



Request For Proposals (Non-Federal)

Background Check

WMATA RFP CQ17164

RFP Issue Date: July 21, 2017

Proposal Due Date: August 23, 2017

July 21, 2017

SUBJECT: WMATA RFP CQ17164 Background Check

Dear Sir/Madam:

The Washington Metropolitan Area Transit Authority (WMATA) requires the services of a qualified contractor to conduct pre-employment background screening services on candidates for employment and other background screenings on current employees as mandated by applicable law and WMATA policies.

WMATA also requires the qualified contractor to provide a minimum of two (2) full-time support personnel on-site at the Jackson Graham Building or at any other designated WMATA location. WMATA shall have the option to increase the number of full-time support, as needed.

These requirements are consistent with the commitment to public safety, security and policy requirements.

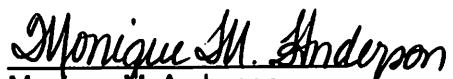
The term of the contract requirement shall be one (1) year base with two (2) one-year options. The Authority has the unilateral right in exercising the two (2) one-year option periods.

If you have any technical, contractual, or administrative questions, please e-mail them to rso@wmata.com no later than August 2, 2017. WMATA will provide written answers, by e-mail to all those who obtain the RFP and provided their e-mail addresses. If an amendment(s) is issued resulting from questions and answers, it will be posted on our website, and a copy will be mailed to all offerors so that they can acknowledge receipt.

For the purpose of clarifying the terms, conditions, and requirements of this Request for Proposals (RFP), a pre-proposal conference will be held to respond to questions by prospective offerors. **This pre-proposal conference will be held at 10:00 a.m., Thursday, August 3, 2017, in the Bus Conference Room 306, 3rd Floor of the WMATA Jackson Graham Building, 600 5th Street, NW, Washington, DC 20001.** It is requested that offerors submit their questions in writing, whether in advance of the meeting or during the meeting. Questions from the floor, however, are permissible.

Your proposal must be received with all required submittals as stated in the RFP, no later than **2:00PM, Wednesday, August 23, 2017**, at WMATA, Office of Procurement and Materials, 600 5th Street, NW, Room 3C-02, Washington, DC 20001-2651.

Sincerely,



Monique M. Anderson
Contracting Officer
Office of Procurement and Materials

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Washington Metropolitan Area Transit Authority
RFP CQ17164

INTRODUCTORY INFORMATION
SOLICITATION CERTIFICATIONS PAGE

RFP CQ17164

BACKGROUND CHECK

APPROVED FOR RELEASE

Michelle R. Chapman

Michelle R. Chapman
Project Manager/Office Designee

July 19, 2017

Date

Monique M. Anderson

Monique M. Anderson
Contracting Officer

July 21, 2017

Date

END OF SECTION

Washington Metropolitan Area Transit Authority
RFP CQ17164

DIRECTIONS
FOR SUBMITTING OFFERS

1. Read and comply with the Solicitation Instructions.
2. Please submit the entire proposal in **One (1) Compact Disk or USB flash drive** and **Two (2) hard copies (original plus 1)**. Envelopes containing the Price Proposal and Solicitation, Offer & Award form in Volume I, Technical Proposal in Volume II, and Contractual Submittals in Volume III. The entire proposals must be sealed and separately marked and addressed to:

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
600 5th Street, NW
Washington, DC 20001
Room 3C-02
Attn: Rod So
REF: WMATA RFP CQ17164

ALL ENVELOPES OR PACKAGES MUST BE SEPARATELY MARKED WITH SOLICITATION NUMBER AS SPECIFIED HEREWITH.

PROPOSALS SHALL BE TIMELY MAILED OR HAND DELIVERED TO REACH WMATA BEFORE 2:00 P.M. (LOCAL TIME) **Wednesday, August 23, 2017** ON DAY OF PROPOSAL CLOSING.

OFFERORS ARE ADVISED THAT THE AUTHORITY UTILIZES SECURITY SCREENING FACILITIES FOR PERSONNEL AND PACKAGES AT THE MAIN ENTRANCE AT 600 5th STREET AND OTHER FACILITIES. PLEASE ALLOW ADEQUATE TIME TO PASS THROUGH SECURITY.

FAILURE TO SUBMIT ANY PORTION OF THE WRITTEN REQUIREMENTS MAY CAUSE YOUR OFFER TO BE REJECTED AND NOT ELIGIBLE FOR AWARD.

QUESTIONS CONCERNING THIS REQUEST FOR PROPOSALS MAY BE DIRECTED NO LATER THAN CLOSE OF BUSINESS August 2, 2017 TO:

Rod So
Contract Administrator
Email: rso@wmata.com

**Washington Metropolitan Area Transit Authority
RFP CQ17164**

NOTICE TO OFFERORS

IN ORDER TO ENSURE THAT YOUR PROPOSAL COMPLIES WITH THE AUTHORITY'S PROCUREMENT REGULATIONS AND THAT IT WILL BE ACCEPTABLE TO THE AUTHORITY, THE FOLLOWING FORMS MUST BE COMPLETED & SUBMITTED AS SPECIFIED BELOW WITH YOUR OFFER:

▪ **VOLUME I :**

- PRICE PROPOSALS (Must be completed and signed, see price schedule pages 6-8)
- SOLICITATION, OFFER & AWARD FORM (Must be completed and signed. See page 4)

▪ **VOLUME II:**

- TECHNICAL PROPOSAL (refer to the submittal requirements in the Evaluation Criteria on pages 14-17 and the Scope of Work (See Technical Specifications on pages 85-104).
- Past Performance Evaluation Form (See Attachment, must be completed and signed)
- COMPLIANCE MATRIX (See Attachment, must be completed and signed)
- INFORMATION SECURITY QUESTIONNAIRE (See Attachment, must be completed and signed).
- Submit SAMPLES / PORTFOLIO (refer to the requirements in the Evaluation Criteria and the Scope of Work.

▪ **VOLUME III:**

- ACKNOWLEDGMENT OF AMENDMENTS (must be signed, see page 5 If any)
- REPRESENTATIONS AND CERTIFICATIONS (Must be signed, see pages 23)
- PRE-AWARD DATA (Must be completed, signed and submitted with all required Schedule attachments, see pages 29)
- PROOF OF INSURANCE ELIGIBILITY -CERTIFICATE(s) OF INSURANCE

FAILURE TO SUBMIT ANY PORTION OF THESE REQUIREMENTS AS SPECIFIED MAY CAUSE YOUR PROPOSAL TO BE CONSIDERED NONRESPONSIVE AND SUBSEQUENTLY REJECTED.

Questions concerning this Request for Proposals may be directed to Rod So at Email: Rso@wmata.com no later than close of business on August 2, 2017.

Washington Metropolitan Area Transit Authority
RFP CQ17164

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.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SUPPLY AND SERVICE CONTRACT RFP-CQ17164



WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SOLICITATION, OFFER AND AWARD

CONTRACT NO.	SOLICITATION NO. RFP CQ17164	DATE ISSUED July 21, 2017	ADDRESS OFFER TO OFFICE OF PROCUREMENT Office of Procurement 600 Fifth Street NW Washington, DC 20001
	<input type="checkbox"/> ADVERTISED <input checked="" type="checkbox"/> NEGOTIATED		

SOLICITATION

Submit sealed offer in one (1) Compact Disk or USB flash drive I and TWO (2) copies (original plus one) for furnishing the supplies or services in the schedules will be received at Authority until 2:00 P.M. (Local time) August 23, 2017.
(Hour) (Date)

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.

Proposer's E-mail _____

Proposer's Phone Number _____

Proposer's Fax Number _____

SCHEDULE

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
				\$	\$
	(See continuation of schedule on page 22)				

DUN & BRADSTREET ID NUMBER: _____

OFFEROR

Name and Address (Street, city, county, state, and zip code)	Name and Title of Person Authorized to Sign Offer (Print or Type)
<input type="checkbox"/> Check if remittance is different from above — enter such address in Schedule	Signature Offer Date

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

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SOLICITATION, OFFER AND AWARD

CONTINUATION SHEET

THE UNDERSIGNED ACKNOWLEDGES RECEIPT OF THE FOLLOWING AMENDMENTS

TO SOLICITATION **WMATA RFP CQ17164**

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 offer unacceptable.

Authorized Signature

Company Name

Date

PRICE SCHEDULE SHEET

WMATA CQ17164 BACKGROUND CHECK

Price Schedule for BASE YEAR

Background Check

Description	Estimated Quantity per Year	Unit of Measure (UOM)	Unit Rate (\$)	Extended Rate per Year (Base Year)	Comments
Background Check, Includes Part A, B, and C	2,300	EACH	\$	\$	

On-Site Personnel - Staffing

Staffing/ Position	Estimated Quantity of Person/s (A)	Est. No. of Hours Per Day (B)	Unit of Measure	Est. No. of Days Per Week (C)	\$ Unit Rate per Hour (D)	Extended Rate per Week (E) E= A x B x C x D	Est. No. of Weeks Per Year (F)	Extended Rate per Year (Base Year) (G) G = E x F
Background Screening Coordinators (Refer to Appendix E)	2	7.5	Hour	5	\$	\$	52	\$

All rates shall be fully loaded, meaning that all direct and indirect costs are included, including profit, overhead, G&A, etc. All expenses, including, but not limited to photocopying shall be included.

The estimated quantity is not a guarantee of the actual quantity to be required or ordered.

Authorized Name & Signature

Company Name

Date

WMATA Vendor Number

PRICE SCHEDULE SHEET (Continuation)

WMATA CQ17164 BACKGROUND CHECK

Price Schedule for OPTION YEAR 1

Background Check

Description	Estimated Quantity per Year	Unit of Measure (UOM)	Unit Rate (\$)	Extended Rate per Year (Option Year 1)	Comments
Background Check, Includes Part A, B, and C	2,300	EACH	\$	\$	

On-Site Personnel - Staffing

Staffing/ Position	Estimated Quantity of Person/s	Estimate Number of Hours Per Day	Unit of Measure	Est. No. of Days Per Week	\$ Unit Rate per Hour	Extended Rate per Week	Est. Number of Weeks Per Year	Extended Rate per Year (Option Year 1)
Background Screening Coordinators (Refer to Appendix E)	2	7.5	Hour	5	\$	\$	52	\$

All rates shall be fully loaded, meaning that all direct and indirect costs are included, including profit, overhead, G&A, etc. All expenses, including, but not limited to photocopying shall be included.

The estimated quantity is not a guarantee of the actual quantity to be required or ordered.

Authorized Name & Signature

Company Name

Date

WMATA Vendor Number

PRICE SCHEDULE SHEET (Continuation)

WMATA CQ17164 BACKGROUND CHECK

Price Schedule for OPTION YEAR 2

Background Check

Description	Estimated Quantity per Year	Unit of Measure (UOM)	Unit Rate (\$)	Extended Rate per Year (Option Year 2)	Comments
Background Check, Includes Part A, B, and C	2,300	EACH	\$	\$	

On-Site Personnel - Staffing

Staffing/ Position	Estimated Quantity of Person/s	Est. Number of Hours Per Day	Unit of Measure	Est. No. of Days Per Week	\$ Unit Rate per Hour	Extended Rate per Week	Est. Number of Weeks Per Year	Extended Rate per Year (Option Year 2)
Background Screening Coordinators (Refer to Appendix E)	2	7.5	Hour	5	\$	\$	52	\$

All rates shall be fully loaded, meaning that all direct and indirect costs are included, including profit, overhead, G&A, etc. All expenses, including, but not limited to photocopying shall be included.

The estimated quantity is not a guarantee of the actual quantity to be required or ordered.

Authorized Name & Signature

Company Name

Date

WMATA Vendor Number

RFP SOLICITATION INSTRUCTIONS

1. INTRODUCTION

- (a) The Authority seeks to award a contract to a qualified contractor to conduct background screening services. This requirement is consistent with the Authority's commitment to public safety, security and policy requirements. WMATA is required to conduct pre-employment background screenings on candidates for employment and other background screenings on current employees in accordance with the law and WMATA's policies. To that end, it is issuing this Request for Proposals (RFP) to solicit proposals from qualified firms and individuals who can satisfy the requirements described herein.
- (b) Since this is a Low Price Technically Acceptable (LPTA) solicitation, award of a Contract hereunder shall be to the offeror whose proposal is deemed by the Authority as satisfying all technical requirements for acceptability stated in the solicitation and offers the lowest price of those satisfying all such requirements
- (c) The Authority contemplates award of a firm fixed priced contract. Unless otherwise specified in the Price Schedule, the Authority reserves the right to make multiple awards pursuant to this solicitation.
- (d) **REQUIREMENTS CONTRACT.** This is a requirements Contract. A requirements Contract provides the Contractor with both the legal right and the legal duty to supply goods and/or services in an amount that is determined by WMATA's needs, rather than by a fixed quantity. Offerors are advised that the quantities of services specified in the Price Schedule are estimates only, included for purposes of price evaluation and in order to provide information to assist offerors in formulating their proposals. While they represent the Authority's best such estimate as of the time of the solicitation, they do not constitute a commitment on the part of the Authority to procure supplies or services at the estimated level.
- (e) In the event that the Contractor is unable or otherwise fails to provide services within the time frames required in this Contract, the Authority reserves the right to procure them from any other source and in any other manner it deems appropriate. Nothing contained herein shall be deemed to waive, modify or impair the Authority's right to treat such failure as a material breach of the Contractor's obligations pursuant to the "Default" article under this Contract, or to pursue any other remedy to which the Authority may be entitled pursuant to this Contract, at law or in equity.

2. SERVICES TO BE SUPPLIED

In preparing their proposals, offerors are advised that:

- (a) All "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.

3. COMMUNICATIONS WITH THE AUTHORITY

Prospective offerors are advised that any and all communications with WMATA relating to this solicitation and made by, or on behalf of, a prospective offeror at any time between release of this Request for Proposals and award of a Contract hereunder, must be directed to the Contract Administrator as follows: Rod So at email rso@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 OFFERS

- (a) Offerors shall furnish all information requested by the solicitation and, in so doing, are expected to examine the Request for Proposals and all referenced documents carefully. Failure to do so will be at Offeror's risk.
- (b) The Offeror 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 offer.
- (c) Offerors must state a definite time for delivery and or for performance of services unless otherwise specified in the solicitation.
- (d) In preparing its proposal, an offeror 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.

5. EXPLANATIONS TO OFFERORS

- (a) Any explanation desired by an offeror regarding the meaning or interpretation of the solicitation or Contract including, without limitation, the terms and conditions, technical specifications or Statement of Work, and Contract drawings, must be requested in writing with sufficient time allowed for a reply to reach all offerors before proposal closing. Absent extraordinary circumstances, all inquiries must be transmitted in a time frame to ensure the Contracting Officer's receipt prior to the specified date. All such requests must be submitted via e-mail or first class mail to the Contract Administrator identified in Paragraph 3. Include the RFP number and Contract title in any correspondence.
- (b) Any information that the Authority furnishes to a prospective offeror relating to the solicitation will be provided in writing to all prospective offerors 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 the lack of such information would be otherwise prejudicial to other prospective offerors. Offerors must acknowledge receipt of all amendments on the form provided.

- (c) Offerors are advised that 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.
- (c) The failure of a prospective offeror 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 offeror.

6. PRE-PROPOSAL CONFERENCE

For the purpose of clarifying the terms, conditions, and requirements of this Request for Proposals, a pre-proposal conference will be held to respond to questions by prospective offerors. **This pre-proposal conference will be held at 10:00 a.m. on Thursday, August 3, 2017, in the Bus Conference Room 306, at the 3rd Floor of the WMATA Jackson Graham Building, 600 5th Street, NW, Washington, DC 20001.** It is requested that offerors submit their questions in writing, whether in advance of the meeting or during the meeting. Questions from the floor, however, are permissible.

7. AMENDMENTS PRIOR TO DATE SET FOR RECEIPT OF PROPOSALS

- (a) The Authority reserves the right to amend any of the terms of this RFP or the Contract, prior to the date set for the proposal closing. Copies of any such amendments as may be issued will be furnished in writing to all prospective proposers.
- (b) If, in the Contracting Officer's judgment, any amendment(s) would require material changes to price proposals and/or other substantive element(s) of the proposals, the date set for proposal closing may be postponed for such period as in the Contracting Officer's opinion will enable offerors to revise their proposals. In such instances, the amendment will include an announcement of the new date for proposal closing.
- (c) In the event of an amendment, all other terms and conditions of the solicitation shall remain unchanged.

8. ACKNOWLEDGMENT OF AMENDMENTS

Offerors are required to acknowledge receipt of all amendment(s) to the solicitation on the designated form to be submitted with their proposal. Failure to do so may, at the Contracting Officer's discretion, jeopardize the offeror's right to have its proposal reviewed by the Authority.

9. SUBMISSION OF PROPOSALS

Proposals, and any revisions thereto, shall be enclosed in sealed envelopes and addressed to the office specified in the solicitation. Proposals shall show the hour and date specified in the solicitation for receipt, the solicitation number, and offeror's name and address on the face of the envelope. Faxed proposals will not be considered.

10. PROPOSAL FORMAT INSTRUCTIONS/REQUIREMENTS

Offerors shall submit proposals as follows:

a. Proposal Format

The original of Volumes I and 2 shall be unbound, all copies of Volumes 1 and 2, as well as Volume 3 will be separately marked and all copies shall have the RFP number, the Offeror's identity, volume number, and volume title printed on the cover page. Volumes shall be submitted in the following order:

(1) Volume I:

- Price Proposal (Must be completed and signed, see price schedules pages 6-8).
- Solicitation, Offer and Award sheet. (Must be completed and signed, see page 4).

(2) Volume II:

- Technical Proposal (refer to the submittal requirements in the Evaluation Criteria on pages 14-17 and the submittal requirements of the Scope of Work on pages 85-104).
- Submit the Compliance Matrix (Must be completed and signed, see attachment)
- Information Security Questionnaire (See Attachment, must be completed and signed)
- Submit the Past Performance Evaluation Form (See Attachment, must be completed and signed)
- Submit company portfolio and of similar projects/contracts as specified in the requirements of the evaluation criteria. (Refer to the requirements in the Evaluation Criteria and the Scope of Work).

(3) Volume III:

- Representations and Certifications. (Must be completed and signed, see pages 23)
- Pre-Award Data Form (Completed, signed and Submit All Required Schedule Attachments. see pages 29)
- Certificate(s) of Insurance
- Signed Acknowledgement of Amendments (See page 5)

Note: Submit one (1) Compact Disk or USB flash drive containing Volumes I, II, and III and Two (2) hard copies (Original plus one).

b. **Volume I:**

- Price Proposal. All information relating to cost or pricing data must be submitted in this volume. Under no circumstances shall cost or pricing data be included elsewhere in the offeror's proposal. The offeror must sign the Price Schedule. (See pages 6-8).
- Solicitation, offer and award sheet. Offeror must complete and submit the solicitation, offer, and award sheet (See page 4) and sign.

c. **Volume II:**

- Technical Proposal. The technical proposal shall enable WMATA evaluating personnel to make a thorough evaluation and arrive at a sound determination as to whether or not the proposal will meet the specifications in accordance with the Authority's requirements. Technical proposals shall be specific, detailed, and complete and demonstrate that the Offeror has a thorough knowledge and understanding of the requirements. Offeror's shall avoid statements which paraphrase the specifications or attest that "standard procedures will be employed," are inadequate to demonstrate how it is proposed to comply with the requirements of the specifications, and this clause.

The Technical Proposal, at a minimum, must include the following:

- Remarks on the details specified in the Scope of Work.
- Submit a completed and signed Compliance Matrix. See attachment.
- Information Security Questionnaire (See Attachment, must be completed and signed).
- Submit all the requirements under the Evaluation Criteria.
- Submit a completed and signed Past Performance Evaluation For (See attached)
- Submit company portfolio and of similar projects/contract as specified in the Evaluation Criteria and Scope of Work.

d. **Volume III:**

- Contractual. Contractual documents to be submitted with the proposal must include;
 - Representations, and Certifications (See pages 23).
 - Pre-Award Data Form (Completed and submit all required Schedule Attachments) (See Pages 29).
 - Certificate(s) of Insurance.
 - Amendments (Completed and signed)

11. LATE SUBMISSIONS AND REVISIONS OF PROPOSALS

- (a) Any proposal or revision received at the office designated in the solicitation after the time specified for receipt will not be considered unless it was sent, properly addressed:
 - (1) By registered or certified U.S. or Canadian mail not later than the fifth (5th) day before the date specified for proposal closing. (e.g. A proposal or revision relating to a solicitation with a closing date of the 20th of a month must have been placed in registered or certified mail by not later than the 15th of such month.);
 - (2) By first class mail, if the Contracting Officer determines that the late receipt was due solely to the Authority's mishandling after delivery on its premises; or
 - (3) By U.S. Postal Service, Express Mail, Next Day Service, not later than 5:00 p.m. at the place of mailing two (2) business days prior to the date specified for proposal closing; or
- (b) A revision submitted after the date and time set for proposal closing will only be accepted if the Contracting Officer authorizes it. A submission in the nature of a Best and Final Offer ("BAFO") received after the time and date specified in the Contracting Officer's request for BAFOs will not be considered unless received before award and, in Contracting Officer's judgment, the late delivery was not attributable to the offeror's acts or omissions.
- (c) The only acceptable evidence to establish the time of receipt by the Authority is the time/date stamp of that event on the proposal or any other documentary evidence of receipt maintained by the Authority.
- (d) A proposal received after proposal closing may be considered if it is the only proposal received for the solicitation, or if a late revision of any otherwise successful proposal makes its terms more favorable to the Authority.

12. WITHDRAWAL OF PROPOSALS

Proposals may be withdrawn by written notice received by the Authority before award. Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is appropriately demonstrated and the representative signs a receipt for the proposal before award. A proposal may not be withdrawn after ninety (90) days from proposal closing without the Contracting Officer's written approval.

13. RECEIPT AND REVIEW OF PROPOSALS BY THE AUTHORITY

- (a) There will be no public opening of proposals for this solicitation. Proposals will be opened by the designated Authority representative and copies of the three (3) volumes of the proposal will be distributed for review by Authority designated personnel only, as appropriate. All reasonable efforts will be made to ensure confidentiality of the information contained in the proposals, consistent with applicable provisions of law.
- (b) The Authority may award a Contract on the basis of the initial proposals as evaluated in accordance with the Evaluation Criteria without discussions. Accordingly, the initial proposal should contain the offeror's best terms from both a price and technical standpoint.

- (c) Notwithstanding a determination by the Authority to proceed without conducting substantive negotiations or discussions with offerors, the Authority may engage in communications with one (1) or more offerors relating to clarification(s) of their proposals.
- (d) The Contracting Officer may conduct discussions with offerors only for the purpose of making a marginal proposal acceptable. If all initial proposals are technically acceptable, the Authority may not conduct further discussions with offerors prior to Contract award.
- (e) The Contracting Officer may request revised price proposals from all offerors who are technically acceptable.
- (f) The Authority maintains the right to waive informalities and minor irregularities in proposals at any time during the solicitation process.

14. EVALUATION CRITERIA AND BASIS FOR AWARD (LOW PRICE TECHNICALLY ACCEPTABLE)

THE BASIS FOR AWARD WILL BE: LOW PRICE - TECHNICALLY ACCEPTABLE

- (a) The Authority will award a Contract resulting from this solicitation to the responsible offeror(s) whose proposal conforms to the solicitation and is determined to be the lowest priced among those proposals rated “technically acceptable.” For purposes of determining whether a proposal is “technically acceptable” for purposes of this solicitation, the following Criteria for Acceptability shall apply:
- (b) The Authority reserves the right to award this Contract without discussions or further communications concerning the proposals received. Proposals should contain the offeror’s best terms from both a price and technical standpoint. The Contracting Officer reserves the right to engage in oral or written communications with proposers, if necessary to make a marginal proposal acceptable.
- (c) Price evaluations will be based on the total cost to the Authority for base year requirements, plus any option years.
- (d) The elements of the technical proposal will be rated in accordance with the Criteria for Acceptability. Only those proposal(s) as are deemed acceptable in terms of their overall technical merit shall remain eligible for potential award.

The offeror’s will be evaluated for acceptability based on the Criteria listed below.

1. CONTRACTOR’S EXPERIENCE AND QUALIFICATIONS:

The offeror’s firm must provide and submit their statement of qualification (SOQ) with specific experience in the performance of managing and conducting background screening services.

- a. The offeror must include in their submittals the following but not limited to, ownership, organizational structure, products & services, training & support, memberships, certifications, company strategies, history, contact information, etc. as part of their company portfolio.
- b. The offeror’s firm must have at least five (5) years of experience in the fields of managing and conducting large scale defined as a minimum of 300 background

screening per month and which are similar or comparable to the requirements and details in the scope of work. The Offeror must submit references proving these requirements.

- c. The offeror must have at least three (3) past performance projects/contracts on background checks that are current or have been successfully completed in the last five (5) years. The offeror must be the prime contractor and where the work performed must be similar in scope of work required under this solicitation. At least one (1) of these projects/contract for background screening must be or has been performed for the Federal, Local Government, Authority, and Government agency sector or Government Contractor.

The offeror must identify these projects/contracts by submitting the following references;

1. Name and location of the project.
 2. Name of the Agency/Organization.
 3. Name, title, phone number and email of contact person
 4. General description of the contract's scope of work, performance measures, etc.
 5. Contract performance period.
- d. The offeror must submit a completed and signed performance evaluation reports form from the authorized technical contract representatives of the projects/contracts. See attached project/contract performance evaluation form.

The Authority may contact the references to verify the reports.

2. QUALIFICATION OF KEY PERSONNEL /MANAGEMENT:

The offeror must demonstrate the qualifications, experience and availability of key personnel assigned to the project to successfully implement the requirements of the scope of work. The offeror must provide the qualification descriptions of the managers, supervisors and key personnel who will be responsible for managing and performing the core activities of background checks. These includes the on-site Background Screening Coordinators.

- a. The key management and personnel must have at least five (5) years of experience in managing and conducting background screening activities for a similarly large organization. The offeror must provide and submit the resumes of the key personnel together with the technical proposal. The resumes must contain their work experience in relation to the requirements of this RFP and the scope of work.
- b. The offeror must also provide and submit a plan of action when changes to the assigned key personnel are expected and in case of changes of personnel assigned to a project or contract.

3. SUBMITTAL REQUIREMENTS:

Each offeror shall submit their portfolio that affirms their qualification as required under these evaluation factors and the scope of work. The submittals shall be included in its technical proposal. The burden is on the offeror to affirmatively demonstrate in its proposal that all of the qualification requirements, evaluation factors, and scope of work requirements are met. The submittal format and or portfolio format is at the discretion of the offeror.

Proposers should be aware that both price and overall technical merit are of extreme importance to the Authority in this Solicitation.

15. RATINGS FOR PROPOSAL EVALUATION CRITERIA (BEST VALUE)

NOT APPLICABLE.

16. RATINGS FOR ACCEPTABILITY CRITERIA (LOW PRICE, TECHNICALLY ACCEPTABLE, ONLY):

Each criterion will be rated using the following scoring method:

Definition:

- | | |
|--------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Acceptable | Meets criteria for acceptability/evaluation standards required under the technical provisions. Weaknesses are correctable. |
| Marginal | Fails to meet criteria for acceptability/evaluation standards. Any significant deficiencies are correctable. Lacks essential information to support a proposal. |
| Unacceptable | Fails to meet a criterion for acceptability or an acceptable evaluation standard and the deficiency is uncorrectable. Proposal would have to undergo a major revision to become acceptable. Demonstrated lack of understanding of WMATA's requirements or omissions of major areas. |

A rating of "Acceptable" is required to be eligible for award consideration. An initial proposal that is marginal must be determined to be either acceptable or unacceptable before any award(s) can be made. Offerors are cautioned to be aware of these standards when preparing proposals.

17. PRICE PROPOSAL EVALUATION

- (a) The Contracting Officer will evaluate price proposals for reasonableness, completeness, and realism as appropriate. Costs will be evaluated in terms of the following:
- (1) Submittal of proposed prices for both the base year (s) and the option year(s), if any;
 - (2) Any offer that is materially unbalanced may be rejected. An unbalanced offer is one (1) that is based on prices that are significantly overstated for some items and understated for other items;
 - (3) The Contracting Officer will compare the price proposals to the Authority's estimate and otherwise determine reasonableness by performing a price analysis, if adequate competition exists. If, in the Contracting Officer's judgment, adequate price competition does not exist, he or she will conduct a cost analysis in order to ascertain whether the proposed price is fair and reasonable;
- (b) The offeror shall provide certified cost or pricing data if the Contracting Officer requests it.

18. TECHNICAL PROPOSAL EVALUATION

FOR Low Price – Technically Acceptable:

The Authority will evaluate the technical proposals in accordance with the “Criteria for Acceptability” set forth in paragraph 14, above including all required submittals. A proposal that fails to meet the minimum standard for acceptability with respect to each element may be deemed technically unacceptable and thus ineligible for award, regardless of price.

19. PRE-AWARD INFORMATION/CONTRACTOR RESPONSIBILITY

- (a) In order to be eligible for award of a Contract, a proposer 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.
- (b) The Contracting Officer may conduct a pre-award survey and/or take other actions to obtain information regarding the proposer’s responsibility, if its offer is in the competitive range or is otherwise under consideration for award. The proposer 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, a proposer 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.
 - (3) Small Business Local Preference Program (SBLPP) documentation (if applicable) as set forth in Appendix C. The offeror’s failure to supply this information or otherwise fully cooperate with the Authority’s inquiry may result in a determination that the offeror is not responsible for purposes of this solicitation and thereby ineligible for award.

20. PRE-AWARD MEETING

NOT APPLICABLE.

21. SITE VISIT/INSPECTION OFFEROR’S FACILITIES

A successful Offeror 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 offeror’s facilities. This will include verifying that necessary equipment, supplies, etc. are readily available and adequate.

22. CONTRACT AWARD

- (a) At the conclusion of reviewing the technical proposals for acceptability, the Contracting Officer shall award Contract to the responsible offeror whose proposal is the lowest priced out of all proposals that are technically acceptable. Such determination shall be based upon initial price proposals or revised price proposals where the Contracting Officer directs their submission.
- (b) A written award mailed or otherwise furnished to the successful offeror at any time prior to withdrawal of the proposal shall result in a binding Contract without further action by either party. Discussions conducted after receipt of an offer do not constitute the Authority's rejection or counteroffer.
- (c) The Authority reserves the right to reject and any all proposals received and decline to enter into a Contract pursuant to this solicitation, if it deems such action is in the Authority's best interests.

23. PERFORMANCE/PAYMENT BONDS

NOT APPLICABLE.

24. OPPORTUNITY FOR DISADVANTAGED BUSINESS ENTERPRISES TO PROPOSE

The Washington Metropolitan Area Transit Authority hereby notifies all prospective offerors that it will affirmatively ensure that disadvantaged minority business enterprises will be afforded full opportunity to submit proposals 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 or gender identity in consideration for award.

25. 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 proposal, the offeror certifies that none of the taxes that the Authority is exempt from are included in its cost proposal.

26. RESTRICTION ON DISCLOSURE AND USE OF DATA

The Authority shall provide all reasonable precautions to ensure that proprietary, technical and pricing information remains within the review process. Offerors shall attach to any proprietary data submitted with the proposal the following legend:

- (a) "This data furnished pursuant to this RFP shall not be disclosed outside the Authority, be duplicated, or used, in whole or in part, for any purpose other than to evaluate the offer. If a Contract is awarded on the basis of this offer, the Authority shall have the right to duplicate, use, and disclose this data, in any manner and for any purpose whatsoever.
- (b) This information does not limit the Authority's right to use information contained in this data, if the Authority obtains it from another independent, legitimate source.
- (b) Except for the foregoing limitation, the Authority or its agents may duplicate, use, and disclose in any manner and for any purpose whatsoever, all data furnished in response to this solicitation."

27. 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.

28. BRAND NAME OR EQUAL

NOT APPLICABLE.

29. 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 offeror 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 offeror shall be required to provide a redacted copy of the successful technical and price proposals 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 successful proposal will be of wide public interest, WMATA will post the redacted proposal on its website. When WMATA receives three (3) or more requests for a successful proposal, WMATA will post the redacted proposal on its website.
- (f) Requests for Records that are not made available during the procurement process and that are not generally made available during the de-briefing 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 parpprivreq@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 proposal/debriefing process nor the PARP process generally allow for the release of information that would cause competitive harm to the proposers, other organizations, WMATA's employees, or interests. Information that will be withheld includes the following:
 - (1) The names of unsuccessful offerors;
 - (2) The technical and price proposals of unsuccessful offerors;
 - (3) Personal information (this does not include education and qualifications which are released) about the successful offeror or its employees that is not available to the public on the website of the successful offeror;
 - (4) Unit price details of the successful price proposal (this does not include the bottom line price, which is released);
 - (5) WMATA's technical evaluation of any proposals submitted to WMATA pursuant to a solicitation;
 - (6) The names of the vendors who file a protest to the solicitation or its award;
 - (7) The written adjudication of any protests;
 - (8) Personal information concerning WMATA's employees; and
 - (9) Trade secrets and confidential commercial or financial information obtained from an offeror.
- (h) If your company's records are subject to a PARP request (i.e., if it is the successful offeror), a broad claim of confidentiality for the entire proposal or pages of the proposal 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:

- (1) Detailed pricing except bottom line offer amounts;
- (2) Trade Secrets;
- (3) Unique proprietary solutions not publicly known;
- (4) Employee/personnel names below the executive level; however, information regarding qualifications of employees is released; and
- (5) Subcontractor/vendor identities, if not publicly known.

(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 RFP requirement; and
- (5) Anything standard to the industry.

30. NOTICE OF PROTEST POLICY

- (a) The Authority's procedure for the administrative resolution of protests is set forth in Chapter 17 of the Procurement Procedures Manual. 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) Alleged violations must be submitted to the Contracting Officer who will administratively decide the protest.
- (c) 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.

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. SMALL BUSINESS & LOCAL PREFERENCE PROGRAM (SBLPP)

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

- (a) It [] is, [] is not, a small business and local preference program enterprise certified firm. "Small Business and Local Preference Program" enterprise means a for profit small business concern that is located in the District of Columbia, Maryland, or Virginia and meets the U.S. Small Business Administration small business size standards.

Name	Signature
Title	Company
Date	

4. 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	

5. 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:

- 5.1** 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
- 5.2** 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	

6. DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

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

6.1 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.

6.1.1 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:

6.1.1.1 are not currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or state department or agency;

6.1.1.2 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;

6.1.1.3 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.

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

6.2 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.

6.2.1 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.

6.2.2 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.

6.3 The Certification required by 6.2, 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	

7. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

7.1 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:

7.1.1 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;

7.1.2 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

7.1.3 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.

7.2 Each person signing this offer certifies that:

7.2.1 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 7.1.1 through 7.1.3 above; or

7.2.2 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 7.1.1 through 7.1.3 above; or and as their agent he or she does hereby so certify.

Name	Signature
Title	Company
Date	

8. NONDISCRIMINATION ASSURANCE

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	

9. DISCLOSURES OF INTERESTS OF WMATA BOARD MEMBERS

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

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

9.1 ☐ 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.

9.2 ☐ 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

9.3 The certification required by 9.1 and 9.2 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	

10. CRIMINAL BACKGROUND SCREENING CERTIFICATION

By submission of this offer, the offeror certifies that:

- 10.1 It will conduct or engage a reputable third-party vendor to conduct, criminal background screenings of all Contractor personnel who would have access to WMATA's customers, WMATA's property, or WMATA's information in connection with this Contract. This requirement also applies to Contractors who engage with the general public on WMATA's behalf.
- 10.2 It will screen for criminal convictions, all Contractor personnel who would have access to WMATA's customers, the general public, WMATA's property, or WMATA's information and who work on this Contract during each calendar year within this Contract's period of performance. The Offeror will provide proof that it conducted these screenings to the Contracting Officer's Technical Representative (COTR) on a quarterly basis using the WMATA-required certification form. The COTR will provide this information to WMATA's Badge Office, for any Contractor employees or agents requiring a WMATA Contractors' badge for admission to a WMATA facility.
- 10.3 The Offeror will conduct the screenings identified in 18.2 above taking due regard for the nature of the job(s) to which the Contractor personnel are or would be assigned and their exposure to and interaction with WMATA's customers and the general public.
- 10.4 The Offeror will also ensure that all Contractor personnel working on this Contract during the calendar quarter remain in good standing and are otherwise fit to work on this Contract.
- 10.5 The Offeror has not obtained or otherwise been made aware of any information about any Contractor personnel working on this Contract that contradicts or otherwise impacts the Contractor's determination that such persons passed the Contractor's criminal background screening and/or are fit to work on this Contract.

Name	Signature
Title	Company
Date	

PRE-AWARD EVALUATION DATA

PROJECT DESCRIPTION: _____

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. _____

f. _____

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

7. Attach as Schedule One (1) 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. Attach as Schedule Two (2) a list of similar contracts, each with contract amount, name of contracting party, and character or type of work for similar contracts completed in the last two (2) years.

9. In the last two (2) years has your firm been denied an award where it was the offeror?

If the answer is yes, attach as Schedule Three (3) the full particulars regarding each occurrence.

10. Has your firm failed to complete, in the last two (2) years, any contract on which it was the offeror?

If the answer is yes, attach as Schedule Four (4), 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. Attach as Schedule Five (5) financial statements and letters from banks regarding credit as required by the "Pre-Award Information" article.
13. What percentage of work (Contract amount) does your firm intend performing with its own personnel? %.
14. Attach as Schedule Six (6), a list of all principal subcontractors and the percentage and character of work (Contract amount) that each will perform. Principal items of work shall include, but not be limited to, those items listed in the "Pre-Award Information" article.
15. If the Contractor or subcontractor is in a joint venture, submit "Pre-Award Evaluation Data" forms for each member of the joint venture.

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 background checks, including all necessary or incidental work, labor and materials. 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 the 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 or Scope of Work; (c) drawings, if any; (d) other documents, exhibits, and attachments generated by the Authority as part of the Contract; (e) the technical proposal, if any, and other Contractor submissions generated as part of the 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 funding provided by 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 the Contract.

4. REQUIREMENTS CONTRACT

- (a) This is a requirements Contract. A requirements contract provides the Contractor with both the legal right and the legal duty to supply goods and/or services in an amount that is determined by WMATA's needs, rather than by a fixed quantity. Offerors are advised that the quantities of supplies and/or services specified in the Price Schedule are estimates only, included for purposes of price evaluation and in order to provide information to assist offerors in formulating their proposals. While they represent the Authority's best such estimate as of the time of the solicitation, they do not constitute a commitment on the part of the Authority to procure supplies or services at the estimated level. If, however as the result of an urgent need, the Authority requires any quantity of goods or services before the date otherwise specified under this Contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Authority may acquire the urgently required goods or services from another source.

- (b) If the Contractor is unable or otherwise fails to provide goods or services within the time frames required in this Contract, the Authority reserves the right to procure them from any other source and in any other manner it deems appropriate. Nothing contained herein shall be deemed to waive, modify or impair the Authority's right to treat such failure as a material breach of the Contractor's obligations pursuant to the "Default" article of this Contract, or to pursue any other remedy to which the Authority may be entitled pursuant to this Contract, at law or in equity.

5. INDEFINITE QUANTITY CONTRACT

NOT APPLICABLE.

6. ORDERING

- (a) The Contracting Officer shall order services to be furnished under this Contract by the issuance of delivery orders, purchase orders or task orders. Such orders may be issued throughout the Period of Performance.
- (b) All delivery orders, purchase orders, or task orders are subject to the terms and conditions of this Contract. In the event of a conflict between a delivery order or task order and this Contract, this Contract shall control.
- (c) If mailed, a delivery order, purchase order, or task order is considered "issued" when the Authority places the order in the mail. Orders may be issued electronically, if authorized by the Price Schedule.

7. ORDER LIMITATIONS

The Contractor shall honor any order without order limitations in this clause, unless that order (or orders) is returned to the Contracting Officer within five (5) days after issuance, with written notice stating the Contractor's intent not to perform the services ordered and provide the reasons. Upon receiving this notice, the Contracting Officer may acquire the services from another source.

8. AUDIT, AVAILABILITY, AND INSPECTION OF RECORDS

- (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 proposal for the Contract, subcontract, or modification; (2) any clarifications or

discussions conducted on the proposal; (3) pricing of the Contract, subcontract or modification; or (4) performance of the Contract, subcontract or modification.

- (e) 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 \$100,000.

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 30th. 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; and
 - (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 one (1) base year commencing on the date of notice to proceed.

The Authority has the unilateral right to extend this Contract by exercising up to two (2) one-year option periods subject to all terms and conditions stated herein.

The Authority may exercise the options by written notice to the Contractor prior to commencement of the option period; provided, that the Authority shall give the Contractor a preliminary notice of its intent to exercise an option within a reasonable time before the Contract expires. The preliminary notice does not commit the Authority to exercise an option.

1. OPTIONS – EVALUATION

In awarding this Contract, the Contracting Officer shall evaluate offers for any option quantities or periods contained in a solicitation in accordance with PPM §§ 4-21 through 4-23.

2. OPTIONS – EXERCISE

(a) When exercising an option, the Contracting Officer shall provide written notice to the Contractor within a reasonable amount of time before exercising the option.

(b) When the Contract provides for economic price adjustment and the Contractor requests a revision of the price, the Contracting Officer shall determine the effect of the adjustment on prices under the option before the option is exercised.

(c) In accordance with PPM § 4-23, the Contracting Officer may exercise options only after determining that—

- (1) Funds are available;
- (2) The requirement covered by the option fulfills an existing WMATA need;
- (3) The exercise of the option is the most advantageous method of fulfilling WMATA's needs, when price and other factors are considered.
- (4) Contractor is not listed in the System for Award Management's Exclusions (See www.sam.gov).
- (5) The Contractor's past performance evaluations on other Contract actions have been considered; and
- (6) The Contractor's performance on this Contract has been acceptable in that it received satisfactory ratings.

(d) The Contracting Officer, after considering price and other factors, shall make the determination on the basis of one (1) of the following:

- (1) A new solicitation fails to produce a better price or a more advantageous offer than that offered by the option. If it is anticipated that the best price

available is the option price or that this is the more advantageous offer, the Contracting Officer should not use this method of testing the market.

- (2) An informal analysis of prices or an examination of the market indicates that the option price is better than prices available in the market or that the option is the more advantageous offer.
 - (3) The time between the award of the Contract containing the option and the exercise of the option is so short that it indicates the option price is the lowest price obtainable or the more advantageous offer. The Contracting Officer shall take into consideration such factors as market stability and comparison of the time since award with the usual duration of Contracts for such supplies or services.
- (e) The determination of other factors under subparagraph (d), should take into account WMATA's need for continuity of operations and potential costs of disrupting operations.
- (f) Before exercising an option, the Contracting Officer shall make a written determination for the Contract file that the exercise is in accordance with the terms of the option, and the requirements of this clause. To satisfy requirements for full and open competition, the option must have been evaluated as part of the initial competition and be exercisable at an amount specified in or reasonably determinable from the terms of the basic contract, such as:
- (1) A specific dollar amount;
 - (2) An amount to be determined by applying provisions (or a formula) provided in the basic contract, but not including renegotiation of the price for work in a fixed-price type contract;
 - (3) In the case of a cost-type contract, if—
 - (a) The option contains a fixed or maximum fee; or
 - (b) The fixed or maximum fee amount is determinable by applying a formula contained in the contract;
 - (4) A specific price that is subject to an economic price adjustment provision; or
 - (5) A specific price that is subject to change as the result of changes to prevailing labor rates provided by the U.S. Secretary of Labor.
- (g) The Contract modification or other written document that notifies the Contractor of the exercise of the option shall cite this article as authority.

4. OPTION FOR INCREASED OR DECREASED QUANTITIES OF SUPPLIES

NOT APPLICABLE.

5. OPTIONS TO EXTEND SERVICES

WMATA may require continued performance of any services within the limits and at the rates specified in this Contract. These rates may be adjusted only as a result of revisions to the

prevailing labor rates provided by the U.S. Secretary of Labor. This option provision may be exercised more than once, but the total extension of performance thereunder shall not exceed six (6) months. The Contracting Officer may exercise the option by written notice to the Contractor within a reasonable amount of time exercising the option.

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 article.
- (c) The total duration of this Contract, including any options under this article shall be reasonable as determined by the Contracting Officer in consultation with counsel (COUN).

7. OPTIONS EXERCISED OUT OF SEQUENCE

WMATA may exercise options at any time, including during the base period, and in any sequence, even if it varies from the sequence stated in the Price Schedule. The Contractor may be entitled to an equitable adjustment in the Contract price, if exercising the option out of sequence causes any undue delay in performance of this Contract. If options are extended during the base period or out of sequence, any previously agreed to economic price adjustment for exercise of the option may not apply, at the Contracting Officer's discretion.

8. LIQUIDATED DAMAGES FOR DELAY

NOT APPLICABLE.

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 delivery(ies) 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 clause 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.

CHAPTER III – ACCEPTANCE/INSPECTIONS/DEFICIENCIES

1. INSPECTION OF SERVICES

- (a) The Contractor shall provide and maintain an inspection system acceptable to the Authority covering the services under this Contract. The Contractor shall maintain complete records of all inspection work it performs and make them available to the Authority during Contract performance in the manner and in accordance with the time periods set forth in the “Audit and Inspection of Records” article of this Contract.
- (b) The Authority has the right to inspect and test all services called for by this Contract, at all times and places reasonably practicable during the term of this Contract. The Authority shall perform inspection and tests in a manner that will not unduly delay the Contract.
- (c) If the Authority performs inspections or tests on the Contractor’s or subcontractor’s premises, the Contractor shall furnish, and shall require subcontractors to furnish, without cost, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.
- (d) If any of the services performed do not conform to the Contract’s requirements, the Authority may require the Contractor to perform them again in conformity with the Contract’s requirements, without additional cost. When the defects in performance cannot reasonably be corrected by such further performance, the Authority may:
 - (1) Direct the Contractor to take necessary action to ensure that future performance conforms to this Contract’s requirements; and/or
 - (2) Reduce the Contract price to reflect the reduced value of the services performed.
- (e) If the Contractor fails to comply with the provisions of paragraph (d), the Authority may:
 - (1) By contract or otherwise, perform the services and charge to the Contractor any cost thereby incurred by the Authority; and/ or
 - (2) In the event that the Contracting Officer deems such failure to comply a material breach, terminate the Contract for default.
- (f) Nothing contained herein shall be deemed to preclude the Contracting Officer from reducing the Contract price due to the reduced value of nonconforming services to the Authority.

2. INSPECTION OF SUPPLIES

NOT APPLICABLE.

3. ACCEPTANCE OF SUPPLIES

NOT APPLICABLE.

4. NEW MATERIAL [SUPPLIES]

NOT APPLICABLE.

5. WARRANTY OF SERVICES

(a) Definition:

"Acceptance," as used in this clause, means the act(s) of WMATA' authorized representative by which WMATA approves specific services, in partial or complete performance of the Contract.

"Correction," as used in this clause, means the elimination of a defect.

(b) The Contractor warrants that all services performed under this contract will, at the time of receipt, be free from defects in workmanship and conform to the requirements of this Contract. The Contracting Officer (CO) shall give written notice of any defect or nonconformance to the Contractor within 30 days from the date of receipt by WMATA. This notice shall state either of the following:

1. The Contractor shall correct or re-perform any defective or nonconforming services;
or,
2. That WMATA does not require correction or re-performance.

(c) If the Contractor is required to correct or re-perform, it shall be at no cost to WMATA and any services corrected or re-performed by the Contractor shall be subject to this clause to the same extent as the work was initially performed.

(d) If the Contractor fails or refuses to correct or re-perform, The Contracting Officer may, by contract or otherwise, correct or replace the services with similar services and charge the Contractor with the cost, or make an equitable adjustment to the Contract price.

(e) If WMATA does not require correction or re-performance, the Contractor shall make an equitable adjustment to the Contract price.

6. 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.

7. FIRST ARTICLE INSPECTION

NOT APPLICABLE.

8. F.O.B. DESTINATION

NOT APPLICABLE.

9. 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 \$100,000, 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 \$100,000.
- (c) The Contractor shall ensure that this article is included in all subcontracts at any tier, if the value of the subcontracted work exceeds \$100,000.

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.

- (e) 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.
- (f) 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
- (a) 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.
- (h) 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. 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 \$100,000 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 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

- (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

- (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

- (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

- (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.

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

EXHIBIT A
CQ17164 - Background Check

(Note to Offerors: If you do not currently carry all of the required insurance for this RFP, 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.)

I. MINIMUM REQUIRED INSURANCE: MINIMUM LIMITS OF INSURANCE

INSURANCE TYPE	LIMITS	BASIS
Workers' Compensation	Statutory	
Employers' Liability	\$500,000	Each Accident
	\$500,000	Disease Policy Limit
	\$500,000	Disease Each Employee
Commercial General Liability		
	\$1,000,000	Each Occurrence Limit
	\$2,000,000	General Aggregate Limit
	\$1,000,000	Products-Completed Operations Limit
Business Auto Liability		
	\$1,000,000	Combined Single Limit
Network Security and Privacy		
	\$1,000,000	Each Claim
Technology Errors and Omissions		
	\$1,000,000	Each Claim

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

- 1) Contractor is required to maintain the prescribed insurance outlined in this Exhibit A during the entire period of performance under this contract. A Notice to Proceed (NTP) will not be issued until all required insurance has been approved 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 for all subcontractors at every tier, 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 its respective liability to WMATA, even if that liability exceeds the Minimum Insurance Requirements.

III. COVERAGE-SPECIFIC REQUIREMENTS

Commercial General Liability

- 1) Commercial General Liability (CGL) shall be written on ISO Occurrence Form CG0001 (12/04) or its equivalent. Equivalency determinations shall be made in WMATA's sole and unreviewable discretion.
- 2) Required minimum limits of coverage may be achieved through a combination of the 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) Policies shall be endorsed with Additional Insured Endorsement(s) in compliance with the "Additional Insured" Section below.
- 4) Policies 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 any contracts involving construction or demolition operations that are within 50 feet of a railroad, and sidetrack agreements.
- 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 Automobile Liability Insurance

- 1) Business Auto 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 Endorsement(s) in compliance with the "Additional Insured" Section below.
- 3) Policies shall be endorsed with a Waiver of Subrogation Endorsement(s) in compliance with the Waiver of Subrogation" section below.
- 4) Business Auto Liability minimum Combined Single Limit requirements may be obtained through the combination of a primary business auto liability policy and an Umbrella/Excess Liability policy provided that the Umbrella/Excess Liability policy complies with items 2 and 3 above.

5) MCS-90 Endorsements are required 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.

6) Non-Owned Disposal Site (NODS) Endorsement is required provided coverage for the Contractor's legal liability arising out of pollution conditions at the designated non-owned disposal site.

Network Security & Privacy liability coverage providing protection against liability for privacy breaches, system breaches, denial or loss of service introductions, implantations, or spread of malicious software code and unauthorized access to or use of computer systems with minimum limits of \$2,000,000 each claim is required.

Technology Errors and Omissions Insurance with minimum limits of \$5,000,000 per claim covering actual or alleged negligent acts, errors or omissions committed by the Contractor in the performance of activities under this agreement, regardless of the type of damages. If the insurance is on a claims made basis, Contractor shall maintain continuous insurance coverage during the term of this agreement. The policy retroactive date must coincide with or precede the effective date of Contractor's services under the agreement and shall continue until the termination of the agreement. The policy must allow for reporting of circumstances or incidents that might give rise to future claims, and an extended reporting period of at least one year must be purchased in the event ongoing coverage is not maintained.

IV. OTHER

Additional Insured

- 1) Contractor and subcontractors at every tier are required to add WMATA and WMATA's Board of Directors as additional insured on all required insurance including excess liability policies, with the exception of Workers' Compensation and Professional Liability insurance policies.
- 2) Coverage provided to any Additional Insured shall be primary and non-contributory to any other insurance available to the Additional Insured, including coverage afforded to 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 hazards.
- 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 at every tier are required to have all insurance policies except Professional Liability insurance policies endorsed to waive the respective insurance company's rights of recovery against WMATA, and the WMATA Board of Directors.

- 1) Waivers shall be provided on an endorsement that are 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

- 1) Proposed material modifications to required insurance, including notices 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.

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

NOT APPLICABLE.

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

- (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 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.

(b) This article shall be included in all subcontracts.

6.ROYALTY INFORMATION

NOT APPLICABLE.

CHAPTER IX – ADDITIONAL COVENANTS/LEGAL REQUIREMENTS

1. NONDISCRIMINATION ASSURANCE

- (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

NOT APPLICABLE.

4. DAVIS-BACON ACT

NOT APPLICABLE.

5. COPELAND ANTI-KICKBACK ACT

NOT APPLICABLE.

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

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

NOT APPLICABLE.

12. LIVING WAGE

- (a) The Authority's Living Wage Policy and implementing regulations apply with respect to all contracts for services (including construction) awarded in an amount that

exceeds \$150,000 in a twelve (12) month period. If this Contract meets those criteria, the following requirements are applicable:

- (b) The Authority's living wage rate is \$13.85 per hour, and may be reduced by the Contractor's per-employee cost for health insurance.
- (c) The Contractor shall:
 - (1) Pay the Authority's living wage rate, effective during the time the work is performed, to all employees who perform work under this Contract;
 - (2) Include this "Living Wage" article in all subcontracts that exceed \$150,000 in a twelve (12) month period awarded under this Contract;
 - (3) Maintain payroll records, in accordance with the requirements of this Contract, and include a similar provision in affected subcontracts that requires the subcontractor to maintain its payroll records for the same length of time; and
 - (4) Certify with each monthly invoice that the Authority's living wage rate was paid to affected employees, or if applicable, certify prior to Contract award or Contract extension, if any, that one or more of the exemptions in paragraph (d) below applies.
- (5) The Contractor shall not split or subdivide this Contract, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor to avoid compliance with this "Living Wage" article
- (d) Exemptions to this "Living Wage" article include:
 - (1) Contracts and agreements subject to higher wage rates required by Federal law or collective bargaining agreements;
 - (2) Contracts or agreements for regulated utilities;
 - (3) Emergency services to prevent or respond to a disaster or imminent threat to public health and safety;
 - (4) Contractor employees who work less than full time; and
 - (5) Contractors who employ fewer than ten (10) employees.
- (e) The Authority may adjust the living wage rate effective in January of each year. The adjustment will reflect the average living wage rate among Metro's Compact jurisdictions with living wage rates. If after Contract award the living wage rate increases, the Contractor is entitled to an equitable adjustment to the Contract price in the amount of the increase for employees who are affected by the escalated wage.
- (f) Failure to comply with the Authority's Living Wage Policy shall result in the Authority's right to exercise available contract remedies, including contract termination, where no fraud is suspected.
- (g) If fraud is suspected, the Authority's only remedy prior to 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 state or Federal agency providing funding under this Contract and/or appropriate Federal, state and/or local law enforcement authorities.

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 – NON-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's 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), via email at 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, or by any other reasonable means; or
 - (4) 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 (a);
 - (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.

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)

NOT APPLICABLE.

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 the latest 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 PROVISIONS

1. AMERICANS WITH DISABILITIES ACT ACCESSIBILITY –

NOT APPLICABLE.

2. 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.

3. GOVERNMENT-WIDE DEBARMENT OR SUSPENSION-

- (a) The Contractor is bound by its certification contained in its offer to the Authority 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 in order to comply with U.S. DOT regulations at 2 C.F.R, Part 1200 prior to awarding any subcontract under this Contract.

4. FALSE STATEMENTS OR CLAIMS CIVIL AND CRIMINAL FRAUD

- (a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U. S. C. § 3801 *et seq.* and U. S. DOT Regulations, "Program Fraud Civil Remedies," 49 C.F. R. Part 31, apply to its actions pertaining to this 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.

5. PROGRESS PAYMENTS

NOT APPLICABLE.

6. BONDING FOR CONSTRUCTION PROJECTS EXCEEDING \$150,000

NOT APPLICABLE.

7. BONDING REQUIREMENTS- GENERAL

NOT APPLICABLE

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, and 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 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.
- (c) 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

- (a) Pursuant to Metro Policy Instruction 7. 2.3/2, "Criminal Background Checks," (a copy is attached), the Contractor shall have the sole responsibility for, and shall assure, adequate criminal background screenings on a routine basis for all persons that the Contractor considers for work under this Contract, if the person would have access to WMATA's customers, the general public, WMATA's property, or WMATA's information. In conducting these screenings, the Contractor shall take due regard for the nature of the person's job, with particular regard for the person's exposure to and interaction with WMATA's customers and the general public. Screenings should be job related for the position in question and consistent with business necessity. The Contractor shall not place or otherwise engage any

person to work under this Contract, who has not passed a criminal background check, if that person would have access to WMATA's customers, property, or information or if the person would interact with the general public on WMATA's behalf. This includes all Contractor personnel who will work on WMATA's premises, who will be denied Contractors' access badges, unless and until adequate criminal background screenings are performed. At the end of each calendar quarter, the Contractor shall certify to the Contracting Officer, its compliance with this criminal background screening requirement. All persons required to be screened, which includes all Contractor personnel who require a Contractors' badge to access a WMATA facility shall pass the Contractor's criminal background screening before working on this Contract, and before being issued a Contractors' access badge.

- (b) The Contractor shall indemnify and hold WMATA harmless from any and all claims, demands, damages, costs and expenses, including attorneys' fees and other costs and expenses associated with any claims, demands, requests for relief, and/or other liabilities arising out of or resulting from the Contractor's criminal background screening obligations and processes.

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 (“MWCOCG”) 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 MWCOCG 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/ and <http://www.baltometro.org/our-work/cooperative-purchasing/brcpc-representatives>

BOND FORMS

NOT APPLICABLE

PERFORMANCE BOND

Contract No.:

Contract Date:

Penal Sum of Bond:

Date Bond Executed:

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

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

NOW, THEREFORE, if the Principal shall perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the Authority, with or without notice to the Sureties, and during the life of any guaranty required under the contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Sureties being hereby waived, then the above obligation shall be void and of no effect.

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

Principal(s)

1. Firm Name
and Address:

Corporate Seal

Signature: _____

State of Inc.:

Name and Title:

2. Firm Name
and Address:

Corporate Seal

Signature: _____

State of Inc.:

Name and Title:

3. Firm Name
and Address:

Corporate Seal

Signature: _____

State of Inc.:

TECHNICAL SPECIFICATIONS



Scope of Work

Washington
Metropolitan
Area
Transit
Authority

Background Check

RFP CQ17164

INTRODUCTION

Washington Metropolitan Area Transit Authority (WMATA) is the transit contractor for the National Capital Region, providing safe, clean, and reliable service to both residents and visitors. Our customers include more than a third of the federal government workforce and millions of tourists who visit the Nation's Capital every year. Metro operates the second largest heavy rail transit system and the sixth largest bus network in the United States.

SCOPE OF SERVICES

WMATA requires the services of a qualified contractor to conduct an estimated 2,300 pre-employment background screenings per year on candidates for employment and other background screenings on current employees as required in the background screening services outlined in Part A, B, and Part C of this document.

Authorization will be obtained from job applications by WMATA prior to the initiation of the background screening. Per WMATA policy, WMATA is authorized to perform background screenings on existing employees and temporary staff on an as-needed basis, with or without consent. This is consistent with the commitment to public safety, security and policy requirements. WMATA is seeking to outsource these services to a qualified contractor.

In addition, WMATA also requires the same qualified contractor to provide a minimum of two (2) full-time support personnel (Position Title: Background Screening Coordinators) on-site reporting at the Jackson Graham Building Headquarters located at 600 Fifth Street, NW, Washington DC 20001, or any other designated Authority location. WMATA shall have the option to increase the number of full-time support personnel, as needed. The scope of work of the Background Screening Coordinators will not include the background check services.

DELIVERABLES

The scope of work will include background screening services as outlined in Part A, B, and Part C of this document.

The job description and qualifications requirement for the on-site full-time support personnel is attached in Appendix E.

PART A: BACKGROUND SCREENING SERVICES

Perform background screening services per year as requested by WMATA, including but not limited to:

1. Employment History Verification/Validation will include the last ten (10) years of employment history and dates of employment, termination(s), resignation(s), job titles(s), position(s) held and rehire eligibility for all positions held.

2. International Background Screening Capabilities will include verification/validation of employment history, criminal history, social security number, education and professional licensure and/or certifications.
3. Social Security Number Verification/Validation will include a national cross check, trace and verification of accurate social security numbers.
4. Sex Offender Registry Searches will include a national cross check of all sex offender databases and registries.
5. Multi-Jurisdictional Criminal History Searches will include a criminal and civil records search nationwide.
6. Federal Criminal History Searches will include a criminal search of Federal records.
7. Verification/Validation of Address will include a history of residential addresses for the previous ten (10) years.
8. Motor Vehicle Records Checks will include verification of valid operator's license and a history of license activity within all states of residency supplied in the previous ten (10) years.
9. Secondary and Post-Secondary Educational Verification/Validation will include confirmation of institution(s) attended, courses taken or degree(s) earned, dates of graduation, and major course(s) of study.
10. Professional Licensure and/or Certification Verification will include verification of professional licensure and/or certifications.

PART B: STANDARDIZED SCREENING PACKAGE SERVICES

WMATA requires the ability to order background screening services in requesting a single report of information that includes those defined in;

1. Screening Procedures (See Appendix A)
2. Screening Grid (See Appendix B)
3. Procedures for Individualized Assessments of Presumption Disqualifications. The contractor shall also provide individualized assessment packets to individuals deemed presumptively disqualified. (See Appendix C).
4. To administer a pre-determined number of professional reference checks per candidate type utilizing WMATA approved questions sets. (See Appendix D).

Additionally;

For Employee Notification of Adverse Criminal History Information;

The contractor will initiate initial communication with the applicant or employee if determined such information would make the individual disqualified for employment.

PART C: REQUIREMENTS FOR ALL BACKGROUND SCREENING SERVICES

1. Contractor's Experience

- 1.1. Contractors will have a minimum of five (5) years of experience in performing the background screenings required in this solicitation. (See Evaluation Criteria for details).

2. Exchange of Data

- 2.1. WMATA and the contractor will exchange all relevant data/information transmitted securely through web applications/service.
- 2.2. Contractor will deliver background screening information electronically.
- 2.3. Contractor will submit a confirmation that a background screening request has been received by the contractor.
- 2.4. Contractor will notify WMATA if the request for a background screening was not complete or requires correction within three (3) days.
- 2.5. WMATA will provide the following information to contractor when requesting a background screening: name, social security number and date ordered.
- 2.6. WMATA shall have the ability to cancel a background screening order that is in process.

3. WMATA Representatives

- 3.1. Contractor will respond to background screening requests only from authorized HR representatives of WMATA.

4. Turnaround Time and Notice of Delay

- 4.1 Contractor will be allotted a turnaround time of two (2) business days or 48 hours beginning from the date/time that WMATA transmits the request to the Contractor for criminal history, employment history and Social Security number verification / validation.

- 4.1.1 Should the Contractor be unable to obtain the information within this specified timeframe, the Contractor will provide notice to WMATA prior to the two (2) business day window and provide an explanation for the delay, status and estimated time of completion.

- 4.1.2 Upon notification of delay, Contractor may be granted a maximum extension of one (1) business day to complete and submit the information requested by WMATA.

- 4.2 The contractor will be allotted a turnaround time of four (4) business days beginning from

the date/time that WMATA transmits the request to the Contractor to validate education, professional licensure and/or certification (including applicable civil records).

4.2.1 Should the Contractor be unable to obtain the information within this specified timeframe, the Contractor will provide notice to WMATA prior to the four (4) business day window and provide an explanation for the delay, status and estimated time of completion.

4.2.2 Upon notification of the delay, Contractor can be granted a maximum extension of one (1) business day to complete and submit the information requested by WMATA.

4.3 The Contractor will be allotted ten (10) business days beginning from the date/time that WMATA transmits the request to the Contractor to complete the requirements of an international background screening.

4.3.1 Should the Contractor be unable to obtain the information within this specified timeframe, the Contractor will provide notice to WMATA prior to the ten (10) business day window and provide an explanation for the delay, status and estimated time of completion.

4.3.2 Upon notification of delay, Contractor can be granted a maximum extension of three (3) business days to complete and submit the information requested by WMATA.

5. Archiving System

5.1. Contractor will maintain a secure archiving system that allows WMATA access to all requested background screening information for the duration of the period of performance including option years that WMATA elects to exercise.

5.2. Contractor will provide 24 hour per day, 7 days per week access to background screening information via secure web application/service to WMATA's representatives.

5.3. Upon the expiration of the contract, Contractor is required to provide all records retrieved on behalf of WMATA in electronic format.

6. Training of Contractor Employees

6.1. Contractor will furnish trained qualified staff as necessary to perform the requested background screenings and supply WMATA with documented proof of training.

6.2. Contractor will have access to legal counsel with background screening and Fair Credit Reporting Act expertise.

6.3. Contractor is preferred to be a member of the National Association of Professional Background Screeners.

7. Training of WMATA Employees

- 7.1. Contractor will perform training services and be available for assistance to WMATA representatives to include, but is not limited to, exchange and retrieval of data, interpreting results, manipulation of data and the communication methods between WMATA and Contractor.
- 7.2. Contractor will furnish WMATA FCRA forms and procedures and notify WMATA of changes to FCRA regulations and other applicable laws.

8. Confidentiality of Information

- 8.1. Contractor will enter with WMATA in a confidentiality agreement.

9. Information Systems and Security

- 9.1 Contractor will have the capacity to integrate with PeopleSoft 9.1 TAM/CG to include requesting the Background Check Package and return of SSN, Birthdate, Prior Work Experience, and Education.
- 9.2 Additional Requirements for Integrated Services/Technology/Reporting, include but are not limited to;
 - 9.2.1 Management Services and E-Verify Integration: Please describe how these services, if you provide them, integrate with the Background Screening Services. Describe in detail how the process works from both the candidate/employee perspective as well as the customer (WMATA). Provide details regarding the technical requirements needed to support this. Describe how your product and services efficiently integrate with PeopleSoft HCM.
 - 9.2.2 Describe the technologies you use to integrate with PeopleSoft or ERPs in general. Provide the technical requirements for initial testing and ongoing integration with PeopleSoft HCM.
 - 9.2.3 Do you use third party system(s) or solutions to assist or complete the implementation? If so, please provide additional details.
 - 9.2.4 If the system solution will be Cloud based, explain whether it will be public, private or hybrid, etc.
 - 9.2.5 Describe the System's Change Management process that you follow.
 - 9.2.6 Provide a list of process certifications, such as ISO, etc. that your technical group follows.
 - 9.2.7 Describe the Software Development Life Cycle (SDLC) methodology as it relates to the System.
 - 9.2.8 Describe how separate environments for Development, System Test, UAT and production are maintained.
 - 9.2.9 Please provide the System Performance Metrics.
 - 9.2.10 Describe the policy on data retention and archiving.
 - 9.2.11 Describe the methodology for data conversion of legacy data when the contract ends.

9.3 Additional Security Requirements, include but not limited to:

- 9.3.1 Describe how data access security is implemented.
- 9.3.2 Describe the security standards and policies complied by the system.
- 9.3.3 If there is an outsourcing contract with third party, do agreement addresses the risks, security controls and processes for information systems, networks and desktop environments in outsourcing contracts?
- 9.3.4 Does an Incident Management procedure exist to handle incidents including reporting, correlation, and remediation?
- 9.3.5 Describe procedures in place for users, to report security weakness in, or threats to, systems or services.
- 9.3.6 Is your system provided with isolated computing environment such as running on a dedicated computer, sharing resources only with trusted application systems, etc.?
- 9.3.7 Are audit logs recording exceptions and other security relevant events produced and kept for an agreed period to assist in future investigations and access control monitoring?
- 9.3.8 Are all areas within the organization considered for regular review to ensure compliance with security policy, standards and procedures?

9.4 Performance Schedules Management Staff Functions

- 9.4.1 Contractors will perform background screening services during normal business hours Monday-Friday 8:30 a.m. to 5:30 p.m. EST with options to extend service hours and days during period of increased need or to resolve critical issues with advances approval by WMATA.

9.4.2 Billing and Invoicing Requirements

- 9.4.2.1 Contractors will submit detailed, itemized billing invoices and each invoiced line item amount must include the following information:
 - 9.4.2.1.1 Screening service provided (individual report requested or by group identifier)
 - 9.4.2.1.2 Name and SS/EIN of individual/entity screening
 - 9.4.2.1.3 Order date of background screening service
 - 9.4.2.1.4 Completion date requested of background screening service
 - 9.4.2.1.5 Name of requesting WMATA official
 - 9.4.2.1.6 Screening service fee
- 9.4.3 Contractor must issue and submit invoices monthly and in duplicate. An itemized invoice must be provided directly to the designated WMATA representative. A second hard copy of a summarized invoice must be provided directly to the Comptroller's Office at the following address below. This is on top of the billing and payment requirements of this RFP.

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

- 9.5 Contractor invoice must be itemized by expense category and include quantity, unit price, line total and grand total. Invoice must also identify vendor name and address and

purchase order number. Invoice data must also be submitted electronically in a secured XML file. This electronic file shall be provided to WMATA within seventy-two hours from the time the paper invoices have been prepared as described above. Any amended invoices or interim invoices shall also be provided in the same electronic format.

9.6 Background Screening Performance

- 9.6.1 Contractor will be capable of processing approximately 300-500 background screenings per month. The numbers of screenings are provided for informational purposes only and do not represent a commitment from WMATA to purchase a minimum or maximum number of background screening services per month.

APPENDIX A: Screening Procedures

1. This Appendix sets forth the procedures for evaluating an individual's Criminal History Information. The evaluation shall be conducted by an individual or entity designated by the CHRO and trained in the administration of Metro's Criminal Background Check Policy Instruction. For purposes of this Appendix, the party conducting this evaluation will be referred to as the Evaluator.
2. This Appendix is intended to be comprehensive. However, circumstances may arise where this Appendix does not provide sufficiently clear guidance or the application of this Appendix would lead to unfair or irrational results. In these circumstances, the Evaluator should contact the CHRO or his or her designee for additional guidance. Metro expressly reserves the right to determine the appropriate Offense Category when evaluating an individual's Criminal History Information
3. An individual's Criminal History Information will be referred to the Evaluator for review if a Background Check reveals that an applicant or employee:
 - 3.1. has been convicted of a crime; or
 - 3.2. Faces pending charges for a crime.
4. As a first step, the Evaluator will review the individual's Criminal History Information to determine whether he or she is disqualified from employment due to a 10-Year Disqualification offense. The following felonies are 10-Year Disqualification offenses if the individual was convicted during the 10 years preceding the employment application date:
 - 4.1. Murder;
 - 4.2. Assault with intent to murder;
 - 4.3. Terrorism;
 - 4.4. Rape or aggravated sexual offenses;
 - 4.5. Unlawful possession, use, sale, distribution, or manufacture of an explosive;
 - 4.6. Armed robbery;
 - 4.7. Aggravated Assault;
 - 4.8. Arson.
5. As a second step, for individuals who are not disqualified by a 10-Year Disqualification offense, the Evaluator will determine if he or she is a Presumptively Disqualified Repeat Offender. For purposes of this Appendix, a Presumptively Disqualified Repeat Offender is an individual who:
 - 5.1. In two or more separate proceedings:
 - 5.2. has been criminally convicted, or released from incarceration in the past 10 years; or
 - 5.3. has been criminally convicted or released from incarceration in the past 10 years, and faces pending criminal charges; or
 - 5.4. faces pending criminal charges; and
 - 5.5. Has 4 or more points from the above-referenced convictions or pending charges, calculated by assigning 2 points to each separate proceeding involving a felony, and 1 point to each separate proceeding involving a misdemeanor. If a single proceeding involves multiple crimes, the crime with the higher point value should be applied (e.g.,

one proceeding resulting in a felony and misdemeanor conviction would be 2 points).

6. As a third step, for individuals who are not Presumptively Disqualified Repeat Offenders, the Evaluator will review the individual's Criminal History Information using the Screening Grid as follows:
 - 6.1. The Evaluator will identify the Screening Group(s) that apply to the position that the individual is seeking to fill.
 - 6.2. Using Section 7 of this Appendix, the Evaluator will review the convictions and pending charges in the individual's criminal history report and place each conviction or charge in the appropriate Offense Category. Where more than one Offense Category may apply, the Evaluator shall apply the Offense Category with the longer lookback period.
 - 6.3. Using the Screening Grid, the Evaluator will determine whether the individual has been convicted or charged with a single offense (felony or misdemeanor) in an Offense Category that has an unlimited lookback period. If so, the individual is Presumptively Disqualified from employment, but may ask for an Individualized Assessment.
 - 6.4. If the individual has not been convicted or charged with a crime that is Presumptively Disqualifying due to an unlimited lookback period, the Evaluator will next determine the lookback period that applies to each of the individual's charges or convictions. 2 points will be assigned to each felony and 1 point to each misdemeanor that
 - 6.4.1. resulted in a conviction entered within the applicable lookback period;
 - 6.4.2. resulted in a conviction entered outside the applicable lookback period, but the individual was released from confinement during the lookback period; or
 - 6.4.3. Has not yet resulted in a conviction, and the charge is still pending.
 - 6.5. An individual will be Presumptively Disqualified from employment if he or she has two or more points, e.g., 2 points for one felony or 2 points for two misdemeanors during the applicable lookback period.
7. The Offense Categories are defined as follows:
 - 7.1. Bias-related Offenses include all criminal acts that result in a conviction due to the accused's prejudice towards the victim's actual or perceived membership in a protected class. Examples of Bias-related Offenses include, but are not limited to, offenses punishable pursuant to 18 U.S.C. § 249 or D.C. Code § 22- 3703.
 - 7.2. Drug Distribution Offenses include all offenses that involve (i) the manufacture, sale or distribution of a controlled substance or (ii) possession with intent to sell, or distribute a controlled substance, with the exception of Section 9 Offenses.
 - 7.3. Drug Possession Offenses include all offenses, other than Drug Distribution Offenses, that involve the unlawful purchase, use, or possession of a controlled substance. Section 9 Offenses are excluded from drug possession offenses.
 - 7.4. Offenses of Dishonesty include all offenses involving fraud or dishonesty. Offenses of Dishonesty include, but are not limited to, fraud (including voter fraud and securities fraud), embezzlement, perjury, identity theft, impersonation of a police officer, forgery, false advertising, and counterfeiting.
 - 7.5. Weapons Offenses include all nonviolent offenses involving the unlawful possession, manufacturing, sale, brandishing, use, or discharge of a firearm, explosive, or deadly

weapon, including felon in possession of a firearm, brandishing a firearm, and unlawful carrying of a concealed weapon.

- 7.6. Offenses of Sexual Violence include (i) all sexual offenses involving force or the threat thereof and (ii) all sexual offenses involving sexual contact where the victim is unable to consent due to incapacity or otherwise, but not statutory rape. Examples of Offenses of Sexual Violence include, but are not limited to, offenses such as rape, sexual assault, sexual abuse, child sexual abuse, and child molestation.
- 7.7. Property Offenses include all offenses involving (i) the destruction or defacement of property or (ii) unauthorized entry onto property. Examples of Property Offenses include, but are not limited to, arson, destruction of property, vandalism, and trespass.
- 7.8. Driving Offenses include reckless driving; careless driving; driving without a license; and driving a motor vehicle without the owner's consent. The Evaluator will consider these offenses only for positions in Screening Group C that require operation of a Metro vehicle.
- 7.9. Serious Driving Offenses include all offenses involving (i) the operation of a vehicle while under the influence of intoxicating substances, (ii) fleeing the scene of a vehicular accident, or (iii) driving offenses involving death or serious injury. Examples of Serious Driving Offenses include, but are not limited to, vehicular homicide, vehicular manslaughter, driving while intoxicated, hit-and-run, and fleeing the scene of an accident.
- 7.10. Societal Offenses include the following crimes: resisting arrest, violation of a protective order, human trafficking, stalking, racketeering, gang-related offenses, escape, money laundering, bribery, obstruction of justice, involuntary manslaughter, witness tampering, and criminal neglect.
- 7.11. Serious Violent Offenses include all offenses involving physical violence against a person or the threat thereof that (i) are punishable as felonies or (ii) involve aggravating circumstances such as intent to kill, use of a weapon, or targeting a vulnerable individual. Examples of Serious Violent Offenses include, but are not limited to, murder, voluntary manslaughter, mayhem, assault with intent to kill, aggravated assault, assaulting a police officer, assault with a deadly weapon, armed robbery, child abuse, kidnapping, and carjacking.
- 7.12. Sexual Offenses include all sexual offenses that (i) do not meet the definition of an Offense of Sexual Violence and (ii) are not listed in Section 9 of this Appendix. Examples of Sexual Offenses include, but are not limited to, indecent exposure, enticing a minor, possession or distribution of child pornography, mailing/displaying/sending obscene materials, and solicitation of prostitution, prostitution, pimping, and statutory rape.
- 7.13. Terrorism Offenses include all criminal offenses involving or relating to international terrorism or domestic terrorism, as those terms are defined in 18 U.S.C. §2331. Examples of Terrorism Offenses include, but are not limited to, providing material support to terrorists or to designated foreign terrorist organizations.

- 7.14. Theft Offenses include all offenses involving (i) the wrongful taking of another's property through means other than fraud or dishonesty. Examples of Theft Offenses include, but are not limited to, extortion, blackmail, larceny, burglary, petty theft, shoplifting, trafficking or receiving stolen property, and possession of burglary tools.
- 7.15. Violent Offenses include all offenses involving physical violence against a person or the threat thereof. Examples of Violent Offenses include, but are not limited to, offenses such as assault, domestic violence, resisting arrest (physical force), robbery, and battery.
8. For purposes of this Appendix, a conviction for an attempt to commit a crime is equivalent to a conviction for the crime itself. Similarly, a conviction for a conspiracy to commit a crime is equivalent to a conviction for the crime itself.
9. Section 9 Offenses and Repeat Offenders. A candidate for employment will not be Presumptively Disqualified based on a conviction or combination of convictions for any of the following offenses, which will not be considered when applying the Screening Grid (collectively referred to as the Section 9 Offenses):
- 9.1. Societal offenses: harboring a fugitive; smuggling contraband into prison; vagrancy; loitering; contempt of court; panhandling; ordinance violations; cruelty or neglect to animals; unauthorized entry or re-entry into the United States; abusive language; disorderly conduct; disturbing the peace; drunk and disorderly; unlawful assembly.
- 9.2. Alcohol and marijuana offenses: minor in possession of alcohol; misdemeanor possession of marijuana; misdemeanor possession of marijuana paraphernalia.
- 9.3. Private sexual offenses: sodomy and bigamy.
- 9.4. However, because repeated convictions for these crimes may be evidence of an inability or unwillingness to abide by the law, Section 9 Offenses other than sodomy and bigamy will be considered in determining whether the candidate is a Repeat Offender.
10. Screening Group Definitions. These descriptions for each screening group are based on the duties, work requirements, and work settings that define the job-related characteristics of the positions in that group.
- 10.1. SCREENING GROUP A - No Heightened Risk Facts. These positions are not safety-sensitive, do not require significant interaction with the public, and the ability to handle conflict is less important. The workers in these positions may still pose a risk to coworkers or have access to metro resources, but there are no job or work context factors that present heightened risk.
- 10.2. SCREENING GROUP B - Significant Interaction with the Public. The positions within this screening group involve substantial interaction with members of the public. As such, these workers are more likely to be responsible for the health, safety, and well-being of members of the public. Also, these workers may be exposed to, and have to handle, unpleasant, discourteous, and potentially Aggressive interactions with the public.
- 10.3. SCREENING GROUP C - Use/Operation of Valuable Equipment or Access/Exposure to Hazardous Materials. The nature of these positions and the circumstances under which the work is performed may involve immediate and/or direct threats to the health or safety of others. These workers may have access/exposure to,

or must operate or use, valuable equipment or hazardous materials, including the operation of a motor vehicle. These positions pose heightened risk because a momentary lapse in judgment could result in either injury or death to another person or significant financial loss to Metro.

- 10.4. SCREENING GROUP D - Access to Significant Resources or Personally Identifiable Information (PII). The positions in this screening group have access to significant or valuable company resources, or personally identifiable information that, if misused or stolen, could result in significant losses or liability for Metro and/or its employees, customers, contractors or other third parties.
- 10.5. SCREENING GROUP E - Unsupervised Responsibility for a Vulnerable Population. The positions within this screening group involve workers who provide direct care and unsupervised assistance, outside of the public eye, to members of vulnerable populations, including children, the elderly, and individuals with a mental or physical disability.

APPENDIX B: Screening Grid

Category of Offenses	LOOKBACK PERIOD				
	Screening Group A (No heighened Risk Factors)	Screening Group B (Significant Interaction with the Public)	Screening Group C (Operation of Equipment or Exposure to Hazards)	Screening Group D (Access to Significant Resources or PII)	Screening Group E (Unsupervised Responsibility for Vulnerable Population)
Bias-related Offenses	7 Years	10 Years	7 Years	7 Years	10 Years
Drug Distribution Offenses	5 Years	7 Years	7 Years	10 Years	10 Years
Drug Possession Offenses	5 Years	5 Years	7 Years	7 Years	7 Years
Offenses of Dishonesty	5 Years	5 Years	5 Years	10 Years	10 Years
Weapons Offenses	7 Years	10 Years	10 Years	7 Years	UL
Offenses of Sexual Violence	10 Years	10 Years	10 Years	10 Years	UL
Property Offenses	5 Years	5 Years	10 Years	10 Years	10 Years
Serious Driving Offenses	5 Years	5 Years	10 Years	5 Years	5 Years
Societal Offenses	5 Years	7 Years	7 Years	7 Years	7 Years
Serious Violent Offenses	10 Years	10 Years	10 Years	10 Years	UL
Sexual Offenses	7 Years	10 Years	7 Years	7 Years	UL
Terrorism Offenses	10 Years	10 Years	10 Years	10 Years	10 Years
Theft Offenses	5 Years	7 Years	5 Years	10 Years	10 Years
Violent Offenses	5 Years	7 Years	7 Years	5 Years	UL
Driving Offenses	N/A	N/A	10 Years	N/A	N/A

OTHER THAN UL, 2 POINTS IN LOOKBACK PERIOD = PRESUMPTIVELY DISQUALIFYING

FELONY = 2 POINTS

MISDEMEANOR = 1 POINT

APPENDIX C: Assessments of Presumptive Disqualifications

Procedures for Individualized Assessments of Presumptive Disqualifications:

1. When information from a Background Check would render an employee or candidate presumptively disqualified for employment, a written notice of Presumptive Disqualification will be sent to the employee or candidate. A packet with instructions for requesting an individualized assessment of the decision will accompany the written notice of Presumptive Disqualification in the adverse notification letter.
2. The purpose of this review process is to allow candidates for employment and current employees to submit additional information that will help Metro determine whether the disqualification from employment is job-related and consistent with business necessity.
3. The Individualized Assessment Panel is responsible for resolving review requests. The Individualized Assessment Panel may consist of: Manager of Employee Relations, Director of Labor Relations and EEO liaison. A representative from the Office of General Counsel will serve as legal advisor to the panel, as needed.
4. For a written request to be timely, it must be postmarked, e-mailed or hand-delivered within seven business days after the date on the notice of Presumptive Disqualification in the adverse notification letter. Failure to timely submit a written request for review constitutes waiver of the right to an Individualized Assessment.
5. The individual may attach documents and other information he or she wishes the Individualized Assessment Panel to consider. The request for review should be mailed or delivered to: WMATA CBC Administrator, Department of Human Resources, 600 Fifth Street, NW, Washington, DC 20001. If delivered via email, the request and documentation should be sent to CBCAppeals@WMATA.com
6. Upon timely receipt of a request, copies of the following documents will be transmitted to the Individualized Assessment Panel:
 - a. The individual's job application;
 - b. The individual's Criminal Disclosure Form;
 - c. The Background Check report containing the individual's Criminal History Information;
 - d. Any written documentation or other information submitted by the individual;
7. The Panel will review the information provided, giving consideration to the following.
 - a. The facts and circumstances surrounding the offense or conduct;
 - b. The number of offenses for which the individual was convicted;
 - c. Older age at the time of conviction or release from prison;
 - d. Evidence that the individual performed the same type of work after his/her conviction with no known incidents of criminal conduct;
 - e. The length and consistency of employment history before and after the offense or conduct;
 - f. Evidence of the person's rehabilitation efforts, e.g., education/training;
 - g. Employment or character references and any other information regarding fitness for the particular position;
 - h. Whether the individual is bonded under a federal, state, or local bonding program;
 - i. Extent of opportunity to engage in further criminal activity;
 - j. Age of the person at the time of the commission of the offense;
 - k. The time elapsed since last criminal activity;
 - l. The legitimate interest of Metro in protecting property and the safety and welfare of specific individuals or the general public;

8. If the position in question is an open position (one under continuous recruitment), the request for review will be completed within 30 calendar days from the date the Panel receives the request for review. If the request for review is resolved in favor of the employee or candidate, the individual will be placed in the next hiring class.
9. If the position in question is not an open position (a position with a defined open and close date), the request for review will be resolved within three business days of receipt of a request for review. The position will be held open until the review is complete. If Metro does not receive a request for review within seven business days of the date on the notice of Presumptive Disqualification, the employee or candidate will be deemed to have waived his or her right to a review, and Metro may offer the position to a different employee or candidate.
10. The Individual Assessment Panel will review the material and determine whether disqualification of the individual is job related and consistent with business necessity. The CBC Administrator will notify the applicant or employee in writing of the Panel's decision within 2-working days of receipt of the decision. The decision of the Panel is final.

APPENDIX D: Standard Reference Check Set of Questions

WMATA – Non-Management Applicant

1. How long have you known the applicant?
2. In what capacity do you know the applicant?
3. Please comment on the applicant's strengths and weaknesses.
4. If the opportunity presented itself, would you rehire this person? (If the person is eligible to be hired again with your company).
5. Please comment on this individual's work ethic.

WMATA - Management Applicant

1. How long have you known the applicant?
2. In what capacity do you know the applicant?
3. Please comment on the applicant's strengths and weaknesses.
4. If the opportunity presented itself, would you rehire this person? (If the person is eligible to be hired again with your company).
5. Please comment on this individual's work ethic.
6. What perspective can you offer on this individual's staff management skills or style?

APPENDIX E: Qualification and Job Description on On-Site Support Personnel Located at WMATA Premises.

- **Position Title: Background Screening Coordinators**
- Contractor must provide a minimum of two (2) full-time support personnel, reporting at the Jackson Graham Building Headquarters located at 600 5th Street, NW, Washington DC 20001, or any other designated Authority location. WMATA shall have the option to increase the number of full-time support personnel, as needed.
- Primary Duties to be Performed Include:
 - Coordinating and monitoring the complete background screening process to ensure adherence to Authority policies.
 - Working with client groups within WMATA to determine appropriate scope of background checks, requests appropriate background checks; initiates reasonable suspicion background screenings with proper authorization.
 - Advises management and potential candidates regarding the status of background investigations; works closely with vendor and management to prioritize and meet established guidelines.
 - Responds to inquiries for individualized assessments and collects data to be reviewed for Authority resolution.
 - Coordinates the receipt and routing of background authorization forms; reviews disclosure of arrests and convictions forms, as needed.
 - Maintains confidentiality of information consistent with Health Insurance Portability & Accountability Act (HIPAA), Americans with Disabilities Act (ADA) and all WMATA guidelines.
 - Conducts random Public Records checks of existing employees, as directed.
- Knowledge Needed:
 - Knowledge of personnel and employment laws, rules and regulations
 - Knowledge of, or the ability to rapidly acquire knowledge of WMATA's policies, procedures and relevant provisions of labor agreements.
 - Knowledge of rules and procedures of local jurisdictions and courts.
- Skills Needed:
 - Communication skill; to communicate with all levels of the organization both written and orally.
 - Proficient software skill; to use PeopleSoft, Microsoft Office and other related software packages.
 - Prioritization skill; to and complete several tasks simultaneously and to handle a large volume of background checks and inquiries.
 - Analysis skill; to collect, analyze, and explain data and statistics in an accurate and effective manner.
 - Attention to detail skill; to accurately review and report statistical and other data.

- **Abilities Needed:**
 - Ability to identify complex problems and procedural irregularities, collect data, establish facts and draw valid conclusions.
 - Ability to exercise sound judgment, timely follow-through and communicate with tact and discretion in conveyance of information.
 - Ability to apply the knowledge of personnel and employment Laws, rules and regulations to the Authority's business environment.
 - Ability to work with broad direction and minimal supervision.
 - Ability to meet deadlines and maintain accuracy of work products.
 - Ability to deal effectively with confidential information.
- **Minimum Qualifications**
 - **Education**
 - Graduation from high school or possession of a high school equivalency certificate.
 - Preferred Bachelor's degree from an accredited college or university in Human Resources or a related field.
 - **Experience**
 - Three (3) years progressively responsible experience in human resources, which must include at least one (1) year experience of background screening.

Experience utilizing Microsoft Office Suite; Word, Excel and PowerPoint, Microsoft Outlook and People Soft HCM.

----END OF SCOPE OF WORK ----

SEE ATTACHMENTS

- **COMPLIANCE MATRIX**
- **PAST PERFORMANCE EVALUATION FORM**
- **INFORMATION SECURITY QUESTIONNAIRE**
- **WMATA Policy/Instruction: 7.2.3/2 Criminal Background Checks**

(Submit a Completed and Signed Compliance Matrix, Past Performance Evaluation Form, and the Information Security Questionnaire together with the Technical Proposal – Volume II).

SMALL BUSINESS LOCAL PREFERENCE PROGRAM (SBLPP)

ATTACHMENT A

***NOTICE OF REQUIREMENTS
FOR
SMALL BUSINESS & LOCAL PREFERENCE PROGRAM (SBLPP)***

November 2016

~ Applies only to contracts involving COMPACT jurisdictional (operating) funds only.

APPENDIX C

SMALL BUSINESS & LOCAL PREFERENCE PROGRAM (SBLPP)

1. SMALL BUSINESS & LOCAL PREFERENCE PROGRAM (SBLPP) REQUIREMENT:

The requirements of the Authority's SBLPP policy and procedures shall apply to this contract. Accordingly, the Contractor shall carry out the requirements of the Authority's Procurement Procedures Manual and this Appendix in the performance of this non-federally funded contract.

2. POLICY:

The Washington Metropolitan Area Transit (WMATA) Board of Directors approved and adopted Resolution #2005-45 in May 2003 for the implementation of the Small Business and Local Preference Program (SBLPP) and its amended requirements on April 23, 2011. The Board mandated that the program provide small and local businesses located in the District of Columbia, the State of Maryland, and the Commonwealth of Virginia be given an opportunity to compete for non-federally funded procurement actions.

3. EVALUATION REQUIREMENTS:

- (a) When a Small Local Business is competing, contracting personnel shall add a factor of five percent to the quotes or bids received from any firms that are not Small Local Businesses. The five percent factor shall only be added to the quote or bid for evaluation purposes. It shall not be added to the actual price reflected on any purchase order or contract.
- (b) The evaluation of quotes or bids may occur on a line item basis, groups of line items, or for the total value of the procurement, as appropriate by procurement. If individual line items are not easily separable without compromising the integrity of the total requirement or the cost effectiveness of the solicitation, then evaluation should occur for the total value of the procurement.
- (c) If a tie occurs between bids from a Small Local Business and a firm that is not a Small Local Business, the award should be made to the Small Local Business. If a tie occurs between bids from a Local Business and a firm that is not a Local Business, the award should be made to the Local Business.
- (d) Determinations of price fairness and reasonableness will be made inclusive of the five percent factor, if applicable. A procurement action shall not be awarded if the cost to the Authority exceeds the fair market price, and the price cannot be determined to be fair and reasonable.

4. DEFINITIONS:

- (a) **Appendix C.** The Notice of Requirements for Small Business and Local Preference Program (SBLPP), which when attached to a solicitation, implements the requirements of the Authority's SBLPP policies and procedures in the award and administration of operating funded Authority contracts.
- (b) **Bidder.** A party submitting a bid in response to this solicitation/invitation for bid.

- (a) **Certified SBLPP.** Is a for-profit small business concern, whose eligibility is evidenced by a current SBLPP certification letter issued by WMATA's Disadvantaged Business Enterprise Office. Certification must be obtained by the deadline of bid/proposal submittal.
- (d) **COMPACT Jurisdictions.** Jurisdictions of the District of Columbia, the State of Maryland, and the Commonwealth of Virginia.
- (e) **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 this Contract, including all incidentals that are necessary to complete the work in accordance with this Contract.
- (f) **Good Faith Efforts.** Efforts to encourage SBLPP participation or other requirements of the Authority's SBLPP Program which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.
- (g) **Joint Venture.** An association of an SBLPP firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the SBLPP is responsible for a distinct, clearly defined portion of the work of the contract and shares in the capital contribution, control, management, risks, and profits of the joint venture commensurate with its ownership interest.
- (h) **Local Business.** A firm that self-certifies it is located in the District of Columbia, State of Maryland, or Commonwealth of Virginia.
- (i) **Offeror.** A party submitting a proposal in response to this solicitation.
- (j) **Proposal.** A submission by an offeror to the solicitation that, if accepted by the Authority, would bind the offeror to perform the resultant Contract.
- (k) **Small Business Concern.** With respect to firms seeking to participate as SBLPP's, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration implementing regulations (13 CFR Part 121).
- (l) **Small Local Business.** A firm that is a Local Business and self-certifies that it is a small business, as defined by the U.S. Small Business Administration.
- (m) **WMATA.** Washington Metropolitan Area Transit Authority, also known as the "Authority" or "Metro", the transit system (rail and bus) serving the District of Columbia, including parts of Virginia and Maryland.

5. **BIDDER/PROPOSAL REQUIREMENTS (WITH THE BID/PROPOSAL):**

The bidder/proposer shall submit its SBLPP certification documentation with its bid/proposal. Any bidder/proposer who fails to complete and return this information with its bid/proposal shall be deemed to be not responsive and may be ineligible for contract award.

SUMMARY OF SUBMITTALS

Bidder/Proposal Requirements (Apparent Successful Bidder/Offeror)

All SBLPPs must submit a copy of their current SBLPP certification letter issued by WMATA's DBE Office at the same time of your bid/proposal submittal.

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 receipt of proposals or Best and Final Offers to clarify, revise, add or delete requirements of the Request for Proposals.

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.

Best and Final Offers: A revision to the initial proposal submitted at the Contracting Officer's request, generally following discussions, upon review of which the Authority will render a determination as to the successful offeror for purposes of Contract award.

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 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 or more offerors of a limited nature, whereby offerors may be given the opportunity to clarify certain aspects of their proposals or to resolve minor irregularities, informalities or clerical errors.

Competitive Range: Those initial proposals that are determined by the Authority to have a reasonable chance of being selected for award and that may be selected for additional negotiations or discussions to the extent deemed appropriate by the Contracting Officer. Proposals not in the competitive range are given no further consideration. For low price, technically acceptable awards, "competitive range" means all proposals that are technically acceptable.

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 this 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 administration 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 this Contract, including all incidentals that are necessary to complete the work in accordance with this Contract.

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

Discussions: Negotiations or exchanges relating to the solicitation between an offeror and the Authority that may occur after receipt of proposals (generally after establishment of the competitive range) and before award, that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal or to be followed by the Contracting Officer's request for receipt of Best and Final Offers (BAFOs).

Evaluation Criteria: Those factors to be considered by the Authority, in determining the successful proposal.

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

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

Final Acceptance: Final acceptance of the work occurs when the work is fully, completely, and finally accomplished in strict compliance with the Contract to the satisfaction of the Authority.

Final Payment: The last payment to the Contractor for work performed under this 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 the Contract unless specifically listed 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 this 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 proposal 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 proposal 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 this 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.

Proposal: A submission by an offeror to the solicitation that, if accepted by the Authority, would bind the offeror to perform the resultant Contract.

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.

Revision: A change to a proposal made by an offeror, at the request of or as allowed by the Contract Administrator or Contracting Officer, often as a result of discussions. Best and Final Offers are one form of revision.

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.

Scope of Work (SOW): The portion of this Contract or Request for Proposals 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 Request for Proposals (RFP).

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

Similar: Generally the same, but not necessarily identical. Details will be worked out regarding 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 this 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 this 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 or suppliers.

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

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, which functionally meets the requirements of the Contract, but is submitted in lieu of item specified therein.

Supplier: A subcontractor who is a manufacturer, fabricator, supplier, distributor, or vendor.

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 Contract.

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 a Contract such as to accomplish the Contract's stated objectives in a timely and fully satisfactory manner.

COMPLIANCE MATRIX

RFP CQ17164 Background Check

The offeror shall submit the Compliance Matrix with the Technical Proposal. The offeror shall check the 'C' Compliant/Conform, 'NC' Not Compliant/Non Conform, or 'NA' Not Applicable box for each section or sub-section listed. Attached separately the description, proof, forms, etc. as required in the scope of work. If a box is checked 'NC' or 'NA', then the offeror must provide comments as to why the functional or technical requirement cannot be met (or is not applicable) and propose alternatives, if any, which are equivalent or better for WMATA's consideration. Provide details in a separate submittal.

(General Description of Scope of Work. For checklist purposes) See SCOPE of WORK attachment for Details.	C	NC	NA	COMMENTS
PART A: Background Screening Services				
1. Employment history Verification/Validation				
2. International background Screening				
3. Social Security Number				
4. Sex Offender				
5. Multi-Jurisdictional Criminal History				
6. Federal Criminal History				
7. Address verification /validation				
8. Motor Vehicle Record Checks				
9. Secondary, Post Secondary Educational verification				
10. Professional Licenses/Certification				
PART B: Standardized Screening Packages Services				
1. Screening Procedures (See Appendix A)				
2. Screening Grid (See Appendix B)				
3. Individualized Assessment (See Appendix C)				
4. Administer WMATA Professional Reference Questions (See Appendix D)				
PART C: Requirements for ALL Screening Services				
1. Contractors Experience Minimum of Five (5) Years				
2. Exchange of Data				
2.1 Data transmitted securely through Web				
2.2 Electronic and in Paperless form				
2.3 Submit confirmation of receipt.				
2.4 Notify WMATA if screening was not completed.				
2.5 Provide information				
2.6 WMATA will have ability to cancel				
3. WMATA Representatives				

(General Description of Scope of Work. For checklist purposes) See SCOPE of WORK attachment for Details.	C	NC	NA	COMMENTS
3.1				
4. Turnaround Time and Notice of Delay				
4.1 Turnaround of two (2) business days for criminal, employment and SS.				
4.1.1				
4.1.2				
4.2 Turnaround of Four (4) business days for education, professional licensure /certification, SS, etc.				
4.2.1				
4.2.2				
4.3 Turnaround of ten (10) business days for International screening, etc.				
4.3.1				
4.3.2				
5. Archiving System				
5.1 Maintain secure archiving				
5.2 Provide 24/7 access				
5.3 Provide all records				
6. Training of Contractor Employees				
6.1 Trained, qualified staff				
6.2 Have Legal access and FCRA expertise				
6.3 Member of NAPBS				
7. Training of WMATA Employees				
7.1 Provide training services to WMATA reps.				
7.2 Furnish WMATA FCRA forms, regulations, changes. Etc.				
8. Confidentiality of Information				
8.1 Confidentiality Agreement				
9. Information System and Security (Attached Submittals)				
9.1 Integrate with PeopleSoft 9.1				
9.2 Additional Reqt's with PeopleSoft 9.1				
9.2.1 E-Verify Requirements				
9.2.2 Describes how to integrate with PeopleSoft or ERP's (Submit Separately)				
9.2.3 Do you use third party system/solution				
9.2.4 If Cloud base, private, public, hybrid				
9.2.5 Describe System Change Management				
9.2.6 Provide certification; i.e ISO				
9.2.7 Describe SDLC				

(General Description of Scope of Work. For checklist purposes) See SCOPE of WORK attachment for Details.	C	NC	NA	COMMENTS
9.2.8 Describe Environment Maintenance				
9.2.9 Provide System Performance Metrics				
9.2.10 Data Retention and Archiving Policy				
9.2.11 Method Data Conversion at end of contract				
9.3 Additional Security Requirements				
9.3.1 Describe how data access is implemented				
9.3.2 Describe security standards				
9.3.3 Provide 3rd party agreements if any				
9.3.4 Detail if any of Incident Management				
9.3.5 Procedure to report security issues				
9.3.6 Provision of Isolated computing environment				
9.3.7 Audit Log recordings				
9.3.8 Review of the organization.				
9.4 Performance Schedules				
9.4.1 Monday-Friday; 8:30A.M - 5:30P.M EST				
9.4.2 Billing and Invoicing Reqts.				
9.4.2.1 Service Provided				
9.4.2.2 Name /SS/EIN of individual				
9.4.2.3 Order date				
9.4.2.4 Completion date				
9.4.2.5 Identify WMATA requesting Official				
9.4.2.6 Service Fee				
9.4.3 Submission of Invoices				
9.5 Invoicing Details				
9.6 Background Screening Performance				
9.6.1 Estimated to process 200 per month				

Name of Authorized Person and Signature

Company Name

Date

Past Performance Evaluation Form

This form should be completed by an authorized representative of the company that awarded the project/contract to:

COMPANY NAME:

COMPANY ADDRESS:

The information on this form will be used by WMATA for evaluation purposes only on WMATA RFP CQ17164 Background Screening.

1. Title of the Project/Contract:
2. Project/Contract Period of Performance:
3. Contract Value:
4. Brief Description of the Scope of Work:

I. Technical & Quality of Service	Yes	No	N/A
a. Was the project/contract completed as per scope of work?			
b. Was the project/contract completed on schedule? Were the background screening performed in a timely manner?			
c. Did the Contractor properly staff and have the knowledge and experience to satisfactorily complete the project/contract?			
d. Was the contractor the prime contractor?			
Overall Rating: ___ Excellent ___ Satisfactory ___ Unsatisfactory ___ N/A			

II. Customer Satisfaction	Yes	No	N/A
a. How would you rate the Contractor's customer service?			
Rating: ___ Excellent ___ Satisfactory ___ Unsatisfactory ___ N/A			

Comments:

Completed by: _____
Name Date

Title: _____

Company Name: _____

WMATA CQ17164 Background Check (Submit together with Volume II)

Information Security Posture Questionnaire (Third Party Information Information Security Survey)

	Information Security Governance - Policies and procedures should provide reasonable assurance that an appropriate segregation of duties exists amongst job functions	Yes	No	N/A	Describe
1	An information security policy has been implemented.				
2	The information security policy is based on a generally accepted framework (e.g., ISO 27001, NIST--800.53, PCI-DSS).				
3	Your company's security policies and standards were last reviewed within the past year.				
4	The scope of your company's security policies and standards cover the type of services WMATA is seeking (e.g., App Dev, Data Center Services, Business Process Outsourcing, etc.).				
5	A Management forum has been established to oversee and champion information security.				
6	Responsibilities for achievement of information security requirements are clearly defined.				
7	There is a separation of production and test processing environments and production and test program libraries.				
8	An independent review of information security practices has been conducted to ensure feasibility, effectiveness and compliance with written policies annually and one has been completed within the past year.				
9	There are no outstanding findings from the last independent audit review.				
10	An information classification policy has been implemented.				
11	Information handling standards have been implemented that support the information classification policy.				
12	A process has been implemented for labeling information that requires security protection.				
13	Security responsibilities are Included in employee job descriptions.				
14	Employees are trained in information security policies, standards and procedures, security requirements, business controls and correct use of IT facilities.				
15	Minimum security baselines (configuration details) are documented and implemented for each type of information processing device that will process WMATA's information.				
16	These baselines are reviewed at least annually and updated as needed.				
	Physical Security: Identify and document the physical access controls for:				
17	There are obvious physical security measures outside the data processing facility.				
18	CCTV covers the facility.				
19	If CCTV covers the facility, do you have at least 90 days of video retention.				
20	A guard/administrative person controls access to the physical facility.				

WMATA CQ17164 Background Check

Information Security Posture Questionnaire (Third Party Information Information Security Survey)

	Information Security Governance - Policies and procedures should provide reasonable assurance that an appropriate segregation of duties exists amongst job functions	Yes	No	N/A	Describe
21	Visitors are required to sign in to the facility.				
22	Visitors are provided with visible identification identifying them as visitors.				
23	Physical security protection exists, based on defined perimeters through strategically located barriers throughout the organization.				
24	Entry controls are employed over secure areas to ensure only authorized personnel can gain access.				
25	Access to the facility is controlled by the use of an access control system.				
26	The data processing facility access and denial of access is electronically logged and periodically reviewed by a security administrator.				
27	Physical access to the computer facility and office spaces is removed upon termination or when it is no longer required.				
28	Your company designs information processing facilities using physical security controls to address human, environmental and natural threats.				
29	The organization examines and addresses threats posed by neighboring facilities.				
30	The organization controls access to secure work areas.				
31	All fire doors are equipped with auditory and visual alarms.				
32	Visitor access, package delivery points and loading docks are isolated from				
33	Equipment is located to reduce risks of environmental hazards and unauthorized access.				
34	Controls are in place to protect information and information processing equipment				
35	Controls are in place to protect information and information processing equipment from power fluctuations.				
36	Controls are in place to protect Information and information processing equipment from telecommunication outages.				
37	Controls are in place to protect information and information processing equipment from loss of water supply.				
38	Controls are in place to protect information and information processing equipment from HVAC failures.				
39	Power and telecommunications cabling is protected from interception or damage.				
	Logical Access Security: Policies for information dissemination and entitlement should control access to information services and data on a basis of business need				
40	A policy based on business need for access has been implemented and communicated to all employees .				
41	Procedures are in place to register and revoke individuals from resource access control lists.				

WMATA CQ17164 Background Check

Information Security Posture Questionnaire (Third Party Information Information Security Survey)

	Information Security Governance - Policies and procedures should provide reasonable assurance that an appropriate segregation of duties exists amongst job functions	Yes	No	N/A	Describe
42	Controls are in place to provide access for authorized users based on the concepts of business need and least privilege.				
43	Formal procedures have been implemented and communicated to all users on the proper handling and control of all passwords				
44	Procedures are in place to ensure management's timely review and reconciliation of access logs.				
45	Controls are in place to require users to follow effective practices in creating passwords .				
46	Controls are in place to protect workstations when they are unattended for a specified period.				
47	Your company has implemented a policy that requires that all workstation screens blank out after a specified period.				
48	Appropriate authentication safeguards are in place to ensure remote user access is adequately controlled.				
49	Physical and logical accesses to diagnostic and configuration ports are securely controlled.				
50	Controls are in place to segregate groups of information services, users and/or information systems.				
51	Processes are in place to ensure that sensitive systems and applications are isolated.				
52	Routing controls have been implemented to ensure that computer connections and information flows do not breach the organization's access control policy.				
53	The procedure for logging into a computer system has been designed to minimize the opportunity for unauthorized access				
54	Standards have been implemented to ensure that all users have a unique identifier (UserID) for their personnel and sole use.				
55	Automated processes are in place to ensure that password management is effective, interactive and provides quality passwords.				
56	Policies and systems are in place to force password expiration . Specify what frequency .				
57	Controls are in place to restrict and tightly control the use of utility programs that are capable of overriding system and application security controls.				
58	Interactive sessions are suspended after a defined period of inactivity.				
59	Controls are in place to restrict connection times for high-risk systems.				
60	A formal policy and supporting standards and procedures have been implemented to authorize telecommuting and teleworking activities				
61	A formal policy and supporting standards and procedures have been implemented to authorize telecommuting and teleworking activities.				

WMATA CQ17164 Background Check

Information Security Posture Questionnaire (Third Party Information Information Security Survey)

	Information Security Governance - Policies and procedures should provide reasonable assurance that an appropriate segregation of duties exists amongst job functions	Yes	No	N/A	Describe
62	Outsourced services or other suppliers are not used for logical security. If you do, describe the controls in place to ensure the supplier meets the security requirements of your company .				
	Application Development Security: For the process, service or application program to be run by the vendor or third party identify and document the application development process				
63	Security requirements are included in the requirements-gathering portion of a pro for new and enhanced information systems.				
64	Controls are in place to ensure data input to applications is validated to ensure that it is correct and appropriate.				
65	Validation checks are incorporated into applications to detect corruption of information through processing errors or by deliberate acts.				
66	Controls have been identified and implemented to ensure the authenticity and message integrity in applications.				
67	Controls are in place to ensure that the data output from an application is correct and appropriate.				
68	A policy on the proper use of cryptographic controls has been implemented.				
69	Controls are in place to manage cryptographic keys.				
70	Procedures are in place to control the installation of software into production systems.				
71	Controls are in place to ensure that test data is carefully selected, protected and purged.				
72	Processes are in place to strictly control access to program source code.				
73	Changes to the production environment are all applications are reviewed and tested to ensure that there is no adverse impact on their operation or security.				
74	A security risk assessment been conducted to determine the company's risk to covert channel interception of information.				
75	Systems and operations support personnel monitor vulnerability notification services for notification of current vul				
76	Solutions (tools, processes) are in place and consistently used to identify and remediate application level security vulnerabilities.				
77	Software providing services sought by WMATA is free from vulnerabilities				
78	Outsourced services or other suppliers are not used for application development. If you do, describe the controls in place to ensure the supplier meets the security requirements of your company.				
	Remote Access: Policies and procedures should provide reasonable assurance that external access to the internal network is appropriately restricted, monitored and reviewed.				

WMATA CQ17164 Background Check

Information Security Posture Questionnaire (Third Party Information Information Security Survey)

	Information Security Governance - Policies and procedures should provide reasonable assurance that an appropriate segregation of duties exists amongst job functions	Yes	No	N/A	Describe
79	Remote access to the internal network is limited to authorized users.				
80	Remote users' activities are logged.				
81	Remote access is restricted to those with a legitimate business need.				
82	Have any third party service providers been granted remote access privileges.				
83	All devices that permit remote access are sufficiently controlled and secured.				
84	All wireless access points require encryption for access.				
85	An extra layer of authentication (i.e., multi-factor) is required for remote access.				
	Operations: Policies and procedures should provide reasonable assurance that system capacity, availability, and operation are appropriately provided and monitored				
86	Documented operating procedures are in place to address:				
	Media Handling				
	System startup / shutdown				
	System backup				
	Equipment maintenance				
87	A change management process has been implemented to track and approve all changes to the production environment.				
88	Specific procedures have been Implemented to address the change management process in emergency situations.				
89	Duties and areas of responsibilities are segregated to reduce the opportunities for unauthorized modification or misuse of assets.				
90	Controls are in place to ensure production operations, development and test environments are separated to reduce the risk of unauthorized access or changes to the production environment.				
91	Controls are in place to ensure that changes to service levels provided by third parties are approved prior to implementation.				
92	Controls are in place to monitor and adjust resource requirements for adequate system performance.				
93	Controls are in place to ensure that new information systems, upgrades, versions, and fixes are migrated into production only after obtaining appropriate review				
94	Appropriate detection, prevention and recovery controls to protect against malicious code has been implemented.				
95	Backups of information and software are taken in accordance with established policy or SLA.				
96	Backup tapes containing sensitive information are encrypted				
97	Back-up media is tested regularly to ensure restoration is possible.				

WMATA CQ17164 Background Check

Information Security Posture Questionnaire (Third Party Information Information Security Survey)

	Information Security Governance - Policies and procedures should provide reasonable assurance that an appropriate segregation of duties exists amongst job functions	Yes	No	N/A	Describe
98	Current back-ups are maintained at an off-site facility for recovery purposes.				
99	Controls are in place to adequately manage and control threats and to maintain security for systems and applications using network facilities.				
100	Procedures are in place to track and reconcile the location of all removable storage media. How long is your tracking system data archived.				
101	The tracking system data is archived. Specify for how long.				
102	The tracking system is capable of determining what data is on what media.				
103	Procedures are in place to ensure the verifiable secured disposal of storage media.				
104	Procedures are in place to ensure the proper handling and storage of information storage media.				
105	a third party off-site storage company is used.				
106	Third party off-site storage companies are bonded.				
107	Third party off-site storage companies, if used, pick up storage media from your site and take the media directly to their off-site location without making other stops.				
108	Third party off-site storage companies, if used, provide a single driver or a driver and attendant or second driver on every pickup.				
109	If third party off-site storage companies are used, the vehicles are equipped with CCTV or equivalent.				
110	Controls are in place to prevent unauthorized access to all system documentation.				
111	Procedures are in place to protect media from authorized access, misuse or corruption during transit.				
112	Controls are in place to ensure information is protected when used in electronic messaging				
113	Policies and standards have been implemented to protect information affected by the interconnection of business information systems.				
114	Firewalls are implemented to protect internal systems from un-trusted networks. Describe the Architecture:				
115	Network and host-based intrusion detection or intrusion prevention controls are implemented.				
116	Periodic network penetration testing is performed by an independent entity.				
117	Firewall and router rule sets are reviewed periodically.				
118	Controls are in place to protect information when passing over public or un-trusted networks.				
119	Controls have been implemented to protect information involved in transmission of on-line transactions.				

WMATA CQ17164 Background Check

Information Security Posture Questionnaire (Third Party Information Information Security Survey)

	Information Security Governance - Policies and procedures should provide reasonable assurance that an appropriate segregation of duties exists amongst job functions	Yes	No	N/A	Describe
120	Audit logs are produced to record activities, exceptions and other security-relevant events.				
121	Audit logs are reviewed and reconciled on a timely basis.				
122	Controls are in place to prevent unauthorized access or modification of log data.				
123	Processes are in place to log all system administrator and system operator activities.				
124	Are these logs reviewed and reconciled by an independent third party (or is adequate segregation of duties in place for such review) on a regular and timely basis.				
125	Processes are in place to record and reconcile system errors and faults.				
126	Procedures are in place to ensure that all processing systems internal clocks are synchronized and accurate.				
127	Outsourced services or other suppliers are not used for operations support. If you do describe the controls are in place to ensure the supplier meets the security requirements of your company.				
128	Controls are in place to restrict the user of "administrator" and "root" accounts.				
	Disaster Recovery and Business Continuity Planning: Controls to identify and reduce risk, limit the consequences of damaging incidents, and ensure timely resumption of mission critical functions must be implemented				
129	A formal process is in place for developing and maintaining business continuity throughout the organization .				
130	A risk assessment has been conducted and maintained to determine the company's risk level to interruptions, including those caused by natural events such as				
131	hurricanes, floods, tornadoes, to the business processes.				
132	Plans have been developed to maintain or restore IT and information security business operations at required levels and time frames following an interruption in services. (Recovery Time Objectives (RTO) and Recovery Point Objectives (RPO)).				
133	Information security is part of the organization's DRP/BCP framework.				
134	All business continuity plans are reviewed by executive management.				
135	The business continuity plans are tested at least annually and the tests are formally documented and approved by executive management.				
136	information security is actively included in the testing and review of the business continuity plans.				

WMATA CQ17164 Background Check

Information Security Posture Questionnaire (Third Party Information Information Security Survey)

	Information Security Governance - Policies and procedures should provide reasonable assurance that an appropriate segregation of duties exists amongst job functions	Yes	No	N/A	Describe
137	All dependencies and specific functions/services provided by other areas or external service providers, on which each business function/service depends, have				
138	The RTO and RPO for each dependency has been reviewed to ensure it is compatible with the impact and time frames of the business function/service,				
139	The key individuals required to activate and participant in the execution have been identified.				
140	The steps for resuming business have been documented.				
141	The minimum recovery resources, sufficient to support a 30-day outage with no				
	Security Incident Handling: Controls to ensure that the response to security incidents are timely, consistently performed and ensure the incidents are adequately documented and evidence is captured, handled and appropriately maintained.				
142	Your company has a documented information security incident response procedure.				
143	The roles and responsibilities for security incident response are clear.				
144	Incident response procedures are tested periodically.				
145	No information security Incidents were experienced in the last year.				
146	Provide a summary of the types of incidents, attack vectors, number of records involved (if applicable).				
147	How many or what percent were from internal vs. external sources.				
148	Have you ever had a security breach that resulted in a) data being stolen, b) data being damaged, altered or deleted. or c) that required notification under privacy laws				
149	If you have had a security breach that resulted in data being stolen, data being damaged, altered or deleted, or that required notification under privacy laws, were steps taken to identify the cause of the breach and were steps taken to prevent a reoccurrence				

Name of Authorized Person and Signature

Company Name

Date



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Metro reserves the right to eliminate, change, or modify this policy at any time. Additionally, the language used in this policy should not be construed as creating a contract of employment between Metro and any of its employees or otherwise altering an employee's at-will employment relationship with Metro.

1.00 PURPOSE

This policy/instruction (P/I) establishes the process and procedures by which candidates and employees are screened for criminal history.

- 1.01 Washington Metropolitan Area Transit Authority (Metro) conducts Background Checks in order to promote a safe and secure environment for all Metro employees, Metro customers, and the general public.
- 1.02 Further, Metro conducts Background Checks in a consistent manner; expects candidates and employees to provide truthful information about their criminal records; and uses such information to exclude individuals from employment only to the extent that such exclusion is job-related and consistent with business necessity.
- 1.03 Consistent with Metro's commitment to Equal Employment Opportunity (EEO) and Title VII of the Civil Rights Act, as amended, it is Metro's policy to treat all candidates for employment and employees in a fair and equitable manner.
- 1.04 Any third party authorized to conduct Background Checks on behalf of Metro shall do so in accordance with applicable federal law, and shall review candidates and employees according to job-related information, documenting the job requirements and work setting characteristics associated with the job category for which they are being considered.

2.00 SCOPE

- 2.01 This P/I applies to all candidates and employees, except for sworn positions and sworn employees of the Metro Transit Police Department (MTPD) as specified below.
- 2.02 Candidates for sworn positions and sworn employees of the MTPD are subject to MTPD pre-employment background screening requirements specific to law enforcement standards.
- 2.03 In accordance with Section 5.01 of this P/I, all external candidates covered by this P/I must undergo a Background Check before receiving a final offer of employment.
- 2.04 Current and returning employees may be subject to a Background Check in accordance with Section 5.02 of this P/I.

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- 2.05 This P/I and its Appendices are applicable exclusively to criminal Background Checks and are not designed to address other employment related checks/screenings required under the Recruitment and Hiring policy.

3.00 DEFINITIONS

- 3.01 Background Check - the process of obtaining, verifying, and evaluating an individual's Criminal History Information to determine eligibility for employment, promotion, or transfer to another position based on the duties, work requirements, and work settings of the position.
- 3.02 Screening Group - the Background Check screen(s) applicable to a particular position with Metro based upon the duties, work requirements, and work settings that constitute the defining job-related characteristics of the position.
- 3.03 Criminal Conviction - a criminal prosecution that results in a judgment of guilt, regardless of whether the judgment is the result of:
- (a) entry of a plea of guilty, nolo contendere, no contest or the equivalent; or
 - (b) a verdict or finding of guilty in a court of law or military tribunal.
- For purposes of this policy, probation before judgment (PBJ) is not a conviction.
- 3.04 Criminal History Information - information contained in federal, state, and local records pertaining to an arrest, indictment, criminal information, misdemeanor complaint, or conviction of a crime.
- 3.05 Investigative Background Check - a Background Check conducted in accordance with Section 5.02(f) of this P/I.
- 3.06 Contingent Offer of Employment - an offer of employment extended after interviews and all other screenings have been successfully completed, except the Background Check and, if applicable, medical exam.
- 3.07 10-Year Disqualifying or 10-Year Disqualification - disqualifying offenses where an individual was convicted during the 10 years preceding the Background Check, for which the individual may not request an individualized assessment.
- 3.08 Presumptively Disqualifying or Presumptive Disqualification - offenses where an individual may request an individualized assessment in accordance with Appendix C to this P/I.

4.00 RESPONSIBILITY

- 4.01 Chief Human Resources Officer (CHRO), or designee, has overall responsibility for the administration, interpretation, application, process and maintenance of this P/I, including providing all needed training. Additionally, the CHRO is responsible for maintaining all

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Background Check records in a manner that ensures confidentiality and integrity of information. The CHRO is the sole officer authorized to initiate an Investigative Background Report.

- 4.02 Department Heads/Directors are responsible for advising hiring officials, managers, and supervisors of the Background Check requirements and processes, and for cooperating with Human Resources in the application of this P/I.
- 4.03 Managers/Supervisors are responsible for understanding and communicating the requirements of this P/I to their employees.
- 4.04 Employees and Candidates are responsible for being truthful, and cooperating fully and in good faith with the Background Check requirements and process.

5.00 POLICIES AND PROCEDURES**5.01 Background Checks for External Candidates**

- (a) It is WMATA's policy not to consider or request Criminal History Information until after a Contingent Offer of Employment has been made. Except as provided in this P/I, no Metro employee may inquire about an external candidate's Criminal Information prior to the candidate receiving a Contingent Offer of Employment.
- (b) HR will notify external candidates in writing that a Background Check will be conducted and obtain the candidate's written consent to perform it. HR must provide the written notification and obtain written consent on an approved authorization form in advance of the Background Check.
- (c) HR will consider an external candidate's failure to authorize the required Background Check as a voluntary withdrawal from employment consideration.
- (d) If an external candidate voluntarily provides information about their Criminal History Information before a Contingent Offer of Employment has been made, the candidate should be advised that their Criminal History Information may not automatically disqualify them from consideration for employment with Metro. Any external candidate questions about Metro's background screenings should be referred to the Manager, Employee Relations.
- (e) In addition to an authorization form, HR will provide a Criminal Disclosure Form to any external candidate who has received a Contingent Offer of Employment. The Criminal Disclosure Form directs the candidate to provide HR with information about that candidate's criminal history, including pending charges.
- (f) The external candidate's Criminal Disclosure Form will be evaluated by HR to determine eligibility for employment in accordance with Appendices A & B to this policy.

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- (g) Any significant discrepancy or misrepresentation found as a result of differences between the Background Check and the information received that cannot be successfully resolved will serve as a basis to disqualify the candidate from employment eligibility.

5.02 Background Checks for Current Employees

- (a) WMATA will conduct Background Checks on current employees consistent with the requirements under the Fair Credit Reporting Act (FCRA). Where required by the FCRA, HR will obtain the employee's written consent on an approved authorization form before conducting a Background Check. For all new hires after the effective date of this P/I, this written consent will be obtained at the time of hire. New hires will be required to complete a one-time authorization allowing WMATA to conduct future Background Checks as outlined below.
- (b) **Change in Position** - Background Checks may be conducted for employees who are being transferred, promoted or demoted into a position with heightened Background Check requirements based upon job-related work requirements and work settings. Screening will be based on the criteria and timelines in Appendix B.
- (c) **Return to Duty Checks** - Employees who have been away from work for 90 calendar days or more will be subject to a return-to-duty Background Check for the period of time the employee is absent from the job. Employees subject to the 90-day return-to-duty Background Check will be allowed to return to work pending the results of the check. A returning employee's Criminal History will not be considered unless:
- (1) The Background Check reveals that the employee has been arrested, charged, indicted or convicted during the period of absence prior to returning to work;
 - (2) The Background Check reveals Criminal History Information that was not revealed by a previous Background Check or disclosed by the employee; or
 - (3) The CHRO determines that there are exceptional circumstances justifying consideration of the employee's Criminal History Information and issues a written determination detailing those circumstances.
- (d) **Random Checks** - Beginning on or about July 1, 2018, all employees will be subject to random Background Checks regardless of position or work status. An employee's Criminal History Information will not be considered unless:
- (1) The Background Check reveals that the employee has been arrested, charged, indicted or convicted, during the 365 day period prior to the date that the Background Check is conducted;
 - (2) The Background Check reveals Criminal History Information that was not revealed by a previous Background Check or disclosed by the employee; or

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- (3) The CHRO determines that there are exceptional circumstances justifying consideration of the employee's Criminal History Information and issues a written determination detailing those circumstances.
- (e) **Reinstated Employee Checks** - Background Checks will be conducted for employees who are reinstated following a period of absence. A reinstated employee's Criminal History Information will not be considered unless:
- (1) The Background Check reveals that the employee has been arrested, charged, indicted or convicted, during the period of absence prior to reinstatement;
 - (2) The Background Check reveals Criminal History Information that was not revealed by a previous Background Check or disclosed by the employee; or
 - (3) The CHRO determines that there are exceptional circumstances justifying consideration of the employee's Criminal History Information and issues a written determination detailing those circumstances.
- (f) **Investigative Background Checks** may be conducted in connection with:
- (1) an investigation into suspected misconduct relating to employment;
 - (2) compliance with Federal laws and regulations;
 - (3) compliance with pre-existing written Metro policies or procedures.
- (g) Consistent with the Uniformed Services Employment and Reemployment Rights Act (USERRA), HR will not delay the prompt reemployment of employees returning from military service while awaiting the results of a Background Check.

5.03 Information Excluded from Background Checks

- (a) In conducting a Background Check, HR will not request or consider Criminal History Information relating to arrests, indictments, or complaints that have been resolved without a conviction.
- (b) HR will not consider Criminal History Information relating to:
- (1) a conviction that has been judicially dismissed, expunged, or ordered sealed; or
 - (2) juvenile case records, as that term is defined in D.C. Code § 16-2331.

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- (a) If a Background Check reveals that criminal charges are pending against an external candidate, HR will apply the standards in Appendix A to determine whether a final conviction on these charges would be 10-Year or Presumptively Disqualifying.
- (1) If a conviction would not be 10-Year or Presumptively Disqualifying, Metro will not consider the pending charges further in evaluating the applicant's suitability for employment. The applicant will continue through the hiring process.
- (2) If a conviction would be 10-Year or Presumptively Disqualifying, Metro will send the applicant a preliminary notice of disqualification and place the application on hold for a period of 90 calendar days, but will not suspend the hiring process. If the applicant provides Metro with notice that the charges have been resolved within the 90 calendar day period, Metro will further consider the applicant for employment in accordance with this P/I, if the position is still open and/or available. Applicants with pending charges not resolved in 90 calendar days will be removed from the hiring process and must re-apply for any future employment opportunity.
- (b) Employees who are arrested, charged with, or convicted of a crime while employed by Metro are responsible for notifying their immediate supervisors or managers in accordance with Metro P/I 7.8.6, *Disclosure and Disposition of Arrests and Convictions*. Employees who fail to do so will be subject to disciplinary action, up to and including termination.
- (c) If a Background Check reveals that a warrant has been issued for the arrest of an external candidate or employee, Metro will notify the individual of this information, provide the individual with a copy of the Background Check report, and inform the individual that the warrant must be executed, revoked, or otherwise resolved within 10 business days. This period may be extended in writing at the discretion of the Chief Human Resources Officer or designee. Failure to satisfy this requirement within the time period proscribed will result in revocation of the candidate's Contingent Offer of Employment or termination of the employee's employment, and will disqualify the individual from future employment with Metro until such time as the warrant is resolved.

5.05 Confidentiality

- (a) Metro takes the protection of applicant and employee information seriously and will take reasonable measures to protect unauthorized access to applicant or employee information collected pursuant to this policy. To the extent permitted by law, Metro will restrict access to such information to Metro employees who need to know as a function of their positions within Metro.
- (b) All information obtained as a result of a Background Check will be used solely for employment purposes.

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- (a) If a Background Check reveals adverse Criminal History Information, this information will be evaluated in accordance with Appendices A and B to this P/I. If it is determined that this information would make the applicant or employee disqualified for employment, the applicant or employee will be sent a pre-adverse information notification.
- (b) Before making any final determination based on adverse information discovered through a Background Check, the individual will:
 - (1) have an opportunity to review and dispute the accuracy of the Criminal History Information after receiving the pre-adverse information notification; and
 - (2) for Presumptive Disqualifications only, have an opportunity to request an individualized assessment in accordance with Appendix C to this P/I. Individualized assessments do not apply to 10-Year Disqualification criminal offenses.
- (c) Individualized assessments conducted pursuant to Section 5.06(b) of this P/I are adjudicated on a case-by-case basis in accordance with Appendix C. Accordingly, as a general rule, an adverse adjudication pursuant to this P/I will not necessarily preclude the applicant or employee from future employment with Metro.

6.00 ENFORCEMENT

Failure to comply with the requirements of this P/I may result in discipline, up to and including involuntary separation.

7.00 EXCEPTIONS

- 7.01 Sworn employees of the Metro Transit Police Department (MTPD).
- 7.02 Contractors and/or consultants performing work on behalf of Metro.

8.00 RELATED POLICIES, REGULATIONS & RESOLUTIONS

- 8.01 P/I 7.1.1 – Equal Employment Opportunity Including Affirmative Action and Alternative Dispute Resolution
- 8.02 P/I 7.2.2 – Recruitment and Hiring
- 8.03 P/I 7.8.6 – Disclosure and Disposition of Arrests and Convictions
- 8.04 D.C. Code § 16-2331 Juvenile Case Records; Confidentiality; Inspection and Disclosure
- 8.05 USERRA – Uniformed Services Employment and Reemployment Rights Act

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9.00 LIST OF APPENDICES, ATTACHMENTS OR FORMS

- 9.01 Appendix A – Screening Procedures
- 9.02 Appendix B – Screening Grid
- 9.03 Appendix C – Procedures for Individualized Assessments of Presumptive Disqualification

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APPENDIX A: Screening Procedures

1. This Appendix sets forth the procedures for evaluating an individual's Criminal History Information. The evaluation shall be conducted by an individual or entity designated by the Chief Human Resources Officer (CHRO) and trained in the administration of Metro's Criminal Background Check Policy Instruction. For purposes of this Appendix, the party conducting this evaluation will be referred to as the "Evaluator."
2. This Appendix is intended to be comprehensive. However, circumstances may arise where this Appendix does not provide sufficiently clear guidance or the application of this Appendix would lead to unfair or irrational results. In these circumstances, the Evaluator should contact the CHRO or his or her designee for additional guidance. Metro expressly reserves the right to determine the appropriate Offense Category when evaluating an individual's Criminal History Information
3. An individual's Criminal History Information will be referred to the Evaluator for review if a Background Check reveals that an applicant or employee:
 - a. has been convicted of a crime; or
 - b. faces pending charges for a crime.
4. As a first step, the Evaluator will review the individual's Criminal History Information to determine whether he or she is disqualified from employment due to a 10-Year Disqualification offense. The following felonies are 10-Year Disqualification offenses if the individual was convicted during the 10 years preceding the employment application date:
 - a. Murder
 - b. Assault with intent to murder
 - c. Terrorism
 - d. Rape or aggravated sexual offenses
 - e. Unlawful possession, use, sale, distribution, or manufacture of an explosive
 - f. Armed robbery
 - g. Aggravated Assault
 - h. Arson
5. As a second step, for individuals who are not disqualified by a 10-Year Disqualification offense, the Evaluator will determine if he or she is a "Presumptively Disqualified Repeat Offender." For purposes of this Appendix, a "Presumptively Disqualified Repeat Offender" is an individual who:
 - (1) In two or more separate proceedings:

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- (a) has been criminally convicted, or released from incarceration in the past 10 years; or
 - (b) has been criminally convicted or released from incarceration in the past 10 years, and faces pending criminal charges; or
 - (c) faces pending criminal charges; AND
 - (2) Has 4 or more points from the above-referenced convictions or pending charges, calculated by assigning 2 points to each separate proceeding involving a felony, and 1 point to each separate proceeding involving a misdemeanor. If a single proceeding involves multiple crimes, the crime with the higher point value should be applied (e.g., one proceeding resulting in a felony and misdemeanor conviction would be 2 points).
6. As a third step, for individuals who are not Presumptively Disqualified Repeat Offenders, the Evaluator will review the individual's Criminal History Information using the Screening Grid as follows:
- a. The Evaluator will identify the Screening Group(s) that apply to the position that the individual is seeking to fill.
 - b. Using Section 7 of this Appendix, the Evaluator will review the convictions and pending charges in the individual's criminal history report and place each conviction or charge in the appropriate Offense Category. Where more than one Offense Category may apply, the Evaluator shall apply the Offense Category with the longer lookback period.
 - c. Using the Screening Grid, the Evaluator will determine whether the individual has been convicted or charged with a single offense (felony or misdemeanor) in an Offense Category that has an unlimited lookback period. If so, the individual is Presumptively Disqualified from employment, but may ask for an Individualized Assessment.
 - d. If the individual has not been convicted or charged with a crime that is Presumptively Disqualifying due to an unlimited lookback period, the Evaluator will next determine the lookback period that applies to each of the individual's charges or convictions. 2 points will be assigned to each felony and 1 point to each misdemeanor that
 - (1) resulted in a conviction entered within the applicable lookback period;
 - (2) resulted in a conviction entered outside the applicable lookback period, but the individual was released from confinement during the lookback period; or
 - (3) has not yet resulted in a conviction, and the charge is still pending.
 - e. An individual will be Presumptively Disqualified from employment if he or she has two or more points, e.g., 2 points for one felony or 2 points for two misdemeanors during the applicable lookback period.

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7. The Offense Categories are defined as follows:
- a. "Bias-related Offenses" include all criminal acts that result in a conviction due to the accused's prejudice towards the victim's actual or perceived membership in a protected class. Examples of Bias-related Offenses include, but are not limited to, offenses punishable pursuant to 18 U.S.C. § 249 or D.C. Code § 22–3703.
 - b. "Drug Distribution Offenses" include all offenses that involve (i) the manufacture, sale or distribution of a controlled substance or (ii) possession with intent to sell, or distribute a controlled substance, with the exception of Section 9 Offenses.
 - c. "Drug Possession Offenses" include all offenses, other than Drug Distribution Offenses, that involve the unlawful purchase, use, or possession of a controlled substance. Section 9 Offenses are excluded from drug possession offenses.
 - d. "Offenses of Dishonesty" include all offenses involving fraud or dishonesty. Offenses of Dishonesty include, but are not limited to, fraud (including voter fraud and securities fraud), embezzlement, perjury, identity theft, impersonation of a police officer, forgery, false advertising, and counterfeiting.
 - e. "Weapons Offenses" include all nonviolent offenses involving the unlawful possession, manufacturing, sale, brandishing, use, or discharge of a firearm, explosive, or deadly weapon, including felon in possession of a firearm, brandishing a firearm, and unlawful carrying of a concealed weapon.
 - f. "Offenses of Sexual Violence" include (i) all sexual offenses involving force or the threat thereof and (ii) all sexual offenses involving sexual contact where the victim is unable to consent due to incapacity or otherwise, but not statutory rape. Examples of Offenses of Sexual Violence include, but are not limited to, offenses such as rape, sexual assault, sexual abuse, child sexual abuse, and child molestation.
 - g. "Property Offenses" include all offenses involving (i) the destruction or defacement of property or (ii) unauthorized entry onto property. Examples of Property Offenses include, but are not limited to, arson, destruction of property, vandalism, and trespass.
 - h. "Driving Offenses" include reckless driving; careless driving; driving without a license; and driving a motor vehicle without owner's consent. The Evaluator will consider these offenses only for positions in Screening Group C that require operation of a Metro vehicle.
 - i. "Serious Driving Offenses" include all offenses involving (i) the operation of a vehicle while under the influence of intoxicating substances, (ii) fleeing the scene of a vehicular accident, or (iii) driving offenses involving death or serious injury. Examples of Serious Driving Offenses include, but are not limited to, vehicular homicide, vehicular manslaughter, driving while intoxicated, hit-and-run, and fleeing the scene of an accident.

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- j. "Societal Offenses" include the following crimes: resisting arrest, violation of a protective order, human trafficking, stalking, racketeering, gang-related offenses, escape, money laundering, bribery, obstruction of justice, involuntary manslaughter, witness tampering, and criminal neglect.
 - k. "Serious Violent Offenses" include all offenses involving physical violence against a person or the threat thereof that (i) are punishable as felonies or (ii) involve aggravating circumstances such as intent to kill, use of a weapon, or targeting a vulnerable individual. Examples of Serious Violent Offenses include, but are not limited to, murder, voluntary manslaughter, mayhem, assault with intent to kill, aggravated assault, assaulting a police officer, assault with a deadly weapon, armed robbery, child abuse, kidnapping, and carjacking.
 - l. "Sexual Offenses" include all sexual offenses that (i) do not meet the definition of an Offense of Sexual Violence and (ii) are not listed in Section 9 of this Appendix. Examples of Sexual Offenses include, but are not limited to, indecent exposure, enticing a minor, possession or distribution of child pornography, mailing/displaying/sending obscene materials, solicitation of prostitution, prostitution, pimping, and statutory rape.
 - m. "Terrorism Offenses" include all criminal offenses involving or relating to "international terrorism" or "domestic terrorism," as those terms are defined in 18 U.S.C. § 2331. Examples of Terrorism Offenses include, but are not limited to, providing material support to terrorists or to designated foreign terrorist organizations.
 - n. "Theft Offenses" include all offenses involving (i) the wrongful taking of another's property through means other than fraud or dishonesty. Examples of Theft Offenses include, but are not limited to, extortion, blackmail, larceny, burglary, petty theft, shoplifting, trafficking or receiving stolen property, and possession of burglary tools.
 - o. "Violent Offenses" include all offenses involving physical violence against a person or the threat thereof. Examples of Violent Offenses include, but are not limited to, offenses such as assault, domestic violence, resisting arrest (physical force), robbery, and battery.
8. For purposes of this Appendix, a conviction for an attempt to commit a crime is equivalent to a conviction for the crime itself. Similarly, a conviction for a conspiracy to commit a crime is equivalent to a conviction for the crime itself.
9. **Section 9 Offenses and Repeat Offenders.** A candidate for employment will not be Presumptively Disqualified based on a conviction or combination of convictions for any of the following offenses, which will not be considered when applying the Screening Grid (collectively referred to as the "Section 9 Offenses"):
- a. Societal offenses: harboring a fugitive; smuggling contraband into prison; vagrancy; loitering; contempt of court; panhandling; ordinance violations; cruelty or neglect to animals; unauthorized entry or re-entry into the United States; abusive language; disorderly conduct; disturbing the peace; drunk and disorderly; unlawful assembly.

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- b. Alcohol and marijuana offenses: minor in possession of alcohol; misdemeanor possession of marijuana; misdemeanor possession of marijuana paraphernalia.
- c. Private sexual offenses: sodomy and bigamy.

However, because repeated convictions for these crimes may be evidence of an inability or unwillingness to abide by the law, Section 9 Offenses other than sodomy and bigamy will be considered in determining whether the candidate is a Repeat Offender.

10. **Screening Group Definitions.** These descriptions for each screening group are based on the duties, work requirements, and work settings that define the job-related characteristics of the positions in that group.
- a. **SCREENING GROUP A - No Heightened Risk Facts.** These positions are not safety-sensitive, do not require significant interaction with the public, and the ability to handle conflict is less important. The workers in these positions may still pose a risk to coworkers or have access to Metro resources, but there are no job or work context factors that present heightened risk.
 - b. **SCREENING GROUP B - Significant Interaction with the Public.** The positions within this screening group involve substantial interaction with members of the public. As such, these workers are more likely to be responsible for the health, safety, and well-being of members of the public. Also, these workers may be exposed to, and have to handle, unpleasant, discourteous, and potentially aggressive interactions with the public.
 - c. **SCREENING GROUP C - Use/Operation of Valuable Equipment or Access/Exposure to Hazardous Materials.** The nature of these positions and the circumstances under which the work is performed may involve immediate and/or direct threats to the health or safety of others. These workers may have access/exposure to, or must operate or use, valuable equipment or hazardous materials, including the operation of a motor vehicle. These positions pose heightened risk because a momentary lapse in judgment could result in either injury or death to another person or significant financial loss to Metro.
 - d. **SCREENING GROUP D - Access to Significant Resources or Personally Identifiable Information (PII).** The positions in this screening group have access to significant or valuable company resources, or personally identifiable information that, if misused or stolen, could result in significant losses or liability for Metro and/or its employees, customers, contractors or other third parties.
 - e. **SCREENING GROUP E - Unsupervised Responsibility for a Vulnerable Population.** The positions within this screening group involve workers who provide direct care and unsupervised assistance, outside of the public eye, to members of vulnerable populations, including children, the elderly, and individuals with a mental or physical disability.

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Category of Offenses	Lookback Period				
	<u>Screening Group A</u> (No heightened risk factors)	<u>Screening Group B</u> (Significant interaction with the public)	<u>Screening Group C</u> (Operation of equipment or exposure to hazards)	<u>Screening Group D</u> (Access to significant resources or PII)	<u>Screening Group E</u> (Unsupervised responsibility for vulnerable population)
Bias-related offenses	7 Years	10 Years	7 Years	7 Years	10 Years
Drug Distribution Offenses	5 Years	7 Years	7 Years	10 Years	10 Years
Drug Possession Offenses	5 Years	5 Years	7 Years	7 Years	7 Years
Offenses of Dishonesty	5 Years	5 Years	5 Years	10 Years	10 Years
Weapons Offenses	7 Years	10 Years	10 Years	7 Years	UL
Offenses of Sexual Violence	10 Years	10 Years	10 Years	10 Years	UL
Property Offenses	5 Years	5 Years	10 Years	10 Years	10 Years
Serious Driving Offenses	5 Years	5 Years	10 Years	5 Years	5 Years
Societal Offenses	5 Years	7 Years	7 Years	7 Years	7 Years
Serious Violent Offenses	10 Years	10 Years	10 Years	10 Years	UL
Sexual Offenses	7 Years	10 Years	7 Years	7 Years	UL
Terrorism Offenses	10 Years	10 Years	10 Years	10 Years	10 Years
Theft Offenses	5 Years	7 Years	5 Years	10 Years	10 Years
Violent Offenses	5 Years	7 Years	7 Years	5 Years	UL
Driving Offenses	N/A	N/A	10 Years	N/A	N/A

**OTHER THAN UL, 2 POINTS IN LOOKBACK PERIOD = PRESUMPTIVELY DISQUALIFYING
FELONY = 2 POINTS MISDEMEANOR= 1 POINT**

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**POLICY/INSTRUCTION: 7.2.3/2 – Criminal Background Checks****APPENDIX C: Procedures for Individualized Assessments of Presumptive Disqualification**

1. When information from a Background Check would render an employee or candidate presumptively disqualified for employment, a written notice of Presumptive Disqualification will be sent to the employee or candidate. A packet with instructions for requesting an individualized assessment of the decision will accompany the written notice of Presumptive Disqualification in the adverse notification letter.
2. The purpose of this review process is to allow candidates for employment and current employees to submit additional information that will help Metro determine whether the disqualification from employment is job-related and consistent with business necessity.
3. The Individualized Assessment Panel is responsible for resolving review requests. The Individualized Assessment Panel may consist of: Manager of Employee Relations, Director of Labor Relations and EEO liaison. A representative from the Office of General Counsel will serve as legal advisor to the panel, as needed.
4. For a written request to be timely, it must be postmarked, e-mailed or hand-delivered within seven business days after the date on the notice of Presumptive Disqualification in the adverse notification letter. Failure to timely submit a written request for review constitutes waiver of the right to an Individualized Assessment.
5. The individual may attach documents and other information he or she wishes the Individualized Assessment Panel to consider. The request for review should be mailed or delivered to: WMATA CBC Administrator, Department of Human Resources, 600 Fifth Street, NW, Washington, DC 20001. If delivered via email, the request and documentation should be sent to CBCAppeals@WMATA.com.
6. Upon timely receipt of a request, copies of the following documents will be transmitted to the Individualized Assessment Panel:
 - a. The individual's job application;
 - b. The individual's Criminal Disclosure Form;
 - c. The Background Check report containing the individual's Criminal History Information; and
 - d. Any written documentation or other information submitted by the individual.
7. The Panel will review the information provided, giving consideration to the following:
 - a. The facts and circumstances surrounding the offense or conduct
 - b. The number of offenses for which the individual was convicted
 - c. Older age at the time of conviction or release from prison
 - d. Evidence that the individual performed the same type of work after his/her conviction with no known incidents of criminal conduct
 - e. The length and consistency of employment history before and after the offense or conduct

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APPENDIX C: Procedures for Individualized Assessments of Presumptive Disqualification

- f. Evidence of the person's rehabilitation efforts, e.g., education/training
 - g. Employment or character references and any other information regarding fitness for the particular position
 - h. Whether the individual is bonded under a federal, state, or local bonding program.
 - i. Extent of opportunity to engage in further criminal activity
 - j. Age of the person at the time of the commission of the offense
 - k. The time elapsed since last criminal activity
 - l. The legitimate interest of Metro in protecting property and the safety and welfare of specific individuals or the general public
8. If the position in question is an open position (one under continuous recruitment), the request for review will be completed within 30 calendar days from the date the Panel receives the request for review. If the request for review is resolved in favor of the employee or candidate, the individual will be placed in the next hiring class.
9. If the position in question is not an open position (a position with a defined open and close date), the request for review will be resolved within three business days of receipt of a request for review. The position will be held open until the review is complete. If Metro does not receive a request for review within seven business days of the date on the notice of Presumptive Disqualification, the employee or candidate will be deemed to have waived their right to a review, and Metro may offer the position to a different employee or candidate.
10. The Individual Assessment Panel will review the material and determine whether disqualification of the individual is job related and consistent with business necessity. The CBC Administrator will notify the applicant or employee in writing of the Panel's decision within 2-working days of receipt of the decision. The decision of the Panel is final.

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