




WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY  
600 Fifth Street, NW, Washington, DC 20001-2651

AMENDMENT OF SOLICITATION / MODIFICATION OF CONTRACT

1. AMENDMENT A002		2. EFFECTIVE DATE SEE BLOCK 17	
3. ISSUED BY PURCHASING SECTION Lydia Pepper Office of Procurement & Materials, Rm 301-A 600 Fifth St, NW Washington, D.C. 20001		4. ADMINISTERED BY (If other than block 3)	
5. CONTRACTOR NAME AND ADDRESS  (Street, city, county, state, and Zip Code)		6. FORM TYPE - (Check only one) <input checked="" type="checkbox"/> AMENDMENT OF SOLICITATION NO. <u>FQ18129/LP</u> <u>Dated: June 27, 2018</u> (See block 7) <input type="checkbox"/> MODIFICATION OF CONTRACT/ORDER NO. _____ DATE _____ (See block 9)	
7. THIS BLOCK APPLIES ONLY TO AMENDMENTS OF SOLICITATIONS <input checked="" type="checkbox"/> The above numbered solicitation is amended as set forth in block 10. The hour and date specified for receipt of Offers <input type="checkbox"/> is extended, <input checked="" type="checkbox"/> is not extended. Offerors must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation, or as amended, by one of the following methods; (a) By signing and returning <u>one</u> copy of this amendment; (b) by acknowledging receipt of this amendment on each copy of the offer submitted; or (c) by separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE ISSUING OFFICE PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If, by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided such telegram makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.			
8. ACCOUNTING AND APPROPRIATION DATA (If required) N/A			
9. THIS BLOCK APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS (a) <input type="checkbox"/> This Change Order is issued pursuant to _____ The Changes set forth in block 10 are made to the above numbered contract/order. (b) <input type="checkbox"/> The above numbered contract/order is modified to reflect the administrative changes (such as changes in paying office, appropriation data, etc.) set forth in block 10. (c) <input type="checkbox"/> This Supplemental Agreement is entered into pursuant to authority of _____ It modifies the above numbered contract as set forth in block 10.			
10. DESCRIPTION OF AMENDMENT - Battery Assemblies for 6k Railcar a. IFB NO.: FQ18129/LP is amended to respond to Technical, Contractual or Administrative questions - see continuation page 2 of Amendment 002 and revised Page 64 of the IFB. <ul style="list-style-type: none"><li>Liability limitation is capped at \$2M (see page 2)</li><li>Insurance Requirement Coverage is amended to include #10 - the 'Incidental/consequential clause' as stated (see page 2)</li><li>Professional Liability Insurance Type is removed.</li><li>Rev. page 64 of the IFB - Minimum Required Limits of Insurance: Exhibit A</li></ul> <p style="text-align: center;"><b>End of Amendment 002</b> Except as provided herein, all terms and conditions of the document referenced in block 6, as heretofore changed, remain unchanged and in full force and effect.</p>			
11. <input checked="" type="checkbox"/> CONTRACTOR/OFFEROR IS REQUIRED TO SIGN THIS MODIFICATION AND RETURN <u>1</u> COPIES TO ISSUING OFFICE.		<input type="checkbox"/> CONTRACTOR/OFFEROR IS NOT REQUIRED TO SIGN THIS DOCUMENT	
12. NAME OF CONTRACTOR/OFFICE  BY _____ (Signature of person authorized to sign)		15. WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY  BY  (Signature of Contracting Officer)	
13. NAME AND TITLE OF SIGNER (Type or print)	14. DATE SIGNED	16. NAME OF CONTRACTING OFFICER (Type or print)  Christopher Stewart	17. DATE SIGNED  August 7, 2018

**AMENDMENT OF SOLICITATION (CONT)**  
**IFB NO.: FQ18129/LP – A002**  
**Description: Battery Assemblies for 6k Railcar**

This Amendment is to respond to the following Technical, Contractual or Administrative questions as referenced in the IFB:

Clarification regarding the following observations: Q= Questions, A= Answer

1. Q – **TERMS AND CONDITIONS:** It is understood that if bidders take exception to any requirements in the bid documents (including terms and conditions), they may be considered non-responsive. That said, we noticed that there is no "Limitation of Liability" clause in this section. This means the amount of liability to the bidder/contractor is virtually uncapped. This could be very damaging to any company. We respectfully request that WMATA consider adding the following language to the terms and conditions:

**LIMITATION OF LIABILITY**

NEITHER PARTY SHALL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT OR REMOTE DAMAGES, INCLUDING LOSS OF PROFITS OR LOSS OF USE, OR FOR PUNITIVE, EXEMPLARY OR OTHER SPECIAL DAMAGES, HOWEVER STYLED, WHETHER ARISING UNDER THIS AGREEMENT OR OTHERWISE.

The total aggregate liability of the Contractor arising out of or in connection with the performance of the Agreement shall in no event exceed the total amount received by Contractor under this Agreement.

- A – The Insurance Requirement has been revised to **ADD** the following statement to the IFB's Terms and Conditions, CHAPTER VII – INDEMNIFICATION/INSURANCE/RISK OF LOSS, Article 2 – Insurance Requirements, 1. **MINIMUM REQUIRED INSURANCE:** **MINIMUM INSURANCE COVERAGES AND COVERAGE PROVISIONS** – Add #10:

'Neither party shall be liable for incidental, consequential, indirect or remote damages, including loss of profits or loss of use, or for punitive, exemplary or other special damages, however styled, whether arising under this agreement or otherwise.

The total aggregate liability of the Contractor arising out of or in connection with the performance of the Agreement shall in no event exceed \$2M (Two Million Dollars'.

2. Q - In the Insurance Requirements, Professional Liability is required. This type of insurance is for professional advice- and service-providing individuals and companies from bearing the full cost of defending against a negligence claim made by a client. This is not applicable to a product supplier. As stated on page 66, this insurance states that it is for consulting services which again proves not to be applicable.

- A - Reference: CHAPTER VII – INDEMNIFICATION/INSURANCE/RISK OF LOSS, Article 2 – Insurance Requirements, **MINIMUM REQUIRED LIMITS OF INSURANCE:** EXHIBIT A, **Professional Liability:**

**DELETE the Insurance Type – 'Professional Liability' coverage in its entirety.**

**End of Amendment 002**

**MINIMUM REQUIRED LIMITS OF INSURANCE: EXHIBIT A**  
 (Note - \* reflects Amendment 002 dated 8-7-18)

INSURANCE TYPE	LIMITS	BASIS
<b>Workers' Compensation</b>	Statutory	
<b>Employers' Liability</b>	\$500,000	Each Accident
	\$500,000	Disease Policy Limit
	\$500,000	Disease Each Employee
<b>Commercial General Liability</b>		
	\$1,000,000	Each Occurrence Limit
	\$2,000,000	General Aggregate Limit
	\$1,000,000	Products-Completed Operations Limit
<b>Business Auto Liability</b>		
	\$1,000,000	Combined Single Limit
<b>*Professional Liability – Delete this Insurance Type per Amendment 002 dated 8-7-18</b>		
	\$1,000,000	Each Claim

**I. MINIMUM REQUIRED INSURANCE: MINIMUM INSURANCE COVERAGES AND COVERAGE PROVISIONS**

- 1) Contractor is required to maintain the prescribed insurance outlined in this Exhibit A during the entire period of performance under this contract. Notice to Proceed (NTP) will not be issued until all required insurance has been accepted by WMATA.
- 2) The prescribed insurance coverage and limits of insurance are minimum required coverages and limits. Contractor is encouraged, at its sole cost and expense, to purchase any additional insurance coverages and or limits of insurance that Contractor deems prudent and necessary to manage risk in the completion of this contract.
- 3) Upon written request from WMATA, contractor shall provide copies of any requested insurance policies, including applicable endorsements, within five (5) business days of such request.
- 4) Receipt, review or communications regarding certificates of insurance (COI), insurance policies, endorsements, or other materials utilized to document compliance with these Minimum Insurance Requirements does not constitute acceptance by WMATA.
- 5) Insurance companies must be acceptable to WMATA and must have an A. M. Best rating of at least A- VII.
- 6) Unless otherwise noted, "Claims Made" insurance policies are not acceptable.
- 7) Any insurance policy utilizing a Self-Insured Retention (SIR) requires written approval from WMATA.
- 8) Contractor must incorporate these Minimum Insurance Requirements into contract requirements of all subcontractors of every tier; however, Contractor, at its sole peril, may amend these Minimum Insurance Requirements for its subcontractors, but doing so does not relieve Contractor from its respective liability to WMATA.
- 9) Compliance with these Minimum Insurance Requirements does not relieve Contractor from Contractor's respective liability to WMATA, even if that liability exceeds the Minimum Insurance Requirements.
- 10) \* Add- 'Neither party shall be liable for incidental, consequential, indirect or remote damages, including loss of profits or loss of use, or for punitive, exemplary or other special damages, however styled, whether arising under this agreement or otherwise.

The total aggregate liability of the Contractor arising out of or in connection with the performance of the Agreement shall in no event exceed \$2M (Two Million Dollars)'.