



# Invitation for Bids

(Federal)

**Title: Battery Assemblies for 6k  
Railcar**

**IFB No.: FQ18129/LP**

**NAICS: 335912, 334515**

**Issue Date: 6/27/2018**

**Pre-Bid Telephone Conference: 7/10/2018 –  
10:00 a.m. EST**

**Bid Opening Date: 7/25/2018 – 2:00p.m.  
EST**

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Date: June 27, 2018

SUBJECT: IFB No.: FQ18129/LP, Battery Assemblies for 6k Railcar

Dear Sir/Madam:

The Washington Metropolitan Area Transit Authority (WMATA) requires a qualified contractor to provide ninety two (92) battery assemblies, as described in the Invitation for Bids (IFB) for the 6K railcars.

This IFB contains a 0% percent DBE goal.

**Please be advised that because this solicitation is an IFB, any qualifying statements, alterations, or exceptions taken to any section of the IFB submitted with the bid package may result in determination that the bid is non-responsive and require rejection of the entire bid package, thus making it ineligible for award. Also, failure to submit any requirements of the IFB may cause your bid to be determined non-responsive and rejected, and thus ineligible for award.**

If you have any technical, contractual, or administrative **questions**, please e-mail them to lpepper@wmata.com **no later than close of business, July 06, 2018**. WMATA will provide written responses by Amendment to this IFB.

**A Pre-Bid Telephone Conference will be conducted at 10:00am EST on July 10, 2018. (see Solicitation Instruction, #6 – Pre-Bid Telephone Conference)**

**The bid must be submitted** in accordance with the IFB's terms **no later than 2:00P.M. (EST), July 25, 2018**, at WMATA, Office of Procurement and Materials, 600 Fifth Street, NW, Room 3C-02, Washington, DC 20001-2651.

The following documents must be completed, signed and submitted with your company's bid:

Solicitation, Offer & Award Form;  
Acknowledgement of Amendment/s  
Price Schedule;  
Proposed Battery Assembly Information Sheet  
Representations and Certifications;  
Pre-Award Evaluation Data;  
List of submittals (see Notice to Bidders, No. 6)  
Certificate(s) of Insurance;

Sincerely,



Frederick Voellm  
Contracting Officer  
WMATA Office of Procurement and Materials

## NOTICE TO BIDDERS

### 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 company's bid for each of the following common responsiveness problems:

1. Have you checked your company's bid? Are all items included and checked for math errors?
2. If amendments are included, has your company acknowledged and recorded the number of amendments on the bid envelope and bid form?
3. Has your company signed and submitted the Solicitation, Offer & Award page(s)?
4. Has your company properly completed and checked the appropriate box for each Certification and Representation? Have you included the Representations and Certifications with your company's bid?
5. Has your company completed and included the Pre- Award Evaluation Data form?
6. **Bidder must submit the following documents with the bid:**
  - A. Bidders must submit the following with the Bid: (See Bid Responsiveness Data)
    - i. Safety Data Sheets (SDS) – Must include smoke, flame and toxicity information of materials to be used for the battery assembly.
    - ii. Certificate and Compliance with Safety Standards — Certified test results from an independent laboratory, for the following tests:
      - a. ASTM Standard E 162 - Flame
      - b. ASTM Standard E662 - Smoke
      - c. Boeing Standard. BSS7239 – Toxicity
      - d. Shock and Vibration Test Reports per IEC 61373-2010 Category Class B
    - iii. Proposed Battery Assembly Drawings and Bill of Materials.
    - iv. Technical Information for the proposed battery assembly per section 10.0.
    - v. Quality Management Plan specific to this contract (See sample plan, Attachment 4).
    - vi. Recycle/Disposal Plan – Plan must include pick up, removal and recycle/disposal of battery assemblies in compliance with Environmental Protection Agency's (EPA) and hazardous material policy, laws and regulations.
    - viii. Warranty Information
    - ix. Sample training plan. Refer to section 7.0 H. a
7. Has your company marked the bid envelope with solicitation number (FQ18129/LP) and addressed it to the Contract Administrator, Lydia Pepper?
8. Has your company included copies of any required Certificate(s) of Insurance?



## **NOTICE TO ALL VENDORS**

Please be advised that all vendors and contractors who do business with the Washington Metropolitan Area Transit Authority (WMATA) must register in the WMATA Vendor Registration System. Registration is located at <http://www.wmata.com>  
*New Vendor Registration.*

If you are a vendor or contractor and *HAVE* done business with WMATA in the past, please electronically request your company's User ID and Password at <http://www.wmata.com>  
*Forgot User Id/Password.*

### Registered Vendor Benefits:

- Visibility to WMATA contract administrators and/or purchasing agents during the purchasing decision period;
- Visibility to other 17,500 registered vendors for possible business opportunities;
- Opportunity to update online, company information such as an e-mail address or contact person on-line;
- Ability to sign up for electronic payment option; and
- Ability to electronically reset user id and password.

Any questions regarding registration may be sent to [clm@wmata.com](mailto:clm@wmata.com).

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY  
SUPPLY AND SERVICE CONTRACT IFB NO.: FQ18129/LP



WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY  
**SOLICITATION, OFFER AND AWARD**

CONTRACT NO.	SOLICITATION NO. IFB No.: FQ18129/LP  <input checked="" type="checkbox"/> ADVERTISED <input type="checkbox"/> NEGOTIATED	DATE ISSUED  June 27, 2018	ADDRESS OFFER TO OFFICE OF PROCUREMENT Office of Procurement 600 Fifth Street NW Washington, DC 20001
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**SOLICITATION**

Sealed offer in original and Three (3) copies plus a copy of electronic media (flash drive/CD) for furnishing the supplies or services in the schedules will be received at Authority until 2:00 P.M. Local time July 25, 2018  
(Hour) (Date)

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

**CAUTION – LATE OFFERS:** See paragraph 6 of Solicitation Instructions.

All offers are subject to the following:

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

**Bidder's e-mail** \_\_\_\_\_

**Bidder's phone number** \_\_\_\_\_

**Bidder's fax number** \_\_\_\_\_

**PRICE SCHEDULE**

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
001-005	Battery Assemblies For 6K Railcars  (Continued on the attached pages)	See	Price	Schedule	Sheet

DUN & BRADSTREET ID NUMBER: \_\_\_\_\_

**BIDDER**

Name and Address (Street, city, county, state, and zip code)	Name and Title of Person Authorized to Sign Offer (Print or Type)
<input type="checkbox"/> Check if remittance is different from above — enter such address in Schedule	<div style="display: flex; justify-content: space-between;"> <div style="width: 60%;">Signature</div> <div style="width: 40%;">Offer Date</div> </div>

**AWARD (To be completed by The Authority)**

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

ITEM NO.	QUANTITY	UNIT	UNIT PRICE

The total amount of this award is \$ \_\_\_\_\_

\_\_\_\_\_  
Name of Contracting Officer (Print of Type)

\_\_\_\_\_  
WASHINGTON METROPOLITAN TRANSIT AUTHORITY

\_\_\_\_\_  
AWARD DATE

## PROPOSED BATTERY ASSEMBLY INFORMATION SHEET

The following information must be attached to the Price Schedule Sheet for the product that is being proposed as referenced in the technical specifications. *Please provide technical literature, charts, diagrams, designs, test reports, and any other applicable documentation.*

***If the bidder is a distributor of a battery company, it must provide the name of the battery manufacturer and submit evidence to show business relationship between manufacturer and distributor.***

*Provide information on the following: See Section 10.0 of the Technical Specifications for Compliance with all technical requirements as outlined*

Type of battery: \_\_\_\_\_

Manufacturer: \_\_\_\_\_

Model No.: \_\_\_\_\_

Part No.: \_\_\_\_\_

Size: \_\_\_\_\_

Weight: \_\_\_\_\_

Battery capacity: \_\_\_\_\_

Capacity before under voltage trips at 25.5 VDC: \_\_\_\_\_

Charging and discharging time: \_\_\_\_\_

Service frequency on electrolyte level: \_\_\_\_\_

Battery life cycle: \_\_\_\_\_

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Date

### PRICE SCHEDULE SHEET

DESCRIPTION: Battery Assemblies for 6K Railcars

Line Items	Description	Quantity	Unit of Issue	Unit Price	Extended Total
001	*Battery Assemblies for FAI	2	Each	\$_____	\$_____
002	*Battery Assemblies to be delivered after acceptance of FAI (15 battery assemblies per delivery)	90	Each	\$_____	\$_____
003	Pick Up, Remove, Dispose of the spent battery assemblies (one for one exchange)	92	Each	\$_____	\$_____
004	Training (by Contractor's certified staff) in accordance with Technical Specification, Paragraph 7.0 for 10 students	3	Classes	\$_____	\$_____
005	Warranty (10 years)			\$_____	\$_____
	<b>TOTAL PRICE</b>				<b>\$_____</b>

**DELIVERY LEAD TIME:** \_\_\_\_\_

**NOTES:** 1 - \*WMATA requires purchasing ninety two (92) (Line Items 1 & 2) battery assemblies for the 6000 series railcars.

*Line Item 1* - Two (2) battery assemblies will be submitted for the First Article Inspection (FAI), testing and approval ninety (90) days after Notice to Proceed(NTP).

*Line item 2* – After FAI, the Contractor shall deliver the remaining ninety (90) battery assemblies (fifteen (15) battery assemblies per month).

2 - The unit prices shown on the Price Schedule Sheet shall constitute full compensation for **all** costs of performance under this contract.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Date

**AMENDMENT/S ACKNOWLEDGEMENT**

THE UNDERSIGNED ACKNOWLEDGES RECEIPT OF THE FOLLOWING AMENDMENTS

TO SOLICITATION **IFB NO.: FQ18129/LP**

Amendment Number _____	Dated _____
Amendment Number _____	Dated _____
Amendment Number _____	Dated _____
Amendment Number _____	Dated _____
Amendment Number _____	Dated _____
Amendment Number _____	Dated _____

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

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Date

## **SOLICITATION INSTRUCTIONS**

## **IFB SOLICITATION INSTRUCTIONS**

### **1. INTRODUCTION**

- (a) The Authority seeks to award a contract for battery assemblies for its 6000 Series (6K) Railcars. To that end, WMATA is issuing this Invitation for Bids (IFB) to solicit bids from qualified firms and individuals who can satisfy the requirements of the Contract.
- (b) Since this is a low bid solicitation, award of a Contract hereunder shall be to the lowest priced, responsible bidder whose bid is responsive to, and meets all requirements of, the solicitation.
- (c) The Authority contemplates award of a firm fixed price Contract. Unless otherwise specified in the Price Schedule, the Authority reserves the right to make multiple awards pursuant to this solicitation.

### **2. GOODS TO BE FURNISHED/SERVICES TO BE SUPPLIED**

Bidders are advised that:

- (a) If "services" are to be performed pursuant to this solicitation, they must be provided in all respects as specified in the Contract and include the services to be furnished, together with any labor, materials or other work necessary for satisfactory and complete performance.
- (b) If "supplies" are to be provided pursuant to this solicitation, they must be delivered in all respects as specified in the Contract and include the items to be furnished, together with any labor, service or other work necessary for satisfactory and complete performance.
- (c) Contractor agrees that Project property will remain available to be used for its originally authorized purpose throughout its useful life or disposition.

### **3. COMMUNICATIONS WITH THE AUTHORITY**

Prospective bidders are advised that any and all communications with WMATA relating to this solicitation and made by, or on behalf of, a prospective bidder at any time between release of this IFB and Contract award, must be directed to the Contract Administrator as follows:

Lydia Pepper at telephone: 202-962-2128 or email: lpepper@wmata.com

**A violation of this provision, deemed willful by the Authority, may result in a determination that an offeror is not responsible, and thus ineligible for award, for purposes of this and/or future Authority solicitations.**

### **4. PREPARATION OF BIDS**

- (a) Bidders shall furnish all information requested by the solicitation and, in so doing, are expected to examine the IFB and all referenced documents carefully. Failure to do so will be at bidder's risk.
- (b) The bidder shall sign the solicitation and print or type its name on the Price Schedule and on each continuation sheet, if an entry has been made. Erasures or other changes must be initialed by the person signing the bid.
- (c) Bidders must state a definite time for delivery of supplies or for performance of services unless otherwise specified in the solicitation.

- (d) Bidders should be aware that all prices for the work shall be deemed to include the cost of all work, labor and materials required by the Contract including, without limitation, delivery charges, insurance, bond premiums or any other expenses required by this Contract, as well as expenses associated with compliance with Federal, State or local laws or regulatory requirements. All prices are deemed to be F.O.B. Destination.

**5. EXPLANATIONS TO BIDDERS**

- (a) Any explanation desired by a bidder regarding the meaning or interpretation of the solicitation or Contract including, without limitation, the terms and conditions, technical specifications or Scope of Work, and Contract drawings, must be requested in writing with sufficient time allowed for a reply to reach all bidders before the date that bids will be opened. Absent extraordinary circumstances, all inquiries must be transmitted in a time frame to ensure the Contracting Officer's receipt at least ten (10) days prior to the date specified for bid opening. All such requests must be submitted via e-mail or first class mail to the Contract Administrator identified in Paragraph 3. Include the IFB number and Contract title in any correspondence.
- (b) Any information that the Authority furnishes to a prospective bidder relating to this solicitation will be provided in writing to all prospective bidders in the form of an amendment if, in the Contracting Officer's judgment, the information is necessary to the preparation and/or submittal of proposals or lack of such information would be otherwise prejudicial to other prospective bidders. Bidders must acknowledge receipt of all amendments on the form provided.
- (c) Oral explanations, representations or instructions of any kind relating to the subject matter of this solicitation given at any time before award of the Contract by any employee, officer or agent of the Authority, will not be binding upon the Authority. The Authority does not assume responsibility for the accuracy of any such communication.
- (d) The failure of a prospective bidder to request an explanation will serve to preclude it from claiming any ambiguity, inconsistency or error that should have been discovered by a reasonably prudent bidder.

**6. PRE-BID TELEPHONE CONFERENCE**

For the purpose of clarifying the requirements of this IFB and responding to questions from prospective bidders, a pre-bid telephone conference will be held at **10:00am EST on July 10, 2018**. Please dial 202-556-2400 followed by the participant collaboration code 344919. Although not mandatory, it is important and strongly recommended that all interested bidders participate in the pre-bid telephone conference.

**7. AMENDMENTS PRIOR TO DATE SET FOR OPENING OF BIDS**

- (a) The Authority reserves the right to amend any of the terms of this IFB, the proposed Contract's terms and conditions, the Scope of Work and/or drawings prior to the date set for the opening of bids. Copies of any such amendments as may be issued will be furnished in writing to all prospective bidders.
- (b) If, in the Contracting Officer's judgment, any amendment(s) would require material changes in bid quantities and/or price, the date set for bid opening may be postponed for such period that, in the Contracting Officer's opinion, will enable bidders to revise their bids. In



such instances, the amendment will include an announcement of the new date for bid opening.

- (c) In the event of an amendment, all other terms and conditions of the solicitation shall remain unchanged.

**8. ACKNOWLEDGMENT OF AMENDMENTS**

Bidders are required to acknowledge receipt of all amendment(s) to the solicitation on the designated form to be submitted with their bid. Failure to acknowledge all amendments may cause the bid to be considered not responsive to the solicitation, which would require rejection of the bid.

**9. PREPARATION OF BIDS**

- a. Bids shall be submitted on the Price Schedule Sheet 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.
- b. Bidders shall furnish all information required by this IFB and, in so doing, are expected to fully examine the IFB and all attached documents. Failure to do so will be at the bidder's risk.
- c. Discounts for prompt payment will not be considered in the evaluation of bids. However, any offered discount will be included within the award of the Contract and the Authority will apply it, if payment is made within the discount period referenced in the bid.
- d. The Price Schedule Sheet may include prices for one or more items that are unit prices, or a combination thereof: Submittal of prices for all items on the Price Schedule is not required. Bidders shall insert the words "NO BID" in the space provided for any item for which no price is submitted.
- e. All bid prices shall be deemed to include the cost of all work, labor and materials required by the Contract, including without limitation, delivery charges, insurance, profit, overhead, container charges or any other expenses incidental to the work, including, but not limited to expenses associated with compliance with Federal, State or local laws or regulatory requirements. All bid prices are deemed to be F.O.B. Destination.
- f. Unless specifically permitted by the Price Schedule Sheet, alternate bids will not be considered.

**10. SUBMITTAL OF BIDS**

- a. Bids shall be enclosed in sealed envelopes and addressed to the office specified in the solicitation.
- b. The face of the envelope must show the hour and date specified in the solicitation for bid opening, the solicitation number, and the bidder's name and address. Failure to follow these instructions may result in a premature opening of, or a failure to open, a bid, for which, the Authority assumes no responsibility.
- c. Facsimile bids will not be considered.
- d. All bids will remain sealed until the date and time specified for the opening of bids.

**11. RESPONSIVE BIDS**

- a. Bidders are advised that a bid that is at variance or noncompliant with any provision of this solicitation, including a qualified or conditional bid, may be rejected as non-responsive.
- b. The Contracting Officer may reject a bid as nonresponsive if, in his or her judgment, the bid prices are materially unbalanced. Bid prices are materially unbalanced when they are significantly understated for one (1) or more element(s) of work and significantly overstated for other element(s) of work.
- c. The Authority reserves the right to waive minor errors or omissions in a bid and to deem it responsive.

**12. LATE BIDS AND MODIFICATIONS OR WITHDRAWALS PRIOR TO BID OPENING**

- a. Any bid received at the office designated in the solicitation after the exact time specified for bid opening will not be considered, unless it is received before award and it:
  - (1) Was sent by registered or certified U.S. or Canadian mail not later than the fifth day before the date specified for receipt of bids (For example, a bid submitted in response to a solicitation stating that bid opening will be on the 20th of the month must have been mailed by the 15th);
  - (2) Was sent by first class mail and the Contracting Officer determines that the late receipt was due solely to the Authority's mishandling after its timely delivery on the Authority's premises;
  - (3) Was sent by U.S. Postal Service, Express Mail Next Day Service not later than 5:00 p.m. at the place of mailing at least two (2) business days prior to the date specified for opening of bids. The term "business days" excludes weekends and U.S. federal holidays; or
  - (4) Is the only bid received.
- b. Any modification or withdrawal of a bid is subject to the same conditions as set forth in subparagraphs (a) (1) through (a) (3) above.
- c. The only acceptable evidence to establish the time of the Authority's receipt is the time/date stamp of that event on the bid wrapper or other documentary evidence of receipt maintained by the Authority.
- d. Notwithstanding subparagraph (a), a late modification of any otherwise successful bid that makes its terms more favorable to the Authority will be considered at any time it is received and may be accepted.
- e. Bids may be withdrawn by written notice, received by the Authority before the opening of bids. Bids may be withdrawn in person by a bidder, or its authorized representative, if the representative's identity is established to the Contracting Officer's satisfaction and the representative signs a receipt for the return of the bid, before the opening of bids. The attempted withdrawal of a bid, received subsequent to bid opening and during the acceptance period set forth in paragraph 12, will not be honored and will be without effect.

**13. BID ACCEPTANCE PERIOD AND BIDDER'S DEFAULT**

- a. The acceptance period for this solicitation is ninety (90) calendar days.
- b. By submission of its bid, the bidder agrees that it shall be irrevocable and shall remain available to WMATA to award a Contract pursuant to this solicitation for not less than the acceptance period. The bidder's failure to furnish required documents and/or to execute a Contract from WMATA in accordance with its bid, during the acceptance period shall constitute a bidder's default.
- c. In the event of a bidder's default, the bidder shall be liable to WMATA for all associated damages and costs, including without limitation, WMATA's "cost to cover." The "cost to cover" is the difference between the bid price and the price WMATA ultimately pays for the work encompassed in this solicitation, whether through award of a Contract to another bidder, pursuant to this solicitation or otherwise.

**14. BID GUARANTEE – N/A**

**15. BID MISTAKE**

- a. A bidder who seeks to withdraw its bid subsequent to bid opening due to a claimed mistake or error in its preparation shall notify the Contracting Officer, in writing, immediately upon realizing the mistake, but not later than three (3) business days following bid opening. Such notification must set forth the details of, and explanation for, the claimed mistake. The Contracting Officer shall evaluate the claimed mistake and determine whether the bidder will be permitted to withdraw its bid.
- b. In the event of an apparent discrepancy between any unit price and its associated extended price, the unit price will be presumed to be correct. The Contracting Officer may award a Contract to an otherwise low bidder based upon the unit price, subject to the additional terms of this article.
- c. A bidder claiming a mistake shall, at the Contracting Officer's request, appear before one (1) or more designated Authority representative(s) to provide testimony and/or documentation that may include the bidder's computation sheets and calculations, to assist in the Authority's determination.
- d. Nothing contained herein shall preclude the Contracting Officer from allowing a bidder to cure a deficiency in an otherwise responsive bid where he or she determines that such deficiency is in the nature of a minor informality or irregularity.

**16. REPRESENTATIONS, CERTIFICATIONS, AND ACKNOWLEDGMENTS**

All bidders shall check or complete all applicable boxes or blocks, and provide all requested information, and signatures on the attached "Representations and Certifications" form. Bidders are reminded of the obligation to fully and faithfully complete the accompanying "Representations and Certifications" form that must be submitted with its bid. Failure to do so may result in the bid being rejected as nonresponsive.

**17. LAWS AND REGULATIONS**

Bidders are responsible for complying with any and all applicable State of Maryland, Commonwealth of Virginia, District of Columbia, and Federal laws and regulations governing the services to be provided under this Contract. Further, the successful bidder shall be responsible to obtain, at its own cost and expense, any and all licenses/permits required to transact business in any political jurisdictions where work will be performed.

**18. ROYALTY INFORMATION – N/A**

**19. REQUIREMENT FOR COST DATA FOR CONTRACT AWARD**

The Authority may require the apparent low bidder to submit cost data in sufficient detail to permit analysis of the cost elements that comprise the bid prices. In such instances, the apparent low bid may, at the discretion of the Authority, be subject to audit.

**20. PRE-AWARD INFORMATION/BIDDER RESPONSIBILITY**

- (a) In order to be eligible for award of a Contract, a bidder must affirmatively demonstrate to the Contracting Officer's satisfaction that it is responsible for purposes of this solicitation. Such demonstration must include a showing that it maintains the requisite integrity, overall technical expertise and experience, (including prior performance on other Authority contracts or contracts with other government agencies), and sufficient financial resources to perform the Contract in a timely, satisfactory and appropriate manner. Failure to so demonstrate may result in rejection of the low bidder as not responsible. In such event, the second lowest bidder will be required to demonstrate its responsibility. This process will continue until a bidder successfully demonstrates that it is responsible for purposes of Contract award.
- (b) The Contracting Officer may conduct a pre-award survey and/or take other actions to obtain information regarding the apparent low bidder's responsibility. The apparent low bidder shall promptly supply information that the Contracting Officer requests regarding its responsibility, in such manner and form as he or she requests.
- (c) Among other items, the apparent low bidder shall furnish the following when the Contracting Officer requests:
  - (1) A completed and signed "Pre-Award Evaluation Data" form (copy attached), including all referenced financial statements and information;
  - (2) Evidence of good standing in the System for Award Management (SAM) at [www.sam.gov](http://www.sam.gov).
  - (3) Disadvantaged Business Enterprise data as set forth in Appendix B. The submittal of certain items and request for waiver (if applicable) are required if the bid is \$150,000 or greater. Failure to submit forms B-12, B-13, and/or to request waivers (if applicable) may cause the bid to be rejected. A bidder's failure to supply this information or otherwise fully cooperate with the Authority's inquiry may result in a determination that the bidder is not responsible for purposes of this solicitation and thereby ineligible for award.

**21. PRE-AWARD RESPONSIBILITY MEETING**

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

**22. SITE VISIT/INSPECTION OFFEROR'S FACILITIES**

A successful bidder must maintain sufficient facilities that will allow it to adequately perform Contract as specified herein. WMATA may make site visits prior to Contract award to examine the bidder's facilities. This will include inspection of the facility, interview with key personnel and also to verify that necessary equipment, supplies, etc. are readily available.

**23. BASIS FOR CONTRACT AWARD**

- a. Award(s) of this Contract will be made based solely on the lowest price as stated in the Price Schedule, to the bidder(s) (i) whose bid is judged to be responsive to the terms of the solicitation and (ii) who demonstrates to the Contracting Officer's satisfaction that it is responsible for purposes of award of this Contract.
- b. Unless otherwise expressly specified in the Price Schedule, the Authority may make multiple awards as a result of this solicitation.
- c. The Authority reserves the right to reject all bids and cancel this solicitation at any time prior to award. The Authority reserves the right to seek additional information or clarification from any bidder regarding any statement that is found to be ambiguous prior to making an award.
- d. A written award notice mailed or otherwise furnished to the successful bidder within the acceptance period shall result in a binding contract without further action by either party.

**24. EQUAL EMPLOYMENT OPPORTUNITY**

In order to be eligible for award of a Contract pursuant to this solicitation, the apparent low bidder will be required to comply with all applicable Equal Employment Opportunity laws and regulations.

**25. PERFORMANCE/PAYMENT BONDS – N/A**

**26. DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENTS**

Attached as part of this solicitation are documents outlining the requirements for the Disadvantaged Business Enterprise (DBE) Program: **The DBE requirement/goal for this Contract is 0% unless a good faith waiver is requested and approved.**

- (a) If the proposal is over \$150,000, in order for the offeror to be considered responsible, the following documents (See Appendix B) shall be completed and submitted with the bid:

Schedule of DBE Participation - Attachment B-1

Letter of Intent to Perform as Subcontractor/Joint Venturer - Attachment B-2  
(If applicable)

DBE Unavailability Certification - Attachment B-3 (Where applicable)  
Written request for waiver, when DBE participation is less than stated percentage.

The provisions of Appendix B (if attached) do not become applicable and forms do not have to be completed, unless the total bid price is \$150,000 or more. If the bid is \$150,000 or more and any portion of the submittal requirement is omitted, then the bid may be found to be unacceptable and subsequently rejected. Appendix B forms and/or waivers must be completed with great care by each bidder to ensure that its bid is acceptable.

**27. OPPORTUNITY FOR DISADVANTAGED BUSINESS ENTERPRISES TO BID**

The Washington Metropolitan Area Transit Authority hereby notifies all prospective bidders that it will affirmatively ensure that disadvantaged minority business enterprises will be afforded full opportunity to submit bids in response to this solicitation and will not be discriminated against on the basis of race, color, creed, sex, religion, national origin, disability, sexual preference and/or gender identity in consideration for award.

**28. NOTICE OF PROTEST POLICY**

- (a) The Authority's procedure for the administrative resolution of protests is set forth in Chapter 17 of WMATA's Procurement Procedures Manual (PPM). The procedures contain strict rules for filing a timely protest, for responding to a notice that a protest has been filed, and other procedural matters.
- (b) The basis on which FTA will review a grantee's protest decision is defined in §17-8. FTA will generally exercise discretionary jurisdiction over cases deemed to involve issues important to the overall third party contracting program. FTA's decision to decline jurisdiction over a protest does not imply approval of or agreement with the agency's decision or that FTA has determined that this Contract is eligible for Federal participation.
- (c) Alleged violations must be submitted to the Contracting Officer who will administratively decide the protest.
- (d) 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 have jurisdiction over court actions concerning protest decisions.

**29. WMATA'S TAX EXEMPT STATUS**

- (a) Pursuant to Article XVI, Paragraph 78, of the Washington Metropolitan Area Transit Authority's 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) By submission of its bid, the bidder certifies that none of the taxes that the Authority is exempt from are included therein.

**30. ENGLISH LANGUAGE AND UNITED STATES CURRENCY**

With respect to both this solicitation and the resultant Contract:

- (a) All communications (oral, written, electronic and otherwise including but, not limited to, software coding) shall be in the English language.
- (b) All pricing shall be in United States dollars.

**31. BRAND NAME OR EQUAL – N/A**

**32. REQUESTS FOR RECORDS**

The Washington Metropolitan Area Transit Authority (WMATA), in the regular course of business, may receive from the public, including prospective vendors and bidders, requests for records on a variety of topics. It is WMATA's policy to make official agency records, including electronic records, available to the public, unless specifically prohibited by WMATA's policy or applicable laws.

- (a) "Records" means any existing writings, drawings, maps, recordings, tapes, film, microfilm, correspondence, forms, cards, photographs, optical disks, photo copies, and records stored by computer (electronic records) that are made or received by WMATA in connection with a public contract. A record does not include uncirculated personal notes, papers, electronic records and any other records that were created and retained solely as work papers for personal use of the Contracting Officer, Contract Administrator or other WMATA employee.
- (b) WMATA's contracting process allows for the release/posting of certain information concerning this Contract after its award. This includes the name of the successful bidder and the amount of the award. This information is available on WMATA's website under "Business with Metro" or directly from the Contract Administrator.
- (c) Upon WMATA's request, the successful bidder shall be required to provide a redacted copy of its bid with confidential and proprietary information redacted.
- (d) After the award is announced, the winning proposal may be subject to release under WMATA's Public Access to Records Policy (PARP).
- (e) When WMATA determines that a bid will be of wide public interest, WMATA will post the redacted bid on its website. When WMATA receives three (3) or more requests for a successful bid, WMATA will post it on its website.
- (f) Requests for Records that are not made available during the procurement process will be submitted in accordance with the PARP. Requests must be in writing and sent by mail to the Office of General Counsel, Washington Metropolitan Area Transit Authority, 600 Fifth Street, NW, Washington, D.C. 20001, or by electronic mail at [parprivreq@wmata.com](mailto:parprivreq@wmata.com) or by facsimile to the attention of the PARP Administrator at (202) 962-2550. If a request for records is sent directly from the requestor to a Contract Administrator, department, or independent office, that entity shall immediately forward the request to the PARP

Administrator in the Office of General Counsel. If records are subject to a PARP request, a member of the PARP team will contact the company to begin the PARP document review process, which includes providing detailed written justifications for any information for which exemptions are claimed.

- (g) Neither WMATA's bidding process nor the PARP process generally allow for the release of information that would cause competitive harm to the bidders, other organizations, WMATA's employees, or interests. Information that will be withheld includes the following:
- (1) Personal information (this does not include education and qualifications which are released) about the successful bidder or its employees that is not available to the public on the website of the successful bidder;
  - (2) Unit price details of the successful bid (this does not include the bottom line price, which is released);
  - (3) The names of the vendors who file a protest to the solicitation or its award;
  - (4) The written adjudication of any protests;
  - (5) Personal information concerning WMATA's employees; and
  - (6) Trade secrets and confidential commercial or financial information obtained from a bidder.
- (h) If your company's records are subject to a PARP request (i.e., if it is the successful bidder), a broad claim of confidentiality for the entire bid is rarely acceptable, and will likely be rejected during the PARP process. Therefore, WMATA suggests that you narrowly identify your confidential/proprietary information based on the following guidance:
- (i) Information that may be withheld/redacted: Detailed pricing except bottom line offer amounts;
- (j) Public information subject to release:
- (1) Any information on your company's website;
  - (2) Publicly known information (even if not on your company's website);
  - (3) General company background;
  - (4) Mere compliance with IFB requirements; and
  - (5) Anything standard to the industry.



**REPRESENTATIONS & CERTIFICATIONS**

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

**1. TYPE OF BUSINESS ORGANIZATION**

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

Name	Signature
Title	Company
Date	

**2. AFFILIATION AND IDENTIFYING DATA**

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

**2.1** It ☐ is, ☐ is not, owned or controlled by a parent company. For this purpose, a parent company is defined as one that either owns or controls the activities and basic business policies of the offeror. To own another company, means that the parent company must own at least a majority, i.e., more than fifty percent (50%), of the voting rights in that company. To control another company, such ownership is not required. If another company is able to formulate, determine or veto the offeror's basic business policy decisions, such other company is considered the parent of the offeror. This control may be exercised through the use of dominant minority voting rights, use of proxy voting, Contractual arrangements or otherwise.

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

\_\_\_\_\_  
Name of Parent Company

\_\_\_\_\_  
Main Office Address (including ZIP Code)

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

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

Name	Signature
Title	Company
Date	

### 3. **PREVIOUS CONTRACTS AND COMPLIANCE REPORTS**

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

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

Name	Signature
Title	Company
Date	

### 4. **DISADVANTAGED BUSINESS ENTERPRISE**

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

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

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

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

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

- 4.3 Special Certification Requirements for Transit Vehicle Manufacturers.** Each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA funded transit vehicle procurements, must certify that it has complied with the DBE requirements of 49 C.F.R. Part 26.

The offeror represents that it [ ] is or [ ] is not a transit vehicle manufacturer and [ ] has or [ ] has not complied with the DBE requirements of 49 C.F.R Part 26.

Name	Signature
Title	Company
Date	

**5. SMALL BUSINESS ENTERPRISE (MAY 2015) – N/A**

**6. AFFIRMATIVE ACTION COMPLIANCE**

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

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

Name	Signature
Title	Company
Date	

**7. COVENANT AGAINST GRATUITIES**

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

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

Name	Signature
Title	Company
Date	

**8. CONTINGENT FEES**

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

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

Name	Signature
Title	Company
Date	

**9. CLEAN AIR ACT AND CLEAN WATER ACT CERTIFICATION**

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

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

Name	Signature
Title	Company
Date	

**10. DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION**

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

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

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

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

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

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

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

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

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

Name	Signature
Title	Company
Date	

**11. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION**

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

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

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

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

**11.2** Each person signing this offer certifies that:

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

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

Name	Signature
Title	Company
Date	

**12. CERTIFICATION OF NONSEGREGATED FACILITIES**

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

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

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

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

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

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

**12.2** Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;

**12.3** Retain such certifications in its files; and

**12.4** Forward the following notice to such subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS  
OF NONSEGREGATED FACILITIES**

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

Name	Signature
Title	Company
Date	

**13. NONDISCRIMINATION ASSURANCE**

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

Name	Signature
Title	Company
Date	

**14. CERTIFICATION OF RESTRICTIONS ON LOBBYING**

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

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

**14.1.1** No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

**14.1.2** If any funds other than federally appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Contract, the undersigned shall complete and submit Standard Form--LLL, "Disclosure of Lobbying Activities."

**14.1.3** The undersigned shall require that the language of this certification be included in all sub-awards (including subcontracts, sub-grants and contracts under grants, loans and cooperative agreements) at all tiers and that all sub-recipients shall certify and disclose accordingly.

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

**14.3** The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C.A. § 3801, *et seq.* apply to this certification and disclosure, if any.

Name	Signature
Title	Company
Date	

**15. BUY AMERICA ACT CERTIFICATION**

The Buy America Act requirements apply to federally assisted construction contracts, and acquisition of goods or rolling stock contracts valued at more than \$150,000.

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

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

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

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



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

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

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

**[n/a] Certificate of Compliance with 49 U.S.C. § 5323(j)(2)(C)**

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

**[n/a] Certificate of Non-Compliance with 49 U.S.C. 5323§ (j)(2)(C)**

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

Name	Signature
Title	Company
Date	

**16. CERTIFICATION OF NON-DELINQUENT TAXES**

This certification is applicable to federally assisted contracts.

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

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

**16.1.2** It has certified if it has been notified of an unresolved tax lien or any unsatisfied Federal tax delinquency in excess of \$3,000 and that it is paying tax debts through an installment agreement or has requested a collections due process hearing.

**16.1.3** The offeror agrees that a breach of this certification is a violation of the Federal Acquisition Regulation (FAR).

**16.1.4** As used in this certification, the term "tax delinquency" means an outstanding debt for which a notice of lien has been filed in public records.

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

**16.2** Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the FAR.;

**16.3** Retain such certifications in its files; and

**16.4** Forward the following notice to such subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

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

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

Name	Signature
Title	Company
Date	

**17. DISCLOSURES OF INTERESTS OF WMATA BOARD MEMBERS**

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

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

**17.1**    ☐ No WMATA **Board member, household member or business associate** has a financial interest in this firm, in a **financial transaction** with the Authority to which this firm is a party or prospective party, or in an **actual or prospective business relationship with the Authority** to which this firm is a party.

**17.2**    ☐ The following WMATA **Board member(s), household member(s) or business associate(s)** has a financial interest in this firm, in a **financial transaction** with the Authority to which this firm is a party or prospective party, or in an **actual or prospective business relationship with the Authority** to which this firm is a party. Include in "Nature of Interest" below, a description of the financial interest and (1) for ownership interests, the value of the interest, the name and address of the firm in which the interest is held, and the total equity or equivalent interest of the firm; and (2) for income, the amount of all income received by the **Board member, household member or business associate** in the current and preceding fiscal year for services provided, and the name and address of the firm from which the income was received.

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

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

Name	Signature
Title	Company
Date	

18. **CRIMINAL BACKGROUND SCREENING CERTIFICATION (QUARTERLY) – N/A**
19. **CERTIFICATION REQUIRED FOR ALL SAFETY-SENSITIVE<sup>1</sup> CONTRACTS.- N/A**

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<sup>1</sup> See the Combined Glossary for a definition of “safety-sensitive.”

**PRE-AWARD EVALUATION DATA**  
**(Must be completed and submitted with the Bid)**

PROJECT DESCRIPTION: Battery Assemblies for 6k Railcars

1. Name of firm \_\_\_\_\_
2. Address: \_\_\_\_\_
3. ☐ Individual     ☐ Partnership     ☐ Corporation     ☐ Joint Venture
4. Date organized \_\_\_\_\_.  
State where incorporated or organized \_\_\_\_\_.
5. Names of officers or partners:
  - a. \_\_\_\_\_
  - b. \_\_\_\_\_
  - c. \_\_\_\_\_
  - d. \_\_\_\_\_
  - e. \_\_\_\_\_
6. How long has the firm been in business under its present name? \_\_\_\_\_
7. **Schedule One (1)** – Attach a list of similar current contracts that demonstrate your firm's technical proficiency, each with contract amount, name of contracting party, character or type of work and percentage of completion.
8. **Schedule Two (2)** - Attach a list of similar contracts, each with contract amount, name of contracting party, telephone number, and character or type of work for similar contracts *completed* in the last two (2) years.
9. **Schedule Three (3)** - In the last two (2) years has your firm been denied an award where it was the low bidder? Y \_\_\_ N \_\_\_\_\_. If the answer is yes, attach as the full particulars regarding each occurrence.
10. **Schedule Four (4)** - Has your firm failed to complete in the last two (2) years, any contract on which it was the low bidder? Y \_\_\_ N \_\_\_\_\_. If the answer is yes, attach as the full particulars regarding each occurrence.
11. Financial resources available as working capital for the Contract:
  - a. Cash on hand: \$\_\_\_\_\_
  - b. Sources of credit: \_\_\_\_\_
12. **Schedule Five (5)** - Attach financial statements and letters from banks regarding credit as required by the IFB Solicitation Instructions, #20. "Pre-Award Information/Bidders Responsibility". Do Not Provide any Account Numbers.

13. What percentage of work (Contract amount) does your firm intend performing with its own personnel? \_\_\_\_ %.
14. **Schedule Six (6)** - Attach a list of all principal subcontractors and the percentage and character of work (Contract amount) that each will perform (if applicable).
15. If the Contractor or subcontractor is in a joint venture, submit "Pre-Award Evaluation Data" forms for each member of the joint venture.
16. All non-manufacturers and distributors must provide proof of its business relationship with the manufacturer of battery assemblies offered for this contract. (e.g. exclusive distributorship agreement)

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

The undersigned certifies to the accuracy of all information.

COMPANY: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

## **TERMS AND CONDITIONS**

## **CHAPTER I – TERMS AND CONDITIONS**

### **1. AGREEMENT**

The work to be performed under this Contract may briefly be described as providing battery assemblies for 6000 series (6k) Railcars, including all necessary labor, materials and transportation. The Contractor agrees to perform the work in accordance with requirements and terms and conditions hereinafter set forth in this Contract. In consideration for the Contractor's complete, satisfactory and proper performance of the Contract, the Authority agrees to pay to the Contractor, and the Contractor agrees to accept as full compensation, the sums of money set forth in the Price Schedule at the time and in the manner and upon the terms and conditions set forth in this Contract.

### **2. ARRANGEMENT OF CONTRACTUAL PROVISIONS**

For ease of reference, this Contract is divided into chapters, articles (also referred to as "clauses"), paragraphs and subparagraphs. While the chapters and articles are titled, it is understood that both the use of such titles and the manner and overall arrangement of the Contractual provisions are intended solely for the convenience of the parties and are without independent Contractual or legal significance.

### **3. ORDER OF PRECEDENCE**

- (a) Any inconsistency in the Contract shall be resolved by giving precedence to the following order: (a) terms and conditions (b) the specifications; (c) drawings, if any; (d) other documents, exhibits, and attachments generated by the Authority as part of this Contract; (e) the technical proposal, if any, and other Contractor submissions generated as part of this Contract. In the event of a conflict within or between provisions entitled to equal precedence, the more stringent requirement shall apply.
- (b) Notwithstanding paragraph (a), if this Contract is funded, in whole or part, through the Federal Government, all contract terms mandated for inclusion by the Federal Government shall be deemed to supersede any other conflicting or inconsistent provisions of this Contract.

### **4. REQUIREMENTS CONTRACT – N/A**

### **5. INDEFINITE QUANTITY CONTRACT – N/A**

### **6. ORDERING - N/A**

### **7. ORDER LIMITATIONS - N/A**

### **8. AUDIT, AVAILABILITY, AND INSPECTION OF RECORDS- FTA**

- (a) Authorized persons. The Contracting Officer and his or her representatives, including representatives of the Authority's governing jurisdictions and any other Federal, state, or local entity providing funding for this Contract and the U.S. Comptroller General shall have access and inspection rights described in this article.

- (b) Examination of costs. The Contractor shall maintain, and the Contracting Officer shall have the right to examine and audit, all records sufficiently to properly reflect all costs incurred or anticipated to be incurred directly or indirectly in performance of this Contract. This right of examination shall include inspection of the Contractor's facilities engaged in performing this Contract at all reasonable times.
- (c) Cost or pricing data. If the Contractor is required to submit cost or pricing data in connection with any pricing action relating to this Contract, the Contracting Officer shall have the right to examine and audit all of the Contractor's records related to: (1) any bid for this Contract, subcontract, or modification; (2) any clarifications of the bid; (3) pricing of this Contract, subcontract or modification; or (4) performance of this Contract, subcontract or modification.
- (d) Availability. The accounts, records and cost information required to be originated under this Contract, and together with all other accounts, records and cost information related to this Contract, shall be maintained and made available by the Contractor and subcontractor(s):
  - (1) At their offices at all reasonable times for inspection, audit, reproduction or such other purposes as the Contracting Officer or by anyone he or she authorizes may require or pursuant to any other provision of this Contract; and
  - (2) Except to the extent otherwise expressly set forth in this Contract, until three (3) years from the date of final payment under this Contract. If the Contract is completely or partially terminated, such records shall be maintained for a period of three (3) years from either the date of any resulting final settlement or the date of final payment, whichever is later. If a pricing adjustment is involved in any dispute or litigation related to this Contract, such records shall be maintained for a period equal to the later of three (3) years from the date of final payment or one (1) year following the final disposition of the dispute or litigation.
- (e) Subcontracts. The Contractor shall insert this article, in all subcontracts that exceed \$150,000.

**9. AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR**

Funds are not guaranteed for performance under this Contract beyond the current fiscal year that ends on June 30<sup>th</sup>. The Authority's obligation for performance of this Contract beyond that date is contingent upon the availability of funds from which payment for Contract purposes can be made. The Authority's legal liability for any payment cannot arise for performance under this Contract, until funds are made available to the Contracting Officer for performance and until he or she notifies the Contractor of the availability, in writing. Any option exercised by the Authority that will be performed, in whole or in part, in a subsequent fiscal year is subject to availability of funds in that year and will be governed by the terms of this article.



**10. CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)**

- (a) The work will be conducted under the Contracting Officer's general directions. Authority will be delegated to the Contracting Officer's Technical Representative (COTR) to take the following actions:
- (1) Act as the principal point of contact with the Contractor. The COTR will submit a copy of each item of incoming correspondence and a copy of any enclosures to the Contract Administrator;
  - (2) Approve in writing, the Contractor's progress schedule and submittals when required;
  - (3) Inspect the work for compliance with this Contract;
  - (4) Review and approve invoices and payment estimates. The COTR will forward invoices and receipts to accounting. The COTR will bring any significant discrepancies in, or disputes concerning, Contractor invoices or payments to the Contracting Officer's attention. In those cases requiring release of final retained percentages of payment, the COTR will make his or her recommendations to the Contracting Officer in writing;
  - (5) Coordinate correspondence with the Contract Administrator, if its importance significantly impacts the Contractual terms and conditions;
  - (6) Evaluate the Contractor's technical letters and proposals for the Contracting Officer;
  - (7) Advise the Contracting Officer of potential problems that may affect Contract performance;
  - (8) Advise DBE Office, if DBE, SBE, or SBLPP issue(s) appear that may require investigation.
  - (9) Advise the Contracting Officer whenever the COTR has reason to believe that the Contractual not-to-exceed amount will be exceeded;
  - (10) Prepare the Authority's estimate for proposed Contract modifications. Participate in negotiations for modifications;
  - (11) Approve, in writing, the Contractor's progress schedule when required.
  - (12) Receive from the Contractor, monthly, if applicable, DBE status reports and forward them to the DBE Office;
  - (13) Receive from the Contractor certified payroll reports and prepare a log sheet indicating the following: (1) name of the Contractor and subcontractor; (2) the Contract number; (3) the certified payroll number (number for the payroll for the project starting with the number 1); (4) the time frame of the payroll period (i.e. 1/21/11-2/3/11); (5) the statement of compliance date (first page of the report); and (6) the date the report was received by WMATA;
  - (14) Maintain a comprehensive file/record of documents and correspondence concerning Contract activities and actions;
  - (15) Provide the Contract Administrator with a written notification after all supplies/services have been received with a statement that the COTR is not aware of any open issues that would preclude closeout of the Contract and that it is ready for closeout. The COTR will return the file, containing all records, correspondence, etc., to the Contract Administrator;
  - (16) Execute Standard Form 1420, which contains a detailed performance evaluation of the Contractor. If, there are one (1) or more categories in which the Contractor is deemed unsatisfactory, these evaluations must be provided to it for comment;

- (17) Provide the Contract Administrator with a written request (and requisition) to exercise option(s) (if any) a minimum of ninety (90) days prior to the time established in this Contract for exercise of the option;
  - (18) The presence or absence of the COTR or his or her inspectors shall not relieve the Contractor from any requirements of this Contract.
  - (19) The COTR may not re-delegate or sub-delegate his or her authority to act on the Contracting Officer's behalf. If, for whatever reason the COTR is unable or unwilling to fulfill his or her responsibilities under this Contract, only the Contracting Officer can designate a new COTR.
- (b) The COTR's name and address will be provided after award.

**CHAPTER II – TIME/DELAYS/LIQUIDATED DAMAGES**

**1. PERIOD OF PERFORMANCE**

The period of performance is eighteen (18) months commencing on the date of Notice to Proceed (NTP).

**1b. DELIVERY SCHEDULE**

- (a) Delivery of Line Item 1 on the Price Schedule Sheet – Contractor shall deliver two (2) battery assemblies for FAI & Testing ninety (90) days after NTP. FAI & Testing is scheduled for a period of six (6) to twelve (12) months.
- (b) Delivery of Line Item 2 on the Price Schedule Sheet – Upon completion of FAI & testing, the Contractor shall provide the remaining ninety (90) battery assemblies in multiple shipments of fifteen (15) battery assemblies per month. Contractor shall deliver the first battery assembly no later than six (6) months following the WMATA Contracting Officer's Notice to Proceed (NTP)

**2. OPTIONS- EVALUATION – N/A**

**3. OPTIONS- EXERCISE – N/A**

**4. OPTION FOR INCREASED OR DECREASED QUANTITIES OF SUPPLIES**

WMATA may increase or decrease the quantities of supplies called for in the Price Schedule, at the unit price specified. WMATA may also require the delivery of a numbered line item, identified in the Price Schedule as an option item, in the quantity and at the price stated in the Price Schedule. The Contracting Officer may exercise the option by written notice to the Contractor within a reasonable amount of time before exercising the option. Delivery of the added items shall continue at the same rate as the like items called for under the Contract, unless the parties agree otherwise.

**5. OPTIONS TO EXTEND SERVICES – N/A**

**6. OPTION TO EXTEND THE TERM OF THE CONTRACT**

- (a) WMATA may extend the term of this Contract by written notice to the Contractor within a reasonable amount of time exercising the option, provided that WMATA gives the Contractor a preliminary notice of its intent to extend within a reasonable amount of time before the Contract expires. The preliminary notice does not commit WMATA to the extension.
- (b) If WMATA exercises this option, the extended Contract shall include this option clause.
- (c) The total duration of this Contract, including any options under this clause shall be reasonable as determined by the Contracting Officer in consultation with counsel (COUN).

**7. OPTIONS EXERCISED OUT OF SEQUENCE – N/A**

**8. LIQUIDATED DAMAGES FOR DELAY – N/A**

**9. EXTENSIONS OF TIME/FORCE MAJEURE**

- (a) For purposes of this clause, the term “force majeure” shall mean an unforeseen event or circumstance, beyond the control of, and not occasioned by the fault or negligence of, the Contractor or the Authority, that gives rise to a delay in the progress of the Contract, including, without limitation, acts of God, acts of war or insurrection, unusually severe weather, fires, floods, strikes, freight embargoes or other events or circumstances of like nature.
- (b) Notwithstanding the provisions of the “Liquidated Damages” article of this Contract (if applicable), if the Contractor is delayed at any time during the performance of this Contract, by the Authority’s negligence or by a force majeure event, then the Contracting Officer shall extend the time for completion and/or the affected delivery date(s) in the following circumstances:
  - (1) The cause of the delay arises after the award of the Contract and neither was nor could have been anticipated by the Contractor by reasonable investigation before such award;
  - (2) The Contractor demonstrates to the Contracting Officer that the completion of the work and/or affected deliveries will be actually and necessarily delayed;
  - (3) The delay cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures available to the Contractor, whether before or after the cause of delay; and
  - (4) The Contractor makes a written request and provides other information to the Contracting Officer, as described below.
- (c) If the Contractor will be delayed at any time or for any period by two (2) or more of the above-mentioned causes, the Contractor shall not be entitled to a separate extension for each cause, but shall be entitled to only one (1) period of extension for the cumulative effects of the delay.
- (d) The Contracting Officer may rescind or shorten any extension previously granted, if he or she subsequently determines that any information that the Contractor provided in support of a request for an extension of time was erroneous, if, accurate information would have resulted in a denial of the request for an excusable delay. The Contracting Officer will not rescind or shorten any extension previously granted, if the Contractor acted in reliance upon it and if, in his or her judgment, such extension was based on information that the Contractor submitted in good faith, even if it is later determined to be erroneous.
- (e) The request for an extension of time shall be made within ten (10) days after the Contractor knows or should know of any cause for which it may claim an excusable delay. The Contractor’s request shall contain any potential basis for an extension of time, describing, as fully as possible, the nature and projected duration of the delay and its effect on the completion of the work identified in the request. Within thirty (30) days after his or her receipt of all such information, the Contracting Officer shall advise the Contractor of his or her decision on such requested extension. Where it is

not reasonably practicable for the Contracting Officer to render his or her decision in the thirty (30) day period, he or she shall, prior to the expiration of such period, advise the Contractor that he or she will require additional time and state the approximate date upon which he or she expects to render a decision.

- (f) In no event shall a delay in performance of the Contract occasioned solely by a force majeure event or the acts or omissions of any party outside of the Contractor's control be the basis for a termination for default pursuant to this Contract. In no event shall a subcontractor at any tier be deemed a party outside of the Contractor's control.

#### **10. THE AUTHORITY'S DELAY**

- (a) If the performance of all or any part of this Contract is delayed in a material manner or extent by the Authority's acts or omissions that are not expressly or impliedly authorized by this Contract or by applicable provisions of law, the Contracting Officer shall make an adjustment (excluding profit) for any increase in the cost of performance of this Contract caused by such delay and shall modify the Contract, in writing. The Contracting Officer shall make an adjustment to the delivery or performance dates and to any other Contractual provision, if such delay or interruption affected Contract compliance. The Contracting Officer shall make no adjustment under this Contract for any delay or interruption, if performance was or could have been delayed by any other cause, including, without limitation: (i) the fault or negligence of the Contractor or any subcontractor; (ii) an act constituting a force majeure event pursuant to this Contract; or (iii) any other cause for which an adjustment is provided under any other article of this Contract, at law or in equity.
- (b) An adjustment pursuant to paragraph (a) shall not be allowed:
  - (1) For any costs incurred more than twenty (20) days before the Contractor notifies the Contracting Officer, in writing, of the delay.
  - (2) Unless the claim, in a sum certain, is asserted in writing as soon as practicable after the termination of the delay. In no event, shall a Contractor assert a delay claim later than thirty (30) days after its termination. The delay claim shall be accompanied by appropriate documentation, specifically supporting the nature and extent of the claimed impact upon the cost and/or time required for performance. In any instance where it is not possible for the Contractor to fully project such impact within the thirty (30) day period, it shall support the claim with such documentation as is then reasonably available, along with a statement of the anticipated time frame when the Contractor expects to provide the additional materials. The Contracting Officer shall maintain the right throughout the process to request such additional materials as he or she shall reasonably require in consideration of the claim and shall be under no obligation to conclude his or her consideration of the claim prior to review of all relevant materials. Any adjustment to the Contract price pursuant this article must be determined prior to final payment under this Contract.

**11. 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 article, including this paragraph (b), in any subcontract hereunder if a labor dispute may delay the timely performance of this Contract.

**12. NOTIFICATION OF BANKRUPTCY OR INSOLVENCY**

In the event the Contractor becomes insolvent or files or has filed against it a petition in bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of such to the Contracting Officer. This notification shall be furnished as soon as possible, but in no event more than ten (10) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all WMATA Contract numbers for all WMATA contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract.

**CHAPTER III – ACCEPTANCE/INSPECTIONS/DEFICIENCIES**

**1. INSPECTION OF SERVICES – N/A**

**2. INSPECTION OF SUPPLIES**

- (a) The Contractor shall provide and maintain an inspection system acceptable to the Authority covering supplies under this Contract and shall tender to the Authority for acceptance only supplies that have been inspected in accordance with the inspection system and that the Contractor determines to be in conformity with this Contract's requirements. As part of the system, the Contractor shall prepare records evidencing the nature and result of all inspections. These records shall be made available to the Authority during the term of the Contract and thereafter in accordance with the "Audit and Inspection of Records" article of this Contract. The Authority may perform reviews and evaluations as reasonably necessary to ascertain compliance with this article. These reviews and evaluations shall be conducted in a manner that will not unduly delay the Contract. Reviews, whether exercised or not, do not relieve the Contractor of its obligations under this Contract.
- (b) The Authority has the right to inspect and test all supplies under this Contract, to the extent practicable, at all places and times, including during manufacturing, and before acceptance. The Authority shall perform inspections and tests in a manner that will not unduly delay the Contract. The Authority assumes no Contractual obligation to perform any inspection and/or test nor shall the Authority's failure to perform any inspection and/or test relieve the Contractor of any obligation under this Contract.
- (c) If the Authority performs inspection(s) or test(s) on the Contractor's or subcontractor's premises, the Contractor shall furnish, and shall require subcontractors to furnish, without additional cost, all reasonable facilities and assistance for the safe and convenient performance of these inspections or tests.
- (d) When supplies are not ready at the time specified for inspection or testing, the Contracting Officer may charge to the Contractor for any additional associated costs. The Contracting Officer may also charge the Contractor for any additional costs of inspection or testing when prior rejection makes re-inspection or retesting necessary.

**3. ACCEPTANCE OF SUPPLIES**

- (a) The Authority shall accept or reject tendered supplies as promptly as practicable after delivery, unless otherwise provided in this Contract. The Authority's failure to inspect and/or accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability upon the Authority, for nonconforming supplies.
- (b) The Authority's acceptance shall be deemed conclusive, except for latent defects, fraud, willful misconduct, gross mistakes amounting to fraud or as otherwise provided in this Contract. In such instances, the Authority, in addition to any other rights and remedies it has under this Contract, at law or in equity, shall have the right:

- (1) To direct the Contractor, at no increase in Contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or, if the Contracting Officer determines, at the Contractor's facility, in accordance with a reasonable delivery schedule as may be agreed upon between the parties. The Contracting Officer may reduce the Contract price, if the Contractor fails to meet such delivery schedule; or
- (2) Within a reasonable time after the Contractor's receipt of a Notice of Defects or Nonconformance, the Contracting Officer may reduce the Contract price, as is equitable under the circumstances, if he or she elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the costs of transportation.

**4. NEW MATERIAL [SUPPLIES]**

Unless this Contract specifies otherwise, the Contractor represents that any 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 furnishing supplies or components that are not new is in the Authority's best interests, the Contractor shall notify the Contracting Officer immediately in writing. The Contractor's notice shall include the reasons for the request, along with any proposed price reduction, that the Authority may take if the Contracting Officer agrees to authorize such supplies or components. The Contracting Officer's authorization to use such supplies or components shall be final and binding and not subject to further review pursuant to the "Disputes" article of this Contract or otherwise.

**5. WARRANTY OF SUPPLIES**

- (a) All workmanship, parts and materials furnished for this Contract shall be unconditionally warranted against failures or defects for a period of ten (10) years after the Authority accepts them or places them in service, whichever is earlier. The Contractor shall accept the Authority's records regarding the date the item was placed in service.
- (b) In the event that any work covered by the warranty provisions fails during the warranty period, the Contractor shall repair or replace the work within three (3) days without cost or expense to the Authority.
- (c) Should the Contractor fail to repair or replace any part or do any work in accordance with the terms of this warranty, or if immediate replacement or work is necessary to maintain operations, the Authority shall have the right to cause such replacement to be made, utilizing its own forces and/or those of third parties as the Authority shall reasonably deem appropriate, at the Contractor's expense.
- (d) Each piece of equipment, component or part thereof that the Contractor replaces, repairs, adjusts or services in any manner under the terms of this warranty during the warranty period shall be reported to the Contracting Officer on the Authority's forms. Each report shall indicate in detail all repairs, adjustments and servicing to each and every component, unit or part thereof.



- (e) Any warranty work shall be accomplished with minimum disruption to the Authority's operations and to its maintenance and service facilities. The Authority shall at its sole discretion determine the availability of facilities for warranty work.
- (f) The Contractor shall make adequate service facilities available, along with spare parts, for all the items under warranty. Trained technical service personnel shall be available to the Authority sufficient to meet the Contractor's warranty obligations.
  - (1) The Contractor shall provide field service representatives who are competent and fully qualified in the maintenance and operation of the warranted items. These field service representatives shall assist the Authority in overcoming any difficulties in the operation or maintenance of the warranted items. They shall further serve as the Contractor's on-site representatives for any component failure claims or warranty claims under this Contract.
  - (2) During the warranty period, a field service representative shall be available within twenty four (24) hours.
- (g) The Authority's rights set forth in this article shall be in addition to those set forth elsewhere in this Contract or otherwise at law or in equity.

**6. WARRANTY OF SERVICES – N/A**

**7. CORRECTION OF DEFICIENCIES**

- (a) The Contractor must replace materials or correct workmanship not conforming to the Contract's requirements at no additional cost to WMATA. In addition, the Contractor is subject to any liquidated damages specified in this Contract or actual damages incurred by WMATA. If the Contractor fails to correct deficiencies, the Contracting Officer, may take specific action as follows:
  - (1) Replace or correct the item or work at the Contractor's expense. This may be accomplished by award of a new contract or by use of WMATA's own resources.
  - (2) Accept the items with a reduction in price. This action will be accomplished by formal modification to this Contract. The reduced price will be based upon the reasonable value of the item, considering the possible cost of correcting the item.
  - (3) Terminate this Contract for default. If the item or work must be re-procured, the Contractor is normally liable for excess costs incurred by WMATA in accordance with the "Termination for Default" article of this Contract.

**8. FIRST ARTICLE INSPECTION**

- (a) The Contractor shall deliver two (2) battery assemblies to the Authority for first article (pre-production) & tests. The shipping documentation shall contain this Contract number and the lot/item identification number. The characteristics for the first article inspection and its testing requirements are stated in the technical specifications/ Scope of Work.

- (b) Within ten (10) days after the Authority receives the first article, the Contracting Officer shall notify the Contractor, in writing, of the conditional approval, approval, or disapproval of the first article. The notice of conditional approval or approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this Contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite the reasons for the disapproval.
- (c) If the first article is disapproved, the Contractor, upon the Authority's request, shall submit an additional first article for testing. After each request, the Contractor shall make any necessary modifications, or repairs to the first article or select another first article for testing. The Contractor shall pay for all costs related to these tests. The Contractor shall furnish any additional first article under this Contract within the time specified by the Authority. The Contracting Officer may make an equitable adjustment to the Contract for any schedule extension related to these tests, at no cost to the Authority.
- (d) Unless otherwise provided in the Contract, the Contractor:
  - (1) May deliver the approved first article as a part of the Contract quantity, if it meets all of the Contract's requirements for acceptance and was not damaged or impaired in testing; and
  - (2) Shall remove and dispose of any first article from the Authority's test facility at the Contractor's expense.
- (e) The Contractor is responsible for providing operating and maintenance instructions, spare parts support, and repairs to the first article during any first article test.
- (f) The Authority will inspect the first article in accordance with the Contract's requirements. A written report will be forwarded to the Contractor in accordance with (b) above.

**9. F.O.B. DESTINATION**

- (a) Unless otherwise specified, the Contractor shall furnish all supplies to be delivered under this Contract "F.O.B. Destination". As used herein, "F.O.B. Destination" means:
  - (1) Free of expense to WMATA on board the carrier's conveyance, at a specified delivery point where WMATA's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and
  - (2) Supplies shall be delivered to WMATA's warehouse unloading platform, or receiving dock, at the Contractor's expense. WMATA shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery of the supplies to the destination, unless such charges are caused by WMATA's acts or omissions, acting in its Contractual capacity. If the Contractor uses a rail carrier or freight forwarder for less than full carload shipments, the Contractor shall assure that the carrier will furnish tailgate delivery, if transfer to truck is required to complete delivery to WMATA.

- (b) The Contractor shall:
- (1) Pack and mark the shipment to comply with this Contract's specifications;
  - (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 delivery point specified in the Contract;
  - (5) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by WMATA 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.

**10. QUALITY ASSURANCE/QUALITY CONTROL**

The Contractor shall be responsible for quality assurance and for assuring that the work conforms to the requirements of this Contract. The Contractor shall maintain an effective and economical quality control program planned and developed in conjunction with other Contractor functions necessary to satisfy this Contract's requirements. The quality control program shall establish and implement procedures to ensure that only acceptable supplies or services are tendered to the Authority for acceptance, and shall demonstrate both recognition of the Contract's quality requirements and an organized approach to satisfying them. The program shall ensure that quality requirements are satisfied throughout all phases of Contract performance, including, as applicable, design development, purchasing, fabrication, processing, assembly, inspection, testing, packaging, delivery, and storage and shall provide for the early detection of actual or potential deficiencies, trends, or conditions that could result in unsatisfactory quality.

## **CHAPTER IV—CHANGES/ PRICING ADJUSTMENTS**

### **1. CHANGE ORDERS**

- (a) The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, direct and implement change orders, within the general scope of this Contract, including but not limited to one or more of the following:
  - (1) Nature and/or extent of services to be performed or supplies to be furnished;
  - (2) Time of performance (i.e., hours of the day, days of the week, etc.); or
  - (3) Place of performance of the services or delivery of the supplies.
- (b) If, in the Contracting Officer's judgment, any change causes an increase or decrease in the cost of, or the time required for, the performance of any part of this Contract, whether or not directly changed by the order, he or she shall make an equitable adjustment to the Contract price, the delivery schedule, or both, and shall modify the Contract, in writing, accordingly.
- (c) In any instance where the Contractor asserts a right to an adjustment in the Contract price or time required for performance as the result of a change, it must submit a written claim advising the Authority within thirty (30) days from the date of receipt of the written order directing the change. The claim shall be accompanied by appropriate documentation, supporting the nature and extent of the claimed impact upon the Contract price and/or time required for performance. In any instance where it is not reasonably practicable fully project such impact within the thirty (30) day period, the Contractor shall accompany its claim with such supporting documentation as is then reasonably available as along with a statement of the anticipated time frame when the Contractor expects to provide the additional materials. The Contracting Officer shall maintain the right throughout the process to request such additional materials as he or she shall reasonably require in consideration of the claim and shall be under no obligation to conclude his or her consideration of the claim prior to review of all relevant materials. Any adjustment to the Contract price pursuant to this article must be agreed upon or otherwise determined prior to final payment.
- (d) If the Contractor's proposed price adjustment includes the cost of property rendered obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of property disposition.
- (e) Disagreement regarding either party's right to any adjustment in price or time for performance as the result of a change implemented pursuant to this article shall be subject to adjudication in accordance with the "Disputes" article of this Contract. Notwithstanding the pendency of any such dispute, the Contractor expressly acknowledges that it shall remain fully obligated to perform the Contract as so changed.
- (f) The Contractor shall promptly notify the Contracting Officer of matters, whether implemented as change orders or otherwise, that the Contractor believes may reasonably result in either an increase or decrease in the Contract price or the time

required for performance of any part of the Contract and shall take action as the Contracting Officer directs. The Contractor's failure to provide such notification shall constitute a waiver of its right to seek an adjustment in the Contract price or time required for such performance.

- (g) In no event shall the Contractor be entitled to payment for change orders, additional or extra supplies or services or other modifications to this Contract, unless the Contracting Officer authorizes, it in writing.

## **2. PRICING OF ADJUSTMENTS**

- (a) The parties agree that, notwithstanding any interpretation of contract cost principles 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 it arises under the Contract or otherwise.
- (b) As part of its proposal for any Contract modification requiring a price adjustment in excess of \$150,000, the Contractor shall submit to the Contracting Officer, cost or pricing data under the conditions described in this paragraph and certify that, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete and current as of the date submitted. At the Contracting Officer's discretion, the Contractor, may be required to submit cost or pricing data for price adjustments less than \$150,000.
- (c) The Contractor shall ensure that this article is included in all subcontracts at any tier, if the value of the subcontracted work exceeds \$150,000.

## **3. ACCOUNTING AND RECORD KEEPING FOR ADJUSTMENTS**

- (a) *Applicability.* This article shall apply to any adjustment in the Contract price initiated by the Contractor or the Authority.
- (b) *Forward Price Adjustments.* Unless waived in writing, the Contractor shall furnish to the Contracting Officer, a proposed price adjustment in advance of performance of any work for which the price adjustment is requested. The Contractor shall generate such records as are necessary to substantiate all elements of the proposed adjustment, which records shall be specifically segregated and identified in the Contractor's accounting system as being applicable to the pricing adjustment request.
- (c) *Post Price Adjustments.* This paragraph shall be applicable to price adjustments that either (i) are expected to exceed \$50,000; or (ii) arise in connection with a Contract with a base sum in excess of \$1,000,000. In addition to the records required pursuant to paragraph (b) above, if pricing of an adjustment under this Contract is not agreed upon between the parties 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 categories that the Contracting Officer approves for all incurred, segregable costs related to the work for which the pricing adjustment is requested. The Contractor shall maintain accounts and records that segregate and account for the costs of all work associated with that part of the Contract for which

the pricing adjustment is requested. The Contractor 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) work claimed or determined to be related to other actual or proposed adjustments, including but not limited to, changes orders, 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) *Access to Records.* As a condition to the Authority's obligation to consider any claim for a potential price adjustment under any provision 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 any such costs as the Contracting Officer deems appropriate.
- (e) *Limitation on Price Adjustments.* If the Contractor or any subcontractor fails to generate, maintain, or make available any records required under this Contract, in addition to any rights to which the Authority may be entitled, the Contracting Officer shall determine whether such failure is willful, deliberate or otherwise precipitated by the Contractor's bad faith, in which case the Contractor shall not be entitled to any price adjustment for the work in question. Where the Contracting Officer determines that the failure was not the result of the Contractor's bad faith, he or she shall determine the reasonable direct costs of the work for which records are not available, and add a single mark-up for indirect expenses not to exceed ten percent (10%) of the direct costs based on:
  - (1) An audit of the Contractor's or subcontractor's records made available to the Authority; and/or
  - (2) The Authority's estimate as the Contracting Officer adopts or modifies
- (f) In no event shall the Contractor and/or subcontractor be allowed any profit on claimed work for which records are not made available in accordance with its obligations under this Contract.
- (g) *Flow-down clause.* The Contractor shall ensure the inclusion of this article in all subcontracts issued under this Contract, modified as necessary, for proper identification of the contracting parties and the Contracting Officer.

**CHAPTER V – INVOICES/PAYMENTS/ DEDUCTIONS**

**1. BILLING AND PAYMENT**

- (a) The Authority shall pay and the Contractor shall accept the amounts set forth in the Price Schedule as full compensation for all costs and expenses of completing the this Contract, including, but not limited to, all labor and material required to be furnished under this Contract, all overhead, expenses, fees and profits including the cost of providing storage yards or facilities; all risks and obligations set forth in this Contract; any applicable fees or taxes; and all expenses due to any unforeseen difficulties encountered in the prosecution of the work.
- (b) Payments will be made following acceptance of the services or supplies to be provided under this Contract and after receipt and acceptance of a properly completed invoice. WMATA will accept the submittal of invoices in one of the following methods:
  - (1) Email: Invoices may be submitted through email at: [apinvoice@wmata.com](mailto:apinvoice@wmata.com). Please submit one (1) invoice and supporting documentation per PDF attachment. You may submit more than one PDF attachment per email.
  - (2) Fax: Invoices may be submitted via the following number: 1-866-534-9063. Please submit one (1) invoice and all supporting documentation for this invoice per fax.
  - (3) Regular Mail: Invoices may be submitted via U.S. Postal Service to the following address:

WMATA-Accounts Payable  
PO Box 1910  
Beltsville, MD 20704-1910

Note: This address is only for vendor invoices. Correspondence should not be sent to this address.
- (c) Invoices shall contain the vendor's name, a unique invoice number for each shipment or service, invoice date, payment terms, total invoice amount, "remit to" address, purchase order number, freight terms, description of each item being invoiced, quantity, unit item cost, extended cost by item, total freight/handling costs, and contact name and email address. Final invoices must clearly be marked "Final" and cite the amount of this Contract, amount previously paid, and the balance due.
- (d) The Authority shall remit payment, generally within thirty (30) days of its receipt and acceptance of an invoice satisfying the requirements of paragraphs (b) and (c), at the prices stipulated in the Contract for supplies delivered and accepted or services rendered and accepted, less any applicable deductions.

**2. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA – MODIFICATIONS**

If the Contracting Officer determines that any price, including profit or fee, previously negotiated in connection with any modification to this Contract involving changes in cost plus applicable profit in excess of \$150,000 was based upon the Contractor's or subcontractor's cost or pricing data that was not complete, accurate or current, such that the amount the Authority paid to the Contractor for such price adjustment was greater than the Contractor would have been entitled to, based upon accurate and complete data, the Authority shall be entitled to an adjustment in an amount equal to such overpayment. The Authority's rights hereunder shall be in addition to any other rights it may have under this Contract, at law or in equity.

**3. SUBCONTRACTOR PAYMENTS**

- (a) The Contractor shall, under this Contract, establish procedures to ensure timely payment of amounts due pursuant to the terms of its subcontracts. The Contractor shall pay each subcontractor for satisfactory performance of its contract, or any billable portion thereof, 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, any retention withheld from the subcontractor within ten (10) days of satisfactory completion of all work required by that 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 with each payment request, of any situation where scheduled subcontractor payments have not been made.
- (c) In the event of a claim by any subcontractor that the Contractor has failed to comply with the terms of this article, the Contractor agrees to fully cooperate in any Authority investigation, and, if deemed appropriate by the Authority, to implement appropriate remedial measures to ensure future compliance.
- (d) The Contractor agrees that the Contracting Officer may provide information that he or she deems appropriate in response to inquiries from subcontractors seeking to determine the status of the Authority's payments to the Contractor.
- (e) Nothing contained in this article or elsewhere in this Contract shall create a Contractual relationship between the Authority and any subcontractor, shall make the subcontractor an intended beneficiary of this Contract or shall alter or affect traditional concepts of privity of contract.

**4. GARNISHMENT OF PAYMENTS**

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



## **CHAPTER VI – CONTRACT TERMINATION/STOP WORK ORDERS/DISPUTES**

### **1. STOP WORK ORDERS**

- (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 for a period of up to ninety (90) days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a “Stop Work Order” (“SWO”) issued under this article. Upon receipt of the SWO, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the SWO during the period of work stoppage. Within a period of ninety (90) days after an SWO is delivered to the Contractor, or within any extension of that period to which the parties agree, the Contracting Officer shall either:
  - (1) Cancel the SWO; or
  - (2) Terminate the work covered by the SWO as provided in this Contract, as appropriate.
- (b) If a SWO is cancelled or expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment to the delivery schedule or Contract price, or both, and shall modify the Contract in writing if, in his or her judgment:
  - (1) The SWO 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 submits a written claim for such adjustment within thirty (30) days after the end of the period of work stoppage. At the Contracting Officer's discretion, the Authority may act upon any claim submitted at any time before final payment under this Contract.
- (c) If an SWO is not cancelled and the work covered by the Contract is terminated for the convenience of the Authority, the Contracting Officer shall allow reasonable costs, if any, resulting from the SWO in arriving at the termination settlement pursuant this Contract.

### **2. TERMINATION FOR DEFAULT- FTA**

- (a) The Contractor shall be in default if it commits a breach of any of its obligations under this Contract deemed material by the Contracting Officer. In addition to those instances specifically referred to in this Contract, the Contractor shall be in default in the following circumstances:
  - (1) It fails to begin, or abandons, the work of the Contract in accordance with the contractual requirements;
  - (2) It fails to deliver the supplies or perform the services within the time specified in this Contract or any extension that the Contracting Officer approves;
  - (3) It fails to make progress in a manner that the Contracting Officer deems unreasonable so as to endanger performance of this Contract; or

- (4) In the view of the Contracting Officer, the Contractor is willfully violating this Contract or is not executing it reasonably and in good faith.
- (b) In the event the Contractor's material breach pursuant to paragraph (a), the Contracting Officer is authorized to direct a written notice (a "Notice to Cure") to the Contractor, specifying the nature of the breach and stating that the Contractor has ten (10) days to cure the breach or such additional time as the Contracting Officer authorizes. If the Contractor fails to cure the breach in the time specified in the Notice to Cure, the Contracting Officer may terminate this Contract, in whole or designated part, for default after providing written notice to the Contractor.
- (c) Upon receipt of a "Notice of Default," the Contractor shall immediately cease performance of the work so terminated. The Authority shall have the right to take any action necessary to complete the work, including performing the work itself, or contracting with another party to do so. In the event the work is completed directly by the Authority or by a third party, the Contractor shall be liable for the additional costs and expenses necessary to complete the work, including, without limitation, labor, material costs, plant costs, tooling expenses, and equipment and property costs. The Authority may deduct the costs and expenses so charged and pay them out of any monies otherwise payable to the Contractor. Nothing contained herein shall be deemed to relieve the Contractor of its continuing obligation to perform any portion of this Contract that was not terminated.
- (d) The Contracting Officer may, at his or her sole discretion, waive a default by the Contractor, but such waiver shall not be deemed a waiver of any subsequent default.
- (e) Upon any termination for default, the Contracting Officer may require the Contractor to transfer title and deliver to the Authority, any completed or partially completed supplies, components (including data and intellectual property) and Contract rights that the Contractor has specifically produced or acquired for the terminated portion of this Contract. At the Contracting Officer's direction, the Contractor shall also protect and preserve property in its possession in which the Authority may have an interest.
- (f) Upon any termination for default, the Authority shall pay for supplies delivered and accepted and/or services rendered and accepted in accordance with the terms of this Contract. The Authority may also compensate the Contractor for actions that it reasonably takes at the Contracting Officer's direction for the protection and preservation of property. The Authority may withhold from these payments any sum that the Contracting Officer determines to be necessary to protect the Authority against loss because of outstanding or claimed liens, or pending or anticipated claims under the Contract.
- (g) If, at any time following the Authority's issuance of a termination for default hereunder, it is determined that the Contractor was not in default or that the default was excusable, the termination shall be converted to a termination for convenience and the rights and obligations of the parties shall be determined in accordance with the "Termination for Convenience" article of this Contract.
- (h) Any dispute or disagreement regarding any issue arising under this article shall be subject to adjudication in accordance with the "Disputes" article of this Contract. In no event shall the Authority's issuance of a "Notice to Cure" pursuant to paragraph (b) be the basis of a dispute pursuant to the "Disputes" article or otherwise be

subject to further review under this Contract or otherwise. The pendency of any dispute shall not constitute a basis for the delay or suspension of, or otherwise affect the Authority's right to proceed in accordance with this article, including without limitation, its right to complete the work or its right to insist that the Contractor complete any portion of the Contract that was not terminated.

- (i) The Authority's rights and remedies in this article are in addition to any other rights and remedies provided under this Contract, at law or in equity.

### **3. TERMINATION FOR CONVENIENCE- FTA**

- (a) The Contracting Officer may terminate this Contract in whole, or in part, if he or she determines that a termination is in the Authority's interest. The Contracting Officer shall terminate by delivering a "Notice of Termination" to the Contractor specifying the extent of termination and its effective date.
- (b) Upon receipt of a Notice of Termination, except as the Contracting Officer otherwise directs, the Contractor shall immediately:
  - (1) Stop work as specified in the Notice of Termination;
  - (2) Complete performance of the work not terminated;
  - (3) Place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the remaining portion of the Contract;
  - (4) Terminate all subcontracts to the extent that they relate to the work terminated;
  - (5) Assign to the Authority, as directed by the Contracting Officer, all of the Contractor's right(s), title, and interest(s) under the subcontracts terminated. The Authority shall have the right to settle or pay any termination costs arising out of the subcontracts and have no further liability to the Contractor for the work that was the subject of such subcontracts;
  - (6) With the Contracting Officer's approval, settle all outstanding liabilities and settlement costs arising from the termination of subcontracts;
  - (7) As the Contracting Officer directs, transfer title and deliver to the Authority:
    - (i) Parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
    - (ii) The completed or partially completed plans, drawings, information and other property that would have been required to be furnished to the Authority, if the Contract had been completed.
  - (8) Take any action that may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this Contract that is in the Contractor's possession and in which the Authority has or may acquire an interest;

- (9) Use its best efforts to sell, as the Contracting Officer authorizes, any property of the types referred to in paragraph (b)(7). The Contractor is not required to extend credit to any purchaser and may acquire the property under the conditions that the Contracting Officer prescribes. The proceeds of any transfer or disposition will be applied to reduce payments to be made by the Authority under this Contract, credited to the price or cost of the work, or paid in any other manner that the Contracting Officer directs.
- (c) The Contractor shall submit complete termination inventory schedules not later than one hundred twenty (120) days from the effective date of termination, unless the Contracting Officer extends the time in writing.
- (d) As soon as reasonably practicable, and not later than twenty (20) business days following the Authority's issuance of a "Notice of Termination" pursuant to paragraph (a), the Contractor shall submit a termination settlement proposal (TSP) to the Contracting Officer in the form that he or she prescribes, detailing the costs to which it asserts entitlement pursuant to this article. If the Contractor fails to submit the TSP within the time prescribed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due to the Contractor as a result of the termination and shall pay the amount so determined.
- (e) Following submission of the Contractor's TSP pursuant to paragraph (d), the parties shall agree upon the whole, or any part, of the amount to be paid or remaining to be paid as a result of the termination. The amount may include a reasonable allowance for profit on work completed. In no event shall the total amount to be paid to the Contractor pursuant to this article exceed the total Contract price as reduced by (1) payments previously made and (2) the Contract price of the remaining work, not terminated.
- (f) If the parties disagree on the whole amount to be paid because of the termination, the Contracting Officer shall pay the Contractor the amounts that he or she determines as follows, but without duplication of any amounts agreed upon under paragraph (e):
  - (1) The Contract price for completed supplies or services that the Authority accepted [or sold or acquired under paragraph (b)(9)] not previously paid for, adjusted for any saving of freight and other charges.
  - (2) The total of:
    - (i) The costs incurred prior to termination in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any costs attributable to items compensated or to be paid for under subparagraph (f)(1);
    - (ii) Termination costs under terminated subcontracts that are properly chargeable to the terminated portion of this Contract, if not excluded in subparagraph (f)(2)(i); and

- (iii) A sum, representing profit on the items described in subparagraph (f)(2)(i) that the Contracting Officer determines to be fair and reasonable pursuant to Section 49.202 of the Federal Acquisition Regulation (FAR), in effect on the date of this Contract. If it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, the Contracting Officer shall allow no profit under this subparagraph and shall reduce the settlement to reflect the projected rate of loss.
- (3) The reasonable indirect costs of settlement of the work terminated, including:
  - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of TSP(s);
  - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
  - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (g) Except for normal spoilage, and except to the extent that the Authority expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (f), the fair value, as he or she determines of property that is unavailable or damaged and undeliverable to the Authority or to a third party.
- (h) The cost principles and procedures of FAR Part 31 in effect on the date of this Contract, shall govern all costs claimed, agreed to, or determined under this article, except that the Authority shall not be obligated to pay interest, however represented, on any claimed costs.
- (i) The Contractor shall have the right to appeal, under the "Disputes" article, from the Contracting Officer's determination under paragraphs (d) or (f). The Contractor's failure to submit the TSP within the time provided in paragraph (d), or to timely request an extension thereof, shall constitute a waiver of its right to appeal the Contracting Officer's determination pursuant to the "Disputes" article or any otherwise applicable Contractual, legal or equitable remedy.
- (j) In determining any sum due to the Contractor under this article, there shall be deducted:
  - (1) All unliquidated advances or other payments to the Contractor under the terminated portion of this Contract;
  - (2) The value, as the Contracting Officer, reasonably determines, of any claim that the Authority has against the Contractor under this Contract, including any third-party claim, if the Contracting Officer is not satisfied that sufficient insurance coverage is in place; and

- (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other items that the Contractor procured or sold under this article, not recovered by or credited to the Authority.
- (k) If the Contractor asserts that any partial termination has rendered enforcement of the remainder of this Contract at the remaining Contract price inequitable, the Contractor may file a proposal with the Contracting Officer for an adjustment to the price(s) for the continued portion of this Contract. Such proposal shall be submitted within ninety (90) days from the effective date of termination, unless the Contracting Officer extends it in writing, and shall be accompanied by appropriate supporting documentation.
- (l) The Contractor's responsibilities and obligations under this article shall remain in full force and effect notwithstanding the pendency of any dispute or other delay relating to determination of the appropriate price adjustment or any other issue arising from the termination for convenience.
- (m) Unless otherwise provided in this Contract or by statute, the Contractor and all subcontractors whose work is encompassed in the termination settlement shall maintain all records and documents relating to the terminated portion of this Contract for three (3) years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to the Authority, its governing jurisdictions and any other Federal, state, or local entities providing funding for this Contract, and to the U.S. Comptroller General or the agents or representatives of any of them, at the Contractor's office, at all reasonable times, without any direct charge.

#### **4. ASSIGNMENT- FTA**

- (a) Except as otherwise provided in this article, the Contractor shall not transfer any of its rights and obligations under this Contract to third parties without the Contracting Officer's prior, written consent. The Contracting Officer may recognize a third party as successor in interest to this Contract in the event of a transfer of all or substantially all of the Contractor's assets, a change in a division of the Contractor involved in the performance of this Contract, or if a parent company provides performance guarantee(s) under this Contract, (i.e., sales of assets, transfer of assets pursuant to merger or consolidation, or incorporation of a proprietorship or partnership). Such recognition shall be at the Contracting Officer's discretion after review of the facts and circumstances surrounding each request. The Contracting Officer, at his or her discretion, may conduct an evaluation of the successor party's capability to perform this Contract in the same manner and to the same extent that he or she conducted a responsibility determination as part of the original solicitation for this Contract. Should the Contracting Officer, for any reason, not recognize such a successor in interest, he or she may terminate this Contract.
- (b) Any attempt to transfer by assignment that the Contracting Officer does not authorize shall constitute a material breach of this Contract and the Contracting Officer may terminate this Contract in accordance with the "Termination for Default" article set forth in this Contract.

- (c) Nothing contained herein shall be deemed to preclude the Contractor's assignment of claims for monies due or to be become due to it under this Contract to a bank, trust company or other financing institution, including any Federal lending agency, upon written notice of such assignment to the Contracting Officer.

**5. DISPUTES- FTA**

- (a) Any dispute concerning a question of fact arising under or related to this Contract that 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 Contracting Officer's decision shall be final and conclusive unless, within thirty (30) calendar days from the date of its receipt, the Contractor mails or otherwise furnishes to the Contracting Officer, a written notice of appeal addressed to the Authority Board of Directors. Such notice must indicate that an appeal is intended and must 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 or board of competent jurisdiction, it determines that the decision was fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In any appeal under this article, the appellant 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 this Contract in accordance with the Contracting Officer's decision. The Armed Services Board of Contract Appeals (ASBCA) is the Board of Directors' authorized representative for final decisions on an appeal.
- (b) This "Disputes" article does not preclude consideration of questions of law in connection with decisions provided for in paragraph (a) above. Nothing in the Contract, however, shall be construed as making final the decisions of the Board of Directors or its representative on questions of law.

**6. EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS FOR CONSTRUCTION ACTIVITIES – N/A**

**CHAPTER VII – INDEMNIFICATION/INSURANCE/RISK OF LOSS**

**1. INDEMNIFICATION**

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

**2. INSURANCE REQUIREMENTS**

If you do not currently carry all of the required insurance for this IFB, a current certificate of insurance (COI) evidencing the insurance you do carry and a letter from your insurance agent/broker stating that 'if our client (you) are awarded the contract, the required coverage will be provided' will suffice.



**MINIMUM REQUIRED LIMITS OF INSURANCE: EXHIBIT A**

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</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.

## **II. COVERAGE-SPECIFIC REQUIREMENTS**

### **Commercial General Liability**

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

### **Business Auto Liability**

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

### **III. Professional Liability Insurance**

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

### **IV. OTHER**

#### **Additional Insured**

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

#### **Waiver of Subrogation**

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

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

#### **Certificate of Insurance (COI)**

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

The Certificate Holder box should read:

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

Additionally:

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

**3. TITLE AND RISK OF LOSS**

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

**4. TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS – FTA-N/A**

**5. VETERANS PREFERENCE- FTA-N/A**

**6. INAPPLICABILITY OF CLAUSES REQUIRING UNAUTHORIZED OBLIGATIONS**

- (a) Except where the Chief Procurement Officer specifically agrees in writing, when any supply or service acquired under this Contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), Master Agreement, Terms and Conditions or similar legal instrument or agreement, that includes any clause requiring WMATA to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability or that would create an unauthorized obligation, the following shall govern:
  - (i) Any such clause is unenforceable against WMATA.
  - (ii) Neither WMATA nor any authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable

mechanism (e.g., “click-wrap” or “browse-wrap” agreements), execution does not bind WMATA or any WMATA authorized end user to such clause.

- (iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.
- (b) When any supply or service acquired under this Contract is subject to any End Use License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, any clause requiring WMATA to pay pre-judgment interest, taxes to which it is exempt, or automatic fines is void and without effect.

**CHAPTER VIII – INTELLECTUAL PROPERTY RIGHTS**

**1. PATENT INDEMNITY**

The Contractor shall indemnify the Authority and its Board members, agents and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. § 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property under this Contract. If the Contractor is not the original equipment manufacturer (OEM) for a manufactured product purchased under this Contract, it will ensure that the patent holder provides indemnity to WMATA under this article. This indemnity shall not apply unless the Contractor is informed as soon as practicable by the Authority of the suit or action alleging such infringement, and is given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof. Such indemnity shall not apply to:

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

**2. SET-OFF**

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

**3. RIGHTS IN TECHNICAL DATA – LIMITED – N/A**

**4. RIGHTS IN TECHNICAL DATA – UNLIMITED**

- (a) The term technical data as used in this article means technical writings, computer software, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of a technical nature, whether or not copyrighted, that 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.

- (b) The Authority or its designated representative shall have the right to use, duplicate or disclose technical data, including computer software, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so that is contained in or derived from:
- (1) Any manuals, instructional materials prepared for installation, operation, maintenance or training purposes;
  - (2) Technical data pertaining to end items, components or processes that were prepared for the purpose of identifying sources, sizes, configurations, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data such as , specification control drawings, catalog sheets, and outline drawings Except for the computer software, it means data identifying sources, functional characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulae, and flow charts of the software.);
  - (3) Other technical data that the Contractor or subcontractor , normally furnishes without restriction; ;
  - (4) Other specifically described technical data that the parties have agreed will be furnished without restriction;
  - (5) All computer software regardless of whether it is technical data as defined in this article, including the source code, algorithms, processes, formulae, and flow charts, that the Contractor developed or materially modified for the Authority or for which the Authority is required by Federal law or regulation to provide a royalty-free, irrevocable and nonexclusive license to the Federal government.
- (c) The Authority shall have the right to use, duplicate, or disclose technical data other than as defined in paragraph (a), in whole or in part. 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 of the Authority,
  - (2) Used, in whole or in part, by the Authority for manufacturing, or
  - (3) Used by a party other than the Authority except for: (i) emergency repair or overhaul, (ii) where the item or process concerned is not otherwise reasonably available to the Authority to enable timely performance of this work, or (iii) administration of this Contract or the inspection of any products produced under it, where the third party has a written contract with the Authority to perform these efforts. In all cases described in this subsection, the release or disclosure outside of the Authority shall be subject to a nondisclosure agreement.
- (d) Technical data provided in accordance with paragraph (c) shall be identified with a legend that suitably recites this limitation. This article shall not impair the Authority's right to use similar or identical data acquired from other sources.
- (e) Where any item is purchased as a separate line item in this Contract, that purchase includes all integral parts of that item, including any computer software, source code, algorithms, processes, formulae, and flow charts. The Authority has full rights to use,

duplicate or disclose any or all parts of the item, including computer software, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so. Should disclosure of the computer software be required only under this paragraph, then the Contracting Officer may waive the provisions of this paragraph if he or she certifies in writing that the item is commercially available from multiple sources and will be fully compatible with existing Authority property.

- (f) Material covered by copyright:
- (1) The Contractor grants to the Authority, and to its Board members, agents and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for the Authority's purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all technical data and computer software covered by subsection (b) (5) now or hereafter covered by copyright.
  - (2) No such copyrighted matter shall be included in (i) technical data or (ii) computer software covered by subsection (b) (5) furnished hereunder without the written permission of the copyright owner for the Authority to use such copyrighted matter in the manner above described.
  - (3) The Contractor shall report to the Authority promptly and in reasonable written detail each notice or claim of copyright infringement it receives regarding any technical data or computer software covered by subsection (b)(5) provided to the Authority.
- (g) Relation to patents: Nothing contained in this article shall imply a license to the Authority under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Authority under any patent.
- (h) Any dispute under this article shall be subject to the "Disputes" article of this Contract.
- (i) The Contracting Officer may retain from payment up to ten percent (10%) 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 Price Schedule or the Contract's specifications.

**5. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT [SUPPLIES]**

- (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 this Contract, once the Contractor is notified thereof.
- (b) In the event of any claim or suit against the Authority based on any alleged patent or copyright infringement arising out of this Contract or out of the use of any supplies furnished or services performed hereunder, the Contractor shall furnish to the Contracting Officer, all evidence and information in its possession pertaining to such suit or claim. Such evidence and information shall be furnished at the Contractor's expense since the Contractor has agreed to indemnify the Authority for such infringement claims.
- (c) This article shall be included in all subcontracts.



**CHAPTER IX – ADDITIONAL COVENANTS/LEGAL REQUIREMENTS**

**1. NONDISCRIMINATION ASSURANCE- FTA**

- (a) *Nondiscrimination Assurance.* In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000 (d), section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, section 202 of the American with Disabilities Act of 1990, 42 U.S.C. §12132, D.C. law and Federal transit law at 49 U.S.C. §5332, the Contractor, sub-recipient, or subcontractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex, age, sexual preference, gender identity and/or disability. In addition, the Contractor, sub-recipient, or subcontractor agrees to comply with applicable Federal implementing regulations and other regulations that FTA may issue.
- (b) *Equal Employment Opportunity.* The following equal employment opportunity requirements apply to this Contract.
- (1) *Race, Color, Creed, National Origin, Sex.* In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000(e), and Federal transit laws at 49 U.S.C. §5332, the Contractor agrees to comply with all applicable equal opportunity requirements of the U.S. Department of Labor (U.S. DOL) including, but not limited to "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Part 60 *et. seq.*, [implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) 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 this Contract. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, national origin, sex or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements that FTA may issue.
- (2) *Age.* In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements that FTA may issue.
- (3) *Disabilities.* In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the

Contractor agrees to comply with any implementing requirements that FTA may issue.

- (c) The Contractor also agrees to include all of 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.
- (d) Failure by the Contractor, sub-recipient, or subcontractor to carry out these requirements is a material breach of this Contract, that may result in the termination or such other remedy as the Authority deems appropriate.

**2. 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 U.S. Secretary of Labor thereunder.

- (a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the Contract work that may involve the employment of laborers, mechanics, apprentices, trainees, watchmen, and guards shall require or permit any such employee in any workweek in which he or she is employed to work in excess of forty (40) hours in such work week on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such employee receives compensation at a rate not less than one and one-half (1 ½) times his or her basic rate of pay for all hours worked in excess of forty (40) hours in such work week.
- (b) *Violation. Liability for Unpaid Wages-Liquidated damages.* In the event of any violation of paragraph (a) the Contractor and any subcontractor responsible therefore shall be liable to any affected employee for his or her unpaid wages. In addition, such Contractor and subcontractor shall be liable to the Authority for liquidated damages. Liquidated damages shall be computed with respect to each individual laborer, mechanic, apprentice, trainee, watchman or guard employed in violation 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 or her standard work week of forty (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 Contractor, such sums as he or she determines to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in paragraph (b).
- (d) *Subcontracts.* The Contractor shall insert this article in all subcontracts at any tier. Contractor shall also require subcontractors to include this clause in any lower tier subcontracts. The Contractor shall be responsible for compliance by any and all subcontractors at every tier.

- (e) *Records.* The Contractor shall maintain payroll records containing the information specified in 29 C.F.R. § 516.2(a). Such records shall be preserved for three (3) years from the completion of this Contract.

**3. WALSH-HEALEY PUBLIC CONTRACTS ACT**

If this Contract is for materials, supplies, or equipment in an amount that 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 U.S. Secretary of Labor (41 C.F.R. Part 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the U.S. Secretary of Labor that are now, or may hereafter, be in effect.
- (b) All employees whose work relates to this Contract shall be paid not less than the minimum wage prescribed by the U.S. Secretary of Labor (41 C.F.R. § 50-202.2). Learners, student learners, apprentices, and certain handicapped workers may be employed at less than the prescribed minimum wage (41 C.F.R. § 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).

**4. DAVIS-BACON ACT- FTA – N/A**

**5. COPELAND ANTI-KICKBACK ACT – FTA-N/A**

**6. CONVICT LABOR**

- (a) Except as provided in paragraph (b), the Contractor shall not employ in the performance of this Contract any person undergoing a sentence of imprisonment imposed by any court of the Federal Government, a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam or the U.S. Virgin Islands.
- (b) The Contractor is not prohibited from employing persons:
- (1) On parole or probation to work at paid employment during the term of their sentence;
  - (2) Who have been pardoned or who have served their terms; or
  - (3) Confined for violation of the laws of the Federal Government, the states, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—
    - (a) The worker is paid or is in an approved work or training program on a voluntary basis;
    - (b) Representatives of the local union's central bodies or similar labor union organizations have been consulted;
    - (c) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades where there is a surplus of available gainful labor in the locality, or impair existing contracts or services;

- (d) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality where the work is being performed; and
- (e) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

**7. COVENANT AGAINST CONTINGENT FEES**

- (a) The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement 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 of this warranty, the Authority shall have the right to terminate this Contract without liability or, in its discretion, to deduct from the Contract price, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee, if no fraud is suspected.
- (b) If fraud is suspected, the Authority's only remedy prior to final adjudication by a court of competent jurisdiction is to report the matter to WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the Offices of Inspectors General of any agency providing funding under this Contract and/or appropriate Federal, state and/or local law enforcement authorities.

**8. SEAT BELT USE POLICY**

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 these requirements in each subcontract awarded for work relating to this Contract.

**9. SENSITIVE SECURITY INFORMATION – N/A**

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

**10. LAWS AND REGULATIONS**

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

**11. HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA**

- (a) The Contractor agrees to submit a Safety Data Sheet (U.S. Department of Labor Form OSHA-20), as prescribed in Federal Standard No. 313B, for all hazardous materials five (5) days before delivery of the material, whether or not listed in Appendix A of the Standard. This obligation applies to all materials delivered under this Contract that involve exposure to hazardous materials or items containing these materials.
- (b) "Hazardous material," as used in this clause, is defined in Federal Standard No. 313B, in effect on the date of this Contract.
- (c) Neither the requirements of this clause nor the Authority's acts or omissions shall relieve the Contractor of any responsibility or liability for the safety of Authority's, personnel or property.
- (d) Nothing contained in this article shall relieve the Contractor from complying with applicable Federal, state, and local laws, codes, ordinances, and regulations (including the requirement to obtain licenses and permits) in connection with hazardous materials.
- (e) The Authority's rights in data furnished under this Contract regarding hazardous materials are as follows:
  - (1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to (a) apprise personnel of the hazards that they may be exposed to in using, handling, packaging, transporting, or disposing of hazardous materials (b) obtain medical treatment for those affected by the materials; and (c) have others use, duplicate, and disclose the data for the Authority for these purposes.
  - (2) To use, duplicate, and disclose data furnished under this article in precedence over any other provision of this Contract providing for rights in data.
  - (3) The Authority is not precluded from using similar or identical data acquired from other sources.
  - (4) The data shall not be duplicated, disclosed, or released outside of the Authority, in whole or in part, for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this clause applies -

"This data furnished under this Contract shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the Contracting Officer's permission. This legend shall be marked on any reproduction of this data."
  - (5) The Contractor shall not place any restrictive legend on any data that (i) the Contractor or any subcontractor previously delivered to the Authority without limitations; or (ii) should be delivered without limitations under the "Rights in Technical Data" clause.

- (6) The Contractor shall insert this article including this paragraph, with appropriate changes in the designation of the parties, in subcontracts at any tier (including purchase designations or purchase orders) under this Contract involving hazardous materials.

**12. LIVING WAGE – N/A**

**13. METRIC SYSTEM**

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

**14. MANDATORY DISCLOSURE**

The Contractor shall timely disclose, in writing, to WMATA's Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this Contract or any subcontract hereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed—

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

**15. WHISTLEBLOWER PROTECTION – FEDERAL**

- (a) The Contractor and its subcontractors shall encourage their employees and independent contractors to report information without fear of actual or threatened discrimination, retaliation or reprisal that they in good faith reasonably believe is evidence of gross mismanagement; gross misuse or waste of public resources or funds; fraud; violation of law; abuse of authority in connection with the conduct of WMATA operations or contracts; or a substantial and specific danger to health,

security or safety. The Contractor and its subcontractors shall notify their employees that they may make reports under this paragraph to:

- (1) WMATA's Office of Inspector General (OIG), in person, in writing, through the OIG Hotline (888-234-2374) or email [wmata-oig-hotline@verizon.net](mailto:wmata-oig-hotline@verizon.net) or by any other reasonable means;
  - (2) WMATA's Metro Transit Police Department (MTPD), in person, by telephone (202-962-2121) or by any other reasonable means, or to the OIG, if the information constitutes a potential violation of criminal law;
  - (3) WMATA's Chief Safety Officer, in person, in writing, through the SAFE Hotline (202-249-7233) or email [safety@wmata.com](mailto:safety@wmata.com), or by any other reasonable means; or
  - (3) Any other official, office or agency within WMATA or outside WMATA that the employee or independent contractor reasonably believes has the authority to act on the matter.
- (b) The Contractor, its employees, independent contractors and subcontractors shall cooperate with any inquiry or review by an authorized official of WMATA, or by the Federal government or any other governmental entity with jurisdiction over WMATA, regarding a matter that would constitute a report under paragraph (a) or a violation of this or any whistleblower provision of this Contract, and with any enforcement or judicial proceeding arising from such inquiry or review.
- (c) The Contractor and its subcontractors shall not interfere with or deny the right of any employee or independent contractor of either the Contractor or any of its subcontractors to make a report under paragraph (a). The Contractor and its subcontractors shall not recommend, take or threaten to take any action having a negative or adverse impact on any employee or independent contractor of either the Contractor or any of its subcontractors because he or she:
- (1) Made or is perceived to have made a report under paragraph (a);
  - (2) Sought a remedy under applicable law after making a report under paragraph
  - (3) Participated in or cooperated with an inquiry or review by an authorized official of WMATA, or by the Federal government or any other governmental entity with jurisdiction over WMATA, regarding a matter that would constitute a report under paragraph (a) or a violation of this or any whistleblower provision of this Contract, or with an enforcement or judicial proceeding arising from such inquiry or review;
  - (4) Refused to obey an order that would violate law; or
  - (5) Refused to work or authorize work when a hazardous safety or security condition presents an imminent danger of death or serious injury, there was no reasonable alternative to refusal, there was not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, notified the Contractor or subcontractor of the condition and of his or her intent not to perform or authorize work.



- (d) The Contractor shall include, or shall cause to be included, the substance of this clause, including this paragraph (d), in its subcontracts at all tiers.
- (e) The Contractor and its subcontractors shall comply with the National Transit Systems Security Act (NTSSA) 6 U.S.C. §1142, which prohibits discharging, demoting, suspending, reprimanding or in any other way discriminating against an employee as a reprisal for the employee lawfully and in good faith:
  - (1) Reporting a hazardous safety or security condition;
  - (2) Refusing to work when a hazardous safety or security condition presents an imminent danger of death or serious injury, there is no reasonable alternative to refusal, there is not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, has notified the Contractor or subcontractor of the condition and of his or her intent to not perform work;
  - (3) Refusing to authorize the use of any safety or security related equipment, track or structures, if the individual is responsible for their inspection or repair and reasonably believes they are in a hazardous safety or security condition, there is no reasonable alternative to refusal, there is not sufficient time to eliminate the danger in absence of refusal and the individual, where possible, has notified the Contractor or subcontractor of the condition and of his or her intent not to authorize use of hazardous equipment or infrastructure unless corrected;
  - (4) Providing information for or directly assisting in an investigation of conduct that the individual reasonably believes to be in violation of Federal law regarding safety, security or fraud, waste or abuse of funds intended for safety or security;
  - (5) Refusing to violate or assist in violation of Federal public transportation safety or security law;
  - (6) Cooperating with a safety or security investigation by the U.S. Secretary of Transportation, U.S. Secretary of Homeland Security or the National Transportation Safety Board;
  - (7) Furnishing information to law enforcement agencies relating to an accident or incident resulting in damage to property, injury or death; or
  - (8) Filing a complaint under the NTSSA (6 U.S.C. §1142), or testifying regarding such complaint.
- (f) The Contractor shall notify the Authority of any instance, related to this Contract, of a report under subparagraph (e)(1) or refusal under subparagraphs (e)(2), (3) or (5).
- (g) The enforcement, filing and investigation of complaints, and remedies under this clause shall be governed by the NTSSA (6 U.S.C. §1142), applicable Federal regulations and Federal law.
- (h) This clause shall be interpreted in accordance with the NTSSA (6 U.S.C. §1142). If any provision is found to be in conflict with the NTSSA, the NTSSA shall govern.
- (i) The Contractor shall include, or shall cause to be included, this clause, including this paragraph, in its subcontracts at all tiers.

**16. WORKPLACE VIOLENCE/ZERO TOLERANCE**

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

**17. DRUG AND ALCOHOL TESTING (FOR SAFETY SENSITIVE FUNCTIONS ONLY) – FTA – N/A**

**18. EMPLOYMENT RESTRICTION WARRANTY**

- (a) The Contractor warrants that it will not offer employment to, solicit or discuss prospective employment with, or otherwise engage in substantive employment related discussions or communications with, any present or former Board member of the Authority who has been involved, directly or indirectly, in any matter of financial interest to the Contractor until at least two (2) years after the Board member has ceased involvement in the matter. The post-employment restriction on former Authority employees is one (1) year from the date of their last employment with WMATA. The Contractor shall not knowingly engage in communications of the nature described above with any immediate family member or member of the household of any Authority employee or Board member during the period when such employee or Board member is involved in any matter of financial interest to the Contractor.
- (b) If a former Board member or employee of the Authority is eventually hired, the Contractor shall ensure that the former Board member or employee is not involved in negotiating or otherwise dealing with the Authority on any particular matter over which he or she had responsibility during his or her tenure.
- (c) Should the Contractor fail to comply with the provisions hereof, and no fraud is suspected, the Contracting Officer shall have the right to withhold payment under this Contract in an amount not to exceed two percent (2%) of the total Contract amount as liquidated damages to the Authority, such withholding to be in addition to any other withholding or retainage under this Contract. Any dispute shall be settled in accordance with the "Disputes" clause of this Contract.
- (d) If fraud is suspected, the Authority's only remedy prior to a final decision by a court of competent jurisdiction is to report the matter to WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the Offices of Inspectors General of any state or Federal agency providing funding under this Contract and/or appropriate Federal, state and/or local law enforcement authorities.

**19. GRATUITIES**

- (a) In connection with performance of 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, to any Board member, employee or agent of the Authority; with a view toward securing this Contract or securing favorable treatment regarding this Contract is expressly

forbidden. The terms of this "Gratuities" clause shall be strictly construed and enforced in the event of violations hereof.

- (b) Reported instances of the giving or offering to give gratuities within the context of this "Gratuities" clause will be investigated by the Authority's 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 clause exists. If such probable cause exists, the Board of Directors, or its duly authorized representative, shall formally notify WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the Offices of Inspectors General of any state or Federal agency providing funding under this Contract and/or appropriate Federal, state and/or local law enforcement authorities.
- (c) The rights and remedies of the Authority provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided under this Contract, at law or in equity.

**20. OFFICIALS NOT TO BENEFIT**

- (a) No member of or delegate to Congress, resident commissioner or member of a state or local public body shall be admitted to any share or part of this Contract, or to any benefit that may arise therefrom during his or her tenure or for two (2) years thereafter, unless his or her interest in the business entity that is awarded this Contract is placed in a blind trust in accordance with the rules and regulations of the U.S. Office of Government Ethics (OGE).
- (b) Enforcement of this clause shall be consistent with 18 U.S.C. §431.

**21. ORGANIZATIONAL CONFLICTS OF INTEREST**

- (a) An organizational conflict of interest (OCI) exists when the nature of the work to be performed under a proposed contract or a subcontract may, without some restriction on future activities result in an unfair competitive advantage to the Contractor or subcontractor; because of (1) unequal access to information, (2) biased ground rules or (3) impaired objectivity. An unequal access to information OCI may exist if in performing a Contract, a Contractor obtains access to non-public information that provides it with a competitive advantage in a later competition. A biased ground rules OCI may exist if the Contractor has a role in setting rules for a source selection in which it will compete. An impaired objectivity OCI may exist if, in performing a Contract, a Contractor is called upon to evaluate an offer from or performance by, itself or an affiliated entity.
- (b) In the event that the Contractor believes that it or any of its potential subcontractors may have an OCI, it shall notify the Contracting Officer, in writing, within five (5) working days after it becomes aware of the potential or actual OCI. The written notification shall identify the nature and circumstances of the perceived conflict and propose appropriate measures to eliminate or mitigate the OCI. The Contracting Officer will review the circumstances and the proposed mitigation plan and notify the Contractor stating whether: (1) no mitigation is required; (2) the conflict cannot be mitigated; or (3) the conflict can be mitigated and he or she accepts the proposed measures, or recommends additional measures.

- (c) The Contractor's failure to identify such perceived conflicts may result in the Contract being rescinded or terminated.
- (d) Should the Contractor identify or become aware of a conflict during the term of this Contract, including any extension thereof that it could not reasonably anticipate prior to award, it shall notify the Contracting Officer in accordance with paragraph (b), or request an exception to the restriction with supporting rationale. The Contracting Officer shall consider the Contractor's proposed measures to mitigate or eliminate the conflict, or the request for an exception.
- (e) If the proposed measures are not determined to be feasible or are otherwise not acceptable to the Contracting Officer, he or she may terminate the Contract. If the Contracting Officer does not grant a request for an exception, and the Contract is not terminated, the Contractor shall be notified in writing and be given ten (10) days from the date of the written notification to take all necessary actions to comply with this clause.
- (f) If the proposed measures are determined to be acceptable to the Contracting Officer, he or she may grant a specific exception to this restriction, when in the Contracting Officer's 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 another contractual or other relationship.
- (g) If the Contractor fails to comply with the terms of this clause, and no fraud is suspected, the Contracting Officer, may withhold payments due under this 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 the Contracting Officer's written notice as provided in paragraph (b), terminate the contract for default pursuant to this Contract.
- (h) If fraud is suspected, the Authority's only remedy prior to a final determination by a court of competent jurisdiction is to report the matter to WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the Offices of Inspectors General of any state or Federal agency providing funding under this Contract and/or appropriate Federal, state and/or local law enforcement authorities.
- (i) The Contractor, in performing this Contract, shall avoid any conduct that might result in or give the appearance of creating for Board members 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 that might result in a Board member, or employee failing to adhere to any Code of Ethics or standards of conduct adopted by the Authority's Board of Directors.
- (j) The Contracting Officer's determination under this clause shall be final and shall be considered a question of fact within the meaning of the "Disputes" article of this Contract.

**22. CONTRACTOR PERSONNEL**

- (a) The Authority may direct the replacement of the Contractor's employees reasonably deemed to be unsuitable by the Contracting Officer, or whose continued participation in the work is deemed contrary to the best interests of the Authority. Except in

circumstances deemed exigent by the Contracting Officer, the reason for replacement will be discussed between the Contractor and the Authority before a replacement directive is issued. Upon receipt of a written replacement directive from the Authority specifying the date by which the replacement must occur, the Contractor shall proceed with the replacement and shall do so in a manner that minimizes, to the greatest extent practicable, any impact upon the Contract.

- (b) Contractor personnel required to work on WMATA's property must obtain a WMATA vendors' badge and successfully complete the mandatory safety training that must be renewed yearly. The Contractor must advise its affected personnel that, to obtain a vendor's badge, a signed waiver to perform a background check is required.

**23. FALSE STATEMENTS, CLAIMS OR SUBMISSIONS**

- (a) The Contractor acknowledges its responsibility to undertake its obligations under this publicly funded Contract with full integrity and, to take all reasonable steps to ensure that statements, claims and submissions made pursuant to this Contract are provided in good faith and with a reasonable belief as to their truthfulness, accuracy and completeness.
- (b) In the event that it is finally determined by a court of competent jurisdiction that any statement, claim, submission, or certification made by or on behalf of the Contractor pursuant to a material element of the Contract was knowingly false, fictitious or fraudulent, the Authority shall be entitled to recover from the Contractor, an amount equal to not more than three (3) times the monetary value of the benefit derived or sought to be derived by the Contractor through its false statement, claim or submission. For purposes hereof, an element of the Contract shall be deemed material if it impacted or could reasonably have been intended to impact the disposition of any claim, dispute, proposed or implemented change order, proposed pricing or schedule adjustment of any nature, or other substantive issue directly affecting the rights of the parties under the Contract.
- (c) The Authority's only remedy prior to a final determination by a court of competent jurisdiction is to report the matter to WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the Offices of Inspectors General of any state or Federal agency providing funding under this Contract and/or appropriate Federal, state and/or local law enforcement authorities.
- (d) The Authority's rights set forth in this article are in addition to any contractual, legal or equitable rights that may arise upon the Contractor's submission of a false claim or statement, including without limitation, the Authority's right to terminate the Contract for default once fraud is finally determined by a court of competent jurisdiction. The provisions of this clause shall not serve in any respect to limit, waive or modify any civil or criminal liability, of the Contractor or any of its officers, agents or employees that such conduct may precipitate.

**CHAPTER X – MISCELLANEOUS ADDITIONAL PROVISIONS**

**1. FEDERAL, STATE, AND LOCAL TAXES**

- (a) Except as may be otherwise provided in this Contract, the Contract price shall be deemed to include all applicable Federal, state and local taxes and duties.
- (b) If a statute, court decision, written ruling or regulation regarding any Federal excise tax or duty on the transactions or property covered by this Contract takes effect after the Contract date, and:
- (c) Results in the Contractor being required to pay or bear the burden of any such Federal excise tax or duty or rate increase that 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, if the Contractor warrants in writing that no amount for such newly imposed Federal obligation was included in the Contract price as a contingency reserve or otherwise; or
- (d) Results in the Contractor not being required to pay or bear the burden of, or in its obtaining a refund or drawback of, any Federal excise tax or duty that would otherwise have been payable on such transactions or property or that 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 the Contracting Officer directs. If the Contractor fails to follow the Contracting Officer's instructions, it will be required to pay or bear the burden of, any such Federal excise tax or duty through a decrease in the Contract price.
- (e) Paragraph (b) above shall not be applicable to social security taxes or to any other employment tax.
- (f) No adjustment of less than \$250 shall be made in the Contract price pursuant to paragraph (b).
- (g) As used in paragraph (b), the term "Contract date" means the date the Contract was executed by the Authority. As to additional services, supplies or construction procured by modification to this Contract, the term "Contract date" means the effective date of such modification.
- (h) The Contractor shall promptly notify the Contracting Officer of matters that may result in either an increase or decrease in the Contract price under this clause and shall take action as the Contracting Officer directs. The Authority shall be entitled to a reduction in the Contract price reflecting such amount and a refund of monies paid related to such taxes, plus applicable interest.

**2. PUBLIC COMMUNICATION**

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

**3. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE**

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

**4. SEVERABILITY**

If the Contract contains any unlawful provisions, the same shall be deemed of no effect, and shall upon the application of either party be stricken from the Contract without affecting the binding force of the Contract as it shall remain after omitting such provision.

**5. SURVIVAL**

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

**CHAPTER XI – ADDITIONAL FEDERAL PROVISIONS**

**1. NOTIFICATION OF FEDERAL PARTICIPATION- FTA**

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

**2. ALL NECESSARY FEDERAL PROVISIONS DEEMED INCLUDED- FTA**

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

**3. ACCESS TO THIRD PARTY CONTRACT RECORDS- FTA**

- (a) The Contractor agrees to provide the Authority, the FTA Administrator, the U.S. Comptroller General or any of their authorized representatives, access to any of the Contractor's books, documents, papers and records that are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 C.F.R. §633.17 to provide FTA Administrator or his or her authorized representatives including any Project Management Oversight (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 (3) years after the date of termination or expiration of this Contract. In the event of litigation or settlement of claims arising from the performance of this Contract, the Contractor agrees to maintain such records until the Authority, the FTA Administrator, the U.S. Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. [See 49 C.F.R. § 18.39(i)(11)].

**4. AMERICANS WITH DISABILITIES ACT ACCESSIBILITY – FTA-N/A**

**5. RIGHTS IN DATA AND COPYRIGHTS — FTA**

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



- (b) The following restrictions apply to all subject data first produced in the performance of this contract:
- (1) Except for its or WMATA's own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of the U.S. Government, until such time as the Government may have either released or approved the release of such data to the public. This restriction on publication, does not apply to agreements with academic institutions;
  - (2) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, the following subject data for its purposes:
    - (i) Any subject data developed under this contract whether or not a copyright has been obtained; and
    - (ii) Any rights of copyright to which the contractor purchases ownership with Federal assistance.
- (c) When the Federal Transit Administration (FTA) provides financial assistance for a planning, research, development, or a demonstration project, it is FTA's general intention to increase mass transportation knowledge, rather than limit the benefits to participants in the project. Therefore, unless FTA determines otherwise, the Contractor agrees that, in addition to the rights set forth in subsection (b)(2) of this article, FTA may make available to any FTA recipient, sub-recipient, third party contractor, or third party subcontractor, either FTA's license in the copyright to the subject data derived under this Contract or a copy of the subject data first produced under this Contract. If this Contract is not completed for any reason whatsoever, all data developed under this Contract shall become subject data as defined in subsection (a) and shall be delivered as the Federal Government may direct.
- (d) Unless prohibited by state law, the Contractor agrees to indemnify, save, and hold harmless WMATA and the Federal Government, their officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from the Contractor's willful or intentional violation of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Contract. The Contractor shall not be required to indemnify WMATA and the Federal Government for any such liability arising out of the wrongful acts of their employees or agents.
- (e) Nothing contained in this article shall imply a license to WMATA or the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to WMATA or the Federal Government under any patent.
- (f) The requirements of paragraphs (b) and (c), do not apply to material furnished by the Authority to the Contractor and incorporated in the work carried out under the contract provided that the Contractor identifies the incorporated material at the time of delivery of the work.

- (g) Any dispute arising under this article shall be subject to the "Disputes" article of this Contract.
- (h) Notwithstanding any other payment provision in this Contract, the Contracting Officer may retain from payments due and owing the Contractor up to 10 percent (10 %) of the contract price until final delivery and acceptance of the subject data defined in this article and as required to be furnished by the Price Schedule or the Contract's specifications.

**6. PATENT RIGHTS- FTA – N/A**

**7. BUY AMERICA ACT- FTA**

- (a) The Buy America Act requirements apply to the following types of contracts: construction contracts, the acquisition of goods or rolling stock valued at more than \$150,000.00
- (b) The Contractor agrees to comply with 49 U.S.C. § 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7, and include final assembly in the United States for fifteen (15) passenger vans and fifteen (15) passenger wagons produced by the Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. § 5323(j)(2)(C) and 49 C.F.R. § 661.11. Rolling stock must be assembled in the United States and have a sixty-five percent (65%) domestic content.
- (c) Contractor is responsible for flowing down these requirements to subcontractors at every tier. The dollar threshold only applies to the prime contract. All subcontracts thereunder are subject to the Buy America Act requirements.
- (d) A bidder must submit to WMATA the appropriate Buy America Act certification with all offers on FTA funded contracts, except those subject to a general waiver. Bids that are not accompanied by the appropriate Buy America Act certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

**8. PRE-AWARD AND POST DELIVERY AUDIT REQUIREMENTS – FTA-N/A**

**9. CHARTER BUS REQUIREMENTS- FTA – N/A**

**10. SCHOOL BUS REQUIREMENTS- FTA – N/A**

**11. BUS TESTING- FTA – N/A**

**12. CARGO PREFERENCE- FTA**

The Contractor agrees:

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

**13. CLEAN AIR ACT- FTA**

- (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. §§ 7401-7671. 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 will comply with U.S. EPA Regulations "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; "Control of Emissions from New and In-Use Highway Vehicles and Engines," 40 C.F.R. Part 86; "Fuel Economy and Greenhouse Gas Exhaust Emissions of Motor Vehicles," 40 C.F.R. Part 600, as well as any applicable State Implementation Plans (SIP), and EPA regulations "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or Federal Transit Laws" 40 C.F.R. Part 93, along with other applicable Federal regulations.
- (c) Flow-down requirement. The Contractor also agrees to include this article in each subcontract exceeding \$150,000 financed, in whole or in part, with Federal assistance provided by FTA.

**14. CLEAN WATER ACT- FTA**

- (a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Water Act, as amended, 33 U.S.C. §§1251-1377. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

- (b) The Contractor will protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§300 (f)-(j).
- (c) The Contractor will comply with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368.
- (d) The Contractor will facilitate compliance with Executive Order 11738, "Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants or Loans," 42 U.S.C. §7606 note.
- (e) Flow-down requirement. The Contractor also agrees to include this clause in each subcontract exceeding \$150,000 financed, in whole or in part, with Federal assistance provided by FTA.

**15. RECOVERED MATERIALS/ RECYCLED PRODUCTS- FTA**

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

**16. RETAINAGE**

*No Retainage:* No provision of this Contract shall serve to deny Contractor's entitlement to full payment for properly performed work or suitably stored materials. No amounts shall be withheld from any payment request submitted by Contractor based on percentage of the work performed during the period of performance and no amounts shall be assigned to the line items, other than as assigned by Contractor in its payment requests.

**17. ENERGY CONSERVATION- FTA**

- (a) The Contractor agrees to comply with mandatory standards and policies relating to the energy efficiency which are contained in the applicable state energy conservation plan issued in compliance with the National Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321, *et. seq.*
- (b) The Contractor agrees to perform an energy assessment for any building constructed, reconstructed or modified with FTA funds as required under FTA regulations, "Requirements for Energy Assessments." 49 C.F.R. Part 622.
- (c) The Contractor must include this clause in all subcontracts and sub-agreements at every tier.

**18. CHANGES TO FEDERAL REQUIREMENTS- FTA**

- (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 (22) dated October 1, 2015) between the Authority and FTA, as they may be amended or promulgated during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.
- (b) Flow-down requirement. The Contractor agrees to include this Article in each subcontract financed in whole or in part with Federal Assistance provided by FTA. It is further agreed that the Article shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**19. FLY AMERICA REQUIREMENTS- FTA**

- (a) The Contractor agrees to comply with 49 U. S. C. § 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. § 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U. S. Flag carriers for U. S. Government financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. If a foreign air carrier was used, the Contractor shall submit 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 provide a certificate of compliance with the Fly America requirements.
- (b) Flow-down requirement. The Contractor agrees to include the requirements of this article in all subcontracts that may involve international air transportation.

**20. PAYMENT DEDUCTIONS - NONCOMPLIANCE WITH DBE REQUIREMENTS- FTA**

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

**21. GOVERNMENT-WIDE DEBARMENT OR SUSPENSION- FTA**

- (a) The Contractor is bound by its certification contained in its bid that neither the Contractor its principals, or affiliates, are excluded or disqualified, from Federal contracting. The certification is a material representation of fact, relied upon by the Authority in entering into this Contract. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to the Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 2 C.F.R, part 180, subpart C as adopted and supplemented by U.S. DOT regulations at 2 C.F.R, part 1200 "Nonprocurement Suspension and Debarment," including any amendments thereto, Executive Orders Nos. 12549 and 12689 "Debarment and Suspension" 31 U.S.C. § 6101 note, and other applicable Federal laws, regulations or guidance regarding participation with debarred or suspended contractors throughout the term of this Contract.
- (b) Flow-down requirement. The Contractor agrees to include this article in all subcontracts at all tiers under this Contract requiring lower tier contractors to comply with Federal suspension and debarment requirements, and review the System for Award Management (SAM) at [www.sam.gov](http://www.sam.gov) in order to comply with U.S. DOT regulations at 2 C.F.R, Part 1200 prior to awarding any subcontract under this Contract.

**22. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

- (a) The preceding provisions include, in part, certain standard terms and conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in other Contract provisions. All Contractual provisions required by DOT, as set forth in FTA Circular 4220.1F and FTA Master Agreement (23) October 1, 2016 or any revision thereto, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all DOT or FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any of the Authority's requests that would cause the Authority to be in violation of the FTA terms and conditions.
- (b) Flow-down requirement. 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.

**23. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES- FTA**

- (a) The Authority and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, it 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 this Contract.
- (b) Flow-down requirement. 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.

**24. FALSE STATEMENTS OR CLAIMS CIVIL AND CRIMINAL FRAUD- FTA**

- (a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U. S. C. § 3801 *e.t seq.* and U. S. DOT Regulations, "Program Fraud Civil Remedies," 49 C.F. R. Part 31, apply to its actions pertaining to this Contract. Upon execution of this 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 this Contract or FTA assisted project for which this Contract 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 that it 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) Flow-down requirement. 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.

**25. LOBBYING- FTA**

- (a) The Contractor agrees that it will not use Federal funds to influence any officer or employee of a Federal agency, member of Congress or an employee of a member of Congress or an officer or employee of Congress on matters that involve this Contract or the underlying grant or agreement, including any award, extension or modification.
- (b) Contractor agrees that it will comply with 31 U.S.C. § 1352, as amended, U.S. DOT regulations "New Restrictions on Lobbying" 49 C.F.R, Part 20, to the extent consistent with 31 U.S.C. § 1352, as amended and other applicable Federal laws, regulations and guidance prohibiting the use of Federal funds for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature unless an exception exists in current Federal law.
- (c) Flow-down requirement. The Contractor agrees to include these requirements in all subcontracts at all tiers under this Contract.

**26. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS - FTA - N/A**

**27. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS - FTA**

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

- (a) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552 (a). Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- (b) The Contractor also agrees to include these requirements in each subcontract involving the administration of any system of records on behalf of the Federal government financed, in whole or in part, with Federal assistance provided by FTA.

**28. PROGRESS PAYMENTS – N/A**

**29. BONDING FOR CONSTRUCTION PROJECTS EXCEEDING \$150,000 – FTA – N/A**

**30. BONDING REQUIREMENTS- GENERAL – N/A**

**31. SEISMIC SAFETY – FTA – N/A**



## **CHAPTER XII-WMATA POLICIES**

### **1. SAFETY REQUIREMENTS**

- (a) The Contractor shall be responsible for ensuring compliance with the most stringent provisions of the applicable statutes and regulations of the District of Columbia, State of Maryland, Commonwealth of Virginia or political subdivision where the work is being performed, as well as the METRO Construction Safety and Environmental Manual (1984, as amended) issued by the Authority, and the U.S. Department of Labor OSHA standards pertaining to the safe performance of the work. In the absence of a specific construction industry standard, the Contractor is required to comply with either an established OSHA General Industry Standard, National Institute for Occupational Safety and Health (NIOSH) guidelines, American Conference of Governmental Industrial Hygienists (ACGIH) guidelines, American National Standards Institute (ANSI) guidelines, the WMATA System Safety Program Plan, the WMATA Construction Safety and Environmental Manual, or the Metrorail Safety Rules and Procedures Handbook. For contracts where work will be performed on, or will interface with the Metrorail System, the Contractor shall also comply with the publication entitled "Metrorail Safety Rules and Procedures Handbook." In the event of a conflict between these guidelines and applicable Federal, State or local health and safety laws, regulations or standards, the more stringent standard shall apply. Further, the Contractor shall ensure that all methods of performing the work do not involve danger to the personnel working at the site, the public and private property, whether or not these methods are cited or indicated in the Contract. The Contractor shall immediately provide to the Contracting Officer, a copy of all citations and/or warnings of safety violations received from any Federal, State or local jurisdiction or agency thereof, and/or all notifications of safety violations from insurance companies. The Contractor shall also provide to the Contracting Officer, copies of any and all subpoenas, complaints or other documents relating to any law suit alleging safety violations.
- (b) The Contractor shall employ and assign a full-time Safety Superintendent for Contracts involving "safety sensitive" functions (See Combined Glossary attached hereto for a definition). The Safety Superintendent shall have a minimum of three (3) years of construction safety experience and hold an OSHA thirty (30) hour course card. He or she shall have the ability to develop and conduct safety training courses. He or she shall be familiar with industrial hygiene equipment and testing as required for the protection of all employees. The Safety Superintendent shall be employed exclusively for the purpose of supervising the safety of persons on or about the worksite and the property affected thereby. The Safety Superintendent shall also be responsible for providing first aid at the worksite and must have a current Red Cross First Aid Certificate. The Contractor shall notify the Contracting Officer a reasonable amount of time beforehand, any time that the Safety Superintendent will not be on site during work hours. If, at any time, the worksite is without the services of an approved Safety Superintendent for a period of three (3) calendar days or more, the work may be closed down at the Contracting Officer's discretion. The Safety Superintendent must be acceptable to the Contracting Officer and his or her performance will be reviewed on a continuing basis. If the Safety Superintendent's effectiveness is below standard, the Contractor shall provide immediate replacement at the Contracting Officer's direction. Once employed, the Safety Superintendent shall not be changed without the Contracting Officer's permission. The Safety Superintendent can be terminated at any time, at the Contracting Officer's discretion.

- (c) The Contractor shall provide, at the site of the work, a first aid kit which shall be fully equipped to meet the needs of the anticipated work force.
- (d) The Contractor shall follow all appropriate RAIL Operational Rules, Operational Administrative Procedures (OAPs), Standard Operational Procedures (SOPs) and General and Special Orders while on the operational railroad and all Start-Up Rules and Manager's Notices when in declared start-up areas.

**2. PRE-EMPLOYMENT CRIMINAL BACKGROUND CHECK REQUIREMENT – N/A**

**3. WORKPLACE VIOLENCE/ZERO TOLERANCE**

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



## **MID-ATLANTIC COOPERATIVE RIDER CLAUSE**

The Mid-Atlantic Purchasing Team (MAPT) is the agreement between the Metropolitan Washington Council of Governments (“MWCOG”) and the Baltimore Metropolitan Council (“BMC”) to aggregate the public entity and non-profit purchasing volumes in the Maryland, Virginia and Washington, D.C. region (“region”).

### **Format**

A lead agency format is used to accomplish this work. The Lead Agency in this procurement has included this MAPT Cooperative Rider Clause in this solicitation indicating its willingness to allow other public entities to participate pursuant to the following Terms and Conditions:

1. Terms
  - 1.1 Participating entities, through their use of the Cooperative Rider Clause, agree to the terms and conditions of the resulting contract to the extent that they can be reasonably applied to the participating entity.
  - 1.2 Participating entities may also negotiate additional terms and conditions specific to their local requirements upon mutual agreement between the parties.
2. Other Conditions - Contract and Reporting
  - 2.1 The contract resulting from this solicitation shall be governed by and "construed in accordance with the laws of the State/jurisdiction in which the participating entity officially is located;
  - 2.2 To provide to MWCOG and/or BMC contract usage reporting information, including but not limited to quantity, unit pricing and total volume of sales by entity, as well reporting other participating entities added on the contract, on demand and without further approval of contract participants;
  - 2.3 Contract obligations rest solely with the participating entities only;
  - 2.4 Significant changes in total contract value may result in further negotiations of contract pricing with the lead agency and participating entities.

In pricing and other conditions, vendors are urged to consider the broad reach and appeal of MAPT with public and non-profit entities in this region.

A list of the participating members of the Mid-Atlantic Purchasing Team can be found at the following web links [www.mwcog.org/purchasing-and-bids/cooperative-purchasing/member-links/](http://www.mwcog.org/purchasing-and-bids/cooperative-purchasing/member-links/) and <http://www.baltometro.org/our-work/cooperative-purchasing/brcpc-representatives>

## **PART III**

### **TECHNICAL SPECIFICATIONS**

#### **PROJECT TITLE: BATTERY ASSEMBLIES FOR 6K RAILCARS**

## **Battery Assemblies for 6K Rail Car**

### **1.0 GENERAL**

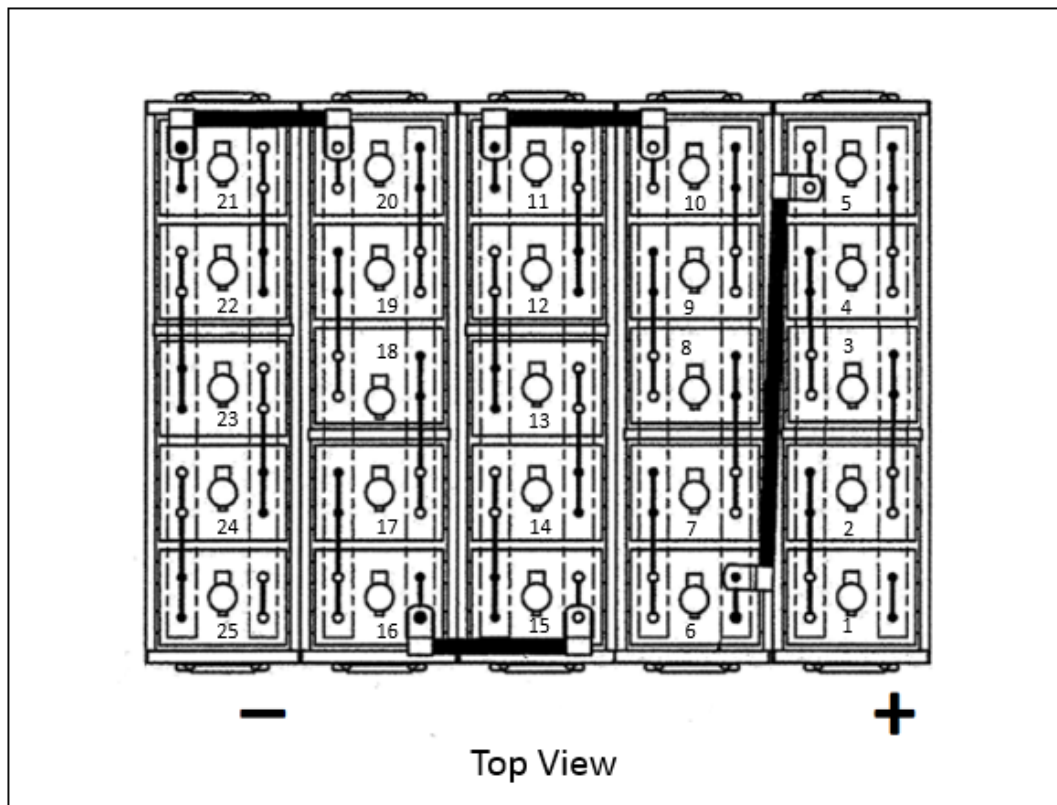
The goal of this project is to procure replacement battery assemblies that meet the technical specifications. Bidders shall prepare bids to provide ninety two (92) battery assemblies for the 6K rail cars

### **1.1 Background**

The 6000 Series (6K) railcars were manufactured by Alstom. The railcars were configured as “married pairs,” with some equipment installed in the “A” car differing from that of the “B” car. All low voltage, carborne electrical equipment (37.5 VDC) is powered by a low voltage power supply (LVPS)/battery combination located in the “B” car. During typical transit operations, the low voltage is supplied by the LVPS. In the event of a LVPS failure, all low voltage power is supplied by twenty five (25) nickel cadmium cells (32 VDC – 1.28 VDC each). *See Figure 1.*

These cells are located in a battery box located on the external undercarriage of the “B” car. The battery box is designed to accommodate five (5) battery crates containing five (5) cells each. A system of guides and rollers allows the battery box’s interior crates to roll out and to the side of the car for maintenance. *See Figure 2.*

The Alstom 6K series railcars have batteries that are near the end of their useful lives. WMATA is seeking to purchase equally operational batteries while reducing maintenance and capitalizing on technology and life cycle costs.



**Figure 1**

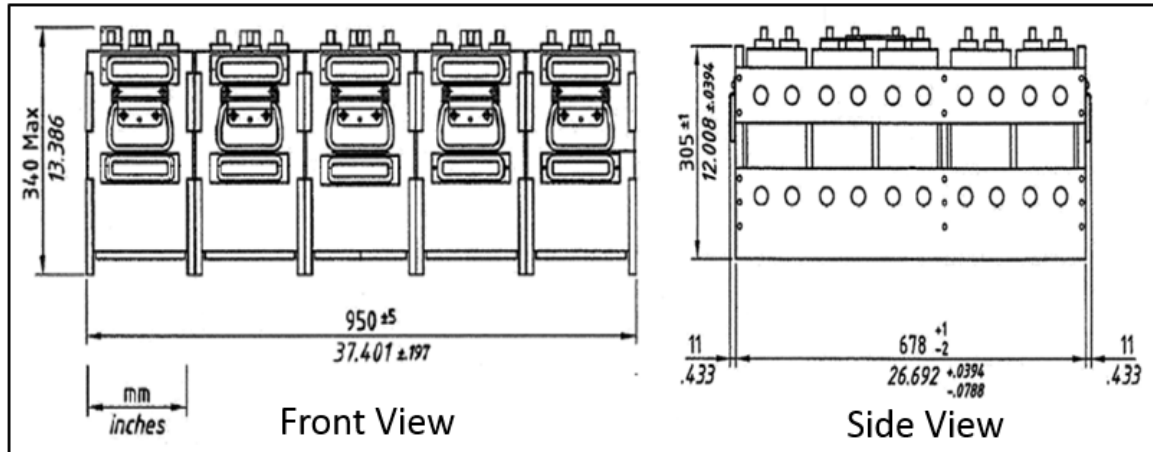


Figure 2.

## 1.2 Documentations must be submitted with the bid

Failure to submit any of the required documents may result in the bid being considered as non-responsive and not be eligible for award.

### A. Bidders must submit the following with the Bid: (Bid Responsiveness)

- i. **Safety Data Sheets (SDS)** – Must include smoke, flame and toxicity information of materials to be used for the battery assembly.
- ii. **Certificate and Compliance with Safety Standards** — Certified test results from an independent laboratory, for the following tests:
  - a. ASTM Standard E 162 - Flame
  - b. ASTM Standard E662 - Smoke
  - c. Boeing Standard. BSS7239 – Toxicity
  - d. Shock and Vibration Test Reports per IEC 61373-2010 Category Class B
- iii. **Proposed Battery Assembly Drawings and Bill of Materials.**
- iv. **Technical Information for the proposed battery assembly (per section 10.0).**
- v. **Quality Management Plan specific to this contract (See sample plan, Attachment 4).**
- vi. **Pick Up Disposal Plan – Plan must include pick up, removal and disposal of battery assemblies in compliance with Environmental Protection Agency's (EPA) and hazardous material policy, laws and regulations.**
- viii. **Warranty Information.**
- ix. **Sample training plan. Refer to section 7.0 H. a**

## 1.3 Requirement for First Article Inspection (FAI) – After award

**Part 1: Testing/Inspection** – Contractor shall provide two (2) each battery assemblies ninety (90) days after NTP, to conduct the First Article Inspection (FAI) and testing for technical and operating merit in accordance with the sample Battery Qualification/Engineering Test Plan (ETP) (See Attachment 2). The ETP is part of the FAI which includes form, fit, function and battery qualification tests in different modes namely shop, dynamic and long term test. An FAI certificate will only be provided when it meets all FAI requirements to include having a pass remark for the ETP.

**Contractor shall provide two (2) battery assemblies for the FAI along with the following:**

- i. *Approved drawings set to the correct revision level.*
- ii. *Dimensional inspection results which affect form, fit and function.*
- iii. *For parts/ components:*
  - a. *Material test that certifies the part meets the material specifications and applicable industry standards.*
- iv. *For assemblies/subassemblies:*
  - a. *Test documentation that supports the compliance with design requirements.*  
*Note: Inspection records used to control and accept in process work shall be available upon request (if applicable).*
- v. *Surface finish acceptance criteria (if applicable)*
- vi. *Safety data sheet (SDS)*
- vii. *Packaging standards (if applicable). It should be done in accordance with WMATA Operational and Administrative Procedure (OAP) 113-19, Supplier Shipping and Delivery requirements.*
- viii. *Article identification award (How the supplier identifies the product)*
- ix. *Installation and running maintenance documentation*

**Part II:** Upon completion of the FAI (Part I), the Contractor shall deliver the remaining ninety (90) battery assemblies in multiple deliveries of fifteen (15) battery assemblies per month.

## **2.0 BATTERY/CELL ASSESSMENT**

During the first article inspection, all batteries will be first commissioned, and charged to 100% capacity. Electrolyte levels will be measured and confirmed to be at the "full" mark. Without the rail car low voltage power supply (LVPS) being turned on, the batteries will be discharged with a typical electrical load and the time to discharge to a 1.0 VDC level will be recorded. Then, with the LVPS turned on, the time to charge to 32 VDC (25 cells) will be recorded. Periodic measurements of the electrolyte levels will be taken during the course of the test. It must be understood that all installed car sets of batteries will not experience the same operational loads. Therefore, data will be averaged and the extreme differences in data analyzed for validity. The authority reserves the right to curtail the tests at any time.

## **3.0 CONTRACTOR SCOPE OF SERVICES**

- a. The Contractor shall provide all necessary factors of production including material, special equipment, special tools, incidentals, project management, supervision, engineering support, accounting, scheduling, coordination, procurement, safety, production, quality assurance, quality control, product assurance testing, storage, transportation, freight, and documentation necessary to satisfactorily deliver all parts being procured for WMATA that meet specification requirements. The Contractor shall provide an updated delivery schedule on a monthly basis in order to assist WMATA with installation and maintenance programs.
- b. Contractor shall provide the Authority with two (2) nickel cadmium electrical battery assemblies for the First Article Inspection (FAI) and testing. Contractor shall deliver the two (2) battery assemblies no later than ninety (90) days following the WMATA Contracting Officer's Notice to Proceed (NTP). The period of performance for the FAI may be from six (6) months to one (1) year.

- c. As part of this contract, the Contractor shall provide all jumpers, bolts, washers, five cell crates, terminal coatings, tray spacers and hardware necessary to directly install the batteries on a WMATA 6K series rail car. All hardware components shall be nickel alloy plated to minimize corrosion.
- d. To ensure proposed batteries will fit the existing battery compartments, and remain secure once installed, it is necessary that the Contractor provide all material for proper installation. A post-award site visit can be conducted in order to inspect battery box/tray, lug size or battery cable, take measurements and/or confirm installation procedures to WMATA personnel.
- e. The battery box assembly with battery cells, trays and spacers shall be subject to the Shock and Vibration requirements of IEC 61373-2010 Category Class B prior to FAI. Class B must include the batteries mounted in the stainless steel trays and simulate the mounting in the battery box with spacers. Cliplocks are not an acceptable replacement for stainless steel trays. Inspections and tests shall be performed prior to and after the shock and vibration tests to inspect the assemblies according to drawings, note any damage to cells or crates, and record individual open circuit cell voltage readings. The test unit shall not sustain damage to the extent that full operation is prevented based on the subjected environment. The Shock and Vibration Test Reports shall be submitted to the Authority no later than ten (10) days prior to the First Article Inspection. The cells shall be shipped to the Authority fully serviced, and in a fully charged state. (Cells shall have temporary non-venting plugs just for shipping. The permanent vent plugs, provided by the Contractor, will be installed by the Authority on each cell prior to battery installation.)
- f. WMATA will remove the battery assemblies from the railcars. Contractor shall pick up and dispose of the batteries assemblies in compliance with the Environmental Protection Agency's regulations. The Contractor shall provide pick up/disposal services of the spent Ni-Cd batteries from the 6K cars in a quantity equal to those purchased under the contract. The Contracting Officer's Technical Representative (COTR) will notify the Contractor via e-mail when spent batteries must be picked up, the quantity to be picked up, locations of pick up, point-of-contact (POC) for each pick up location and telephone numbers of the POCs. Within three (3) calendar days after e-mail notification, the contractor will arrange transportation for the pickups, send a bill of lading to the COTR for each pickup site, include Safety Data Sheets (SDSs) for the batteries, and tracking number(s) for the pickup. A certificate of disposal shall be forwarded to the COTR upon disposal of the each spent Ni-Cd batteries.

#### **4.0 DELIVERY**

Upon completion of the FAI and testing, the Contractor and the COTR shall mutually agree on the Delivery Schedule for the remaining ninety (90) battery assemblies. Deliveries will be made in multiple shipments of fifteen (15) until completed and accepted by the Authority. Contractor shall inform COTR by e-mail when each shipment is initiated. All batteries shall be shipped FOB destination (WMATA).

For the **FAI**, battery test assemblies shall be delivered to:

**WMATA Greenbelt S & I Shop**  
5801 Sunnyside Avenue  
College Park, MD 20740



The **remaining battery assemblies** shall be delivered to:

**WMATA Supply Facility**  
8201 Ardwick Ardmore Rd,  
Hyattsville, MD 20785

## 5.0 WARRANTY

The Contractor shall guarantee during all warranty periods described hereunder (collectively, the "Warranty Period"), the contracted Items and the work will:

- (a) Comply with the requirements of the WMATA Contract and the Technical Provisions,
- (b) Will be free of any patent or latent defect of design, material or workmanship and
- (c) Will be fit for their intended purposes.

All cells shall be warranted against any and all manufacturing flaws and performance failures for a minimum of ten (10) years. The first two (2) years of the warranty require direct replacement of the cells with new cells at no cost to the Authority. The remaining 8 years of the warranty shall have the cost of the replacement cell pro-rated as follows:

- Year 3 – 10% of the contract unit price
- Year 4 – 15% of the contract unit price
- Year 5 – 25% of the contract unit price
- Year 6 – 45% of the contract unit price
- Year 7 – 60% of the contract unit price
- Year 8 – 75% of the contract unit price
- Year 9 – 85% of the contract unit price
- Year 10 – 90% of the contract unit price

If a commercial warranty is applicable, one copy of the warranty shall accompany the battery assemblies at the time of the delivery. If warranty registration is required, said documentation shall be completed by the Contractor and furnished to the Contracting Officer's Technical Representative (COTR) at the time of delivery. Any and all extended manufacturer's warranties shall be transferred to the Authority.

## 6.0 TECHNICAL DOCUMENTATION

The Contractor shall provide the necessary technical documentation (operation and maintenance manuals) regarding the function, operation and service maintenance, installation and removal, and troubleshooting of each battery assembly as well as drawings with the bill of material. If changes are made concerning the battery assembly during production, the Contractor shall update battery maintenance and operational manuals and provide a copy to the COTR. This technical documentation must also contain all necessary safety precautions regarding handling and servicing of the battery. Technical documentation shall be provided with the first shipment of fifteen (15) battery assemblies after passing FAI.

## **7.0 OPERATIONS AND MAINTENANCE TRAINING REQUIREMENTS (Post Award)**

The Contactor shall fulfill the following general training requirement:

- A. The Contractor shall be responsible for operations and maintenance training of WMATA-designated personnel on all materials provided as part of the project during the warranty period.
- B. The Contractor shall perform all training at WMATA's Greenbelt facility or other designated WMATA locations.
- C. Training shall include hands-on experience in the following activities:
  - a. Preventive Maintenance (PM) techniques;
  - b. Equipment testing and diagnostic techniques.
- D. The Contractor shall perform all training as a combination of classroom and hands-on training.
- E. The Contractor shall only utilize experienced and qualified personnel for training. Personnel shall have prior experience performing these same training classes for similar transit agency systems.
- F. The Contractor is responsible for providing all training materials, visual aids, projects, sample equipment, etc. One complete set of hardcopy training materials shall be provided to each WMATA student. Also, one electronic set of material shall be provided to the COTR with the rights to make copies.
- G. All training materials will become the property of WMATA.
- H. A training plan shall be submitted to the COTR at least four (4) weeks prior to the first set of training classes. The COTR shall review and provide approval on the training plans within two (2) weeks after receipt. Submittals shall be as follows.
  - a. Training Plan. (The training plan shall contain an overview and outline of the agenda for the training class as well as the outcomes that are to be learned).
  - b. Technical documentation manuals regarding function, operation, service maintenance, installation and removal, drawings with the bill of materials and troubleshooting of the battery assembly. All training materials will become the property of WMATA.
  - c. Certification and resume of key personnel to conduct training.
- I. Three (3) training classes of eight (8) hours each will be conducted by the qualified Contractor and will include no more than ten (10) students per class.

## **8.0 QUALITY ASSURANCE REQUIREMENTS**

The delivered battery assemblies shall be new and of the most suitable grade for the purpose intended. All work shall be performed in compliance with the Contractor's quality assurance/quality control programs and procedures. A copy of the Contractor's quality control manual and quality assurance plan specific for this contract shall be provided with the Contractor's bid.

## **8.1 CERTIFICATE OF CONFORMANCE (CoC)**

8.1.1 Supplier Certificates of Conformance (CoC) shall accompany all product and materials shipments for delivery to WMATA.

8.1.2. The Supplier shall provide a CoC with each lot shipped to WMATA, indicating that the items shipped meet all the applicable requirements, technical specifications, in this document and/or any referenced documents and standards.

8.1.3. For materials made according to WMATA or to the Supplier's drawings, the CoC shall indicate conformance to the drawings and other applicable requirements. A CoC shall be included with each shipment to WMATA as required by these specifications and requirements.

8.1.4. Acceptance Test Data shall be supplied with each unit or shipment.

## **8.2 PACKAGING, SHIPMENT (FOB – DEST) AND DELIVERY - see Terms and Conditions, Chapter III, Article No. 9b.** - Contractor shall ensure that packaging of material/items to be shipped to WMATA will be done in accordance with WMATA Operational and Administrative Procedure (OAP) 113-19, Supplier Shipping and Delivery Requirements. (Attachment 3)

## **8.3 FIRST ARTICLE INSPECTION (FAI) - see Terms and Conditions, Chapter III, Article No. 8.**

8.3.1. As required, a First Article Inspection (FAI) of the representative production units produced is required prior to the start of full rate production and product delivery to WMATA as referenced in section 1.3

8.3.2. FAI shall be conducted in accordance with WMATA Organizational Administrative Procedure (OAP) 113-12, First Article Inspection Procedure. (Attachment 1)

8.3.3. The FAI shall be conducted on two (2) battery assemblies (units) after contract award as outlined in section 1.3

## **9.0 INSPECTION AND ACCEPTANCE**

The battery assemblies shall be inspected and tested by COTR and WMATA personnel at WMATA's delivery site before final acceptance to ensure technical compliance with the contract. Items found to be defective or not in compliance with the contract will be corrected or replaced by the Contractor within a month at no charge to the Authority. **See Terms and Condition, CHAPTER III – ACCEPTANCE/INSPECTIONS/DEFICIENCIES, Article #2 “Inspection of Supplies” and Article #3 “Acceptance of Supplies”.**

## 10.0 TECHNICAL REQUIREMENTS for Battery Assemblies

### 10.1 Battery Type

The battery shall be of nickel-cadmium-alkaline type. Each cell shall have an electrolyte reservoir capacity to hold enough/endure one year of normal service without requiring inspection of the electrolyte level or addition of water during summer operations under elevated temperatures. The battery shall consist of open (vented), low maintenance sintered PBE or fiber nickel-cadmium cells with M Plate performance design and shall comply with IEC 60623 5th edition released January 23, 2017.

### 10.2 Battery Capacity

The battery Ampere hour (Ah) capacity shall be a minimum of 195Ah while meeting or exceeding criteria listed below. At normal battery operating temperatures (+50 to +104°F), the battery shall have a capacity of ( $\leq 37.5$  but  $> 25.5$ Vdc) before the under-voltage device trips to:

- 10.2.1 Carry all loads of a married-pair of railcars until load shedding, then provide all 37.5-volt loads (including emergency lighting) in the absence of battery charging for a period of 40 minutes, including 20 station stops with passengers boarding and alighting.
- 10.2.2 Maintain a terminal voltage adequate to operate all connected systems after 60 hours of operation on a stored pair of railcars with the battery system power converter inoperative (assuming normal loading), the heating control in layover position, and the control key removed.
- 10.2.3 Carry emergency lighting, communications equipment, running lights, and any loads that cannot be shed by the use of cab circuit breakers and switches, on a two-car train standing still with no third rail power, for two (2) hours.

Each of the above conditions shall be met beginning with a battery charged to 85% of maximum capacity. Battery capacity shall not degrade below 85% C5 AH after 2,000 cycles with depth of discharge of 40% at a constant ambient temperature of 40°C. C rating is the battery capacity and is typically followed by a number to indicate the number of hours this power is spread across. Amp Hours quantifies the amount of current a battery can deliver over a length of time. Life expectancy of the batteries in the WMATA environment shall be 10 years or longer. The end of useful life will be defined as: when the battery has degraded to 75% C5 A-Hr. Procedures for any commissioning charge and *reasonable* maintenance practices shall be included in the Maintenance Manuals. *Reasonable* in this instance means: WMATA wishes to reduce battery maintenance to a minimum and capitalize on technology and life cycle costs.

### 10.3 Electrodes/Plates

The electrodes/plates inside the nickel cadmium cells are sintered positive and plastic bonded negative. The positive active material is nickel hydroxide, while the negative active material is a cadmium-oxide mixture. Graphite shall not be used in the plates. All nickel-plated steel plate tabs shall be seam welded onto the plates to ensure the highest transfer of current and maximum mechanical strength. Each cell has plate stacks consisting of a number of positive and negative plates that are separated by a multi-layer separator. The plate stacks are bolted to the corresponding positive or negative terminal post(s).

#### **10.4 Electrolyte**

The electrolyte shall be a water based solution of potassium hydroxide (KOH), lithium hydroxide (LiOH) and distilled or de-ionized water. The electrolyte does not participate in the electrochemical reaction, which takes place in the battery cell, but only acts as an ion-carrying medium and its specific gravity remains relatively constant. Electrolyte changes or replacement shall not be required over the life ten (10 years) of the battery.

#### **10.5 Separators**

The cell separator shall be of multi-layer type to act as a barrier between the positive and negative plates and to prevent oxygen generated by the positive plate from reaching the negative plate.

#### **10.6 Cell Container and Crates**

The cell container shall meet flammability (ASTME 162-16), smoke emission (ASTME 662-17) per NFPA-130, 2010 edition, section 8.6.9 (7), and toxicity requirements (BSS 7239). The cell container shall be of transparent plastic (Poly-sulfone). Both sides of the container of each cell must have two electrolyte level lines permanently stamped to show the level of electrolytes. The upper level line is the "Max" for maximum and the lower line is the "Min" for minimum, providing verification of levels. The battery cells shall be assembled in stainless steel crates with insulated stainless steel lifting handles to provide high resistance to shock and vibration encountered during typical transit operations. Crates shall allow visibility of the level of electrolyte contained in the cell container.

#### **10.7 Cell Identification**

The cell type identification and the International Electro-technical Commission (IEC) standard designation that includes the capacity must be shown on the label(s) of each cell (e.g. KH195 for an SRX195 is 195Ah), as per the IEC 60623 designation. Each battery crate will have label(s) with the same identification and other battery crate details. The positive terminal has a red polarity washer and the negative terminal has a black polarity washer. The positive (+) terminal can be further identified by a "+" raised symbol molded on the cell cover.

#### **10.8 Date Code**

The manufacturing date code must be punched on top of each cell's positive terminal by month (upper number) and year (lower number), e.g., 0517 for May 2017. The manufacturing date code must also be on the crate identification label as year and month.

#### **10.9 Cell Vent Plug**

Each cell shall be equipped with a flip-top, flame arrester, vent plug for ease in maintenance. The cell vent plug cover or cap, when closed, shall allow the escape of hydrogen and oxygen gases developed during the charging process while also preventing flames or sparks from entering the cell that could ignite this gas mixture. The vent plug shall be spring loaded to ensure positive open or closed position for safety and quick opening by maintenance personnel. Vent plugs shall easily facilitate the addition of distilled water when using the typical fillers and fluid level measurement devices.

#### **10.10 Cell Size**

The twenty five cells placed in their crates must not exceed the absolute limits of 26.732 inches (not including handles) length, 37.519 inches width and 13.386 inches height. These measurements include the wall thickness of the tray and the height of the cells electrical terminals and filler caps.

#### **10.11 Battery Weight**

Battery crate and battery assembly shall not exceed 133lb (5 cells) and 666lb (25 cells) respectively. This must be strictly enforced to maintain the vehicle lateral balance.

#### **10.12 Bus Bars / Jumper Cables**

Bus-bars shall be protected by insulating covers. Inter-cell jumper cables shall be a minimum of 3/0 AWG. All positive terminals shall be identified with bright red insulating discs and all negative terminals shall be black.

#### **10.13 Battery Spacers**

The Contractor shall provide, as part of the mounting hardware, battery spacers. The spacers shall be of a material that meets smoke, flame and toxicity requirements of this specification. These spacers shall prevent the movement of batteries within the battery box, while the transit car travels during typical operation within the WMATA rail system.

#### **10.14 Electrolyte Level Adjustment**

Each cell shall have an electrolyte reservoir capacity to be able to endure six (6) months of normal service without requiring inspection of electrolyte level or addition of distilled or ionized water. An optional selection of topping up device for the battery electrolyte shall be provided. This device shall be portable and easy to operate, and shall allow the routine replacement of battery electrolyte to be performed automatically.

### **ATTACHMENTS**

1. WMATA Organizational Administrative Procedure (OAP) 113-12, First Article Inspection Procedure (Attachment 1)
2. Sample Battery Qualification/Engineering Test Plan (ETP) (Attachment 2).
3. WMATA Operational and Administrative Procedure (OAP) 113-19, Supplier Shipping and Delivery Requirements. (Attachment 3)
4. Sample Quality Management Plan (Attachment 4)

### **END OF TECHNICAL SPECIFICATIONS**

**COMBINED GLOSSARY OF DEFINITIONS**

**As used throughout this Contract, except to the extent otherwise expressly specified, the following terms shall have the meanings set forth below:**

**Acceptance:** Acknowledgment by the Authority that the supplies, services, or other work conform to the applicable contract requirements.

**Acceptance Period:** The number of days available to the Authority to award a Contract pursuant to this solicitation, during which period offerors may not withdraw their offers.

**Amendment:** Written instructions issued prior to the date set for bid opening to clarify, revise, add or delete requirements of the IFB.

**Approved equal:** An item approved by WMATA as equivalent to a brand name item originally specified.

**Authority or WMATA or Metro:** 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.

**Board of Directors:** The Board of Directors of the Washington Metropolitan Area Transit Authority.

**Brand name:** Identification of an item that is produced or controlled by one or more entities, including trademarks, manufacturer names, or model names or numbers that are associated with a manufacturer.

**Breach:** An unexcused and unjustifiable failure or refusal of a party to satisfy one (1) or terms of the Contract which, if material, shall constitute a basis for potential default.

**Change or Change Order:** A written alteration issued, upon agreement of both parties or unilaterally by the Authority, to modify or amend the Contract, generally directing changes to the Scope of Work and/or Contract terms.

**Claim:** A written demand or assertion by the Contractor seeking, as a legal right, the payment of money, adjustment or interpretation of Contract terms, or other relief, arising under or relating to this Contract.

**Clarifications:** Exchanges between the Authority and one (1) or more bidders of a limited nature, whereby bidders may be given the opportunity to clarify certain aspects of their bids or to resolve minor irregularities, informalities or clerical errors.

**Constructive Change:** An act or omission by the Authority that, although not identified as a Change Order, does in fact cause a change to the Contract.

**Contract or Agreement:** The written agreement executed between the Authority and the Contractor awarded pursuant to this solicitation.

**Contract Administrator:** The Authority's representative designated to serve as its primary point of contact for pre-award activities relating to the solicitation as well as such post-award activities as are set forth in the Contract.

**Contracting Officer:** An employee with authority duly delegated from the powers of the Chief Procurement Officer to legally bind the Authority by signing a Contractual instrument. The Contracting Officer is the Authority's primary point of contact for pre-award administration, modifications above the limits of the Contracting Officer's Representative, and final settlement.

**Contracting Officer Representative:** The person to whom the Contracting Officer delegates the authority and responsibility for post-award execution of the Contract. The Contracting Officer's Representative is the Authority's primary point of contact with its Contractor.

**Contractor:** The individual, partnership, firm, corporation, or other business entity that is contractually obligated to the Authority to furnish, through itself or others, the supplies, services and/or construction services described in the Contract, including all incidentals that are necessary to complete the work in accordance with the contract.

**Contract Price:** The amount payable to the Contractor under the terms and conditions of the Contract based on lump sum prices, unit prices, fixed prices, or combination thereof, with any adjustments made in accordance with the Contract.

**Data:** Recorded information, regardless of form or the media on which it may be recorded, including technical data and computer software.

**Day:** Calendar day, except where the term business day, work day or like term is used.

**Designer:** The individual, partnership, firm, corporation or other business entity that is either the Contractor, or employed or retained by the Contractor, to manage and perform the design services for the Contract.

**Disadvantaged Business Enterprise (DBE):** A for-profit small business concern that has been certified by the Authority to be at least fifty-one percent (51%) owned by one (1) or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty one percent (51%) of the stock is owned by one (1) or more individuals, and whose management and daily business operations are controlled by one (1) or more of the socially and economically disadvantaged individuals who own it.

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

**Directed, ordered, designated, prescribed or words of like importance:** 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.

**Explanation:** Additional information or clarification provided by an Authority representative to one (1) or more prospective bidders in response to an inquiry relating to the solicitation, that will be binding upon the Authority, only to the extent specified in the Contract.

**Equivalent:** Of equal or better quality and/or performance to that specified in the Contract as determined by the Authority.



**Final Payment:** The last payment to the Contractor for work performed under the Contract.

**Force Majeure:** An unforeseen event or circumstance, beyond the control of, and not occasioned by the fault or neglect of, the Contractor or the Authority, that gives rise to a delay in the progress or completion of the Contract, including, without limitation, acts of God, acts of war or insurrection, unusually severe weather, fires, floods, strikes, freight embargoes or other events or circumstances of like nature.

**FTA:** Federal Transit Administration, an agency within the United States Department of Transportation that provides financial and technical assistance to local public transit agencies.

**Government:** The Government of the United States of America.

**Industry Standards:** Drawings, documents, and specifications or portions thereof published by industry organizations. Industry Standards are not part of this Contract unless specifically listed as such in the Scope of Work.

**Legal Requirements:** All Federal, state and local laws, ordinances, rules, orders, decrees, and regulatory requirements such as: building codes, mechanical codes, electrical codes, fire codes, Americans with Disabilities Act Accessibility Guidelines (ADAAG), and other regulations of any government or quasi-government entity that are applicable to this Contract.

**Milestone:** A specified date in the Contract by which the Contractor is required to complete a designated portion or segment of the work.

**Minor Irregularity:** A variation from the solicitation contained in a bid that does not affect the price or other material term of the Contract and does not confer a competitive advantage or benefit not enjoyed by other offerors or adversely impact the Authority's interests.

**Notice to Proceed:** Written notice issued by the Authority establishing the date on which the Contractor may commence work and directing the Contractor to proceed with all or a portion of the work.

**Offeror:** A party submitting a bid in response to this solicitation.

**Option:** A unilateral right in the Contract by which, for a specified time, the Authority may elect to purchase, at a predetermined price, additional supplies, services and/or work called for by the Contract or to extend the term of the Contract.

**Organizational conflict of interest:** A circumstance in which, because of other activities or relationships, a person, corporation or other business entity is unable or potentially unable to render impartial assistance or advice to the Authority, or its objectivity in performing the Contract is or might be otherwise impaired, or it has an unfair competitive advantage.

**Period of Performance:** The time allotted in the Contract for completion of the work. The period of performance begins upon the effective date of Contract execution and ends on the last date for complete performance of the final option. The period of performance incorporates the milestones established for the Contract.

**Pre-award Survey:** An evaluation of a prospective Contractor's capability to perform a proposed Contract, including an assessment of matters relating to its responsibility.

**Product Data:** Information furnished by the Contractor to describe materials used for some portion of the work, such as written or printed descriptions, illustrations, standard schedules, performance charts, instructions, brochures, and diagrams.

**Records:** Books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

**Safety Sensitive:** FTA regulations at 49 C.F.R. § 655.4 define “safety sensitive functions” as any of the following duties when performed by WMATA as a grant recipient, or any of its contractors: (a) Operating a revenue service vehicle, including when it is not in revenue service; (b) Operating a nonrevenue service vehicle, when required to be operated by the holder of a commercial driver’s license (CDL); (c) Controlling dispatch or movement of a revenue service vehicle; (d) Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service; and (e) Carrying a firearm for security purposes. WMATA’s definition of safety sensitive functions extends beyond FTA’s requirements and includes (f) Employees and contractors who maintain escalators and elevators (including repairs, overhauls and rebuilding) and (g) Station managers.

**Services:** The performance of work by a person or legal entity under contract with the Authority, including without limitation: maintenance; overhaul; repair; servicing; rehabilitation; salvage; modernization or modification of supplies, systems or equipment; routing, recurring maintenance of real property; housekeeping; operation of Authority-owned equipment, facilities and systems; communication services; Architect-Engineering services; professional and consulting services; and transportation and related services.

**Small Business Enterprise Set-Aside:** Competitive procurement(s), less than \$500,000, exclusively for SBE certified bidders/proposers.

**Supplies:** The end item(s) required to be furnished by the Contractor in fulfillment of its obligation under this Contract as well as any and all related services and required performance.

**Statement of Work/Scope of Work (SOW):** The portion of a contract or IFB that describes specifically what is to be done by the Contractor. It may include specifications, performance outcomes, dates and time of performance, quality requirements, etc.

**Solicitation:** This Invitation for Bids (IFB).

**Shop Drawings:** Fabrication, erection, layout, setting, schematic, and installation drawings that the Contractor prepares for permanent structures, equipment, and systems it designed to comply with this Contract.

**Similar:** Generally the same but not necessarily identical; details shall be worked out in relation to location and relation to other parts of the work.

**Site:** The areas that are occupied by or used by the Contractor and subcontractors during performance of the Contract.

**Small Business Enterprise (SBE):** A for profit small business concern that has been certified by the Authority to be at least fifty one percent (51%) owned by one (1) or more individuals who are economically disadvantaged.

**Small Business & Local Preference Program:** Board mandated small business contracting program for WMATA funded contracts with firm(s) located in the District of Columbia, Maryland or Virginia.

**Subcontract:** An agreement between the Contractor and another party, or between other subcontractors at any tier, to perform a portion of the Contract through the acquisition of specified supplies, materials, equipment or services.

**Subcontractor:** An individual, firm, partnership, or corporation that has a contractual obligation with the Contractor or other subcontractors.

**Submittal:** Written or graphic document or samples prepared for the work by the Contractor or a subcontractor and submitted to the Authority, including shop drawings, product data, samples, certificates, schedules of material, or other data.

**Substantial Completion:** Work or a portion thereof that has progressed to the point where it is sufficiently complete in accordance with the Contract (including receipt of test and inspection reports) so that it , can be utilized for the purpose for which it is intended, and only incidental work remains for physical completion in accordance with the Contract.

**Substitution:** An item offered by the Contractor of significant difference in material, equipment, or configuration, that functionally meets the requirements of the Contract, but is submitted in lieu of item specified therein.

**Utility:** A public and/or private facility or installation, other than WMATA's facility, that relates to (1) the conveyance and supply of water, sewage, gas, chemicals, steam, petroleum products, and other piped installations, or (2) electrical energy, telephone, radio, television, and cellular or wireless communications.

**Utility Standards:** Drawings and specifications for utilities published or issued by municipalities or utility companies.

**WMATA Safety Manual:** A compilation of the appropriate safety and reporting requirements for the project as specified in the Contract.

**WMATA Safety and Security Certification Program Plan:** A compilation of the appropriate system safety and security certification requirements for the project.

**Work:** All of the services of any kind, as well as any and all goods, supplies, equipment, labor, and material, of any type and nature to be furnished and/or performed pursuant to this Contract to accomplish the Contract's stated objectives in a timely and fully satisfactory manner.