

IFB No. CQ8106/BMM



Washington
Metropolitan
Area Transit
Authority

Invitation For Bid

Procurement of Two Armored Trucks

May 14, 2008

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT IFB CQ8106/BMM

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WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT

IFB CQ8106/BMM

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

DATE: May 14, 2008

SUBJECT: IFB CQ8106/BMM

The Washington Metropolitan Area Transit Authority (WMATA) requests your bid to provide two Armored Trucks per WMATA specifications.

A pre-bid conference will not be held. Bids must be received, as stated in the Invitation For Bids, no later than **2:00 P.M. on July 2, 2008 at Room 3C-02, 600 Fifth Street, N.W., Washington, D.C. 20001.**

All questions concerning contractual and technical matters should be directed to the Brij M. Malhotra, Contract Administrator, at (202) 962-2785.

Sincerely,

Raj Chopra
Contracting Officer

SPECIAL ATTENTION
NOTICE TO BIDDER
IMPORTANT
PLEASE READ CAREFULLY

To ensure submission of complete bids and to avoid irregularities that could result in a non-responsive bid, please check your bid for each of the following common responsiveness problems:

1. Have you checked your bid? Are all items included and checked for math errors?
2. Have you acknowledged and recorded the number of amendments on the bid envelope and Bid Form?
3. Have you signed and submitted the Bid Form solicitation page?
4. Have you properly completed and checked the appropriate box for each Certification and Representation? Have you included the Representations and Certifications with your bid?
5. Contractor's pricing, if offered to other jurisdictions, will be the same regardless of quantities ordered and that the Authority makes no representations regarding the quantities that may be ordered by any such jurisdictions.
6. Bid envelope must be marked with solicitation number.
7. Qualifying Statements/ Alterations of Requirements: Any bid that fails to conform to essential requirements of the IFB shall be rejected.

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BIDDING REQUIREMENTS AND CONDITIONS

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INVITATION FOR BID

DATE OF INVITATION: May 14, 2008

PROJECT DESCRIPTION: Two Armored Trucks per WMATA specifications.

SEALED BIDS for Two Armored Trucks described herein will be received at or before 2:00 PM on **July 2, 2008** at the Washington Metropolitan Area Transit Authority, in the Meeting Room at the Lobby Level, at 600 Fifth Street, N. W., Washington, D. C. 20001.

Bidding Material:

Bid Form
Price Schedule
Representations and Certifications
Specifications

DESCRIPTION OF CONTRACT:

Provide Two Armored Trucks per WMATA specifications directly from the contractor at awarded prices.

BID MUST SET FORTH FULL, ACCURATE AND COMPLETE INFORMATION AS REQUIRED BY THIS INVITATION FOR BIDS, INCLUDING ATTACHMENTS.

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SOLICITATION INSTRUCTIONS

1. **DEFINITIONS:** As used herein

- a. The term "solicitation" means "Invitation for Bids (IFB)" where the procurement is advertised, and "Request for Proposal (RFP)" where the procurement is negotiated.
- b. The term "offer" means "bid" where the procurement is advertised, and "proposal" where the procurement is negotiated.

2. **EXPLANATION TO BIDDER**

- a. Any explanation desired by a bidder regarding the meaning or interpretation of this Invitation for Bid, specifications, drawings, and other bidding documents must be requested in writing before **June 11, 2008**, to allow sufficient time for a reply to reach all bidders before the time set for the opening of bids.
- b. Any interpretation made will be in the form of an amendment of this Invitation for Bid, specifications, or other bidding documents and will be furnished to all prospective bidders.
- c. Oral explanations or instructions given before the award of the contract will not be binding.

3. **PRIOR REPRESENTATIONS**

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

4. **PRE-BID CONFERENCE**

A pre-bid conference will not be held.

5. **REVISIONS PRIOR TO DATE SET FOR RECEIPT OF BIDS**

- a. The right is reserved by the Authority to revise or amend the scope of work and/or drawings prior to the date set for the opening of bids. Such revisions and amendments, if any, will be announced by an amendment or amendments to this Invitation for Bid. Copies of such amendments as may be issued will be furnished to all prospective bidders.
- b. If the revisions and amendments require material changes in quantities or prices bid, or both, the date set for the opening of bids may be postponed by such number of 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 opening of bids.

6. **BRAND NAME OR EQUAL**

- a. If items called for by this Invitation for Bids have been identified in the Schedule 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. Bids offering "equal" products including products of the brand name manufacturer other than the one described by brand name will be considered for award if such products are clearly identified and are determined by the Authority to meet fully the salient characteristic requirements in the Invitation for Bids.

- b. Unless the bidder clearly indicates in his bid that he is offering an "equal" product, this bid shall be considered as offering the brand name product referenced in the Invitation for Bids.
- c. If the bidder proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be clearly identified in the space provided in the Invitation for Bids or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Authority and will be based on information furnished by the bidder or identified in this bid, as well as other information reasonably available. **CAUTION TO BIDDERS:** The Authority is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the Authority. Accordingly, to ensure that sufficient information is available, the bidder must furnish as part of his bid all descriptive material (i.e., cuts, illustrations, drawings, specifications or any other information) necessary for the Authority to:
 - (1) Determine whether the product offered meets the salient characteristic requirements of the Invitation for Bids;
 - (2) Establish exactly what the bidder proposes to furnish and what the Authority would be binding itself to purchase by making the award. The information furnished may include specific references to information previously furnished or to information otherwise available to the Authority.
- d. If the bidder proposes to modify a product so as to make it conform to the requirements of the Invitation for Bids, he shall:
 - (1) Include in his bid a clear description of such proposed modifications; and
 - (2) Clearly mark any descriptive material to show the proposed modifications.
 - (3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the Invitation for Bids will not be considered.

7. ACKNOWLEDGMENT OF AMENDMENTS

- a. Offerors are required to acknowledge receipt of all amendments to this Invitation on the Bid Form in the space provided, or by separate letter or telegram prior to opening of bids.
- b. Failure to acknowledge all amendments may cause the bid to be considered not responsive to the invitation, which would require rejection of the bid. The

outside of the envelope containing the offer shall also be marked to show the amendments received.

8. PREPARATION OF BIDS

- a. Bids shall be submitted on the Bid Forms furnished, or copies thereof, and must be manually signed. If erasures or other changes appear on the forms, such erasures or changes must be initialed by the person signing the bid. Unless specifically authorized in this Invitation for Bid, telegraphic bids will not be considered.
- b. The Bid Form may provide for submittals of a price or prices for one or more items which may be lump sum bids, alternate prices, scheduled items resulting in a bid on a unit of construction or a combination thereof, or other bidding arrangements. Where the Bid Form explicitly requires that 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 any item on which no price is submitted.
- c. Unless specifically called for, alternate bids will not be considered.
- d. Modifications of bids already submitted will be considered if received at the office designated in this Invitation for Bid by the time set for the opening of bids. Telegraphic modifications will be considered, but not reveal the amount of the original or revised bid. Neither telegraphic nor teletype facilities are located in the offices of the Authority.

9. SUBMITTAL OF BIDS

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

10. LATE BIDS AND MODIFICATIONS OR WITHDRAWALS

- a. Any offer received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it--
 - (1) Was sent by registered or certified U.S. mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been sent by registered mail by the 15th);

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

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

11. MINIMUM BID ACCEPTANCE PERIOD

- a. "Acceptance period," as used in this provision, means the number of calendar days available to WMATA for awarding a contract from the date specified in this solicitation for receipt of bids.
- b. This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.
- c. WMATA requires a minimum acceptance period of **120** calendar days.

12. CONTRACT AWARD

If this solicitation is an Invitation for Bids:

- a. The Authority may (1) reject any or all bids, (2) accept other than the lowest bid, and (3) waive minor informalities and irregularities in bids received.
- b. A written award or acceptance of a bid mailed or otherwise furnished to the successful bidder within the time of acceptance specified in the bid shall result in a binding contract without further action by either party.
- c. The Authority may reject a bid as non-responsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Authority even though it may be the low evaluated bid, or it is so unbalanced as to be tantamount to allowing an advance payment.

13. PRE-AWARD INFORMATION

- a. The Contracting Officer or other delegated Authority's Representative may conduct a pre-award survey to determine if the bidder eligible for award is responsible both financially and technically and has the capability to perform the work of the Contract in accordance with the requirements of the Specifications and within the time or times specified.
- b. Accordingly, the apparent lowest responsive bidder is required to furnish, within five calendar days after bid opening, pre-award data when requested by the Contracting Officer:

- (1) A completed and signed Pre-Award Evaluation Data form (furnished with the solicitation), including, but not limited to, the following: A statement of the offeror's experience record, the type of concerns for which the offeror conducts business and a list of contracts, if any, on which failure to complete within the specified time resulted in the assessment of liquidated damages.

The low bidder will be required to demonstrate its ability to perform services contained in the solicitation, in a timely manner, to the complete satisfaction of the Authority. The Authority may reject the bidder as non-responsible. If the low bidder is eliminated, then the second lowest bidder will be required to demonstrate its ability to perform services as described herein. This process will continue to the next lowest bidder until a bidder successfully meets the specification requirements.

- (2) Financial Statements

Complete financial statements for the last two years, including Statement of Financial Position (Balance Sheet), Results of Operations (Income Statement), Statement of Changes in Financial Position (Net Change in Resources) and Statement of Current and Retained Earnings. These statements shall be certified indicating disclosure of all facts which could impair or affect the statements presented.

- c. Doubt as to technical ability, productive capability, and financial strength which cannot be resolved affirmatively may result in a determination of non-responsibility by the Contracting Officer or other delegated Authority's Representative.

14. EQUAL EMPLOYMENT OPPORTUNITY

Contractor will be required to comply with all applicable Equal Employment Opportunity laws and regulations.

15. OPPORTUNITY FOR DISADVANTAGED BUSINESS ENTERPRISES TO BID

It is the policy of the Authority (WMATA), the Federal Transit Administration (FTA) and the U.S. Department of Transportation (US DOT) that Disadvantaged Business Enterprises (DBE's) shall have an equal opportunity to receive and participate in performing federally assisted contracts, including contracts and subcontracts at any tier.

16. REPRESENTATIONS, CERTIFICATIONS, AND ACKNOWLEDGMENTS

The offeror shall check or complete all applicable boxes or blocks on the attached "Representations and Certifications" form.

- a. Ineligible Offeror. All offerors will be required to certify that they are not on the Comptroller General's list of ineligible bidders.

- b. Parent Company. A parent company for the purposes of this offer is a company which either owns or controls the activities and basic business policies of the offeror. To own another company means the parent company must own at least a majority (more than 50 percent) of the voting rights in that company. To control another company, such ownership is not required; if another company is able to formulate, determine, or veto basic business policy decisions of the offeror, such other company is considered the parent company of the offeror. This control may be exercised through the use of dominant minority voting rights, use of proxy voting, contractual arrangements, or otherwise.
- c. Employer's Identification Number (E.I. No.). The offeror shall insert in the applicable space on the form, if it has no parent company, its own E.I. No. (Federal Social Security Number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941), or, if it has a parent company, the E.I. No. of its parent company.

17. AWARD - SINGLE AWARD

The Authority will make a single award for the two Armored Trucks in the Schedule unless specified elsewhere.

18. NOTICE OF PROTEST POLICY

- a. WMATA policy and procedure for the administrative resolution of protests is set forth in Chapter 20 of the Procurement Policy Manual (PPM) The PPM contains strict rules for filing a timely protest, for responding to a notice that a protest has been filed, and other procedural matters. The Contracting Officer or other delegated Authority's Representative can furnish a copy of Chapter 20 upon request.
- b. UMTA (FTA) Circular 4220.IE, Section 7.I., addresses Bid Protests. FTA will only review protests regarding the alleged failure of the grantee to have a written protest procedure or alleged failure to follow such procedures, and only when submitted by an interested party. The term "interested party" is defined in the Authority's policy for handling protests.
- c. Alleged violations on other grounds must be submitted to the Contracting Officer or other delegated Authority's Representative who will decide the protest.
- d. The judicial authorities having jurisdiction over court actions concerning protest decisions are the United States District Courts for the Districts of Maryland, Virginia, and the District of Columbia, and the local courts in Maryland, Virginia, and the District of Columbia.

19. REQUIREMENT FOR COST DATA FOR CONTRACT AWARD

In the event there is inadequate competition as a result of this solicitation, the Authority may require each bidder to submit cost data in sufficient detail to permit analysis of the cost elements which make up the bid prices. If there is a sole bid, and the bid is over \$100,000, the bid may be subject to audit.

20. BASIS FOR AWARD

- a. The Authority will award a contract, on a line item basis resulting from this solicitation to the lowest responsive and responsible bidder whose bid conforming to this Invitation for Bids, is determined to be most advantageous to the Authority, considering only price related factors included in the IFB.
- b. If, after receipt of the bids, the Contracting Officer determines that adequate price competition does not exist, the offeror shall provide certified cost or pricing data as requested by the Contracting Officer.
- c. In addition to other factors, bids will be evaluated on the basis of advantages and disadvantages to WMATA that might result from making more than one award (multiple awards). It is assumed, for the purpose of evaluating bids, that \$500 would be the administrative cost to the Authority for issuing and administering each contract award under this solicitation, and individual awards will be for the items or combination of items that result in the lowest aggregate cost to the Authority, including the assumed administrative costs.

21. WMATA'S TAX EXEMPT STATUS

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

"The Authority and the Board shall not be required to pay taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession or supervision, or upon its activities in the operation and maintenance of any transit facility or upon any revenues therefrom, and the property and income derived therefrom shall be exempted from all Federal, State, District of Columbia, municipal, and local taxation. This exemption shall include without limitation, all motor vehicle license fees, sales taxes and motor fuel taxes."
- b. It has been the practice of the District of Columbia to apply the Authority's tax exempt status to certain purchases of materials required under Authority construction contracts and acquired by contractors for physical incorporation into the project work. This has not been the practice in either Maryland or Virginia. The Authority does not represent or warrant that the District of Columbia practice applies to this project or, if it does, that it will continue in effect during the term of this project. It is the responsibility of the Contractor to determine its liability for any and all taxes applicable to this project. Assessment or payment of taxes by the Contractor, including taxes resulting from changes in existing laws or the application thereof or of new or additional taxes, shall not constitute the basis for an increase in the Contract price, except as otherwise allowed under the General Provisions Article, FEDERAL, STATE AND LOCAL TAXES, of this Contract.
- c. By submission of its bid, the bidder certifies that none of the taxes as to which the Authority is exempt are included in its bid price(s).

22. CONTRACTOR 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 Evaluations may be used in determinations of responsibility for future WMATA contracts.

23. TYPE OF CONTRACT

The Authority contemplates award of a **Firm Fixed Price Supply** contract resulting from this solicitation.

CONTRACTUAL REQUIREMENTS



WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SOLICITATION, OFFER AND AWARD

CONTRACT NO. CQ8106	SOLICITATION NO. IFB CQ8106/BMM <input checked="" type="checkbox"/> ADVERTISED <input type="checkbox"/> NEGOTIATED	DATE ISSUED 05/14/08	ADDRESS OFFER TO OFFICE OF Room 3C-02 600 Fifth Street, N. W. Washington D. C. 20001
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In advertised procurement, "offeror" shall be construed to mean "bid" and "bidder."

SOLICITATION

Sealed offer in original and THREE (3) copies for furnishing the supplies or services in the schedules will be received at

Authority until 2:00 P.M. local time July 2, 2008.
(Hour) (Date)

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

All offers are subject to the following:

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

FOR INFORMATION CALL (No collect calls) Brij Malhotra:(202) 962-2785 or bmalhotra@wmata.com.

SCHEDULE					
ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	WMATA is soliciting bids to provide two Armored Trucks within 240 calendar days from award per WMATA specifications. (See continuation of schedule on page 22)	2	EACH		

DUN & BRADSTREET ID NUMBER:

OFFEROR

Name and Address (Street, city, county, state, and zip code)

Name and Title of Person Authorized to Sign Offer (Print or Type)

Signature

Offer Date

Check if remittance is different from above — enter such address in Schedule

AWARD (To be completed by The Authority)

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

ITEM NO.	QUANTITY	UNIT	UNIT PRICE

The total amount of this award is \$ _____

Raj Chopra

Name of Contracting Officer (Print of Type)

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

AWARD DATE

THIS PAGE NOT USED



WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SOLICITATION, OFFER AND AWARD

CONTINUATION SHEET

REFERENCE NO. OF DOCUMENT BEING CONTINUED: IFB CQ8106/BMM			DATE: 05/14/08		
SCHEDULE					
<i>Item No.</i>	<i>Description</i>	<i>Quantity</i>	<i>Unit</i>	<i>Unit Price</i>	<i>Total Amount</i>
1.	Two Armoured Trucks per WMATA Specifications	2	EACH	\$ _____	\$ _____

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ACKNOWLEDGMENT OF AMENDMENTS

The undersigned acknowledges receipt of the following amendments to the Solicitation Documents (Give number and date of each):

Amendment Number _____, dated _____

Amendment Number _____, dated _____

Amendment Number _____, dated _____

Failure to acknowledge receipt of all amendments may cause the bid to be considered not responsive to the solicitation, which would require rejection of the bid.

DIRECTIONS FOR SUBMITTING BID:

1. Read and comply with the Solicitation Instructions. This form is to be submitted in singular. Attached certifications must be completed and returned with the bid form.
2. Envelopes containing bids, and related required documents must be sealed, marked and addressed as follows:

IF BID IS TIMELY MAILED OR HAND DELIVERED BEFORE 2:00 PM ON BID OPENING DAY: July 2, 2008	WMATA IFB CQ8106/BMM PRMT, RM. 3C02 600 5 TH STREET, N.W. WASHINGTON, D.C. 20001
IF BID IS HAND-DELIVERED BETWEEN 1:00 PM AND 2:00PM ON BID OPENING DAY: July 2, 2008	WMATA IFB CQ8106/BMM MEETING ROOM, LOBBY LEVEL 600 5 th STREET, N.W. WASHINGTON, D.C. 20001

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REPRESENTATIONS AND CERTIFICATIONS

REPRESENTATIONS (Check or complete all applicable boxes or blocks)

The offeror represents as part of its offer that:

1. TYPE OF BUSINESS ORGANIZATION

It operates as an individual, a partnership, a nonprofit organization, or a corporation, incorporated under the laws of the State of _____.

2. DISADVANTAGED BUSINESS ENTERPRISE

It is , is not, a disadvantaged business enterprise.

"Disadvantaged Business Enterprise" means a for-profit small business concern that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged individuals or, in the case of a corporation, in which 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 Individuals" means any individual who is a citizen (or other lawfully admitted permanent residents) of the United States and who is any individual who the Authority finds to be socially and economically disadvantaged individuals on a case-by-case basis, and any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

Black Americans, which includes persons having origins in any of the Black racial groups of Africa:

Hispanic Americans, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

Native Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

Asian-Pacific Americans, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Phillipines, Brunei, Somoa, Guam, the U. S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the North Marianas Islands, Macao, Fiji, Tonga, Kiribati, Javalu, Nauru, Federated States of Micronesia, or Hong Kong:

Subcontinent Asian-Indian Americans, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

Women; and

Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such times as the SBA designation becomes effective.

3. AFFILIATION AND IDENTIFYING DATA:

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

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

Name of Parent Company

Main Office Address (including ZIP Code)

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

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

- d. With respect to the Data Universal Numbering Systems (DUNS), the following applies.
 - 1) The offeror shall insert the DUNS number applicable to the offeror's address entered on the Solicitation, Offer & Award Form: _____
 - 2) If a DUNS number has not been established for the address indicated in paragraph (d) 1) of this provision, the Authority will arrange for the assignment of this number after award of a contract and will notify the Contractor accordingly.

4. REPRESENTATION OF NAMING CERTAIN SUBCONTRACTORS:

By submittal of this bid, the bidder represents that he will comply with the provisions concerning approval of certain subcontractors as set forth in the BIDDER'S QUALIFICATIONS and the PRE-AWARD INFORMATION articles of the Invitation for Bid.

5. REPRESENTATIONS: NONDISCRIMINATION CLAUSE:

- a. It [] has, [] has not, participated in a previous contract or subcontract subject to either the Equal Opportunity Clause of this solicitation, or the clause originally contained in

Section 310 of Executive Order Number 10925, or the clause contained in Section 201 of Executive Order Number 11114;

- b. It [] has, [] has not, filed all required compliance reports; and
- c. Representations indicating submittal of required compliance reports signed by proposed subcontractors will be obtained prior to subcontract awards.
- d. The above representation need not be submitted in connection with contracts or subcontracts which are exempt from the clause.

6. AFFIRMATIVE ACTION COMPLIANCE:

By submittal of this bid, the bidder represents that he will participate in the Affirmative Action Program required by the AFFIRMATIVE ACTION PROGRAM article of the SPECIAL PROVISIONS or Special Provisions.

- a. It has a workforce of _____ employees.
- b. It [] has developed and has on file, [] 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 CFR Parts 60-1 and 60-2),

or
- c. It [] has not previously had contracts subject to the written affirmative action program requirements of the rules and regulations of the Secretary of Labor.

CERTIFICATIONS (Check or complete all applicable boxes or blocks)

By signing and dating this offer, each offeror certifies that:

1. DEBARRED OR INELIGIBLE CONTRACTORS; Certification Regarding Debarment, Suspension, & Other Responsibility matters Lower Tier Covered Transactions (Third Part contracts over \$100,000)

Instruction for Certification

- a. By signing and submitting this bid or proposal, the prospective offeror is providing the signed certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, WMATA may pursue available remedies, including suspension and/or debarment.
- c. The prospective offeror shall provide immediate written notice to WMATA if at any time a prospective subcontractor (at any tier) learns that its certification was erroneous when

submitted or has become erroneous by reason of changed circumstances.

- d. The terms “covered transaction”, “debarred”, “suspended”, “ineligible”, “lower tier covered transaction”, “participant”, “person”, “principal”, “proposal”, and “voluntarily excluded”, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact the WMATA Contracting Officer for assistance in obtaining a copy of those regulations.
- e. The offeror agrees by submitting this proposal that, should the contract be entered into, it shall not knowingly enter into any subcontract (at any tier) with a firm which is debarred suspended, declared ineligible, or voluntarily excluded, unless authorized in writing by the Contracting Officer.
- f. The offeror further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction”, without modification, in all subcontracts and solicitations for subcontracts anticipated to exceed \$100,000 in value.
- g. A prime contractor may rely upon a certification of a subcontractor that it is not debarred, suspended, ineligible, or voluntarily excluded for the contracting, unless it knows that the certification is erroneous. A prime contractor may decide the method and frequency by which it determines the eligibility of its principals. Each prime contractor may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
- h. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under Paragraph 5 of these instruction, if a prime contractor under a WMATA contract knowingly enters into a subcontract (at any tier) with a firm which is suspended, debarred, ineligible, or voluntarily excluded from contracting, in addition to all remedies available to the Federal Government, WMATA may pursue available remedies including suspension and/or debarment.

“Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction”

- a. The prospective offeror certifies, by submission of this bid or proposal, that neither it nor its “principals” (as defined at 49 C.F.R. ¶ 29.105) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b. When the prospective offeror is unable to certify to the statements in this certification, such prospective offeror shall attach an explanation to this proposal.

Name of Contractor

*By

Signature

Title

* As the bidder/offers, the Certification by a prospective Contractor is required ONLY for a contract over \$100,000.

2. CONTINGENT FEE:

- a. It [] has, [] has not, employed or retained any company or persons (other than a full-time, bonafide employee working solely for the offeror) to solicit or secure this contract, and
- b. It [] has, [] has not, paid or agreed to pay any company or person (other than a full-time, bona fide employee working solely for the offeror) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of this contract; and
- c. Agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer or other delegated Authority's Representative.

3. CLEAN AIR AND WATER

Applicable if the offer exceeds \$100,000, or the Contracting Officer believes that orders under an indefinite contract in any year will exceed \$100,000 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 Water Act [33 U.S.C. 1319©] and is listed by the Environmental Protection Agency (EPA) as a violating facility, and the acquisition is not otherwise exempt.

- a. Any facility to be utilized in the performance of this proposed contract [] is, or [] is not listed on the EPA list of Violating Facilities;
- b. It 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 which it proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and
- c. It will include a certification substantially the same as this certification, including this paragraph (c), in every non-except subcontract.

4. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION:

- a. It, and in the case of a joint offer, each party thereto, certifies as to its own organization that in connection with this procurement:
 - (1) The prices in this offer have been arrived at independently without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any other competitor;
 - (2) Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the offeror and will not be knowingly disclosed by the offeror prior to the opening of bids in the case of an advertised procurement or prior to award in the case of a negotiated procurement, directly or indirectly, to any other offeror or to any competitor; and
 - (3) No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition.
- b. Each person signing this offer certifies that:
 - (1) He or she is the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein and that he/she has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or
 - (2) (a) He/she is not the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein, but that he/she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated and will not participate, in any action contrary to (a)(1) through (a)(3) above, and as their agent does hereby so certify; and
(b) He/she has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above.

5. CERTIFICATION OF NONSEGREGATED FACILITIES:

- a. 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.
- b. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity Clause in the contract.
- c. 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 which 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.

- d. It further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will:
 - (1) Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;
 - (2) Retain such certifications in its files; and
 - (3) 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 which 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).

6. COVENANT AGAINST GRATUITIES:

Neither it nor any of its employees, representatives or agents have offered or given gratuities (in the form of entertainment, gifts or otherwise) to any director, officer or employee of the Authority with the view toward securing favorable treatment in the awarding, amending, or the making of any determination with respect to the performing of the contract.

**7. SURFACE TRANSPORTATION ASSISTANCE ACT (BUY AMERICA) CERTIFICATIONS
(As a condition of responsiveness to this solicitation (49 CFR Part 661.13), one of the following certificates must be executed by the Offeror.)**

a. If iron, steel or manufactured products (as defined in 49 CFR Parts 661.3 & 661.5) are being procured, the appropriate certificate as set forth below shall be completed and submitted with the offer.

- (1). [] Certificate of Compliance with Section 165(a)
The offeror hereby certifies that it will comply with the requirements of Sections 165(a) of the Surface Transportation Assistance Act of 1982 and the applicable regulations in 49 CFR Part 661.

Date: _____

Signature: _____

Title: _____

- (2). [] Certificate for Non-Compliance with Section 165(a)

The offeror hereby certifies that it cannot comply with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982, but it may qualify for an

exception to the requirement pursuant to Section 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act and regulations in 49 CFR Part 661.7.

Date _____

Signature: _____

Title: _____

- b. If buses or other rolling stock (including train control, communication, and traction power equipment), are being procured, the appropriate certificate as set forth below shall be completed and submitted with the offer.

(1). Certificate of Compliance with Section 165(b)(3)

The offeror hereby certifies that it will comply with the requirements of Sections 165(b)(3) of the Surface Transportation Assistance Act of 1982 and the applicable regulations in 49 CFR Part 661.11

Date: _____

Signature: _____

Title: _____

(2). Certificate for Non-Compliance with Section 165(b)(3)

The offeror hereby certifies that it cannot comply with the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, but it may qualify for an exception to the requirement pursuant to Section 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act and regulations in 49 CFR Part 661.7.

Date _____

Signature: _____

Title: _____

Whether or not the offeror certifies that it will comply with the applicable requirement, such bidder or offeror is bound by its original certification and is not permitted to change its certification after bid opening. An offeror that certifies that it will comply with the applicable Buy America requirements is not eligible for a waiver of those requirements.

8. CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (November 2000)

- a. The definitions and prohibitions contained in the clause, at Federal Acquisition Regulation, 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, are hereby incorporated by reference in paragraph (b) of this certification.
- b. The offeror hereby certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress or any state legislature, an officer or employee of Congress or any state legislature, or an employee of a Member of Congress or state legislature on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal Grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
 - (2) If any funds other than Federal appropriated funds (including profit or fee under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress or state legislature, an officer or employee of Congress or state legislature, or an employee of a Member of Congress or state legislature on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, "Disclosure of Lobbying Activities," to the Contracting Officer;
 - (3) The undersigned will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- c. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by Section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or emended by this provision, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000, for each such failure.

Name of Contractor

Signature

Title

~APPENDIX B

**NOTICE OF REQUIREMENTS
FOR AFFIRMATIVE ACTION-
DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

REVISED SEPTEMBER 2001

* * *

~Applies only if bid/proposal price is \$500,000 or more for a construction contract or \$100,000 or more for a supply and service contract.

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~ APPENDIX B

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

1. DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENT:

- A. The DBE requirements of 49 CFR Part 26 apply to this Contract. Accordingly, the Contractor shall carry out the requirements of 49 CFR Part 26 and this Appendix in the award and administration of U.S. Department of Transportation (US DOT) assisted contracts.

2. POLICY:

- A. It is the policy of the Authority (WMATA), the Federal Transit Administration (FTA) and the US DOT that Disadvantaged Business Enterprises (DBE's) shall have an equal opportunity to receive and participate in performing federally assisted contracts, including contracts and subcontracts at any tier. It is further the policy of the Authority, the FTA and the US DOT that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts. The Contractor hereby agrees to carry out this policy in the award and administration of subcontracts to the fullest extent possible consistent with efficient Contract performance.

3. CONTRACT GOAL:

- A. If the bidder/proposer is not a DBE, then the bidder/proposer agrees that the DBE goal for this Contract will be met by subcontracts or by joint ventures with DBE's. The goal set forth for this Contract is **2%** of the final Contract price, including amendments and modifications. The amount of DBE participation will be determined by the dollar value of the work performed and/or supplies furnished by DBE firms as compared to the total value of all work performed and/or supplies furnished under this Contract. The Contractor shall have met this goal if the Contractor's DBE participation meets or exceeds this goal.
- B. In cases where work is added to the Contract by modification such that additional DBE participation is necessary to meet this goal, the Contractor shall increase the participation of one or more firms listed on the "Schedule of DBE Participation" or submit additional DBE firms to meet the goal. In cases where work is deleted from the Contract, the goal shall be applicable to the new Contract amount. The Contractor shall be permitted to meet the goal by revising its DBE participation, provided, however, that the revision shall not result in DBE participation that is less than the original goal.

~ Applies only if bid/proposal price is \$500,000 or more for a construction contract and \$100,000 or more for a supply and service contract.

4. DEFINITIONS:

- A. **Contractor.** Contractor means one who participates, through a contract or subcontract (at any tier), in a US DOT assisted highway, transit or airport program.
- B. **DBE.** A DBE means a for-profit small business concern that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged individuals or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- C. **Good Faith Efforts.** "Good faith efforts" means efforts to achieve a DBE goal or other requirements of 49 CFR Part 26 which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the goal program requirement.
- D. **Joint Venture.** Joint Venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture is commensurate with its ownership interest.
- E. **Personal Net Worth.** Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include the individual's ownership interest in an applicant or participant DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.
- F. **Small Business Concern.** Small business concern means, with respect to firms seeking to participate as DBE's in US DOT assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR Part 26.65(b).
- G. **Socially and Economically Disadvantaged Individual.** The phrase "socially and economically disadvantaged individual" means any individual who is a citizen (or other lawfully admitted permanent resident) of the United States and who is any individual who the Authority finds to be a socially and economically disadvantaged individual on a case-by-case basis, and any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

- (1) Black Americans, which includes persons having origin in any of the Black racial groups of Africa;
- (2) Hispanic Americans, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (3) Native Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (4) Asian-Pacific Americans, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the North Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (5) Subcontinent Asian Americans, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- (6) Women; and
- (7) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

H. **US DOT Assisted Contract.** US DOT assisted contract means any contract between the Authority and a contractor (at any tier) funded in whole or in part with US DOT financial assistance, including letters of credit or loan guarantees.

5. HOW DBE PARTICIPATION IS COUNTED TOWARDS THE CONTRACT GOAL:

DBE participation shall be counted towards meeting the DBE goal in accordance with the following:

- A. When a DBE participates in a contract, only the value of the work actually performed by the DBE is counted towards the DBE goal.
 - (1) This amount includes the entire amount of that portion of a construction contract that is performed by the DBE's own forces. This amount includes the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate.

- (2) This amount includes the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional technical consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the contract., towards the DBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.
 - (3) When a DBE subcontracts part of its work under the contract to another firm, the value of the subcontract work may be counted towards the DBE goal only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count towards the DBE goal.
- B. When a DBE performs as a participant in a joint venture, the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that a DBE performs with its own forces towards the DBE goal may be counted.
- C. Expenditures to a DBE contractor towards the DBE goal may be counted only if the DBE is performing a commercially useful function on that contract.
- (1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the Authority will consider the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
 - (2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.
 - (3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work, the Authority will presume that the DBE is not performing a commercially useful function.
- D. The following factors will be used by the Authority in determining whether a DBE trucking company is performing a commercial useful function:
- (1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible for on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal.

- (2) The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the contract.
 - (3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers, it employs.
 - (4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - (5) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
 - (6) The lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the terms of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
- E. The following factors will be used to count expenditures with DBE's for materials or supplies towards the DBE goal:
- (1) If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies will be counted towards the DBE goal. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the contract.
 - (2) If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies will be counted towards the DBE goal. A regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph if this person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by long-term lease agreement and not on an ad

hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph.

- (3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials and supplies required on a job site, may be counted towards the DBE goal, provided the fees are reasonable and are not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves may not be counted towards the DBE goal.
- F. Participation by a firm that is not currently certified as a DBE by the Authority at the time of contract award, does not count towards the DBE goal.
- G. The dollar value of work performed under the contract by a firm whose DBE certification has expired, does not count towards the DBE goal.
- H. The participation of a DBE subcontractor does not count towards the Contractor's DBE goal until the amount being counted towards the goal has been paid to the DBE.

6. BID AND PROPOSAL REQUIREMENTS (WITH THE BID/PROPOSAL):

The bidder/proposer shall submit the following with their bid/proposal: Any bidder/proposer who fails to complete and return this information with their bid/proposal shall be deemed to be not responsible and may be ineligible for contract award. Bidders/proposers that fail to meet the DBE goal above and fail to demonstrate "good faith efforts" to justify waiver of the DBE goal (see paragraph 6.C. below) shall be deemed to be not responsible and will be ineligible for Contract award.

- A. Completed "Schedule of DBE Participation" (Page 65) sufficient to meet the above goal. If the bidder/proposer is a DBE firm and intends to satisfy the appropriate DBE requirement with its own firm, he/she must indicate in the Schedule the area of work and percentage it will perform to satisfy the goal.
- B. Executed "Letters of Intent to Perform as a Subcontractor/Joint Venture" (Page B-13). If the bidder/proposer is not a DBE then he/she must attach these letters from each DBE listed on the Schedule.
- C. Justification for grant of relief (waiver of DBE goal). If in the submittal of its bid/proposal, the bidder/proposer fails to meet the DBE goal above, the bidder/proposer has the burden of furnishing sufficient documentation with its bid/proposal of its "good faith efforts" to justify a grant of relief (waiver) from the goal or portion of the goal. Such justification shall be in the form of a detailed report. The following is a list of actions which shall be considered as part of the bidder's/proposer's good faith efforts to obtain DBE participation. This list is neither a mandatory checklist nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases:

- (1) Soliciting through all reasonable and available means (e.g. attendance at pre-bid/proposal meetings, advertising and/or written notices) the interest of all certified DBE's who have the capability to perform the work of the contract. The bidder/proposer must solicit this interest within sufficient time to allow the DBE's to respond to the solicitation. The bidder/proposer must determine with certainty if the DBE's are interested by taking appropriate steps to follow up initial solicitations.
- (2) Selecting portions of the work to be performed by DBE's in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- (3) Providing interested DBE's with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- (4) (a) Negotiating in good faith with interested DBE's. It is the bidder's/proposer's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBE's that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBE's to perform the work. "DBE Unavailability Certifications" (Page B-14) shall be completed as appropriate.

(b) A bidder/proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as the contract goal into consideration. However, the fact that there may be some additional costs involved in finding and using DBE's is not in itself sufficient reason for a bidder's/proposer's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder/proposer of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBE's if the price difference is excessive or unreasonable.
- (5) Not rejecting DBE's as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids/proposals in the contractor's efforts to meet the project goal.

- (6) Making efforts to assist interested DBE's in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- (7) Making efforts to assist interested DBE's in obtaining necessary equipment, supplies, materials, or related assistance or services.
 - (8) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBE's.

7. BID AND PROPOSAL REQUIREMENTS (APPARENT SUCCESSFUL BIDDER/PROPOSER):

The bidder/proposer shall submit the following items within ten (10) calendar days after notification that they are the apparent successful bidder/proposer:

- A. The documents itemized on the DBE Certification Instructions (Page B-15) and the "DBE Disclosure Affidavit" (Pages B-16, B-17 & B-18) are for DBE firms not currently certified with WMATA. For those DBE's certified by WMATA within the past three years, a copy of the current WMATA certification letters may be attached in lieu of the Disclosure Affidavit and related documents.
- B. DBE Manufacturer's Affidavit, if applicable, must be submitted in order to receive 100 percent of the allowable credit for expenditures to DBE manufacturers/suppliers (page B-19). By submission of this Affidavit, the bidder/proposer certifies this it is satisfied that the manufacturer meets the requirements of 49 CFR Part 26.
- C. Schedule B Information for Determining Joint Venture Eligibility, if applicable (pages B-21, B-22, B-23 & B-24*). Submittal shall be signed by all parties, dated and notarized.
- D. Copy of Joint Venture Agreement, if applicable. Submittal shall be signed by all parties, dated and notarized.
- E. Certification letter of the DBE regular dealer/supplier, if applicable. If the bidder/proposer wants to receive the maximum allowable credit of its expenditures for material(s) or supplies required under this Contract, from DBE regular dealers/suppliers, the DBE must submit a signed and notarized statement on their letterhead, that they are a regular dealer of the material(s) or supplies. By submission of this statement, the bidder/proposer certifies that it is satisfied that the subcontractor is a regular dealer/supplier that meets the requirements of 49 CFR Part 26.

8. CONTRACT ADMINISTRATION REQUIREMENTS:

The following requirements apply after contract award:

- A. The Contractor shall include the following provision in each subcontract it awards in support of the Appendix B DBE goal:

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in termination of this contract or such other remedy as the Buyer deems appropriate.

- B. The Contractor shall monitor the performance of, collect and report data on DBE participation to the COR or AR, on the attached "DBE Participation Status Report" (page B-20), which shall be submitted monthly with each payment request. The COR or AR will forward the "DBE Participation Status Report" to the Authority's Office of Civil Rights and to the Contracting Officer for contract compliance monitoring. Failure to submit this report may result in suspension of contract payments. The Contractor shall certify with each payment request that payment has been or will be made to all subcontractors due payment, within ten (10) days after receipt of payment from the Authority for work by that subcontractor. The Contractor shall inform the COR or AR, with their payment request, of any situation in which scheduled subcontractor payments have not been made.

- C. The Contractor shall have a continuing obligation to maintain a schedule for participation by DBE contractor(s) to meet its goal set forth above in this Appendix. The Contractor shall not have work performed nor the materials or supplies furnished by any individual or firm other than those named in the "Schedule of DBE Participation". If at any time, the Contractor believes or has reason to believe that it needs to obtain a substitute for a DBE contractor named in the "Schedule of DBE Participation", the Contractor shall, within ten (10) days, notify the Contracting Officer of that fact in writing. Situations which may warrant substitution for a DBE firm include, but are not limited to the following:

- (1) Failure to qualify as a DBE.
- (2) Death or physical disability, if the named subcontractor or DBE partner of the joint venture is an individual.
- (3) Dissolution, if a corporation or partnership.
- (4) Bankruptcy of the subcontractor, subject to applicable bankruptcy law, and only instances where the bankruptcy affects the Contractor's ability to perform.

- (5) Inability to furnish a reasonable performance or payment bond, if required.
- (6) Inability to obtain, or loss of, a license necessary for the performance of the particular category of work.
- (7) Failure or inability to comply with a requirement of law applicable to contractors and subcontractors on a construction, alteration or repair project.
- (8) Failure or refusal to execute the subcontract in accordance with the terms of an offer submitted to the Contractor prior to the Contractor's submission of its bid/proposal, but only where the Contracting Officer can ascertain with reasonable certainty the terms of such offer. In the absence of any other factors, such a failure or refusal will be considered an unusual situation only if the bidder/proposer obtained, prior to bidding/proposing, an enforcement commitment from the subcontractor involved.
- (9) Failure to comply with the terms and conditions of this Contract or those of its subcontract or joint venture agreement.

Within 30 days thereafter, the Contractor shall, if necessary to achieve the Appendix B goal, make every reasonable effort to subcontract the same or other work to other DBE firms. The Contractor must have the prior written approval of the Contracting Officer and the Office of Civil Rights before substitution for a DBE subcontractor, regardless of the reason for substitution. Failure to obtain Authority approval could result in the Contractor being found non-compliant with the requirements of Appendix B.

- D. If the Contracting Officer determines that the Contractor has failed to comply with this Appendix B, he will notify the Contractor of such non-compliance and the action to be taken. The Contractor shall, after receipt of such notice, take corrective action. If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue a "stop work 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 work order shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor. When the Authority proceeds with such formal actions, it has the burden of proving that the Contractor has not met the requirements of this Appendix, but the Contractor's failure to meet its Appendix B goal shall shift to it the requirement to come forward with evidence to show that it has met the good faith requirements of this Appendix. Where the Contractor, after exhausting all its administrative and legal remedies and procedures is found to have failed to exert a "good faith effort" to involve DBE's in the work as herein provided, the Authority may declare the Contractor ineligible to receive further Authority contracts for three years from the date of the finding.

- E. The Contractor agrees to cooperate in any studies or surveys as may be conducted by the Authority which are necessary to determine the extent of the Contractor's compliance with this Appendix.
- F. The Contractor shall keep records and documents for two years following performance of this Contract to indicate compliance with this Appendix. These records and documents, or copies thereof, shall be made available at reasonable times and places for inspection by any Authorized Representative of the Authority and will be submitted upon request together with any other compliance information which such Representative may require.
- G. If the Authority, the FTA or the US DOT has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements under this Contract, it shall refer the matter to the General Counsel of the US DOT. He/she may initiate debarment procedures in accordance with 41 CFR 1-1.504 and 12-1.602 and/or refer the matter to the U.S. Department of Justice under 18 U. S. C. 1001, as he/she deems appropriate.
- H. Failure by the Contractor to carry out the requirements of this Appendix is a material breach of this Contract, which may result in the termination of this Contract under the Default provision of this Contract or such other remedy as the Authority deems appropriate.

SUMMARY OF SUBMITTALS

With the Bid/Proposal

1. Completed "Schedule of Pre-certified DBE Participation" (Page 51).
2. Executed "Letters of Intent to Perform as a Subcontractor/Joint Venture" (Page 52).
3. Justification for grant of relief (waiver of DBE goal), if applicable. Include completed "DBE Unavailability Certifications" as appropriate.

Bid and Proposal Requirements (Apparent Successful Bidder/Proposer)

1. Documents itemized on the DBE Certification Instructions and the "WMATA DBE Disclosure Affidavit" for each DBE currently not certified with WMATA. For those DBE's certified by WMATA within the past three years, copy of the current WMATA certification letters.
2. DBE Manufacturer's Affidavit, if applicable, must be submitted in order to receive 100 percent of the allowable credit for expenditures to DBE manufacturers/suppliers.
3. Schedule B Information for Determining Joint Venture Eligibility, if applicable.
4. Copy of Joint Venture Agreement, if applicable.
5. Certification letter of the DBE regular dealer/supplier, if applicable.

After Contract Award

1. "DBE Participation Status Report" – submitted monthly.
2. Request to substitute DBE contractor (see paragraph 8.C.) – submitted as required.

THIS PAGE NOT USED

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
 SUPPLY AND SERVICE CONTRACT

IFB CQ8106/BMM

SUBMIT WITH BID/PROPOSAL
SCHEDULE OF DBE PARTICIPATION

Contract No. _____

_____ Bidder/Proposer Project Name _____ Name of _____

The bidder/proposer shall complete this Schedule by identifying only those DBE firms, with scope of work and price, who have agreed to perform work on this Contract. The prices for the work/supplies of these firms shall be at prices amounting to at least the DBE percentage goal of the total Contract price. The bidder/proposer agrees to enter into a formal agreement with the DBE firm(s) listed for the work and at, or greater than, the prices listed in this Schedule subject to award of a Contract with the Authority. If the total amount is less than the DBE percentage goal, a justification for waiver of DBE goal shall be attached to this Schedule.

<i>Name of DBE Subcontractor</i>	<i>DBE</i>	<i>Address</i>	<i>Type of Work (Electrical, Paving, Etc.) and Contract Items or Parts Thereof to be Performed and Work Hours Involved</i>	<i>Agreed Price</i>
<i>Subtotal \$ DBE Subcontractors</i>			<i>Subtotal</i>	
<i>Name of DBE Prime Contractor</i>	<i>DBE</i>	<i>Address</i>	<i>Type of Work (Electrical, Paving, Etc.) and Contract Items or Parts Thereof to be Performed and Work Hours Involved</i>	<i>Agreed Price</i>
<i>Subtotal \$ DBE Prime Contractor</i>			<i>Subtotal</i>	
TOTAL \$ ALL DBE CONTRACTORS			TOTAL	

_____ Signature of Contractor Representative

_____ Title

_____ Date

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT

IFB CQ8106/BMM

M

23.26a (Rev 11/99)

Contract Number: _____

Project Name: _____

**LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR/JOINT VENTURE
(ALL ITEMS MUST BE COMPLETED)**

TO: _____
(Name of Bidder/Proposer)

The undersigned intends to perform work in connection with the above projects as (check one):

_____ an individual _____ a corporation
_____ a partnership _____ a joint venture

Specify in detail particular work items or parts thereof to be performed:

at the following price: \$ _____

Please indicate _____ % of the dollar value of the subcontract that will be awarded to non-DBE contractors, if applicable. The undersigned will enter into a formal agreement with you for the above work upon your execution of a contract with the Authority.

Name of DBE Subcontractor/Joint Venture Phone Number

Address WMATA Vendor ID Number

Signature & Title Date

The following is to be completed by the Prime Contractor. A copy of this letter must be returned to the DBE subcontractor to indicate acceptance.

To: _____
(Name of DBE)

You have projected your interest and intent for such work, and the undersigned is projecting completion of such work as follows:

<u>WORK ITEMS</u>	<u>PROJECTED DBE COMMENCEMENT DATE</u>	<u>PROJECTED DBE COMPLETION DATE</u>
-----------------------	--	--

(Date)

(Name of Prime Contractor &
Acceptance Signature)

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT

IFB CQ8106/BMM

23.24 (Rev
10/99)



SUBMIT WITH BID / PROPOSAL

DBE UNAVAILABILITY CERTIFICATION

I, _____, _____, of _____
(Name) (Title) (Bidder/Proposer)

certify that on _____ I contacted the following minority contractor to obtain a proposal for work
(Date)
items to be performed on Contract Number _____.

<u>DBE Contractor</u>	<u>Work Items Sought</u>	<u>Form of Bid Sought (i.e., Unit Price, Materials and Labor Only, Etc.)</u>
-----------------------	--------------------------	--

To the best of my knowledge and belief, said DBE contractors were unavailable (exclusive of unavailability due to lack of agreement on price) for work on this project, or unable to prepare a proposal, for the following reason(s):

Signature: _____

Date: _____

_____ was offered an opportunity to bid on the above
(Name of DBE Contractor)
identified work on _____ by _____
(Date) (Source)

The above statement is true and accurate account of why I did not submit a bid on this project.

(Signature of DBE Contractor)

(Title)

M

23.25 (Rev 10/99)

DBE Certification Instructions

Important Notice

If you do not have a current official letter of certification from WMATA, you must comply with the procedures that follow in order to be eligible to participate in WMATA's Disadvantaged Business Enterprise (DBE) Program.

Instructions

If you currently hold a valid DBE Certification status with either the Maryland Department of Transportation (MDOT); or the U.S. Small Business Administration, 8a Program (SBA-8a), forward a copy of the official certification letter along with the WMATA Affidavit. In addition, submit the pertinent documents for your company listed below. The affidavit form should be completed in full and **NOTARIZED**.

General (All firms must submit documents under General)

- Current (unaudited) Financial Statements
- Prior three (3) years Federal Tax Returns
- Resume of Principal(s) and Key Personnel
- Third Party Agreements, such as Rental and Management Agreements
- Licenses to Do Business
- Personal Net Worth (PNW) Statement
- Statement of Disadvantage
- No Change Affidavit or Notice of Change (where applicable)

Corporations

- Articles of Incorporation
- By-Laws
- Stock Ownership Options
- Copy of Stock Certifications of Each Holder
- Copy of Voting Rights
- Record of First Organizational Meeting

Partnerships

- Partnership Agreement

Proprietorships

- IRS Employer ID Number
- WMATA Vendor ID#

Recertification Review

Once certified you will be required, every three years, to resubmit for our review an updated **NOTARIZED** WMATA DBE Affidavit form along with the latest income tax return and copies of any of the above cited documents that may have changed since your initial certification. This should include updated letters of certification from MDOT or SBA-8a if your initial WMATA Certification was based upon prior certification under either of these programs. (NOTICE: In-person interviews may be scheduled at WMATA facilities and scheduled or unscheduled visits to your place of business may be conducted at the direction of WMATA staff.)

AFFIDAVIT ENCLOSURE

NOTE: When completing Disclosure Affidavit, complete all information blocks. Type "N/A" if item does not apply to you or your firm.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
 SUPPLY AND SERVICE CONTRACT

IFB CQ8106/BMM

23.22 (10/99)



WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
 600 Fifth Street, NW
 Washington, DC 20001
 (202) 962-1086
 DISADVANTAGED BUSINESS ENTERPRISE
 DISCLOSURE AFFIDAVIT

<p>1 .NAME AND ADDRESS: (Company Name, Street Address, City, State, Zip)</p> <p>TELEPHONE: ()</p>	<p>2. PRESUMPTIVE GROUP:</p> <p><input type="checkbox"/> Black American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Other</p> <p><input type="checkbox"/> Hispanic American <input type="checkbox"/> Subcontinent Asian American</p> <p><input type="checkbox"/> Native American <input type="checkbox"/> Women</p> <p>Nation of Family Origin (i.e., Mexico, Korea, Jamaica, Africa, India, etc.): _____</p> <p>_____</p> <p style="text-align: center;">FURTHER PROOF OF ETHNICITY MAY BE REQUIRED</p>																									
<p>3. CONTACT PERSON: (Name, Title, Telephone)</p>	<p>SEX: <input type="checkbox"/> Male <input type="checkbox"/> Female</p> <p><input type="checkbox"/> U.S. Citizen</p> <p><input type="checkbox"/> Permit Resident (attach copy)</p>																									
<p>4. NATURE OF FIRM'S BUSINESS:</p> <p>NAICS CODE:</p>	<p>6. ARE YOU AFFILIATED WITH ANY CONTRACTOR ORGANIZATIONS? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p style="text-align: center;">If so, please list which ones:</p>																									
<p>5. YEARS FIRM HAS BEEN IN BUSINESS:</p>																										
<p>7. HAS YOUR COMPANY EVER BEEN CERTIFIED AS A MINORITY DISADVANTAGED OR WOMEN-OWNED BUSINESS?</p> <p><input type="checkbox"/> YES WHAT AGENCY?</p> <p><input type="checkbox"/> NO</p>	<p>9a. NUMBER OF EMPLOYEES:</p> <p>FULL TIME _____</p> <p>PART TIME _____</p> <p>OTHER _____</p>																									
<p>8. HAS YOUR BUSINESS EVER BEEN DENIED CERTIFICATION AS A MINORITY BUSINESS ENTERPRISE?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>If yes, explain in REMARKS (#25 Page 3)</p>	<p>9b. GROSS RECEIPTS (Last 3 Years)</p> <p>YEAR _____ \$ _____</p> <p>YEAR _____ \$ _____</p> <p>YEAR _____ \$ _____</p>																									
<p>10. TYPE OF OWNERSHIP: (Check One)</p> <p><input type="checkbox"/> Sole Proprietorship</p> <p><input type="checkbox"/> Partnership</p> <p><input type="checkbox"/> Joint Venture</p> <p><input type="checkbox"/> Corporation</p> <p><input type="checkbox"/> Limited Liability Corp.</p> <p><input type="checkbox"/> Other _____</p>																										
<p>11. CURRENT BOARD OF DIRECTORS:</p> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:30%;">NAME AND POSITION</th> <th style="width:10%;">ETHNIC GROUP</th> <th style="width:10%;">SEX</th> <th style="width:15%;">DATE OF SERVICE WITH COMPANY</th> <th style="width:35%;">FULL ADDRESS (Number, Street, City, State, Zip)</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table>		NAME AND POSITION	ETHNIC GROUP	SEX	DATE OF SERVICE WITH COMPANY	FULL ADDRESS (Number, Street, City, State, Zip)																				
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**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT**

IFB CQ8106/BMM

13. PRIOR BOARD OF DIRECTORS AND/OR COMPANY OFFICERS:

<i>NAME AND POSITION</i>	<i>ETHNIC GROUP</i>	<i>SEX</i>	<i>DATE OF SERVICE WITH COMPANY</i>	<i>FULL ADDRESS (Number, Street, City, State, Zip)</i>

14. CURRENT COMPANY OFFICERS:

<i>NAME AND POSITION</i>	<i>ETHNIC GROUP</i>	<i>SEX</i>	<i>DATE OF OWNERSHIP</i>	<i>INTEREST OR SHARES OWNED (Class & Quantity)</i>	<i>VOTING PERCENTAGE</i>

15. NUMBER OF SHARES AUTHORIZED, ISSUED & OUTSTANDING:

Preferred _____
Common _____
Other _____

16. INDICATE SOURCE(S) AND AMOUNT OF CAPITAL INVESTED IN COMPANY BY PERSONS AFFILIATED WITH THE ENTERPRISE:

<i>Source</i>	<i>Amount</i>

17. IDENTIFY YOUR BONDING COMPANY, BANK AND SOURCES OF LETTERS OF CREDIT:

<i>Bonding Company</i>	<i>Bank</i>	<i>Letter of Credit</i>

18. WHAT IS YOUR BONDING LIMIT?

\$ _____

19. WHO DETERMINES WHAT JOBS THE COMPANY WILL UNDERTAKE? (Name and Title)

20. WHO NEGOTIATES FOR SURETY BONDS AND SIGNS FOR INSURANCE AND PAYROLL?

<i>Surety and/or Performance Bonds</i>	<i>Payroll</i>	<i>Insurance</i>

21. WHO WILL BE RESPONSIBLE FOR ONSITE PROJECT SUPERVISION? (Name and Title)

22. LIST THE THREE LARGEST PROJECTS IN DOLLAR AMOUNTS COMPLETED BY YOUR COMPANY DURING THE LAST THREE YEARS; INDICATE PRIME CONTRACTORS OF THESE PROJECTS OR PROCUREMENTS:

<i>PROJECT/PROCUREMENT</i>	<i>DOLLAR AMOUNT</i>	<i>DATE COMPLETED</i>	<i>PRIME CONTRACTOR</i>



WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SUPPLY AND SERVICE CONTRACT

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23. PRIOR AND CURRENT COMPANY CLIENTS: (Company Name, Street Address, City, State, Zip) (Attach if necessary)

24a. LIST MAJOR EQUIPMENT: TYPE QUANTITY 24b. LIST ALL PRODUCTS AND/OR SERVICES RENDERED: PRODUCTS OR SERVICES

25. REMARKS:

The undersigned swears that the foregoing statements are true and correct and include all material information necessary to identify and explain the operations of (name of firm as well as the ownership thereof). Further, the undersigned agrees to provide through the prime contractor, or if no prime directly to WMATA, current complete and accurate information regarding actual work performed on any project, the payment therefor, and any proposed changes of any of the foregoing arrangements and to permit the audit and examination of books, records and files of the named firm. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal and State laws concerning false statements.

If, after filing this Affidavit and before the work of this firm is completed on any contract covered by this regulation, there is any significant change in the information submitted, you must inform WMATA of the change through the prime contractor or, if no prime contractor, inform WMATA directly.

It is recognized and acknowledged that the information provided hereinabove may be used by WMATA for the purpose of certifying the authenticity of the disadvantaged status of the applicant firm. Trade secrets, information privileged by law and confidential commercial, financial, geological or geophysical data furnished will be protected by WMATA.

Signature of Affiant Printed Name

Date: State: County:

On this day of, 19,

before me appeared (Name)

to me personally known, who, being duly sworn, did execute the foregoing Affidavit, and did state that he

or she was properly authorized by (Name of Firm)

to execute the Affidavit and did so as his or her free act and deed.

Sworn and subscribed before me (Notary Public) (Seal)

Commission Expires:

THIS PAGE NOT USED

DBE MANUFACTURER'S AFFIDAVIT

I hereby declare and affirm that I am _____ (Title)

and duly authorized representative of _____
(Name of Company),
a _____ owned and controlled enterprise
whose address is _____

I further declare and affirm that company employees (persons not on the payroll of and/or performing the same tasks for disadvantaged owned business having any interest in the affiant's business) operate the following company equipment relative to the manufacturing process:

Equipment

Type	Function	Model	Age	Make
------	----------	-------	-----	------

Number of employees involved in the manufacturing process: _____

The undersigned swears that the foregoing statements are true and correct and fully understands that WMATA may rely on these statements in determining whether a WMATA prime contractor purchasing goods from the undersigned's manufacturing concern is entitled to a 100% credit of such purchases towards its DBE goal. The undersigned further understands that any material misrepresentation will be grounds for initiating action under Federal or state laws concerning false statements.

Signature of Affiant Printed Name

Date: _____ State: _____ County: _____

On this _____ day of _____, 19 _____

before me appeared _____
(Name)

to me personally known, who, being duly sworn, did execute the foregoing Affidavit, and did state that he or she was properly authorized by _____

(Name of Firm)
to execute the Affidavit and did so as his or her free act and deed.

(Seal) Sworn and subscribed before me _____
(Notary Public)

Commission Expires: _____

23.29
(10/99)



WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT

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Information For Determining Joint Venture Eligibility

Page 1

.....
Name and address of Joint Venture: _____

Contact Person: _____ Telephone: _____

Have you attached a copy of the Joint Venture agreement? Yes No

NOTE: Affidavit will not be processed without a copy of the Joint Venture agreement.

.....
.....

Name and address of Joint Venture partner: _____

Contact Person: _____ Telephone: _____

Status of firm: DBE. Non-Minority.

Does firm have current WMATA DBE certification? Yes No

Name and address of Joint Venture partner: _____

Contact Person: _____ Telephone: _____

Status of firm: DBE. Non-Minority.

Does firm have current WMATA DBE certification? Yes No

Describe the nature of the Joint Venture business:

Describe the role in the Joint Venture of each partner listed above:

Describe the experience and business qualifications of each partner in the Joint Venture listed above:

(10/99) 23.29



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Page 2

.....

 Indicate the percentage of ownership in the Joint Venture for each Joint Venture partner, indicating dollar amounts wherever applicable.

Name of Partner	Percentage of Ownership	Profit and Loss Sharing	Capital Contributions including Equipment	Other Agreements
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

TOTALS:

.....
 Identify by name, title, race, sex and company affiliation those individuals responsible for the management control of and participation in this contract:

1. Financial decisions, such as payroll, insurance, surety and/or bonding requirements:

Name: _____ Race: _____

Title: _____ Sex: Male Female

Company affiliation: _____

2. Management decisions, such as estimating, marketing and sales, hiring and firing, purchasing supplies:

Name: _____ Race: _____

Title: _____ Sex: Male Female

Company affiliation: _____

3. Supervision of field operations:

Name: _____ Race: _____

Title: _____ Sex: Male Female

Company affiliation: _____

.....

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WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
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Information For Determining Joint Venture Eligibility

Page 3

.....
The undersigned swear that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operations of our following named Joint Venture:

and the intended participation by each Joint Venturer in the undertaking. Further the undersigned covenant and agree to provide the Authority current, complete and accurate information regarding actual Joint Venture work and the payment thereof and any proposed changes in any of the Joint Venture arrangements and to permit the audit and examination of the books, records and files of the Joint Venture, or those of each Joint Venturer relevant to the Joint Venture, by authorized representatives of the Authority or the Federal funding agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal and State laws concerning false statements.

It is recognized and acknowledged that the Authority's DBE Program shall have access to the information provided herein above for the purpose of establishing eligibility and authenticity of the minority status of the Joint Venture.

It is understood that trade secrets and information privileged by law, as well as commercial, financial, geological and geophysical data furnished will be protected.

----- (NAME OF FIRM)	----- (NAME OF SECOND FIRM)
----- (SIGNATURE OF AFFIANT)	----- (SIGNATURE OF AFFIANT)
----- (PRINT NAME)	----- (PRINT NAME)
----- (TITLE)	----- (TITLE)
----- (DATE)	----- (DATE)

23.29 (10/99)



WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
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Information For Determining Joint Venture Eligibility

Page 4

.....
Date: _____ State: _____ County: _____

On this _____ day of _____, 19_____,

before me appeared _____

(Name)

to me personally known, who, being duly sworn, did execute the foregoing Affidavit, and did state that he

or she was properly authorized by _____

(Name of Firm)

to execute the Affidavit and did so as his or her free act and deed.

(Seal) Sworn and subscribed before me _____
(Notary Public)

Commission Expires: _____

.....
Date: _____ State: _____ County: _____

On this _____ day of _____, 19_____,

before me appeared _____

(Name)

to me personally known, who, being duly sworn, did execute the foregoing Affidavit, and did state that he

or she was properly authorized by _____

(Name of Firm)

to execute the Affidavit and did so as his or her free act and deed.

(Seal) Sworn and subscribed before me _____
(Notary Public)

Commission Expires: _____

.....
* * *

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CONTRACTUAL REQUIREMENTS

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PRE-AWARD EVALUATION DATA

PROJECT DESCRIPTION: Armored Trucks

1. Name of Firm: _____

2. Address: _____

3. Individual Partnership Corporation Joint Venture
4. Date Organized _____.
State in which incorporated _____.
5. Names and Addresses of Officers or Partners:
 - a. _____
 - b. _____
 - c. _____
 - d. _____
 - e. _____
 - f. _____
6. How long has your firm been in business under its present name? _____
7. Attach as SCHEDULE ONE a list of current contracts, which demonstrates your proficiency, each with contract amount, name of contracting party, type of work and percentage of completion.
8. Attached as SCHEDULE TWO a list of similar contracts, each with contract amount, name of contracting party, and character or type of work for similar contract **completed** in the last two (2) years.
9. In the last two (2) years, have you ever been denied an award where you were low bidder/offer? If the answer is YES, attach as SCHEDULE THREE the full particulars regarding each occurrence.
10. Have you ever failed to complete any contract, other than current, on which you

were the low bidder? _____

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

11. Financial resources available as working capital for the Contract:
 - a. Cash on hand \$ _____
 - b. Source of credit: _____
12. Attach as SCHEDULE FIVE financial statements and letters from banks regarding credit as required by the Pre-Award Information article.
13. What percentage of the work (contract amount) do you intend performing with your own personnel? _____%
14. Attach as SCHEDULE 15a list of all principal subcontractors and the percentage and character of work (contract amount) which each will perform. Principal items of work shall include, but not be limited to, those items listed in the Pre-Award Information article of the Invitation for Bid.
15. If the Contractor or subcontractor is a joint venture, submit PRE-AWARD EVALUATION DATA form for each member of the joint venture.

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

The undersigned certifies to the accuracy of all information.

COMPANY: _____

(Name of Firm)

SIGNATURE: _____

TITLE: _____

DATED: _____

LOCATION: _____

SECTION 1

GENERAL PROVISIONS

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SUPPLY AND SERVICE CONTRACT
GENERAL PROVISIONS

1. DEFINITIONS

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

- a. The term Authority means The Washington Metropolitan Area Transit Authority created effective February 20, 1967, by Interstate Compact by and between Maryland, Virginia, and the District of Columbia, pursuant to Public Law 89-774, approved November 6, 1966.
- b. The term Contracting Officer means the person executing this Contract on behalf of the Authority, and his or her successor, and the term includes, except as otherwise provided in this Contract, the authorized representative of a Contracting Officer acting within the limits of his authority.
- c. Except as otherwise provided in this Contract, the term subcontracts includes purchase orders under this Contract.
- d. Wherever in the scope of the work the words directed, ordered, designated, prescribed, or words of like import are used, it shall be understood that the direction, requirement, order, designation, or prescription of the Contracting Officer is intended and similarly the words approved, acceptable, satisfactory, or words of like import shall mean approved by, or acceptable to, or satisfactory to the Contracting Officer, unless otherwise expressly stated.

2. CHANGES (Revised 09/14/94)

- a. The Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this Contract, in any one or more of the following:
 - (1) Description of services to be performed.
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.).
 - (3) Place of performance of the services.
 - (4) Drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Authority, in accordance with the drawings, designs, or specifications.
 - (5) Method of shipment or packing of supplies.
 - (6) Place of delivery.
- b. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Contract, whether changed or not changed by the order, the Contracting Officer shall

make an equitable adjustment in the Contract price, the delivery schedule, or both, and shall modify the Contract.

- c. The Contractor must assert its right to an adjustment under this article within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.
- d. If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.
- e. Failure to agree to any adjustment shall be a dispute under the Disputes article. However, nothing in this article shall excuse the Contractor from proceeding with the contract as changed.

3. EXTRAS

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

4. VARIATION IN QUANTITY

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

5. INSPECTION

- a. All supplies, which term throughout this article includes without limitation raw materials, components, intermediate assemblies, and end products, shall be subject to inspection and test by the Authority, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance.
- b. In case any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this Contract, the Authority shall have the right either to reject them (with or without instruction as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by the Contracting Officer, corrected in place by and at the expense of the Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If the Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed or promptly to replace or correct such supplies or lots of supplies, the Authority may either:
 - (1) By contract or otherwise replace or correct such supplies and charge to the Contractor the cost occasioned the Authority thereby; or
 - (2) Terminate this Contract for default as provided in the DEFAULT article of

this Contract. Unless the Contractor corrects or replaces such supplies within the delivery schedule, the Contracting Officer may require the delivery of such supplies at a reduction in price which is equitable under the circumstances. Failure to agree to such reduction of price shall be a dispute concerning a question of fact within the meaning of the DISPUTES article of this Contract.

- c. If any inspection or test is made by the Authority on the premises of the Contractor or a subcontractor, the Contractor without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the Authority inspectors in the performance of their duties. If Authority inspection or test is made at a point other than the premises of the Contractor or a subcontractor, it shall be at the expense of the Authority except as otherwise provided in this Contract; provided, that in case of rejection, the Authority shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by the Authority shall be performed in such a manner as not to unduly delay this work. The Authority reserves the right to charge to the

Contractor any additional cost of Authority inspection and test when supplies are not ready at the time such inspection and test is requested by the Contractor or when reinspection or retest is necessitated by prior rejection. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this Contract; but failure to inspect and accept or reject supplies shall neither relieve the Contractor from responsibility for such supplies as are not in accordance with the Contract requirements nor impose liability on the Authority therefor.

- d. The inspection and test by the Authority of any supplies or lots thereof does not relieve the Contractor from any responsibility regarding defects or other failures to meet the Contract requirements which may be discovered prior to acceptance. Except as otherwise provided in this Contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.
- e. The Contractor shall provide and maintain an inspection system acceptable to the Authority covering the supplies hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Authority during the performance of this Contract and for such longer period as may be specified elsewhere in this Contract.

6. RESPONSIBILITY FOR INSPECTION

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

7. TITLE AND RISK OF LOSS

- a. Unless this Contract specifically provides for earlier passage of title, title to

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supplies covered by this Contract shall pass to the Authority upon formal acceptance, regardless of when or where the Authority takes physical possession.

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

8. PAYMENTS

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

9. DELAY OF WORK

- a. If the performance of all or any part of the work is delayed or interrupted by an act of the Contracting Officer in the administration of this Contract, which act is not expressly or impliedly authorized by this Contract, or by his failure to act within the time specified, an adjustment (excluding profit) shall be made for any increase in the cost of performance of this Contract caused by such delay or interruption and the contract modified in writing

accordingly. Adjustment shall be made also in the delivery or performance dates and any other contractual provision affected by such delay or interruption. However, no adjustment shall be made under this article for any delay or interruption

- (1) to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor; or
- (2) for which an adjustment is provided or excluded under any other provision of this Contract.

b. No claim under this clause shall be allowed

- (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved; and
- (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such delay or interruption, but not later than the date of final payment under the Contract.

10. STOP WORK ORDER

a. The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part of the work called for by this Contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a STOP WORK ORDER issued pursuant to this article. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either:

- (1) Cancel the stop work order, or
- (2) Terminate the work covered by such order as provided in the TERMINATION FOR CONVENIENCE article of this Contract.

b. If a stop work order issued under this article is cancelled or the period of the order or any extension thereof expires, the Contractor shall resume work. An equitable adjustment shall be made in the delivery schedule or Contract price, or both, and the Contract modified in writing accordingly, if:

- (1) The stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract, and
- (2) The Contractor asserts a claim for such adjustment within 30 days after the end of the period of work stoppage; provided that, if the Contracting Officer decides the facts justify such action, he may receive and act upon any such claim asserted at any time prior to final payment under this

Contract.

- c. If a stop work order is not cancelled and the work covered by such order is terminated for the convenience of the Authority, the reasonable costs resulting from the stop work order shall be allowed in arriving at the termination settlement.

11. DISPUTES (Revised 11/22/00)

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

12. DEFAULT

The Authority may, subject to the provisions of paragraph c. below, by written notice of default to the Contractor, terminate the whole or any part of this Contract in any one of the following circumstances:

- a. If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or
- b. If the Contractor fails to perform any of the other provisions of this Contract, or so fails to make progress as to endanger performance of this Contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

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

of this article, the rights and obligations of the parties shall, if the Contract contains an article providing for termination for convenience of the Authority, be the same as if the notice of termination had been issued pursuant to such article. If, after notice of termination of this Contract under the provisions of this article, it is determined for any reason that the Contractor was not in default under the provisions of this article, and if this Contract does not contain an article providing for termination for convenience of the Authority, the Contract shall be equitably adjusted to

compensate for such termination and the Contract modified accordingly; failure to agree to such adjustment shall be a dispute concerning a question of fact within the meaning of the DISPUTES article of this Contract.

- g. If the Contractor fails to deliver the supplies or perform the services within the time specified in this Contract, or any extension thereof, the actual damage to the Authority for the delay will be difficult or impossible to determine. Therefore in lieu of actual damages, the Contractor shall pay to the Authority as fixed, agreed and liquidated damages for each calendar day of delay, the amount set forth elsewhere in this Contract. Alternatively, the Authority may terminate this Contract in whole or in part as provided in paragraph a. of this article, and in that event the Contractor shall be liable, in addition to the excess costs provided in paragraph b. above, for such liquidated damages accruing until such time as the Authority may reasonably obtain delivery or performance of similar supplies or services. The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the Contractor, as defined in paragraph c. above, and in such event, subject to the DISPUTES article, the Contracting Officer shall ascertain the facts and extent of the delay and shall extend the time for performance of the contract when in his judgment the findings of fact justify an extension.
- h. The rights and remedies of the Authority provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- i. As used in paragraph c. of this clause, the terms subcontractor and subcontractors mean subcontractor(s) at any tier.

13. TERMINATION FOR CONVENIENCE OF THE AUTHORITY

- a. The performance of work under this Contract may be terminated by the Authority in accordance with this article in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Authority. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.
- b. After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:
 - (1) Stop work under the Contract on the date and to the extent specified in the Notice of Termination;
 - (2) Place no further orders or subcontracts for materials, services, or

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- facilities, except as may be necessary for completion of such portion of the work under the Contract which is not terminated;
- (3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.
 - (4) Assign to the Authority, in the manner, at the time, and to the extent directed by the Contracting Officer, all of the rights, title, and interests of the Contractor under the orders and subcontracts so terminated, in which case the Authority shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
 - (5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this article;
 - (6) Transfer title to the Authority and deliver in the manner, at the times, and to the extent, if any, directed by the Contracting Officer:
 - a. the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the work terminated by the Notice of Termination, and
 - b. the completed or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to the Authority;
 - (7) Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the type referred to in paragraph 6. above; provided, however, that the Contractor
 - a. shall not be required to extend credit to any purchaser, and
 - b. may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer. And, provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Authority to the Contractor under this Contract or shall otherwise be credited to the price or cost of the work covered by the Contractor or paid in such other manner as the Contracting Officer may direct;
 - (8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and
 - (9) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the

Authority has or may acquire an interest.

- c. At any time after expiration of the plant clearance period, as defined in Subpart 45.6 of the Federal Acquisition Regulations (48 CFR 45.6), as the definition may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Authority to remove such items or enter into a storage agreement covering them. Not later than 15 days thereafter, the Authority will accept title to such items and remove them or enter into a storage agreement covering the same. Provided, that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items or, if the items are stored, within 45 days from the date of submittal of the list and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.
- d. After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim, in the form and with certification prescribed by the Contracting Officer. Such claims shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such one-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any
- such termination claim at any time after such one-year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any review required by the contracting agency's
- procedures in effect as of the date of execution of this Contract, determine, on the basis of information available to him, the amount, if any, due the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.
- e. Subject to the provisions of paragraph d., and subject to any review required by the contracting agency's procedures in effect as of the date of execution of this Contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this article, which amount or amounts may include a reasonable allowance for profit on work done. Provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. The Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph f. of this article, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this article, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph e.
- f. In the event of the failure of the Contractor and the Contracting Officer to agree as provided in paragraph e. upon the whole amount to be paid the Contractor by reason

of the termination of work pursuant to this article, the Contracting Officer shall, subject to any review required by the contracting agency's procedures in effect as of the date of execution of this Contract, determine, on the basis of information available to him, the amount if any, due the Contractor by reason of the termination and shall pay to the Contractor the amounts determined as follows:

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

Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Authority, or to a buyer pursuant to paragraph b. (7).

- g. Costs claimed, agreed to, or determined pursuant to paragraphs d., e. and f. of this article shall be in accordance with the applicable contract cost principles and procedures in Subpart 31.1 of the Federal Acquisition Regulations (48 CFR 31.1) in effect on the date of this Contract.
- h. The Contractor shall have the right to appeal, under the DISPUTES article of this Contract from any determination made by the Contracting Officer under paragraph d. or f. above, except that, if the Contractor has failed to submit his claim within the time provided in paragraph d. above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph d. or f. above, the Authority shall pay to the Contractor the following:
 - (1) if there is on right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer; or
 - (2) if an appeal has been taken, the amount finally determined on such appeal.
- i. In arriving at the amount due the Contractor under this article there shall be deducted
 - (1) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this Contract;
 - (2) any claim which the Authority may have against the Contractor in connection with this Contract; and
 - (3) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this article, and not otherwise recovered by or credited to the Authority.
- j. If the termination hereunder be partial, prior to the settlement of the terminated portion of this Contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.
- k. The Authority may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this Contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this article, such excess shall be

payable by the Contractor to the Authority upon demand, together with interest computed at the rate of six percent per annum for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Authority; provided, however, that no interest shall be charged with

respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until 10 days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reasons of the circumstances.

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

14. FEDERAL, STATE AND LOCAL TAXES

- a. Except as may be otherwise provided in this Contract, the Contract price includes all applicable Federal, State, and Local taxes and duties.
- b. Nevertheless, with respect to any Federal excise tax or duty on the transactions or property covered by this Contract, if a statute, court decision, written ruling, or regulation takes effect after the Contract date, and:
 - (1) Results in the Contractor being required to pay or bear the burden of any such Federal excise tax or duty or increase in the rate thereof which would not otherwise have been payable on such transactions or property, the Contract price shall be

increased by the amount of such tax or duty or rate increase, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the Contract price as a contingency reserve or otherwise; or
 - (2) Results in the Contractor not being required to pay or bear the burden of, or in his obtaining a refund or drawback of, any such Federal excise tax or duty which would otherwise have been payable on such transactions or property or which was the basis of an increase in the Contract price, the Contract price shall be decreased by the amount of the relief, refund, or drawback, or that amount shall be paid to the Authority, as directed by the Contracting Officer. The Contract price shall be similarly decreased if the Contractor, through his fault or negligence or his failure to follow instructions of the Contracting Officer, is required to pay or bear the burden of, or does not obtain a refund or drawback of, any such Federal excise tax or duty.
- c. Paragraph b. above shall not be applicable to social security taxes or to any other employment tax.
- d. No adjustment of less than \$100 shall be made in the Contract price pursuant to paragraph b. above.
- e. As used in paragraph b. above, the term Contract date means the date set for bid opening, or if this is a negotiated contract, the Contract date. As to additional supplies or services procured by modification to this Contract, the term Contract date

means the date of such modification.

- f. Unless there does not exist any reasonable basis to sustain an exemption, the Authority upon the request of the Contractor shall, without further liability, furnish evidence appropriate to establish exemption from any Federal, State or Local tax; provided that evidence appropriate to establish exemption from any Federal excise tax or duty which may give rise to either an increase or decrease in the Contract price will be furnished only at the discretion of the Authority.
- g. The Contractor shall promptly notify the Contracting Officer of matters which will result in either an increase or decrease in the Contract price and shall take action with respect thereto as directed by the Contracting Officer.

15. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT OVERTIME COMPENSATION

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

- a. Overtime requirements: No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics,

apprentices, trainees, watchmen, and guards shall require or permit any laborer, mechanic, apprentice, trainee, watchman, or guard in any workweek in which he is employed on such work to work in excess of 40 hours in such work week on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer, mechanic, apprentice, trainee, watchman, or guard receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of 40 hours in such work week.
- b. Violation: liability for unpaid wages: liquidated damages. In the event of any violation of the provisions of paragraph a., the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the Authority for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, apprentice, trainee, watchman, or guard employed in violation of the provision of paragraph a. in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of his standard work week of 40 hours without payment of the overtime wages required by paragraph a.
- c. Withholding for unpaid wages and liquidated damages: The Contracting Officer may withhold from the Authority Contractor, from any monies payable on account of work performed by the Contractor or subcontractor, such sums as may be administratively determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph b.
- d. Subcontracts: The Contractor shall insert paragraphs a. through d. of this article in all subcontracts and shall require their inclusion in all subcontracts of any tier.

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- 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 the completion of this Contract.

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

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

- a. All stipulations required by the Act and regulations issued by the Secretary of Labor (41

CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may be hereafter, be in effect.

- b. All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped worker may be employed at less

that the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

17. EMPLOYMENT RESTRICTION WARRANTY

- a. The Contractor warrants that it will not offer employment to any officer or employee of the Washington Metropolitan Area Transit Authority (WMATA) who has been involved, directly or indirectly, in any matter of financial interest to the Contractor until at least one year after the officer or employee has ceased involvement in or responsibility for the matter.

- b. The Contractor further warrants that it will not employ any WMATA officer or employee who has had direct responsibility for any matter of financial interest to the Contractor within the year prior to the retirement or termination of the officer or employee until at least one full year after such officer or employee has left the employment of the Authority.

- c. The one year requirement described in a. and b. above may be waived at the discretion of the Contracting Officer if the WMATA employee or former employee has been subject to a Reduction in Force; in such case, the Contracting Officer will provide the Contractor with a letter to that effect.

- d. If a waiver is granted, or if a former employee of WMATA is eventually hired, the Contractor shall be responsible for ensuring that the former employee is not directly involved in negotiating or otherwise dealing with WMATA on any particular matter over which such employee had responsibility during his or her period of employment at WMATA.

- e. Should the Contractor fail to comply with paragraphs a., b. or d. above, the Contracting Officer shall have the right to withhold payment under this Contract in an

amount not to exceed 2% of the total Contract amount as liquidated damages to the Authority, such withholding to be in addition to any other withholding under this Contract. Further, the

Contracting Officer shall consider such violation in evaluating the Contractor's responsibility in connection with award of any other Authority Contract.

18. OFFICIALS NOT TO BENEFIT

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

19. COVENANT AGAINST CONTINGENT FEES

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

20. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

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

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

21. NOTICE TO THE AUTHORITY OF LABOR DISPUTES

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

with respect thereto, to the Contracting Officer.

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

22. PATENT INDEMNITY

- a. If the amount of this Contract is in excess of \$10,000, the Contractor shall indemnify the Authority and its officers, agents, and employees against liability, including costs, for infringement of any United States letters patent arising out of the manufacture or delivery of supplies under this Contract. The foregoing indemnity shall not apply unless the

Contractor shall have been informed as soon as practicable by the Authority of the suite or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to:

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

23. ROYALTY INFORMATION

- a. When the response to this solicitation contains costs or charges for royalties totaling more than \$250, the following information shall be furnished with the offer, proposal, or quotation on each separate item of royalty or license fee:

- (1) Name and address of licensor;
- (2) Date of license agreement;
- (3) Patent numbers, patent application serial numbers or other basis on which the royalty is payable;
- (4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
- (5) Percentage or dollar rate of royalty per unit;
- (6) Unit price or Contract item;

- (7) Number of units; and
- (8) Total dollar amount of royalties.

b. In addition, if specifically requested by the Contracting Officer prior to execution of the Contract, a copy of the current license agreement and identification of applicable claims of specific patents shall be furnished.

24. RIGHTS IN TECHNICAL DATA (Revised 6/96)

a. The Authority shall have the right to use, duplicate or disclose technical data, which includes computer software, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so:

- (1) Any manuals, instructional materials prepared for installation, operation, maintenance or training purposes;
- (2) Technical data pertaining to end items, components or processes which were prepared for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data; e.g., specification control drawings, catalog sheets, outline drawing; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software);
- (3) Other technical data which has been, or is normally furnished without restriction by the Contractor or subcontractor;
- (4) Other specifically described technical data which the parties have agreed will be furnished without restriction.

b. The Authority shall have the right to use, duplicate, or disclose technical data other than that defined in paragraph a. in whole or in part, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data, be

- (1) released or disclosed in whole or in part outside the Authority,
- (2) used in whole or in part by the Authority for manufacture, or
- (3) used by a party other than the Authority except for emergency repair or overhaul work only, by or for the Authority where the item or process concerned is not otherwise reasonably available to enable timely performance of the work; provided, that the release or disclosure thereof outside the Authority shall be made subject to a prohibition against further use, release or disclosure.

c. Technical data provided in accordance with the provisions of paragraph b. shall be identified by a legend which suitably recites the aforesaid limitation. Nothing herein shall impair the right of the Authority to use similar or identical data acquired from

other sources.

- d. The term technical data as used in this article means technical writing, computer software, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of a technical nature, whether or not copyrighted, which are specified to be delivered pursuant to this Contract. The term does not include financial reports, cost analyses, and other information incidental to Contract administration. Computer software as used in this article means computer programs,

computer data bases, and documentation thereof.

- e. Material covered by copyright:

- (1) The Contractor agrees to and does hereby grant to the Authority, and to its officers, agents and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for Authority purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all technical data now or hereafter covered by copyright.

- (2) No such copyrighted matter shall be included in technical data furnished hereunder without the written permission of the copyright owner for the Authority to use such copyrighted matter in the manner above described.

- (3) The Contractor shall report to the Authority (or higher-tier contractor) promptly and in reasonable written detail each notice or claim of copyright infringement received by the Contractor with respect to any technical data delivered hereunder.

- f. Relation to patents: Nothing contained in this article shall imply a license to the Authority under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Authority under any patent.

- g. Any dispute under this article shall be subject to the Disputes article of this contract.

- h. Notwithstanding any other payment provision in this contract, the Contracting Officer may retain from payment up to 10 percent of the contract price until final delivery and acceptance of the technical data defined in this article and as required to be furnished by the bid schedule or the contract specification.

25. TECHNICAL DATA — WITHHOLDING OF PAYMENT (Deleted 6/96)

26. AUDIT AND RECORDS— NEGOTIATION (Revised 4/20/01)

- a. This clause is applicable if this Contract was entered into by means of negotiation and shall become operative with respect to any modification to this Contract whether this Contract was initially entered into by means of negotiation or by means of formal advertising.

- b. As used in this clause, “records” includes books, documents, accounting procedures

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and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

- c. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of

examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing this contract.

- d. If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to the proposal for the contract, subcontract, or modification; the discussions conducted on the proposal(s), including those related to negotiating; pricing of the contract, subcontract or modification; or performance of the contract, subcontract or modification.
- e. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and the data reported.
- f. The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence described above, for examination, audit or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—
- (1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and
 - (2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are fully resolved.
- g. The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold (currently \$100,000 or less) and –

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

27. GRATUITIES

- a. In connection with performance of work required under this Contract, or any changes or modifications relative thereto, the giving of or offering to give gratuities (in the form of entertainment, gifts or otherwise) by the Contractor, or any agent, representative or other person deemed to be acting on behalf of the Contractor, or any supplier or subcontractor

furnishing material to or performing work under this Contractor, or any agent, representative or other person deemed to be acting on behalf of such supplier or subcontractor, to any Director, Officer or employee of the Authority; or to any Director, Officer, employee or agent of any of the Authority's agents, consultants, representatives or other persons deemed to be acting for or on behalf of the Authority with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract is expressly forbidden. The terms of this GRATUITIES article shall be strictly construed and enforced in the event of violations hereto.

- b. Reported instances of the giving or offering to give gratuities within the context of this GRATUITIES article will be investigated by the Board of Directors or its duly authorized representative. A preliminary investigation will be made to determine whether there is probable cause to suspect that a violation of this article has been committed. If such probable cause is found to exist, the Board of Directors, or its duly authorized representative, shall formally notify the suspected donor corporation or individual in writing of the particulars of the event; and provide such donor the opportunity to be heard on the matter. The aims of the investigations and hearing shall be to ensure due process and to preserve the best interests and rights of all parties by the full and fair disclosure of all relevant and material information. Accordingly, the Board of Directors, or its duly authorized representative, shall require production of all pertinent documents and records, and sworn testimony from witnesses. During the pendency of any investigation or hearing treating with a violation of this GRATUITIES article, the Board of Directors, or its duly authorized representative may exercise its power granted by the Washington Metropolitan Area Transit Authority Compact, Public Law 774, 80 Star. 1324, Article V, General Powers, Subparagraph (k), by issuing subpoenas to compel the attendance of necessary witnesses, and to compel production of papers, records, accounts, ledgers and documents. The subpoenas shall be enforceable by order of an appropriate United States District Court. If, after notice and hearing, or notice of the opportunity to be heard, the Board of Directors, or its duly authorized representative, finds that a violation of this GRATUITIES article has been committed, the Authority shall have the right to:

- (1) Require that the individual(s) giving or offering the gratuity be removed from further participation on any Authority projects (be terminated);

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- (2) Deny the Contractor any G & A (general and administrative) mark-ups for all changes and/or modifications found to be tainted by the giving of or offering to give gratuities;
 - (3) Preclude the Contractor from bidding on, receiving or participating as joint venturer, subcontractor or otherwise in any Authority project for a period of five years;
 - (4) Have complete access to all the Contractor's financial books, records and accounts for the purpose of performing a comprehensive audit of the entire project.
 - (5) In the event of repeated violations of this GRATUITIES article or of gross or extreme conduct indicative of a corrupt intent to gain special advantage, by written notice to the Contractor, terminate the right of the Contractor to proceed under the Contract.
- c. The existence of the facts upon which the Board of Directors, or its duly authorized representative, makes findings in connection with investigations and hearings in consonance herewith shall be an issue and may be reviewed in any competent court.
- d. In the event this Contract is terminated as provided in paragraph b. (5) hereof, the Authority shall be entitled
- (1) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor, and
 - (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in any amount (as determined by the Board or its duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.
- e. The rights and remedies of the Authority provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

28. CONVICT LABOR

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

29. LIMITATION ON WITHHOLDING PAYMENTS

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

- a. Withholdings pursuant to any clause relating to wages or hours of employees;

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- b. Withholdings not specifically provided for by this Contract; and
- c. The recovery of overpayment.

30. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA PRICE ADJUSTMENTS

a. This article shall become operative only with respect to any modification of this Contract which involves aggregate increases and/or decreases in costs plus applicable profits in excess of \$100,000 unless the modification is priced on the basis of adequate competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The right to price reduction under this article is limited to defects in data relating to such modification.

b. If any price, including profit, or fee, negotiated in connection with any price adjustment under this Contract was increased by any significant sums because:

(1) The Contractor furnished cost or pricing data which was not complete, accurate and current as certified in the Contractor's Certificate of Current Cost or Pricing Data;

(2) A subcontractor, pursuant to the articles of this Contract entitled SUBCONTRACTOR COST OR PRICING DATA--PRICE ADJUSTMENTS or any subcontract clause therein required, furnished cost or pricing data which was not complete, accurate and current as certified in the subcontractor's Certificate of Current Cost or Pricing Data;

(3) A subcontractor or prospective subcontractor furnished cost or pricing data which

was required to be complete, accurate and current and to be submitted to support a subcontract cost estimate furnished by the Contractor but which was not complete, accurate and current as of the date certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(4) The Contractor or a subcontractor or prospective subcontractor furnished any data, not within (1) or (3) above, which was not accurate, as submitted; the price shall be reduced accordingly and the Contract shall be modified in writing as may be necessary to reflect such reduction. However, any reduction in the Contract price due to defective subcontract data of a prospective subcontractor, when the subcontract was not subsequently awarded to such subcontractor, will be limited to the amount (plus applicable overhead and profit markup) by which the actual subcontract, or the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor, provided that the actual subcontract price was not affected by defective cost or pricing data.

NOTE: Since the Contract is subject to reduction under this article by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the Contractor may wish to include an article in each such subcontract, requiring the subcontractor to appropriately indemnify the Contractor. However, the inclusion of such an article and the terms thereof are matters for negotiation and

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agreement between the Contractor and the subcontractor and are not binding upon the Authority. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted to his lower tier subcontractors.

31. RESERVED

32. SUBCONTRACTOR COST AND PRICING DATA-PRICE ADJUSTMENTS

- a. Paragraphs b. and c. of this article shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this Contract which involves a price adjustment in excess of \$100,000. The requirements of this article shall be limited to such price adjustments.
- b. The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances:
 - (1) prior to award of any cost-reimbursement type, incentive, or price re-determinable subcontract;
 - (2) prior to the award of any subcontract the price of which is expected to exceed \$100,000;
 - (3) prior to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed \$100,000; except in the case of (2) or (3) where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.
- c. The Contractor shall require subcontractors to certify that to the best of their knowledge and belief the cost and pricing data submitted under paragraph b. above is accurate, complete, and current as of the date of execution, which date shall be as close as possible to the date of agreement on the negotiated price of the Contract modification.
- d. The Contractor shall insert the substance of this clause including this paragraph d. in each subcontract which exceeds \$100,000.

33. NEW MATERIAL

Except as to any supplies and components which the Specifications or schedule specifically provides need not be new, the Contractor represents that the supplies and components to be provided under this Contract are new (not used or reconditioned, and not of such age or so deteriorated as to impair their usefulness or safety). If at any time during the performance of this Contract, the Contractor believes that the furnishing of supplies or components which are not new is necessary or desirable, he shall notify the Contracting Officer immediately, in writing, including the reasons therefor and proposing any consideration which will flow to the Authority if authorization to use such supplies is granted.

34. ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, unless otherwise provided herein, the

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inconsistency shall be resolved by giving precedence in the following order:

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

35. CORRECTION OF DEFICIENCIES

- a. Definitions: As used in this article:
 - (1) Deficiency means any condition or characteristics in any supplies (which term shall include related technical data) or services furnished hereunder, which is not in compliance with the requirements of this Contract.
 - (2) Correction means any and all actions necessary to eliminate any and all deficiencies.
 - (3) Supplies mean the end item(s) furnished by the Contractor and related services required under this Contract.
- b. General:
 - (1) The rights and remedies of the Authority provided in this article:
 - a. Shall not be affected in any way by any other provisions under this Contract concerning the conclusiveness of inspection and acceptance; and
 - b. Are in addition to and do not limit any rights afforded to the Authority by any other article of this Contract.
 - (2) This article shall apply only to those deficiencies discovered by either the Authority or the Contractor within one year after acceptance.
 - (3) The Contractor shall not be responsible under this article for the correction of deficiencies in Authority furnished property, except for deficiencies in installation, unless the Contractor performs or is obligated to perform any modifications or other work on such property. In that event, the Contractor shall be responsible for correction of deficiencies to the extent of such modifications or other work.
 - (4) The Contractor shall not be responsible under this article for the correction of deficiencies caused by the Authority.
- c. Deficiencies in accepted supplies or services:

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- (1) Notice to Contractor - Recommendation for Correction: If the Contracting Officer determines that a deficiency exists in any of the supplies or services accepted by the Authority under this Contract, he shall promptly notify the Contractor of the deficiency, in writing, within 30 days. Upon timely notification of the existence of such a deficiency, or if the Contractor independently discovers a deficiency in accepted supplies or services, the Contractor shall promptly submit to the Contracting Officer his recommendation for corrective actions, together with supporting information in sufficient detail for the Contracting Officer to determine what corrective action, if any, shall be undertaken.
 - (2) Direction to Contractor concerning correction of deficiencies: Within 30 days after receipt of the Contractor's recommendations for corrective action and adequate supporting information, the Contracting Officer, at his sole discretion, shall give the Contractor written notice not to correct any deficiency, or to correct or partially correct any deficiency within a reasonable time and at a specified location.
 - (3) Correction of deficiencies by Contractor: The Contractor shall promptly comply with any timely written direction by the Contracting Officer to correct or partially correct a deficiency, at no increase in the Contract price. The Contractor shall also prepare and furnish to the Authority data and reports applicable to any correction required under this article (including revision and updating of all other affected data called for under this Contract) at no increase in the Contract price.
 - (4) Modification of Contract With respect to uncorrected deficiencies: In the event of timely notice of a decision not to correct or only to partially correct, the Contractor shall promptly submit a technical and cost proposal to amend the Contract to permit acceptance of the affected supplies or services in accordance with the revised requirements, and an equitable reduction in Contract price shall promptly be negotiated by the parties and reflected in a supplemental agreement to this Contract.
- d. Deficiencies in supplies or services not yet accepted: If the Contractor becomes aware at any time before acceptance by the Authority (whether before or after tender to the Authority) that a deficiency exists in any supplies or services, he shall promptly correct the deficiency or, if he elects to invoke the procedures in paragraph c. above, he shall promptly communicate information concerning the deficiency to the Contracting Officer, in writing, together with his detailed recommendation for corrective action.
- e. No extension in time for performance; no increase in Contract price.
- (1) In no event shall the Authority be responsible for extension or delays in the schedule deliveries or periods of performance under this Contract as a result of the Contractor's obligations to correct deficiencies, nor shall there be any adjustment of the delivery schedule or period of performance as a result of such correction of deficiencies, except as may be agreed to by the Authority in a supplemental agreement with adequate consideration.
 - (2) It is hereby specifically recognized and agreed by the parties hereto that this

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article shall not be construed as obligating the Authority to increase the Contract price of this Contract.

f. Transportation charges:

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

g. Failure to correct: If the Contractor fails or refuses to

- (1) present a detailed recommendation for corrective action in accordance with c. above,
- (2) correct deficiencies in accordance with c. (3) above, or
- (3) prepare and furnish data and reports in accordance with paragraph c. (3) above,

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

- (1) Obtain detailed recommendations for corrective action;
- (2) Correct the supplies or services, or
- (3) Replace the supplies or services; and if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of nonconforming supplies for the Contractor's account in a reasonable manner, in which case the Authority is entitled to reimbursement from the Contractor or from the proceeds for the reasonable expenses of care and disposition, as well as for excess costs incurred or to be incurred; and
- (4) Obtain applicable data and reports and charge to the Contractor the cost occasioned to the Authority thereby.

h. Correction of deficient replacements and re-performances: Any supplies or parts

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thereof corrected or furnished in replacement and any services re-performed pursuant to this article shall also be subject to all the provisions of the article to the same extent as supplies or services initially accepted.

- I. Disassembly / reassembly expense: The Contractor shall be liable for reasonable cost of disassembly / reassembly of larger items necessary to remove the supplies to be inspected

and/or returned for correction or replacement.

36. ASSIGNMENT (Revised 05/24/94)

- a. The Contractor shall not transfer the rights and obligations of the Contract to third parties. The Authority 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 discretion of the Contracting Officer after review of the facts and circumstances surrounding each request but the assignment shall 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/or performance bonds.
- b. If this Contract provides for payments aggregating \$1,000 or more, claims for monies due or to become due the Contractor from the Authority under this Contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any institution. (Notice of such assignment shall be made to the Authority.) Any such assignment or reassignment shall cover all amounts payable under this Contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. It is the Authority's intent to recognize assignments only to bona fide lending institutions, therefore, assignment to any private corporation, business or individual which does not qualify as such is specifically prohibited.
- c. Any attempt to transfer by assignment not authorized by this article shall constitute a breach of the Contract and the Authority may for such cause terminate the right of the Contractor to proceed as provided in the DEFAULT article of these General Provisions, and the Contractor and his sureties shall be liable to the Authority for any excess costs incurred by the Authority.

37. PRICING OF ADJUSTMENTS

- a. When costs are a factor in any determination of a Contract price adjustment pursuant to the CHANGES AND CHANGED CONDITIONS article or any other provision of this Contract, such costs shall be in accordance with the Subpart 31.1 of the Federal Acquisition Regulations (48 CFR 31.1).
- b. Notwithstanding any interpretation of the aforementioned contract cost principles and procedures to the contrary, the Authority will not be liable for interest, however represented, on or as a part of any claim, request, proposal or adjustment, including equitable adjustments, whether said claim, request, proposal or adjustment, including

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equitable adjustments, arises under the Contract or otherwise.

- c. Where general and administrative expense is recoverable as part of any pricing adjustment under this contract, the adjustment shall be based on the relationship between the Contractors' total general and administrative expenses allowable under FAR cost principles for all construction-type operations during the fiscal or calendar year covering the actual performance period of the work included in this pricing adjustment, and the Contractor's total cost input (excluding General and Administrative costs) for construction-type operations during the same period, expressed as a percentage, applied to the direct and overhead contract costs included in the pricing adjustment.

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

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

39. ACCOUNTING AND RECORD KEEPING (Revised 4/20/01)

- a. **Applicability.** This Article shall become effective for and shall apply to any adjustment in the price of this Contract initiated by the Contractor or the Authority. However, where the original amount of this Contract is less than \$1,000,000, paragraph c. of this Article does not apply unless the adjustment is expected to exceed \$50,000.
- b. **Forward Priced Adjustments.** Unless expressly waived in writing in advance by the Contracting Officer, the Contractor shall furnish to the Contracting Officer a cost proposal in advance of performance of any work for which a price adjustment is requested under this Contract. The Contractor shall originate such records as are necessary to substantiate all elements of the pricing proposal, current to the date of agreement on the pricing adjustment. Such records supporting the costs of each pricing adjustment request shall be specifically segregated and identified in the Contractor's accounting system as being applicable to the pricing adjustment request.
- c. **Post Pricing Adjustments.** In addition to the records required to be originated under b. above, in the event pricing of an adjustment under this Contract is not agreed upon between the Contractor and the Contracting Officer prior to the commencement of work for which the pricing adjustment is requested, the Contractor and any subcontractor engaged in work for which the pricing adjustment is requested, shall maintain accounts and original cost records specifically segregated and identified by job order or other appropriate accounting procedures approved by the Contracting Officer of all incurred segregable costs related to the work for which the pricing adjustment is requested. The Contractor shall maintain accounts and records which segregate and account for the costs of all work associated with that part of the project for which the pricing adjustment is requested and shall allocate the costs so accumulated between (1) work required under the base Contract; (2) work requested to be reimbursed under the pricing adjustment; and (3) other claim, including but not

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- limited to, changes, differing site conditions, and the like. The accounts and records so established shall accumulate such costs under logical costs groups, such as material, labor, equipment, subcontracts, field overhead and the like. The Contractor shall record these costs on a form approved by the Contracting Officer.
- d. Availability. The accounts, records and costs information required to be originated under b. and c. above together with all other accounts, records and costs information related to this Contract shall be maintained and made available by the Contractor and subcontractor(s).
- (1) At the office of the Contractor or subcontractor(s) at all reasonable times for inspection, audit, reproduction or such other purposes as may be required by the Contracting Officer or by anyone authorized access to the records by the Contracting Officer or pursuant to any other provisions of this Contract.
 - (2) Until the expiration of three years from the date of payment of the final \$100 (final payment) under this Contract or such lesser time as is specified in Subpart 4.7 of the Federal Acquisition Regulations and for such longer period, if any, as is required by applicable statute, or by other articles of this contract, or by paragraphs (a) and (b) below:
 - a. If the Contract is completely or partially terminated, for a period of three

years from either the date of any resulting final settlement or the date of final payment whichever is the greater period; and
 - b. If a pricing adjustment is involved in any appeal under the Disputes Article of this Contract or in any litigation related to this Contract, for a period of one (1) year following the final disposition of the appeal or litigation.
- e. When asserting a claim under the various provisions of this Contract, the Contractor shall grant the Authority access to review and ascertain the validity of the accounting records being maintained for segregation of costs, including base cost records, and to audit such costs as are deemed appropriate by the Contracting Officer. No payment shall be made to the Contractor on its claim until such records are made available and access is permitted.
- f. Limitation on Pricing Adjustment. In the event the Contractor or any subcontractor fails to originate or to maintain, or to make available any accounts or records as required under this or any other Article of the Contract, any pricing adjustment or portion thereof previously granted by the Contracting Officer for which records are not available shall be rescinded and recomputed, or if a pricing adjustment has not yet been granted shall be computed, in an amount not to exceed the direct costs for the affected work for which accounts or records are not available, plus a single mark-up for indirect expenses not to exceed ten percent of the direct costs so determined by the Contracting Officer. The adjustment will be established by the Contracting Officer based upon, at his or her election, either,
- (1) an audit of any existing books and records of the Contractor or subcontractor;

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or

- (2) an Authority estimate adopted by the Contracting Officer, or
- (3) a combination of (1) and (2);

plus a single mark-up for indirect expenses not to exceed ten percent of the direct costs so determined by the Contracting Officer. The Contractor and subcontractors shall not be allowed any profit for the work for which the Contractor or subcontractor fails to originate, or to maintain, or to make available any accounts or records as required under this Contract.

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

40. COST OR PRICING DATA (Revised 11/22/00)

- a. The Contractor shall submit to the Contracting Officer, either actually or by specific identification in writing, cost or pricing data under the conditions described in this paragraph and certify that, to the best of his knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of the date of execution, which date shall be as close as possible to the date of agreement on the negotiated price of the Contract modification. The cost or pricing data shall be submitted at the time the Contractor submits his proposal for the pricing of any modification to this Contract, whether or not cost or pricing data was required in connection with the initial pricing of the Contract, when the modification involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed \$100,000, or less at the discretion of the Contracting Officer.
- b. The submittal of certified cost or pricing data shall not be required if the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The Contractor agrees that the terms adequate price competition and established catalog or market prices of commercial items sold in substantial quantities to the general public shall be determined by the Contracting Officer in accordance with the guidelines as set forth in Subpart 15.4 of the Federal Acquisition Regulations (48 CFR 15.4).
- c. Cost or pricing data consists of all facts existing up to the time of agreement on price which prudent buyers and sellers would reasonably expect to have a significant effect on the price negotiations for the modification. The definition of cost or pricing data embraces more than historical accounting data; it also includes where applicable, such factors as subcontractor, supplier and vendor quotations, non-recurring costs, changes in construction methods, unit cost trends such as those associated with labor efficiency and any management decisions which could reasonably be expected to have a significant bearing on costs under the proposed modification and the Contract work.

Cost or pricing data consists of all facts which can reasonably be expected to contribute to sound estimates of future costs as well as to the validity of costs already

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incurred. Cost or pricing data, being factual, is that type of information which can be verified. Because the certificate pertains to cost or pricing data, it does not make representations as to the accuracy of the Contractor's judgment on the estimated portion of future costs or projections. The certificate does, however, apply to the data upon which the Contractor's judgment is based.

41. CARGO PREFERENCE REQUIREMENTS-USE OF UNITED STATES FLAG VESSELS
(Revised 4/20/01)

The Contractor agrees:

- a. To utilize privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.
- b. To furnish within 20 working days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) above to WMATA (through the Contractor in the case of a subcontractor's bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 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.

42. RESERVED

43. CIVIL RIGHTS (Revised 10/20/00)

- a. Nondiscrimination: In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, section 202 of the American with Disabilities Act of 1990, 42 U.S.C. §12132, and Federal transit law at 49 U.S.C. §5332, the contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing regulations that FTA may issue.
- b. Equal Employment Opportunity: The following equal employment opportunity requirements apply to this contract.
 - (1) Race, Color, Creed, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, and Federal transit laws at 49 U.S.C. §5332, the Contractor agrees to comply with all applicable equal opportunity requirements of the U. S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, " 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment

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

- (2) Age: In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. §5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- (3) Disabilities: In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, the Contractor agrees that it will comply with the requirements of U. S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- c. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

44. REVOLVING DOOR (See Article #17)

45. CONFLICT OF INTEREST (Revised 02/24/94)

- a. Neither the Contractor nor any person or company affiliated with it shall have, during the term of this contract and any extensions thereof, any contractual or other financial relationship with the Authority, with any Authority prime Contractor, or with any subcontractor or supplier to any Authority prime Contractor other than the contractual relationship established under this Contract, unless an exception is granted as described below.
- b. Upon request of the Contractor and upon full disclosure and for good cause the Contracting Officer may in his sole discretion grant an exception to the requirement of a., above, when in his judgment the exception will not create a conflict between the Contractor's duties and obligations under this contract and the duties and obligations imposed on the Contractor under the contractual or other relationship for which an exception is requested.
- c. If, during the performance of this contract and any extension thereof, the Contractor

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becomes aware of any relationship, financial interest, or other activity in which it or an affiliated person or company is involved which is not in compliance with the provisions of a., above, it shall promptly notify the Contracting Officer in writing and fully disclose all circumstances thereof. Should the Contracting Officer not grant an exception to the requirements of this Article, the Contractor shall, within ten (10) days of written notice from the Contracting Officer to do so, take all action necessary to comply with the terms of a., above.

- d. If the Contractor fails to comply with the terms of this Article, the Contracting Officer, may withhold payments due under the contract until such time as the Contractor is in compliance or, should the non-compliance remain uncorrected at the expiration of ten (10) days from written notice from the Contracting Officer as provided in c., above, terminate the contract for default pursuant to the Default Article of this contract.
- e. The Contractor in performing this Contract shall avoid any conduct which might result in or give the appearance of creating for Directors, Officers or employees of the Authority in their relationship with the Contractor any conflicts of interest or favoritism and/or the appearance thereof and shall avoid any conduct which might result in a Director, Officer or employee failing to adhere to the Standards of Conduct adopted by the Authority's Board of Directors.
- f. Any determination by the Contracting Officer under this Article shall be final and shall be considered a question of fact within the meaning of the Disputes Article of this Contract.

46. SUBCONTRACT PAYMENTS (January 2000)

- a. The Contractor shall, under this contract, establish procedures to ensure timely payment of amounts due pursuant to the terms of their subcontracts. The Contractor shall pay each subcontractor for satisfactory performance of its contract, no later than ten (10) days from the date of the Contractor's receipt of payment from the Authority for work by that subcontractor. The Contractor shall also release, within ten (10) days of satisfactory completion of all work required by the subcontractor, any retention withheld from the subcontractor.
- b. The Contractor shall certify on each payment request to the Authority that payment has been or will be made to all subcontractors in accordance with paragraph a above. The Contractor shall notify the contracting officer or other delegated authority representative with each payment request, of any situation in which scheduled subcontractor payments have not been made.
- c. If a subcontractor alleges that the Contractor has failed to comply with this provision, the Contractor agrees to support any Authority investigation, and, if deemed appropriate by the Authority, to consent to remedial measures to ensure subcontractor payment that is due.
- d. The Contractor agrees that the Authority may provide appropriate information to interested subcontractors who want to determine the status of Authority payments to the Contractor.

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- e. Nothing in this provision is intended to create a contractual obligation between the Authority and any subcontractor or to alter or affect traditional concepts of privity of contract between all parties.

47. RIGHTS IN DATA AND COPYRIGHTS — FTA (June 1996)

- a. The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists; specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to Project administration.

- b. The following restrictions apply to all subject data first produced in the performance of this contract.

- (1) Except for its or WMATA's own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of the U.S. Government, until such time as the Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to Agreements with academic institutions.

- (2) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. 19.36, the Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, the following subject data for Federal Government purposes:

- (a) Any subject data developed under this contract whether or not a copyright has been obtained; and

- (b) Any rights of copyright to which the contractor purchases ownership with Federal assistance.

- c. When the Federal Transit Administration (FTA) provides financial assistance for a planning, research, development, or a demonstration project, it is FTA's general intention to increase mass transportation knowledge, rather than limit the benefits of the Project to participants in the Project. Therefore, unless FTA determines otherwise, the Contractor agrees that, in addition to the rights set forth in subsection b(2) of this clause, FTA may make available to

any FTA recipient, 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

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become subject data as defined in subsection a. of this clause and shall be delivered as the Government may direct.

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

48. FEDERAL CHANGES (Revised 11/22/00)

- a. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (8) dated October 1, 2001) 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.

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

- a. The Authority and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this contract, absence 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

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contract.

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

50. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

(Revised 01/04/00)

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

51. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS (Revised 01/04/00)

- a. The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, dated April 15, 1996, as mended by Change 1 thereto dated August 4, 1998, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any WMATA requests which would cause WMATA to be in violation of the FTA terms and conditions.
- b. The Contractor agrees to include this clause in each subcontract financed in whole

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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.

52. SEAT BELT USE POLICY (November 2000)

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

53. BUY AMERICA

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

54. FLY AMERICA REQUIREMENTS (April 2001)

The Contractor agrees to comply with 49 U. S. C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and 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 carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

55. ENERGY CONSERVATION (April 2001)

The Contractor agrees to comply with mandatory standards and policies relating to the energy

efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

56. CLEAN WATER (April 2001)

a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U. S. C. 1251 et seq. The Contractor agrees to report each violation to the Authority and

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

- b. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

57. ACCESS TO RECORDS (April 2001)

- a. The Contractor agrees to provide the Authority, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 CFR. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U. S. C.

5302(a)1, which is receiving federal financial assistance through the programs described at 49 U. S. C. 5307, 5309 or 5311.

- b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case the Contractor agrees to maintain same until the Authority, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(I)(11).

58. CLEAN AIR (April 2001)

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

59. RECOVERED MATERIALS (April 2001)

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

SECTION 2
SPECIAL PROVISIONS

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SECTION 2
SPECIAL PROVISIONS

1. PERIOD OF PERFORMANCE

- a. The Contractor shall complete all work associated with this contract, within not more than 240 calendar days after the date of Award for the contract.

2. PRICING

- a. Prices on the Price Schedule Sheets submitted must include all associated costs, including but not limited to, travel, freight, mark-ups, overhead, and profit. Pricing must include all manuals if available for the Armored Truck. If manuals are on back order contractor must send a memo stating and estimated receipt date.

3. PAYMENT TERMS

- a. Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror.
- b. Partial payments are authorized. Final Payments will be made upon delivery, inspection and acceptance of all service manuals, and written manual for the Hi-Rail Boom Truck as authorized by the COTR, and receipt of a properly executed invoice.

4. BILLING AND PAYMENT

- a. Payment will be made after receipt of a properly completed invoice. Mail original and one copy of all invoices to the Office of Accounting, WMATA, 6th Floor, 600 Fifth Street, NW, Washington, DC 20001. Also mail one copy of each invoice to the Contracting Officer's Technical Representative (COTR). A letter appointing the COTR will be included in the contract award package.
- b. Invoices shall be prepared and submitted in duplicate, sequentially numbered and contain the date, contract order number, item part number, description of product, quantity, unit prices, date of delivery, delivery location and extended totals.

5. POINT OF CONTACT

All inquiries are to be directed to:

Mr. Brij M. Malhotra
WMATA/PRMT
600 Fifth St, N.W., Room 301-B
Washington, D.C. 20001
(202) 962-2785
bmalhotra@wmata.com

6. **F.O.B. DESTINATION**

a. The term "f.o.b. destination," as used in this clause, means---

(1) Free of expense to WMATA on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and

(2) Supplies shall be delivered to the destination consignee's warehouse unloading platform, or receiving dock, at the expense of the Contractor. WMATA shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of WMATA acting in its contractual capacity. If the Contractor uses rail carrier or freight forwarder for less than carload shipments, the Contractor shall assure that the carrier will furnish tailgate delivery if transfer to truck is required to complete delivery to consignee.

b. The Contractor shall ---

(1) Pack and mark the shipment to comply with contract specification;

(2) In the absence of specifications, prepare the shipment in conformance with carrier requirements;

(3) Prepare and distribute commercial bills of lading;

(4) Deliver the shipment in good order and condition to the point of delivery specified in the contract;

(5) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;

(6) Furnish a delivery schedule and designate the mode of delivering carrier; and

(7) Pay and bear all charges to the specified point of delivery.

7. **ORDERING NOT USED**

8. **WARRANTY** (See Technical Specifications)

9. **INDEMNIFICATION**

a. Contractor shall indemnify and save harmless WMATA, its directors, officers, employees and agents from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorney's fees), of whatsoever kind and nature for injury, including personal injury or

death of any person or persons, and for loss or damage to any property, occurring in connection with, or in any way arising out of the use, occupancy and performance of the work and/or any acts in connection with activities to be performed under this contract resulting in whole or in part from the acts, errors or omissions of Contractor, or any employee, agent or representative of Contractor. Nothing in the preceding sentence shall be deemed to relieve Contractor from ultimate liability for any obligation of Contractor under this Contract.

- b. Contractor shall indemnify, defend and hold harmless WMATA its directors, officers, employees and agents against any and all claims, liabilities, losses, demands, damages, penalties, costs, charges, remedial costs, environmental claims, fees or other expenses including attorneys fees, related to, arising from or attributable to any effluent or other hazardous waste, residue, contaminated soil or other similar material discharged from, removed from, or introduced on, about or under the contract.
- c. If any action or proceeding relating to the indemnification required is brought against WMATA, then upon written notice from WMATA to the indemnitor, the indemnitor shall, at the indemnitor's expense, resist or defend such action or proceeding by counsel approved by WMATA in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend the same.
- d. Contractor understands and agrees that it is Contractor's responsibility to provide indemnification to WMATA pursuant to this Section. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements and the failure of Contractor's insurance to fully fund any indemnification shall not relieve the Contractor of any obligation assumed under this indemnification.

10. **INSURANCE REQUIREMENTS**

- a. WMATA is acknowledged and understood to be a third party beneficiary of any insurance policy carried by any contracting Party.
- b. As may be required in any insurance policy carried by any contracted Party, this Contract is understood and agreed to be a written contract or an Insured Contract between that Contractor and WMATA.
- c. Contractor understands and agrees that provision of a complete copy of the Policy or Policies which provide the below required insurance, including a copy

of any endorsement or exclusion thereto, for review and approval by WMATA is a prerequisite for entry onto WMATA property. It is the Contractor's responsibility to ensure adequate and complete coverage as contemplated in this agreement. This responsibility is not waived, nor is any requirement to indemnify waived by WMATA's review and approval of any Policy.

- d. Contractor understands and agrees that WMATA is a self-insured governmental entity and that the insurance and indemnification provided by any Contractor under the terms of this Contract shall be Primary. Contractor agrees that to the extent any endorsement contemplates issuance of a contract by a state or political subdivision, WMATA shall be considered a state or political subdivision for the purposes of those policies and endorsements.
- e. Insurance Companies. Insurance companies providing the required coverages must be rated by A.M. Best or a comparable rating company and carry at least an "A" rating. All insurance shall be procured from insurance or indemnity companies acceptable to WMATA and licensed and authorized to conduct business in the jurisdiction where the work is to be performed. WMATA approval or failure to disapprove the insurance shall not release the Permitted Parties of full responsibility for liability for damage and accidents
- f. Changes in Insurance Coverage. The requisite insurance policies shall not be canceled, terminated or modified (except to increase the amount of coverage) without thirty (30) calendar days prior written notice from Contractor to WMATA's Office of Insurance, Room, 8D01, and Office of Procurement, 600 Fifth Street, NW, Washington, DC 20001. All correspondence and insurance certificates must include the Contract Number. If any required insurance policies should be canceled, terminated or modified so that the insurance is not in full force and effect, then WMATA can hold Contractor in default of this Contract. Under such circumstances, WMATA shall give Contractor a notice of default and after the expiration of the cure period, WMATA may terminate this Contract for an event of default or obtain insurance coverage equal to that required herein, the full cost of which shall be paid by Contractor to WMATA on demand.
- g. Evidence of Insurance Coverage. Evidence of the requisite insurance policies in the form of the complete insurance policy including any endorsements and certificates of insurance stating work to be performed and Contract Number shall be submitted to WMATA at least ten (10) business days prior to commencement of operations and from time to time at WMATA's request. Contractor shall not be allowed to enter WMATA Premises until the evidence of insurance has been received and approved in writing by WMATA. All evidence of insurance shall be sent to:

Office of Procurement
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

With a Copy to:

Office of Insurance
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Room 8D01
Washington, DC 20001

- h. Contractor shall require each subcontractor, at all tiers, to provide evidence of insurance coverage specified herein and such evidence of coverage shall be provided to WMATA.
- i. Any contract of insurance or indemnification naming WMATA, the United States of America, or any of the departments, agencies, administrators or authorities as an additional insured shall be endorsed to provide that the insurer will not contend in the event of any occurrence, accident, or claim that WMATA or the United States of America, et al, are not liable in tort by virtue of the fact of being governmental instrumentalities or public or quasi-public bodies.
- j. Limits and Modification of Coverage. The limits of liability included herein are minimum limits. WMATA reserves the right to review or change these limits if the terms of the Contract or standards in the industry change. If requested by WMATA, Contractor shall make or require its subcontractors to make any necessary adjustments in such limits or in the type of coverage to reflect then currently acceptable, commercially reasonable policy limits and types of coverage for similar uses and operations. Contractor's failure to cooperate with WMATA regarding this shall constitute a Default in accordance with this Contract. During the term of this Contract and any extensions, except for such longer terms as may be required herein, Contractor shall provide or cause to be provided at least the types and amounts of insurance indicated by an "X" below:
 - X Worker's Compensation. An insurance policy complying with the requirements of the statutes of the jurisdiction(s) in which the work will be performed, and if there is any exposure to personnel of any Contractor with the U. S. Longshoremen's and Harbor Workers' Act, Jones Act, Admiralty Laws or

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the Federal Employers' Liability Act, Contractor will provide coverage for these exposures on an "if any basis" with limits not less than:

Worker's Compensation:	Statutory
Employers' Liability:	
Each Accident	\$1,000,000
Disease - Policy Limit	\$1,000,000
Disease - Each Employee	\$1,000,000

- X** Commercial General Liability Insurance. A Commercial General Liability Insurance policy issued to and covering the liability for all work and operations under or in connection with this Contract and all obligations assumed by Contractor under this Contract. Coverage shall include Products Liability, Completed Operations and Contractual Liability Insurance in addition to coverage for explosion, collapse, and underground hazards, wherever required. The coverage under such an insurance policy or policies shall be maintained for three (3) years and shall have at least the following limits:

Bodily Injury and Property Damage Liability
\$1,000,000 Each Occurrence; \$2,000,000 Aggregate

Premises Medical Payments \$5,000

Personal Injury/Advertising \$1,000,000 or
Combined Single Limit not less than \$2,000,000

WMATA shall be included as an additional insured under the coverage for Commercial General Liability Insurance on a manuscript endorsement which shall read: "Section II – Who is An Insured is amended to include as an additional insured the person(s) or organizations(s) shown in the Schedule with respect to liability for "personal injury", "bodily injury" or "property damage" caused , in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- A. In the performance of your ongoing operations; or
- B. Included in the "products-completed operations hazard"; or
- C. In connection with your premises owned by or rented to you."

If construction or demolition work is being performed within 50 feet of the center line of WMATA's railroad tracks, then an endorsement that removes the railroad exclusion from the definition of an "Insured Contract" shall be included.

X Automobile Liability Insurance. A commercial auto insurance policy covering the use of all owned, non-owned, hired, rented or leased vehicles bearing valid license plates appropriate for the circumstances for which the vehicles are being used. These vehicles should bear license plates applicable to the state laws for which the vehicle(s) are registered. Liability for contractor's mobile equipment is not subject to this coverage and therefore the aforementioned general liability insurance is required. Contract employees are not permitted to operate any vehicle owned by WMATA whether in commission of the contract or outside the same.

The coverage under such an insurance policy or policies shall include mandatory Uninsured Motorist Coverage where applicable. Form MCS-90 as required by the Motor Carrier Act of 1980 shall also be included where applicable.

The coverage under such an insurance policy or policies shall have limits not less than: BODILY INJURY AND PROPERTY DAMAGE LIABILITY \$2,000,000 Combined Single Limit and Uninsured Motorist Coverage Minimum Limit \$50,000

WMATA must be included as an additional insured under the auto liability insurance coverage with respect to activities related to this Permit.

X Railroad Protective Liability Insurance.

(May be included if work is planned within 50 feet in any direction of the center-line of WMATA's operating railroad tracks) An insurance policy issued to WMATA as the named insured and covering the liability of all Contracting Parties for the work to be performed on, above, adjacent to or underneath WMATA's operating railroad property 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 this contract work. The coverage under such an insurance policy shall have a limit of liability not less than:

BODILY INJURY AND PROPERTY DAMAGE LIABILITY
\$2,000,000 per occurrence/\$6,000,000 aggregate

Contractor's Pollution Legal Liability Insurance. (Environmental Impairment Liability) Contractor shall require its Subcontractors to provide an insurance policy covering the liability of the contracting Parties during the process of removal, storage, transport and disposal of hazardous waste and contaminated soil and or asbestos abatement. The policy should also include coverage for

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bodily injury and loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, or gas, waste materials or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental.

Limits shall not be less than \$3,000,000 Per Occurrence

The policy form shall include an extended reporting period of at least three (3) years. WMATA shall be included as an additional insured.

Professional Errors and Omissions Liability Insurance. A separate insurance policy to pay on behalf of the Contractor all costs the Contractor shall become legally obligated to pay as damages due to any claim caused by any negligent act, error or omission of any Contracting Party out of their acts or omissions in performance of their work under this Contract.

Such insurance shall be maintained for five (5) years after the final acceptance of the work by either continuation of the policy every year or if coverage is moved to another carrier, the same prior acts retro date should be continued. If coverage is not renewed, an extended reporting period of five (5) years should be purchased and such coverage should be evidenced on the certificate of insurance. In addition, Contractor should purchase unintentional errors and omissions and cross liability coverage by endorsement if not already provided.

For contracts with a value ***Over \$500,000** the coverage under such an insurance policy shall have a limit of liability not less than: **BODILY INJURY AND PROPERTY DAMAGE LIABILITY**
\$3,000,000 per occurrence / \$3,000,000 aggregate

For contracts with a value **Under \$500,000** the coverage under such an insurance policy shall have a limit of liability not less than: **BODILY INJURY AND PROPERTY DAMAGE LIABILITY**
\$1,000,000 per occurrence / \$1,000,000 aggregate

Builder's Risk Insurance. (May be required if Permittee is constructing a building adjacent to WMATA property) An insurance policy covering all risk of physical damage to property under construction shall be procured. Coverage for damage to building materials to be installed may be written separately or by endorsement to this policy; damage to Contractor's owned, leased or rented equipment may be written separately or by endorsement to this policy. Insurance shall be on an

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all-risk policy form including the perils of fire, extended coverage, theft, vandalism, certified acts of terrorism, malicious mischief, collapse and earthquake. Coverage limits shall be equal to the initial contract construction amount and any amendments to the contract which affect the contract cost on a replacement cost basis.

Non-Liability of WMATA. WMATA shall have no liability for any injury or property damage whatsoever unless the injury or damage arises solely from WMATA's negligence. Neither the contract / purchase requisition, nor any provision thereof, shall impose upon WMATA any new or additional duty or liability or enlarge any existing duty or liability of WMATA. Nothing in this Contract / Purchase Requisition shall be deemed to waive WMATA's immunity as a sovereign entity.

11. **SAFETY/ENVIRONMENTAL REQUIREMENTS** (See Technical Specifications)
12. **SANITARY PROVISIONS** (Not Used)
13. **SUBCONTRACTS** (Not Used)
14. **LAWS AND REGULATIONS**

Each offeror shall be responsible to fully inform themselves of the requirements for and to comply with any applicable State of Maryland, Commonwealth of Virginia, District of Columbia, Federal and jurisdictional laws and regulations governing the service to be provided under the contract. Further, each contractor shall be responsible to obtain, at its own cost and expense, any and all licenses/permits required to transact business in any political jurisdictions to be serviced.
15. **FEDERAL/LOCAL/STATE SALES TAX**
 - a. The Authority is exempt under this solicitation from all Federal, State and District of Columbia, municipal and local taxation.
 - b. This provision supersedes any language pertaining to payment of taxes that may appear elsewhere in this solicitation.
 - c. The Authority's tax exempt numbers are as follows: District of Columbia -- 5611-0082187-001; Maryland -- 30072210; Virginia -- 5280-0067.
16. **CONTRACTING OFFICERS TECHNICAL REPRESENTATIVE (COTR)**
 - a. The work will be conducted under the general direction of the Contracting Officer. Authority will be delegated to the Contracting Officer's Technical Representative (COTR) to take the following actions;

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- (1) Act as the principal point of contact with the contractor. Submit a copy of each item of incoming correspondence and a copy of any enclosures to the Contract Administrator.
 - (2) Review and recommend approval/disapproval or modification of invoices and partial payment authorizations. Prepare the partial payment authorization as applicable, execute and forward to Accounting.
 - (3) Coordinate correspondence with the CA if its importance significantly impacts the contractual terms and obligations. Where such coordination is unnecessary provides an information copy to the CA.
 - (4) Provide the CA with information copies of any memorandum for record which is relative to the contract.
 - (5) Notify the Contracting Officer whenever the COTR has reason to believe that the estimated cost not-to-exceed amount will be exceeded.
 - (6) Prepare the Authority estimate for Proposed Contract Modifications. Participate in negotiations of modifications.
 - (7) Approve, in writing, the contractor's progress schedule when required.
 - (8) Receive from the contractor, monthly, if applicable, DBE status reports and forward them to the Office of Procurement and Materiels (PRMT), DBE Section.
 - (9) Provide the Contract Administrator with a written notification after all supplies/services have been received with statement that COTR is not aware of any open issues that would preclude closeout of the contract and that the Contract is ready for closeout. Return all records, correspondence, etc., to the Contract Administrator for closeout purposes.
 - (10) Provide the Contract Administrator with a written request (and requisition) to exercise option(s) [if any] a minimum of 90 days prior to the expiration of the base period of the contract.
- b. There are certain actions which are reserved for only the Contracting Officer. They are:
- (1) Approval of contract modification proposals and/or other unilateral actions.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SUPPLY AND SERVICE CONTRACT

IFB CQ8106/BMM

- (2) Issuance of written orders to stop and/or resume work under Article 10, "Stop Work Orders", of the General Provisions.
- (3) Negotiation with the Contractor for adjustment of contract price and/or time.
- (4) The COTR is not authorized to render final decision under the DISPUTES article of the General Provisions.
- (5) The COTR is not authorized to issue Termination Notices pursuant to the terms of this contract.

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

17 **SPECIAL DELIVERY INSTRUCTIONS (See Technical Specifications)**

18. PACKAGING AND MARKING **NOT USED**

19. INSPECTION AND ACCEPTANCE **(See Technical Specifications)**

20. AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR **NOT USED**

21. **ORGANIZATIONAL CONFLICT OF INTEREST**

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

THIS PAGE NOT USED

TECHNICAL SPECIFICATION FOR THE PROCUREMENT
OF
TWO ARMORED TRUCKS

**WMATA SPECIFICATION
TANDEM AXLE ARMORED TRUCKS**

<u>Category</u>	<u>Specification</u>
<u>GVWR</u>	<ul style="list-style-type: none">• 64,000 lb
OVERALL LENGTH	<ul style="list-style-type: none">• Maximum length including the lift gate is 27 feet (324")
AXLE, FRONT	<ul style="list-style-type: none">• 18,000 lb. Front Axle w/Stemco Wheel seals• 18,000 lb. Front Springs
AXLE, REAR	<ul style="list-style-type: none">• 46,000 lb. Tandem rear axle with oil seals and air operated power divided lock and dash-mounted control with warning light. Ratio geared for 60-65 mph road speed;• 46,000 lb. rear suspension steel springs and 54" walking beams with reinforced saddles for off-highway service.• Magnetic drain plug.
BRAKES	<ul style="list-style-type: none">• Full cam type with auto slack adjusters• Largest diameter and width shoes available for model offered• Air compressor Bendix min. 13 cfm• Bendix air dryer AD-9 or ADIP with heater• Parking brake anchorlok• Rear Dust Covers
CAB	<ul style="list-style-type: none">• Cab with tilting fiber glass hood and fenders.• Air Ride Driver's Seat – Vinyl – highback;<ul style="list-style-type: none">• Air Ride Passenger – Vinyl – highback;• Flip Seat – 2nd Passenger• To include seat belts and sun visors* Final Seat arrangement if different must be approved by WMATA• Cab Color: White• AM/FM Stereo radio system with compact disk, to include an installed external antenna• Heater/Defroster• Windshield Wipers – 2+ Speed Electric with Washer• Tinted Glass• Stationary grille• Horns – Dual Electrical, Dual Air• Floor Mats – Full Heavy Duty Rubber
CAB (continued)	<ul style="list-style-type: none">• Mirrors –<ul style="list-style-type: none">• 16" x 6" Heated West Coast Mirrors to be electrically controlled from inside truck w/8" Convex GS55 Mirrors attached to bottom bracket• Two (2) 8" convex mounted on front fenders- 1 mounted each side

- Two (2) lighted guide post mounted front bumper- 1 each side
- Aux turn signal lights mounted on right and left mirrors or on cab
- Overhead Dome Light
- Dual Outside Grab Handles – Left and Right Side Cab
- Dual Inside Grab Handles – One each door
- Headlight to be Halogen - daytime running lights
- Instruments:
 - a) Speedometer
 - b) Pyrometer
 - c) Hour meter
 - d) Fuel Gauge
 - e) Transmission Temp
 - f) Oil Pressure
 - g) Coolant Temp
 - h) Tachometer
 - i) Voltmeter
 - j) Air Pressure Gauge
- Triangle kit (3)
- Fire extinguisher (2) two 5 lb. mounted in cab one each side
- One First Aid kit model 10 unit mounted in cab.

COOLING

- Largest available radiator for model offered with surge tank and sight glass:
- Translucent surge tank or sight glass is required
- Silicone heater and radiator hoses
- Perry Water Filter
- Gravel/Stone Guard
- Antifreeze - Long Life

ELECTRICAL

- Twelve Volt Starting & Electrical System
- 130 Amp Alternator
- Batteries 2700 CCA (cold cranking Amps)
- Automatic Reset Circuit Breakers preferred but if not available, manual reset type acceptable
- Electric key shutdown
- Jump start terminal outside battery box
- Electronic back up alarm Grote #73110 or approved equal

ENGINE

- Cummins ISM 335 HP or approved equal
- 13500 lb-ft torque
- Spin-on Fuel Filter

- Water fuel separator Dahl #200 or Racor 6903e
- Fan Clutch
- Dual Element or 2 – stage Air Cleaner w/restriction gauge (Reset type)
- Electric Block Heater with Receptacle mounted beside driver door
- Engine Shut Down with Automatic Override – Low Oil Pressure, High Temperature and Low Coolant Level
- Either start system temperature controlled
- Magnetic drain plug

EXHAUST

- Standard, if vertical mounted must have tailpipe with Guard and rain cap

FRAME

- Straight Channel Main Frame Rail
- Full Length “C” Channel Reinforcement
- 3,100,000 Resistance to Bending Movement (RBM)
- Two Front Tow Hooks
- Approximate Wheelbase (WB) 204”
- Cab to Axle (CA) to be determined by body builder.

FUEL TANK

- Min. 90 Gallon Left/Right Step Tank with locks keyed alike

STEERING

- Heavy Duty Power Steering System

TIRES

- Front tires tubeless radials highway tread
- Rear tires tubeless radials mud and snow tread;
- Tires to be of sufficient size and ply ratings to accommodate GVW of truck.
- Tires mounted on steel disc wheels.

TRANSMISSION

- HD4560 P – 6 speed Allison

COMPLETE TRUCK AND CHASSIS TO BE RUSTPROOFED

**AIR
CONDITIONING
& HEATER**

- Heavy-duty;
- on Chassis and an extra ceiling Mounted evaporator unit tapped into truck A/C unit;
- extra evaporator unit not to exceed height of truck body.

**STORAGE
BOXES**

- One (1) on each side under body from rear wheel to fuel tank with fold-up door.

- Boxes not to interfere with equipment mounted on frame (i.e., fuel water sep or air drier).
- Lock cylinders keyed alike, with aluminum inserts around locks.
- Weather stripping on tool box doors with rain channel cap mounted above each door.

**ELECTRICAL
WIRING**

- Run through loom and properly grommeted and secured;
- Provide Truck-Lite “LED” type stop/tail/turn and clearance/marker lights in lieu of standard.

CAB Cab portion is to be manufactured on an O.E.M. cab-cut-off chassis. Therefore, successful vendor will manufacture his own cab with a one piece Flat Bullet resistance windshield, fiberglass insulation in sides/rear/roof, min. (3) three inch pad or insulation on floor, and a stainless steel continuous hinge.

SOFT ARMORING TYPE NOT ACCEPTABLE (Where armor is placed inside of existing conventional cab doors)

**CAB
COMPARTMENT**

- Must be bullet resistant to ballistic level (3) With maximum window area of bullet Resistant glass. O.E.M. glass replaced with Transparent armor.
- Do not armor cab roof, floor and firewall. Do armor all vertical portions of the cab.
- Escape hatch in armored cab.
- Single Rotary Latch lock on cab doors keyed alike
- Manual lever to secure doors inside cab.
- Minimum of two (2) two-way vents in cab.
- Gun ports in two (2) cab doors.
- Aluminum kick plates below doors.
- Aluminum insert around outside key cylinder in cab doors.
- Partition between cab and cargo area to be padded on cab side.
- Outside mounting steps to be approximately 31” long by 6” wide.
- Door ajar warning for cab doors on dash, integrated with cargo compartment door ajar warning.

**CARGO
COMPARTMENT**

Constructed to industry standards for heavy-duty use.

- Height
 - Rear cargo door opening minimum 72”
 - Overall vehicle maximum height from ground – 132”

- Inside cargo compartment height 78"
- Width
 - Overall maximum 96"
 - Inside minimum clearance after addition of E" Rails – 87"
 - Rear cargo door – as wide as possible
- Length: Inside cargo compartment length -minimum 180"
- Outside skin min. 12 gauge Steel with anti-rust properties
- Wall supports on max. 18" centers.
- Interior walls covered with a min. 22 gauge Steel
- Body must have all rust removed and treated with metal prep.
- All welds, seams, and joints must be sealed with 3-M brand seam sealer.
- Body sprayed with epoxy primer, and (2) two coats of paint to match truck.
- All lighting must conform to FVMSS-108

FLOOR

- "C" channel structural steel 1.5" x 3" 1/8" thick set on 12" centers. 2" hardwood with 1/4" diamond plate steel over top. Flat surface with no wheel wells.
- 6" x 4" oak board 30" off floor across cab bulkhead. To prevent boxes from resting on front bulkhead.
- 3.5" x 12" oak boards run down each side of body set on floor.
- Large rain channel cap mounted on roof of body to channel off rain water.

CARGO RESTRAINTS

- "E" (Logistic) rails 30" centers from floor left and right sides;
- Eight (8) pair "E" rail sockets with eight (8) aluminum box beam crossbars.
- A permanent stop – "E" rail socket and metal bar cross bar at forward bulkhead of cargo compartment.

DOOR

- Stainless Steel rear roll-up door (slam type with latch & lock)

LIGHTS

- Dome lights 1/3 and 2/3 distanced apart in cargo area.
- Outside spotlight centered above rear door to shine onto lift gate with switches inside cab and inside rear door.
- Door ajar light in cab for cargo door.

LIFTGATE

- Minimum 6,000 lbs capacity

- Waltco WDL-60 - RM.
 - Ramp 15"
 - Remote hand held super switch control
 - Light Kit
 - Aux hand pump
 - Master switch - lighted - on dash
 - Vault Restraint bar at the end of the tailgate to prevent vaults from rolling off of the tailgate during loading. This bar should be a spring loaded pop up barrier with a lock and unlock lever.
-
- MUST PROVIDE MIN. THREE (3) YEAR OR 36,000 MILES PARTS AND LABOR WARRANTY ON COMPLETE VEHICLE
 - UNDERCOATING AND RUSTPROOFING REQUIRED IF MANUFACTURE WARRANTY IS NOT FOR A MIN. OF 5 YEARS OR 60,000 MILES
 - DO NOT INSTALL ANY TRADE NAMES OR DECALS
 - ALL SPECIFICATIONS STATED ARE MINIMUM REQUIREMENTS OR EQUAL
 - VEHICLES MUST MEET ALL FEDERAL AND STATE LAWS WHEN DELIVERED
 - ALL FACTORY SERVICE BULLETINS TO BE SENT TO THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, 2250 26TH STREET N.E. WASHINGTON D.C. 20018 ATTENTION STERLING BROWN.
 - ARMORED TRUCKS DELIVERY ADDRESS:
 - WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
 - 3500 Pennsy Drive, Building G
 - Hyattsville, Maryland 20785
 - ATTENTION: Mr. Donald Scruggs, (301) 618-1202.
 - VENDOR MUST NOTIFY STERLING BROWN (202-962-5649) PRIOR TO DELIVERY
 - TRAINING FOR FOUR (4) MECHANICS PER VEHICLE TYPE TO BE PROVIDED AT AN AUTHORIZED TRAINING CENTER. PLAN MUST BE ESTABLISHED BY VENDOR AND SUBMITTED WHEN VEHICLES ARE DELIVERED. PLAN AND TRAINING TO INCLUDE: TRAINING ON ALL MAJOR VEHICLE SYSTEMS.
 - MANUALS, KEYS AND C/O (CERTIFICATE OF ORIGIN) MUST BE DELIVERED WITH VEHICLES. IF MANUALS ARE ON BACK ORDER MUST HAVE A MEMO STATING THAT AND ESTIMATED ARRIVAL TIME
 - MANUALS - 3 COMPLETE SETS PER TYPE OF VEHICLE
 - KEYS - 6 SETS DOOR AND IGNITION KEYED ALIKE WHERE APPLICABLE KEYS TO INCLUDE ANY ADD ON EQUIPMENT (UTILITY DOORS OR AUX. TOOL BOXES)

THE AUTHORITY RESERVES THE RIGHT TO PERFORM AN ON SIGHT ACCEPTANCE INSPECTION PRIOR TO DELIVERY AFTER NOTIFICATION FROM VENDOR THAT VEHICLE HAS BEEN COMPLETED.

ALL NEW EQUIPMENT WILL BE INSPECTED FOR CONFORMANCE TO THESE SPECIFICATIONS BEFORE FINAL ACCEPTANCE AND PAYMENT IS ISSUED