



Request For Proposals (Non-Federal)

**8000 Series Passenger Railcars,
Simulator, Related Supplies and
Services**

RFP No. : CQ19038-8K/FRV

Date: September 4, 2018

Proposal Closing Date: January 31, 2019

Date: September 4, 2018

SUBJECT: RFP No. CQ19038-8K/FRV

Dear Sir/Madam:

The Washington Metropolitan Area Transit Authority (WMATA) requires the services of a qualified contractor to design, build, and deliver WMATA's 8000 series passenger railcars, simulator, and spare parts, with options for additional railcars, vendor managed inventory (VMI), and extended warranties.

Offerors are required to submit sufficient information concerning all evaluation factors to enable Authority personnel to fully assess the capabilities of the Offeror to perform all requirements. The proposal must be sufficient in detail and scope to enable evaluation and provide the evaluators a clear understanding of the Offeror's approach, expertise, and capability as required by the solicitation. Proposals must demonstrate that the Offeror has a thorough understanding of all requirements and associated risks and is able, willing, and competent to devote the resources necessary to meet all requirements. The Offeror shall not alter or rearrange the solicitation. The burden of proof for all substantiation within the proposal rests with the Offeror. Offerors are advised that the Authority may incorporate any part of the Offeror's proposal deemed beneficial to the Authority, into the final contract, with or without discussions.

In presenting material in the proposal, the Offeror is advised that quality of information is more important than quantity. Clarity, brevity, and logical organization should be emphasized during proposal preparation. It is the responsibility of the Offeror to present enough information to allow the Authority to evaluate its proposal without discussions. Unsubstantiated statements that the prospective Offeror understands, can or will comply with the specifications, or paraphrasing the requirements or parts thereof are considered inadequate and may render a rating of unacceptable.

The Offeror shall include any data necessary to illustrate the adequacy of the various assumptions, approaches, and solutions to problems. There is no need to repeat information in more than one volume. The detailed information must be included in the most logical place and summarized and referenced in other areas if an overlap exists. Do not provide elaborate brochures or other presentation material beyond that sufficient to present a complete and effective proposal.

WMATA would be interested in viewing alternative pricing models that would include opportunities for overall cost savings, incentives for expedited delivery of railcars, the achievement of quality and safety standards that prolong lifecycles of railcars, quantities price breaks, and the timely delivery of spare parts. Such alternative pricing models must include details of methodology, metrics and basis for incentives to reflect reasonable values for meeting stated objectives.

The overall cost of this project is very important to WMATA. However, high quality standards for structural, systematic operating systems, and optimal designs remain a high priority focus for our railcar fleet. We expect a final product that will meet or exceed the stated technical requirements and serve the needs of our regional customers.

A pre-proposal conference will be held at 10:00AM EST on October 9, 2018. Details can be found in Solicitation Instruction #7 'Pre-Proposal Conference'. If you have any technical, contractual, or administrative questions, please e-mail them to Frederick R. Voellm fvoellm@wmata.com no later than close of business, November 15, 2018. WMATA will provide written responses via amendments to the RFP. Amendments will be posted on WMATA's website and FedBizOps, and e-mailed to all known potential offerors.

Your proposal must be received with all required submittals as stated in the RFP, no later than 5:00PM, EST, January 31, 2019 at WMATA, Office of Procurement and Materials, 600 Fifth Street, NW, Room 3C-02, Washington, DC 20001-2651.

Sincerely,

Chris Stewart

Christopher
Stewart E013191
WMATA

Digitally signed by Christopher Stewart
E013191 WMATA
DN: c=US, o=Washington Metropolitan
Area Transit Authority, ou=People,
cn=Christopher Stewart E013191 WMATA
Date: 2018.09.04 16:46:14 -0400

Christopher Stewart
Contracting Officer
Office of Procurement and Materials

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Washington Metropolitan Area Transit Authority

RFP: CQ19038-8K/FRV

DIRECTIONS FOR SUBMITTING OFFERS

1. Read and comply with the solicitation instructions.

2. Envelopes containing technical and price proposals must be sealed and separately marked and addressed to:

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
600 5th Street, N.W.
Washington, DC 20001
Room 3C-02
Attn: RFP CQ19038-8K/FRV

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

PROPOSALS SHALL BE TIMELY MAILED OR HAND DELIVERED TO REACH WMATA ON OR BEFORE 5:00 PM. EST. ON JANUARY 31, 2019.

Washington Metropolitan Area Transit Authority

RFP: CQ19038-8K/FRV

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:

- SOLICITATION, OFFER & AWARD FORM (Must be signed.) - VOLUME III

- PRICE SCHEDULE- VOLUME I

- REPRESENTATIONS AND CERTIFICATIONS- VOLUME III

- PRE-AWARD EVALUATION DATA- VOLUME III

- ACKNOWLEDGMENT OF AMENDMENTS (IF ANY)- VOLUME III

- TECHNICAL PROPOSAL- VOLUME II

- CERTIFICATE OF INSURANCE AND/OR LETTER FROM INSURER DEMONSTRATING INSURANCE ELIGIBILITY - VOLUME III (CHAPTER VII, ARTICLE 2)

- LETTER FROM BONDING AGENCY DEMONSTRATING BONDING ELIGIBILITY – VOLUME III

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 **Frederick R. Voellm at 202-962-2485 or fvoellm@wmata.com.**

Washington Metropolitan Area Transit Authority

RFP: CQ19038-8K/FRV

NOTICE TO ALL VENDORS

Please be advised that all vendors, contractors and subcontractors under this Contract must register in the WMATA Vendor Registration System. The Contractor must include this provision in all of its subcontracts. 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-CQ19038-8K/FRV



WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
SOLICITATION, OFFER AND AWARD

CONTRACT NO.	SOLICITATION NO. RFP CQ19038-8K/FRV <input checked="" type="checkbox"/> ADVERTISED <input checked="" type="checkbox"/> NEGOTIATED	DATE ISSUED 09/04/18	ADDRESS OFFER TO OFFICE OF PROCUREMENT Office of Procurement 600 Fifth Street NW Washington, DC 20001
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SOLICITATION

Sealed offer in original and six (6) copies and two (2) USB flash drives for furnishing the supplies or services in the schedules will be received at for furnishing the supplies or services in the schedules will be received at

Authority until 5:00 P.M. EST. Local time January 31, 2019.
(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 Price Schedule (embedded Excel file)				\$
(Continued on the attached pages)					

DUN & BRADSTREET ID NUMBER: _____

OFFEROR

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

AWARD (To be completed by The Authority)

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

ITEM NO.	QUANTITY	UNIT	UNIT PRICE

The total amount of this award is \$ _____

Christopher Stewart
Name of Contracting Officer (Print of Type)

WASHINGTON METROPOLITAN TRANSIT AUTHORITY

AWARD DATE

SOLICITATION, OFFER AND AWARD
CONTINUATION SHEET

ACKNOWLEDGMENT OF AMENDMENTS

THE UNDERSIGNED ACKNOWLEDGES RECEIPT OF THE FOLLOWING AMENDMENTS

TO SOLICITATION **RFP CQ19038-8K/FRV**

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



(DoubleClick red tag above to open attachment)

PRICE SCHEDULE SPARE PARTS



Price Schedule -
Spare Parts, Portable

(DoubleClick red tag above to open attachment)

RFP SOLICITATION INSTRUCTIONS

1. INTRODUCTION

- a. The Authority seeks to award a contract to **design, build, and deliver WMATA’s 8000 series passenger railcars, simulator, and spare parts, with options for additional railcars, vendor managed inventory (VMI), and extended warranties.** 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 Best Value solicitation, award of a Contract hereunder shall be to the offeror whose proposal provides the best overall value to the Authority, based upon application of the evaluation criteria set forth in herein.
- c. The Authority contemplates award of a **firm fixed price** contract with an Option Price Adjustment. 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. 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.

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.

The Authority will provide the Contractor with written notice within a reasonable amount of time, if its estimated quantities for any item should change. The parties shall agree as to what constitutes a “reasonable amount of time.” While the quantities are dependent on WMATA’s needs rather than a fixed number, the parties may also agree on the amount of upward or downward fluctuation of quantities that will occur given there are design, planning, and production lead-times associated with this procurement.

2. GOODS TO BE FURNISHED/SERVICES TO BE SUPPLIED

In preparing their proposals, offerors are advised that:

- (a) If “services” are to be performed pursuant to this solicitation, they must be provided in all respects as specified in the Contract and include the services to be furnished, together with any labor, materials or other work necessary for satisfactory and complete performance.

- (b) If “supplies” are to be provided pursuant to this solicitation, they must be delivered in all respects as specified in the Contract and include the items to be furnished, together with any labor, service or other work necessary for satisfactory and complete performance.

3. NOT USED

4. 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 Manager, Frederick R. Voellm at 202-962-2485, fvoellm@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.

5. 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. Offers signed by an agent are to be accompanied by evidence of his or her authority, unless such evidence has been previously furnished to the Contracting Officer.
- (c) Offerors must state a definite time for delivery of spare parts, supplies, or for performance of services unless otherwise specified in the solicitation. Time if stated as a number of days, will include Saturdays, Sundays and holidays.
- (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. All prices are deemed to be F.O.B. Destination.

6. 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 no later than seventy five (75) days prior to the date specified for proposal closing. All such requests must be submitted via e-mail or first-class mail to the Contract Manager 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.
- (d) 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.

7. PRE-PROPOSAL CONFERENCE

For the purpose of clarifying the terms, conditions, and requirements, 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 October 9, 2018, in the Lobby Level Board Room 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.

8. 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 and posted online at www.wmata.com and www.fbo.gov.
- (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.

9. 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. **If this solicitation is amended, then all terms and conditions that are not modified will remain unchanged.** Failure to do so may, at the Contracting Officer's discretion, jeopardize the offeror's right to have its proposal reviewed by the Authority.

10. 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 or emailed proposals** will not be considered.

11. PROPOSAL FORMAT INSTRUCTIONS/REQUIREMENTS

Offerors shall submit proposals as follows:

(a) **Proposal Format**

The original of Volumes 1 and 2 shall be unbound. All copies of Volumes 1 and 2, as well as Volume 3, will be separately bound. All copies shall have the RFP number, the proposer's identity, volume number, and volume title printed on the cover page. All proposals and submittals shall also be submitted as follows:

- (1) Volume I – Price Schedule - One (1) original and six (6) copies of the price proposal and two (2) flash drives. The price proposal must include the Price Schedule; Spare Parts, Portable Test Units, Special Tools and Test Equipment pricing; and any other related pricing information.
- (2) Volume II – Technical - One (1) original and six (6) copies of the technical proposal and two (2) flash drives. The technical proposal must also include the VMI and Economic Benefits plans. (See Solicitation Instructions 31 and 32, respectively.) **Volume II shall not include any cost/price information.**
- (3) Volume III – Contractual - One (1) original and six (6) copies and two (2) flash drives of the completed, signed solicitation documents to include Solicitation, Offer and Award form; Acknowledgment of Amendments; Representations and Certifications; Pre-Award Evaluation Data; Certificate(s) of Insurance and/or Letter from Insurer Demonstrating Insurance Eligibility; and Letter from Bonding Agency Demonstrating Bonding Eligibility.

(b) **Cost/Price.**

All information relating to cost or pricing data must be included in Volume I. Under no circumstances shall cost or pricing data be included elsewhere in the proposal. This includes, but is not limited to any proposal for Financing.

- (1) Proposers should be advised that, for purposes of comparative evaluation, WMATA will only consider proposals that provide underwritten commitments and full guarantees, and that “best efforts” undertakings to arrange or provide “financing” will not be viewed by WMATA as adding value to a proposal.
- (2) The financing proposal must identify the financing structure, the amount financed, the interest rate, the loan term, all fees and expenses, and details relative to the repayment and methods of payment.
- (3) Identify the underwriters as well as the guarantors.
- (4) WMATA requires 100% financing of total project costs. The proposal should provide for capitalization of interest during the manufacturing period as well as interim financing or deferral of payments during the delivery period.
- (5) WMATA reserves its right to request other financing proposals either as part of the negotiation process, if any, or at any time prior to the issuance of a Notice to Proceed for subsequent phases or optional elements of the procurement.

(c) **Technical Proposal.**

The technical proposal should address the stated Evaluation Criteria in such a manner as to enable the Authority to engage in a thorough evaluation of its overall technical merit. Technical proposals shall be specific, detailed and complete and shall demonstrate that the offeror has a thorough knowledge and understanding of the Contract's requirements. Concise text, graphs, tables and drawings should be included, as needed, to clearly describe the equipment and its performance.

Technical Proposal Worksheet (Attachment A). Note: Sections A through O of the worksheet must be filled in completely. The offeror must list at least one subcontractor if applicable, but not more than two in Sections A through O. The requested information must be filled in completely for each subcontractor. This worksheet is to be included as part of the offeror's technical proposal.

(1) The technical proposal must include the following:

- i The technical proposal in PDF searchable format;
- ii Attachment A, Technical Proposal Worksheet
- iii Brand Name, Design Status and Service History in Excel spreadsheet.
- iv Any drawings, diagrams or renderings.
- v Attachment B, Compliance Matrix

Offerors shall avoid generalized statements that for example, paraphrase the specifications or attest that "standard procedures will be employed." The Authority wishes to be satisfied that the offeror maintains an understanding of the specific Contract requirements and maintains the means to fully satisfy them. Proposals shall be specific enough to enable the Authority to make a sound determination as to whether the proposed vehicles and associated supplies and services will meet its requirements. The Authority seeks a contract that provides the best solution for the procurement while allowing the offeror flexibility in providing a cost-effective solution. Accordingly, the Authority expects offerors to include their own solutions in proposed designs, as appropriate.

(2) **Layout**

The technical proposal shall consist of 28 numbered sections, as defined below, clearly separated from each other by index tabs. The title and number used to identify the first 25 sections shall be consistent with the sections of the Technical Specifications. Section 26 shall address warranty and spare parts. Section 27 shall address Vendor Managed Inventory (VMI). (See Solicitation Instruction 31) Section 28 shall address the Economic Benefits plan. (See Solicitation Instruction 32).

Each section shall be complete and self-contained and present a complete description of the approach and equipment/services. Each section shall enable the reviewer to obtain a thorough understanding of the solution(s) being offered and how the solutions meet the requirements of the associated specification section.

(3) **Format**

The entire technical proposal shall be contained within two 3 inch D ring binders. It shall be submitted on white, 8 ½ x 11 inch, 20 pound or better paper. Printing shall be in Arial or equivalent 10.5 point font. Double sided printing is acceptable.

Top and bottom margins shall be no less than 1 inch. The binder side margin shall be no less than 1 ½ inches and the right hand margin shall be no less than 1 inch. Each page shall be numbered with the applicable section number followed by sequential page numbering.

All drawings, schematics, tables, or other pre-packaged technical documentation shall be included as enclosures or appendices to the proposal section to which they pertain. The drawings shall be bound within the proposal, and those larger in size than 8 ½ x 11 inches shall be properly folded. Drawings may not be larger than 11 x 17 inches.

All associated renderings shall be submitted on a USB flash drive. Clarity and legibility shall be maintained in all submitted materials.

(4) **Technical Proposal Arrangement**

Section 1 of the Technical Proposal shall be arranged in the following order:

- (a) Table of Contents
- (b) Compliance Matrix
- (c) Service History
- (d) Description
- (e) Specific Requirements
- (f) Proposed Alternative Solutions Requiring a Specification Change

Sections 2 through 9, 24 and 25 of the Technical Proposal shall be arranged in the following order:

- (a) Table of Contents
- (b) Compliance Matrix
- (c) Description
- (d) Specific Requirements

- (e) Proposed Alternative Solutions Requiring a Specification Change

Sections 10 through 23 of the Technical Proposal shall be arranged in the following order:

- (a) Table of Contents
- (b) Compliance Matrix
- (c) Brand Name
- (d) Design Status
- (e) Developmental Risk
- (f) Service History
- (g) Diagnostics
- (h) Preventive Maintenance
- (i) Description
- (j) Specific Requirements
- (k) Required Alternatives
- (l) Proposed Alternative Solutions Requiring a Specification Change

Section 26 of the Technical Proposal shall be arranged in the following order, as detailed below:

- (a) Table of Contents
- (b) Description of WARRANTY Plan
- (c) Specific Requirements of WARRANTY ARTICLE
- (d) Description of SPARE PARTS ARTICLE
- (e) Specific Requirements of SPARE PARTS ARTICLE
- (f) Proposed Alternative Solutions Requiring Specification Changes

Section 27 of the Technical Proposal shall be arranged in the following order, as detailed below:

- (a) Table of Contents
- (b) Proposed VMI Plan
- (c) Specific Requirements of VMI

- (d) List of current and prior VMI contracts

Section 28 of the Technical Proposal shall be addressed as indicated in Solicitation Instruction 32.

(d) **Technical Proposal Arrangement Guidelines**

(1) **Table of Contents**

The Table of Contents shall list major subdivisions of the section, all enclosures and other attachments comprising the individual section.

(2) **Compliance Matrix**

The Compliance Matrix ([Attachment B](#)) shall either state that the offered solution is fully compliant with the specifications or list those specification requirements with which the offer does not comply. For each noncompliance, the offeror shall include the reason for the noncompliance and the specification reference in the compliance matrix.

(3) **Brand Name**

The Brand Name shall be an Excel spreadsheet listing original equipment manufacturers (OEM) and/or subcontractors for major systems and/or equipment. The spreadsheet shall include the manufacturer's model and/or part number, relevant ratings, capacity and location(s) for the manufacturing and assembly.

(4) **Design Status**

The Design Status shall be an Excel spreadsheet categorizing design status (where applicable) as it relates to proposed equipment. The design status categories are: existing design, further development/modification of existing design, or required design and development of new equipment. Include both hardware and software in the status category.

(5) **Developmental Risk**

Assess the developmental risk, with respect to performance and delivery schedules. Describe any system development needed to meet the requirements, especially those performance requirements that are new to the proposed equipment. Indicate the magnitude of the developmental effort, how the product will be qualified prior to production and the degree of risk.

(6) **Service History**

The Service History shall be an Excel spreadsheet that provides evidence of in-service performance of the offeror's railcars on other transit projects. Service History for Section 1 shall list railcars. Service History for Sections 10 through 23 shall list equipment. The categories are: number of sets, type of service, transit authority/agency where railcars were in service, car builder, duration of service including dates, performance record (failures per million miles), life expectancy and overhaul frequency.

The spreadsheet shall be divided into two sections: the first section shall list the relevant in-service performance within the United States of America, the second section shall list the remaining relevant in-service performance elsewhere. Include contact points and telephone numbers of individuals at properties where the equipment has been in service.

(7) Diagnostics

The diagnostics shall contain a description of the diagnostic capabilities of the equipment. The description shall indicate whether the diagnostics are self-contained, accessible via the vehicle monitoring and diagnostic system or a combination of both. Include the type of records and a description of how the diagnostics minimize troubleshooting, fault determination and mean time to repair.

(8) Preventive Maintenance

Explain the preventive maintenance plan associated with the equipment including specific requirements, intervals and average time associated with each interval to perform preventive maintenance for the proposed equipment. Mileage between minor and major overhauls shall also be included.

(9) Description

The description shall be a complete explanation of the management and/or technical method being offered and how each specification requirement will be met. The description shall incorporate sufficient information to permit a thorough understanding of the proposed vehicles and systems, without the need for additional information or discussion. All drawings required to adequately describe the design elements of the vehicles being offered shall be of sufficient quality and detail to enable a meaningful evaluation.

(10) Specific Requirements

Specific requirements that must be included in the Technical Proposal are stated in subparagraph 11(e) below. The offeror shall address each specific requirement with information that is more detailed than that included in the description. If the offeror feels that the specific requirement is duplicative of information provided in the description, the offeror should complete the specific requirement and reference it in the description.

(11) Required Alternatives

Certain sections of the Technical Specifications specify an alternative solution denoted as a Priced Option. The Priced Options are identified in the technical specifications under section 10.14.2 for Alternative Seating Configuration and Section 21.8.3.2 Operator Platform Monitoring. Provide a description that includes a discussion of the advantages/disadvantages of the Priced Option regarding impact to any essential function or characteristic of the vehicle such as safety, performance, service life, reliability, economy of operation, maintainability, standardization and customer service. The offeror shall also address any additional training or test equipment requirements. The cost of the Priced Option shall be included only in the Price Schedule.

(12) Proposed Alternative Solutions Requiring a Specification Change

The offeror may include alternative solutions in its initial offer that may deviate from the requirements in the specifications. Should the offeror include solutions which it believes to be advantageous to the Authority, that are not in full compliance with the specifications, they shall be clearly identified and included in the applicable technical proposal section under a separate heading called "Proposed Alternative Solution(s) Requiring a Specification Change." The offeror shall include under this heading, a clear explanation of the advantages of the alternative, and the specific changes to the specification required to make the alternative compliant.

Any price benefits associated with each proposed alternative solution shall be identified only in a separate attachment to the Price Schedule in Volume I, with proper reference made to the written text in the Technical Proposal in Volume II.

Non-compliant alternatives shall not be included in any best and final offer (BAFO) or other final proposal revision(s).

(e) Technical Proposal Specific Requirements

Each section shall address the following specific requirements:

Section 1 - Performance Requirements

- (1) Discuss the process(es) used by the offeror to control total vehicle, lateral imbalance, end-to-end and A-car to B-car weights. Identify subcontractor involvement in the weight control process. (Reference TS 1.5)
- (2) Provide analysis to show how the performance and duty cycle of the proposed vehicle meets the specified track, wayside and environmental characteristics. The analysis should cover acceleration, deceleration, continuous speed, energy consumption, regeneration and friction brake energy dissipation. The data should be presented both in writing and graphically. (Reference TS 1.7)
- (3) Describe how the proposed vehicle meets wheel diameter matching requirements. (Reference TS 1.4)
- (4) Discuss the process(es) used by the offeror to control electromagnetic interference. Describe how the offeror will assure emissions do not affect existing wayside and/or car borne equipment and how the proposed vehicle will satisfactorily operate in WMATA's existing environment. (Reference TS 1.8)

Section 2 - Program Management and Commissioning

- (1) Describe the offeror's experience in utilizing an internet-based document management system for program correspondence, and how it proposes to do so for this Contract. (Reference TS 2.2.1)
- (2) Provide the proposed program organizational chart along with a description of the responsibilities of all parties shown thereon. Show how the program

management team fits into the entire company's organization. Include resumes for the key personnel as specified in Technical Specifications Section 2.4. Resumes should contain information on education, work history, experience within the rail industry with emphasis on rapid transit, accomplishments, and other pertinent qualifications. Each resume shall identify work experience within the transit industry in the United States of America. (Reference TS 2.3 Items 3b and 3c). In this section, note whether the proposed key personnel are willing to sign a letter of intent to commit to working on this project, if the proposer is awarded the contract.

- (3) Describe the offeror's process for managing multi-party communications and design integration between the carbuilder and subcontractors/suppliers. Address the interaction of the carbuilder and subcontractors/suppliers to ensure integration of the total car system is clearly established. (Reference TS 2.3 Item 3d)
- (4) Provide a master program schedule in graphic display with key milestones, events and program phases emphasized. Identify the critical path of the master program schedule. (Reference 2.5.1)
- (5) List all other programs that might compete for resources with this Contract and state the measures that will be taken to ensure the competing work will not adversely affect this Contract. .
- (6) Identify the locations where the major engineering and manufacturing work will be performed, including the facility to be used for final assembly of the vehicles. Provide evidence to demonstrate that the prime contractor and major subcontractors/suppliers will have adequate human and facility resources available to the project during the scheduled work, warranty, and reliability demonstration periods.
- (7) Provide a preliminary version of the Systems Integration Testing Plan and Matrix. (Reference TS 2.6.3)
- (8) Describe the offeror's methodology for producing drawings and maintaining the drawings throughout the design and manufacturing of the railcars with emphasis on configuration control. (Reference TS 2.14.4.5)
- (9) Describe the offeror's measures to avoid cost overruns and commitment to completing the work, including cooperation with sub-suppliers, in the event cost overruns occur.

Section 3 - Testing

- (1) Provide a description and capabilities of the offeror's test track (Reference TS 3.2.2.2 Item 4)
- (2) Describe how the Master Test Plan will be developed. (Reference TS 3.3.2.1)
- (3) Describe how the Operational Characteristics Analysis will be used to identify relevant aspects of the existing fleet and system interfaces. List anticipated key areas of focus. (Reference TS 3.2.2.1)

- (4) Identify the climate laboratory where the air conditioning and heating qualification tests will be performed. (Reference TS 3.6.3.1)
- (5) Identify the facility where the combined systems tests will be conducted. Describe the capabilities of the testing facility. Provide a block diagram of the test configurations. Provide the sequence of required tests. (Reference TS 3.6.13)

Section 4 - System Safety

- (1) Demonstrate that the offeror has a system safety organization in place. (Reference TS 4.1.2)
- (2) Describe the offeror's participation in a Safety and Security Certification Program. Provide a list of vehicles that have gone through a safety and security certification process. (Reference TS 4.1.12)

Section 5 - Quality Assurance

- (1) Provide the company policy statement that defines the authority and role of the quality assurance function within the offeror's organization, particularly with regard to schedule and costs. (Reference TS 5.1.2.2)
- (2) Describe the offeror's methods for selection and control of subcontractors and suppliers. (Reference TS 5.1.2.5)
- (3) Describe the offeror's procedures for internal and external quality system audits, including the process for assuring that quality parts, from legitimate suppliers, are used in production. (Reference TS 5.1.4)

Section 6 - Software Quality Assurance

- (1) Provide the status of Capability Maturity Model integration (CMMI) maturity level rating for the offeror and each supplier in the proposal. (Reference TS 6.2)
- (2) Provide the company policy statement that defines the authority and role of the software subcontractor's management function within the offeror's organization, particularly with regard to software performance, defect tracking and schedules. (Reference TS 6.3.3 and 6.3.4)
- (3) Provide a consolidated list of all software that will be used in the various vehicle systems, including the operating systems. Classify the software as commercially available, supplier's standard product, modified standard product or new/developed for this program. State whether software source code will be provided to the Authority or place in escrow with a third party. (Reference TS 6.3.6)
- (4) Describe the offeror's experience in utilizing software metrics for defect tracking, root cause analysis and phase containment effectiveness. (Reference TS 6.7)

Section 7 - Reliability and Maintainability

- (1) Demonstrate that the offeror has a reliability and maintainability (RAM) organization in place. Summarize the reliability organization and task assignments, including reliability issues management. (Reference TS 7.2)
- (2) Indicate the ability to meet “Mean Distance Between Delays”, “System Reliability”, “Fleet Availability” and “Mean Time to Repair” requirements. Offerors may suggest different goals as long as the rationale for each suggested change is explained, and the offeror indicates that it will meet the changed goal. (Reference TS 7.3, TS 7.4 and TS 7.5)
- (3) Describe methods that will be used to ensure that reliability requirements of subcontractor-supplied equipment are met. (Reference TS 7.6.1)

Section 8 - Manuals and Training

- (1) Provide an organizational chart showing primary responsibility for manual development, along with all individuals, departments or suppliers who will be working on the manuals. (Reference TS 8.1.2)
- (2) Define activities, management controls and monitoring processes to be utilized by the offeror to ensure that manuals are provided on schedule. (Reference TS 8.1.8)
- (3) Describe the process for controlling manual revisions, especially during field modification of systems, subsystems and assemblies. (Reference TS 8.1.9)
- (4) Provide an organizational chart showing primary responsibility for training, along with all individuals, departments or suppliers who will be working on the training program. (Reference TS 8.2.1)
- (5) Identify customer training programs that have been provided on similar projects. (Reference TS 8.2.7)

Section 9 - Special Tools and Test Equipment

- (1) Provide a list of each car system and note whether the system will be tested via the Vehicle Monitoring Diagnostics System (VMDS) display in the train operator’s cab or a portable test unit. (Reference TS 9.2.1)
- (2) Describe how the list of special tools will be developed and maintained throughout the program. (Reference TS 9.5.3)

Section 10 - Carbody

- (1) Discuss whether the offeror will meet the specifications for carbody materials. Discuss any alternative carbody materials to those specified, including the reasons for the selection. (Reference TS 10.1.3)
- (2) Explain the welding/joining techniques and standards proposed, and how welding will meet American Welding Society’s (AWS) code. Simply stating that welding will meet AWS code is unacceptable. (Reference TS 10.3.2 and TS 24.6.3.1)

- (3) Describe the offeror's work practices that ensure the carbody's elements will be free of nicks, dents, weld marks and other surface imperfections. (Reference TS 10.3.3)
- (4) Explain the methodology applied to meeting the crashworthiness criteria of the specifications (including occupant protection), and previous application of this methodology. Describe the carbody's structural features incorporated to ensure the crashworthiness of the proposed design, and structural and crashworthiness compatibility with the existing 7000 series fleet. Identify the highest risk issues in meeting these requirements. (Reference TS 10.4.9)

Section 11 - Operator's Cab

- (1) Describe the ergonomic design features of the proposed cab and hostler control area that will promote ease of operation and reduce operator fatigue and discomfort. (Reference TS 11.6.1.1)
- (2) Describe how visibility of the controls and indications in the cab and hostler control area will be assured under all possible lighting conditions. (Reference TS 11.6.1.2)

Section 12 - Coupler and Drawbar

- (1) Discuss the approach to ensuring mechanical compatibility with existing Authority rail cars. (Reference 12.1.1)
- (2) Describe the contact pin type proposed for the train control network, train communication and diagnostic network and discrete trainline network. Include the operational experience with the pin. (Reference TS 12.6.4)

Section 13 - Doors

- (1) Describe how the proposed door control system will achieve 100% availability of side door operations while in service. (Reference TS 13.1.2)
- (2) Describe the proposed method for achieving the selective reopen function. (Reference TS 13.1.12.2)
- (3) Discuss the ability of the proposed door system to change door direction at any time during the open or close cycle. (Reference TS13.1.12.4)

Section 14 - Trucks

- (1) Explain what type of trucks will be included for the proposed railcars. Discuss why the proposed trucks were selected. (Reference TS 14.2)
- (2) Explain how the vehicle dynamics simulations will account for specification requirements, especially for special trackwork and worn conditions. Discuss conditions in the yards, as specified, and their impact on the vehicle/truck design, especially truck equalization. Identify the highest risk issues in meeting these requirements. Describe in detail the proposed derailment criteria, if different than stated in the specifications. (Reference TS 14.3)

- (3) Describe the advantages or disadvantages of the proposed leveling control system over alternative designs. (Reference TS 14.5.3)

Section 15 - Propulsion

- (1) Describe how it was determined that the proposed propulsion system ratings meet the specified performance characteristics. (Reference TS 15.2.6)
- (2) Discuss mitigation and avoidance of nuisance trips due to normal transient effects. (Reference TS 15.2.5 and TS 15.7.1)
- (3) Provide motor characteristic curves for both motoring and braking. (Reference TS 15.4)
- (4) Discuss how traction motor bearings are protected from leakage current. (Reference TS 15.4.9)
- (5) Describe the proposed method for sensing third rail potential and providing dead-rail protection. (Reference TS 15.7.4)

Section 16 - Braking

- (1) Describe the hardware, software and functional interfaces that exist between the proposed friction braking and propulsion systems. (Reference TS 16.1.1)
- (2) Discuss the fail-safe design of the proposed train protection braking and load-weighing system. (Reference TS 16.4.1 and TS 16.4.2)
- (3) Describe the operation and functioning of the proposed slip-slide system. In the description, include detection of all slides whether they are random or synchronous, correction for braking effort in excess of that which available adhesion will support, minimization of stopping distance, prevention of wheel flats, and integration with electric braking. (Reference TS 16.4.8.3.3)
- (4) Describe the proposed friction brake pad and disc materials, where they will be manufactured, where they were used before, and actual operating experience with regard to pad life, smoke and odor. (Reference TS 16.4.11)

Section 17 - Auxiliary Power

- (1) Discuss how the offeror has ensured that the proposed auxiliary power system meets the 10% excess capacity requirement. (Reference TS 17.1.3.2)
- (2) Discuss the proposed auxiliary power system's ability to traverse and recover from non-bridgeable third rail gaps. (Reference TS 17.1.3.7)

Section 18 - Heating, Ventilation and Air Conditioning

- (1) Discuss the proposed method of meeting the "No Fresh Air Intake" feature. (Reference TS 18.4.7)
- (2) Explain the HVAC system's capability of meeting the proposed cooling capacity per car, overhead heating capacity per car and floor heating capacity

per car to maintain the car interior at the specified temperatures under the specified conditions. (Reference TS 18.6.5)

Section 19 - Lighting

- (1) Provide a graph depicting the decay of intensity as the proposed LED ages. (Reference TS 19.1.4)

Section 20 – Automatic Train Control

- (1) Provide a list of the proposed vital relays. (Reference TS 20.1.1)
- (2) Provide a description of the offeror's approach to ensuring the ATP system is fail-safe and meets the specified reliability and fail-safe requirements. (Reference TS 20.2)
- (3) Describe the proposed methodology for ensuring accurate station stopping when operating in the automatic mode. (Reference TS 20.3.4)

Section 21 - Network and Trainline Control

- (1) Provide a block diagram of the proposed network communications and trainline system. Include physical redundancy, redundant networks and associated circuitry, in the diagram. (Reference TS 21.3)
- (2) Identify the various car level interfaces with the E-TCN Ethernet Consist Network. (Reference TS 21.3.2)
- (3) Discuss the proposed technology for transporting data across the specified electrical coupler system, including the level of risk associated with this technology. (Reference TS 21.3.2 Item 10)
- (4) Discuss how the specified trainlines are managed and operated in conjunction with the Train Control Network. Describe how they ensure safe operation of critical systems and provide a limp-home mode of train operation in case of Train Control Network failure. (Reference TS 21.3.5)
- (5) Discuss how security measures shall be designed and implemented such that their effect on reliability, availability and basic system operation is minimized. (Reference TS 21.5)
- (6) Discuss how the interoperability requirements will be met. (Reference TS 21.6.3)
- (7) Identify the proposed computer network integrator. Describe successful prior experience in performing such work. (Reference TS 21.7)

Section 22 - Communication - PA, Intercoms, Screen, Video Surveillance

- (1) Discuss the capabilities of the proposed passenger information system for uploading general information, advertising and other public information data and for acquiring train location information. (Reference TS 22.2)

Section 23 - Monitoring and Diagnostics

- (1) Describe the user interface of the proposed vehicle's monitoring and diagnostic systems. How the train operator will access information to reduce train delays; how the maintenance personnel will use the system for troubleshooting; and how the system will alert users of pending or current problems. (Reference TS 23.2)

Section 24 - Materials and Workmanship

- (1) Provide a list of intended standards for materials and workmanship other than those specified in Section 24.1.3. (Reference TS 24.1.3)
- (2) Describe the offeror's method for controlling: fastener types, sizes, styles, lengths, materials, grades and finishes, keeping counterfeit components from reaching its production line, and the production lines of its suppliers. (Reference TS 24.4.1.2)
- (3) Discuss the offeror's method for keeping piping and tubing clean and clear of dirt, metal chips, oily contamination and moisture. (Reference TS 24.14.1)
- (4) Discuss how the offeror will keep the number of wire types and sizes to a minimum. (Reference TS 24.21.1)

Section 25 – Data Communication Interface with WMATA

- (1) Define the activities, management controls and configuration processes to be utilized by the offeror to ensure that the Illustrated Parts Catalog (IPC) provided is complete and accurate. (Reference 25.4)
- (2) Describe other telemetry data that is collected but not identified in section 25. (Reference TS 25.11.4)
- (3) Describe system configuration methods and system use by the offeror. (Reference 25.8)

Section 26 – Warranty and Spare Parts

- (1) Describe how the offeror will be organized to meet the 24-hour repair requirement.
- (2) Provide a list of warranty work the offeror has performed during prior contracts. Indicate the number of cars under warranty, the warranty duration, whether a time period for repair was specified, and the number of warranty staff, for both the carbuilder and suppliers.
- (3) Describe how the offeror will be organized to fulfill the spare parts provisioning requirements.
- (4) Describe the offeror's process employed for ensuring that the spare parts are delivered in the correct configuration and that the inventory is updated whenever equipment is modified.

Section 27 – Vendor Managed Inventory (VMI) - (In addition to the requirements of Solicitation Instruction 31)

- (1) Describe how the offeror will be organized to meet inventory and spare parts needs of WMATA.
- (2) Provide a list of VMI work the offeror has performed during prior contracts. Indicate the number of cars the VMI supports, the duration of contract, the number of staff, and if the VMI was managed by a sub-contractor.
- (3) Describe how the offeror plans to implement VMI to support the railcars warranty and maintenance plans.
- (4) Describe how the offeror's VMI plan ensures that the inventory is in the correct configuration and that the inventory is updated whenever equipment is modified.

(f) Technical Specification Alternatives

The offeror shall include the following alternatives in the technical proposal:

- (1) Longitudinal Seating - all A and B cars (Reference TS 10.14.2);
- (2) Longitudinal Seating - A cars only (Reference TS 10.14.2.1);
- (3) Longitudinal Seating - B cars only (Reference TS 10.14.2.2);
- (4) Operator Platform Monitoring (Reference TS 22.5.5.4);

(g) Contractual

The Contractual Volume 3 shall contain completed, signed solicitation documents to include Solicitation, Offer and Award form; Acknowledgment of Amendments; Representations and Certifications; Pre-Award Evaluation Data; Certificate(s) of Insurance and/or Letter from Insurer Demonstrating Insurance Eligibility; and Letter from Bonding Agency Demonstrating Bonding Eligibility. In the event that the offeror takes any exception to any of the Contract's terms and conditions, wishes to propose alternative Contract language or is otherwise unwilling or unable to satisfy any of the Contract's requirements such information should be clearly noted on the first page(s) of Volume III of the proposal. Failure to take exception shall constitute the offeror's acceptance.

12. 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.);

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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.

13. WITHDRAWAL OF PROPOSALS

Proposals may be withdrawn by written notice received by the Contracting Officer 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. Proposals shall be valid for one year from proposal closing. A proposal may not be withdrawn after 90 days from proposal closing without the Contracting Officer's written approval.

14. 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 Contracting Officer, or his or her designated representative and copies of the six (6) 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, in his or her discretion engage in oral or written discussions with one (1) or more offerors regarding the Authority's understanding of the proposals and/or to discuss deficiencies in the initial proposals. In determining

those offerors with whom he or she chooses to engage in discussions, the Contracting Officer shall first make a determination regarding the initial proposals that he or she deems to be within the competitive range for Contract award. The Contracting Officer shall conduct discussions with all offerors submitting proposals that are within the competitive range.

- (e) The Contracting Officer may, following such discussions, direct those offerors whose proposals are within the competitive range to submit Best and Final Offers (“BAFOs”). In such instances, the Contracting Officer shall award the Contract based upon his or her review of the BAFOs in accordance with the Evaluation Criteria. Nothing contained herein shall limit, modify or impair the Contracting Officer’s right to engage in any additional oral or written discussions or other communications relating to the solicitation that may, be consistent with the Authority’s best interests.
- (f) The Authority maintains the right to waive informalities and minor irregularities in proposals at any time during the solicitation process.

15. BASIS FOR AWARD

BEST VALUE

The Authority will award a contract to the responsible offeror whose proposal conforms to the solicitation and is judged to be the most advantageous or “best value” to the Authority based on an overall assessment of technical merit and price in accordance with the Evaluation Criteria. In conducting this assessment, the Authority is more concerned with obtaining superior technical and reliability features than with making an award at the lowest overall cost to the Authority. Therefore, the Authority may select other than the lowest priced offer if it is determined that the additional technical merit offered is worth the additional price. However, the Authority will not make an award at a significantly higher overall cost to achieve only slightly superior technical or management features. For evaluation purposes, as proposals become more technically equivalent, price becomes more important.

16. RATINGS FOR PROPOSAL EVALUATION CRITERIA – (BEST VALUE ONLY)

Each criterion will be rated using the adjectival scoring method as follows:
Definition of adjectival rankings:

- (a) **Beneficially Exceeds** - The proposal is responsive beyond the minimum requirements of the RFP with no significant weaknesses and only a few, if any, minor weaknesses noted. Fulfilling the definition of Beneficially Exceeds indicates that, in terms of the specific factor, the proposal demonstrates a level-of-effort beyond that required by the RFP, and that this effort has, or could produce, results that should prove to be substantially beneficial to the Authority.
- (b) **Acceptable** - The proposal is adequately responsive with no major weaknesses noted. A rating of Acceptable indicates no exceptional features or innovations that could prove to be beneficial and/or only minor weaknesses.
- (c) **Marginal** - The proposal fails to meet the evaluation standards; however, any significant deficiencies are considered correctable. A rating of Marginal indicates that corrective actions by the offeror which would improve the rating are attainable.

- (d) **Unacceptable** - The proposal is not adequately responsive or does not address a specific factor. The offeror's interpretation of the Authority's requirements is so superficial, incomplete, vague, not comprehensive, or incorrect as to be unsatisfactory. A rating of Unacceptable indicates that mandatory corrective action would be required to prevent significant weaknesses from affecting the overall contract effort. In essence a complete rewrite of that portion of the offeror's proposal that is unacceptable would be required.

A rating of "Acceptable" or higher is required to be eligible for award consideration. Offerors are cautioned to be aware of this standard 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 order and the options;
 - (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 line items and understated for other **line** 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 CRITERIA**

The Authority will evaluate technical proposals in accordance with the "Evaluation Criteria" set forth below and render an assessment as to the overall technical merit of the proposal. The proposal's failure to demonstrate that it meets or surpasses an acceptable level with respect to any such element may result in a determination that the proposal is unacceptable and thus ineligible for award.

Technical Proposals will be evaluated based upon the following criteria that are listed below in the order of importance:

- (a) **Technical Adequacy** - This factor shall consider the degree to which the offeror is proposing service-proven equipment and how well the offeror is expected to meet the requirements contained in the Technical Specifications.
- (b) **Availability** – This factor shall consider the availability for revenue service of the vehicles. Among the factors that affect availability are reliability, maintainability, spare parts, warranty, test equipment, on-site support, equipment modifications and training. The offeror shall demonstrate how the Authority will maintain the vehicles.

- (c) **Schedule** - This factor shall consider the schedule logic and how well the offeror will be able to manage the schedule to ensure delivery and acceptance of the vehicles by stated deadlines. Risks in modifying the requirements while meeting the Authority's schedule will also be taken into account. Be sure to include a description of any proposed scheduling software and how it will be used.
- (d) **Managerial Approach** - This factor shall consider familiarity with and application of management tools, past experience of the program manager and his or her team, facility capacity and competing programs, design capacity, subcontractor and sub-supplier capacity, demonstrated understanding of the Authority's requirements and of risks associated with the proposed approach.
- (e) **History of Past Performance** – This factor shall consider the quality of previous work accomplished by the offeror comparable and similar to the work to be performed under this Contract.

19. **TECHNICAL PROPOSAL EVALUATION CRITERIA FOR ADDITIONAL OPTIONS**

- (a) Vendor Managed inventory (VMI) – This factor shall include solutions based on industry leading best practices that address in sufficient detail the requirements and aspects of a VMI program identified including but not limited to those identified in Solicitation Instruction 31.
- (b) Economic Benefits – This factor shall consider and identify actions that the offeror will take to ensure economic benefits accrue to the local region resulting from the potential award of this contract as discussed in Solicitation Instruction 32.

20. **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.

21. **PRE-AWARD MEETING**

The Authority reserves the right to require that a pre-award meeting be held with the apparent successful offeror prior to Contract award in order to review the offeror's understanding of the Contract's requirements and/or further assist the Authority in determining the offeror's responsibility for purposes of award. The Contractor shall be represented at such meeting by individual(s) fully familiar with the Contractual requirements including, where so requested by the Contracting Officer, representative(s) of one or more major subcontractor(s).

22. **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 verification that necessary equipment, supplies, etc. are readily available.

23. **CONTRACT AWARD**

At the conclusion of the technical and price evaluation processes, the Contracting Officer will award a Contract to the responsible offeror whose proposal conforms to the solicitation and is the most advantageous to the Authority based upon application of the Evaluation Criteria. Such determination shall be based upon the initial proposals received where the Contracting Officer determines not to conduct discussions or shall be based upon the BAFOs, if the Contracting Officer directs their submission.

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.
- (c) 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

- (a) If items called for by this RFP have been identified in the Price Schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Proposals offering "equal" products including products of the brand name manufacturer other than the one (1) described by brand name will be considered for award, if such products are clearly identified in the proposals and the Authority determines them to fully meet the salient characteristics (physical, functional, or performance) requirements in the Technical Specifications.
- (b) Unless the offeror clearly indicates in its proposal that it is offering an "equal" product, the proposal shall be considered as offering a brand name product referenced in the RFP.
- (c) If the offeror proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished in the space provided in the RFP, or such product shall be otherwise clearly identified in the proposal. The determination as to equality of the product offered shall be at the Authority's sole discretion.

CAUTION TO OFFERORS. WMATA is not responsible for locating or securing any information that is not identified in the proposal and reasonably available to the Authority. The offeror must furnish as a part of its proposal all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the Authority to determine whether the product offered meets the salient characteristics of the RFP.

The information furnished may incorporate by specific reference, information previously furnished or otherwise available to the Authority. If the Offeror proposes to modify a product to make it conform to the RFP, it shall include in the proposal, a clear description of such proposed modifications, and clearly mark any descriptive material to show the proposed modifications.

29. REQUEST FOR RECORDS

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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.

31. **VENDOR MANAGED INVENTORY (VMI)**

Provide in narrative form, a proposal to establish a Vendor Managed Inventory (VMI) system for the 8000 Series passenger rail cars parts for 10 years from exercise of Option 4. The proposal shall encompass all categories of inventory including, but not limited to consumables, non-consumables, replacement parts, repairable, overhaul parts, maintenance parts, and spares. The Contractor will be responsible for the procurement and availability of all categories of inventory on a non-consignment basis, 24 hours a day, 7 days a week. The Contractor will be required to provide the manufacturer's name and part number for all inventory. The offeror's VMI proposal shall address, but not be limited to, the following areas:

- (a) **Provisioning** – material planning, availability, sourcing, forecasting and integration with WMATA systems (Maximo software);
- (b) **Storage & distribution** – warehouse management, stock rotation, delivery/pick-up plan, core management, security;
- (c) **Financial** – invoicing, price control;
- (d) **Quality** – obsolescence management, technical and engineering support,
- (e) **Reports** – inventory levels, usage, reorder points, out-of-stock, lead-times;
- (f) **Continuity** – master parts database (manufacturer's name and part number, price analysis, usage trends), knowledge repository (methodology, best practices, training manuals, lessons learned), and a turnkey solution.

An acceptable VMI proposal shall address the above aspects and must be beneficial to WMATA in terms of measurable cost savings and improved efficiencies. The offeror must describe the methodology used in determining cost savings and improved efficiencies. WMATA reserves the right to award the VMI option as a negotiated separate contract.

32. **ECONOMIC BENEFITS**

Provide a narrative describing economic benefits that will accrue to the local region as a direct or indirect result of the Contractor's performance of this Contract. The local region is defined as the District of Columbia, Maryland (Montgomery and Prince George's Counties), and Northern Virginia. Examples of economic benefits include but are not limited to, building an assembly plant in the region, subcontracting to local businesses, hiring local employees, providing job training, supporting local business initiatives, etc. The economic benefits must

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be measurable as a percentage of the of contract value to the local region. The offeror must provide the methodology used to calculate this percentage.

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. NOT USED

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;

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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;

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- 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 (QUARTERLY)

By submission of this offer, the offeror certifies that:

10.1 It will contract with or engage a reputable third-party vendor to conduct, criminal background screenings of all Contractor personnel who will have access to WMATA's customers, WMATA's property, or WMATA's information in connection with this Contract.

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This requirement also applies to Contractors who engage with the general public on WMATA's behalf.

- 10.2** It will screen for criminal convictions, taking into consideration (1) the nature of the services or work being performed under the contract with particular regard for the individual's access to, and interaction with, WMATA's customers, property, and confidential information; (2) the nature or gravity of the offense or conduct resulting in a criminal conviction; and (3) the time that has lapsed since the conviction and/or completion of the sentence, all Contractor personnel who will have access to WMATA's customers, the general public, WMATA's property, or WMATA's information and who work on this Contract during each calendar year within this Contract's period of performance. The Offeror will provide certification that it conducted these screenings to the Contracting Officer's Technical Representative (COTR) on a quarterly basis, on a form provided.
- 10.3** The Contractor shall submit to the COTR, a list of all employees and agents who will require Contractors' access badges not less than 7 days prior to the date on which access will be required.
- 10.4** The Offeror will determine that all Contractor personnel working on this Contract during the calendar year passed the Contractor's criminal background screening and will be in good standing and otherwise fit to work on this Contract.
- 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.
- 10.6** The Contractor will flow this requirement down to all of its subcontractors who will have access to WMATA's customers, the general public, WMATA's property, or WMATA's information within this Contract's period of performance.

Name	Signature
Title	Company
Date	

11. CERTIFICATION REQUIRED FOR ALL SAFETY-SENSITIVE¹ CONTRACTS.

- 11.1** By submission of this offer, the offeror represents and certifies that it will comply with the Federal Transit Administration (FTA) regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 655, and applicable provisions of the U.S. Department of Transportation (DOT) regulations, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," 49 C.F.R. Part 40.
- 11.2** Offeror agrees that its employees and agents, including but not limited to, safety-sensitive subcontractors will be enrolled in a drug and alcohol testing program that meets the policy and procedural requirements listed in Appendix A of this document.

¹ See the Combined Glossary for a definition of "safety-sensitive."

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- 11.3** Offeror understands that Washington Metropolitan Area Transit Authority (WMATA) will perform oversight during the contract's period of performance to ensure that the successful offeror complies with the DOT/FTA regulations.

- 11.4** Failure to comply with this certification may result in WMATA issuing sanctions and pursuing available contractual remedies.

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: \$_____

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- 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 the requirement to design, build, and deliver WMATA's 8000 series passenger railcars, simulator, and spare parts, with options for additional railcars, vendor managed inventory (VMI), and extended warranties, 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 Statement 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. 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.

- (c) The Authority will provide the Contractor with written notice within a reasonable amount of time, if its estimated quantities for any item should change. The parties shall agree as to what constitutes a "reasonable amount of time." While the quantities are dependent on WMATA's needs rather than a fixed number, the parties may also agree on the amount of upward or downward fluctuation of quantities that will occur given that there are design, planning, and production lead-times associated with this procurement.

5. **NOT USED**

6. **ORDERING**

- (a) The Contracting Officer shall order any supplies and/or services to be furnished under this Contract by the issuance of delivery orders or task orders. Such orders may be issued throughout the Period of Performance.
- (b) All delivery 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 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 Authority will not order any parts beyond the Approved Recommended Spare Parts List as referenced in Chapter II, Article 4, and "Options".

The initial order of 256 railcars in the base order, two option quantities of 104 each and a third option of 120 railcars reflect the Authority's best estimate of the total quantity to be ordered over the life of this requirements contract. The estimated quantities are not a guarantee of the actual quantity to be required or ordered. The maximum number of railcars that may be ordered under this contract is 800. The total base spare parts price shall not exceed 10% of the total base vehicle price, as detailed on the Price Schedule. The total spare parts price for the options shall not exceed 10% of the total option vehicle price.

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.
- (d) **Availability.** The accounts, records and cost information required to be originated under this Contract, and together with all other accounts, records and cost information related to this Contract, shall be maintained and made available by the Contractor and subcontractor(s):
- (1) At their offices at all reasonable times for inspection, audit, reproduction or such other purposes as the Contracting Officer or anyone he or she authorizes may require or pursuant to any other provision of this Contract; and
 - (2) Except to the extent otherwise expressly set forth in this Contract, until three (3) years from the date of final payment under this Contract. If the Contract is completely or partially terminated, such records shall be maintained for a period of three (3) years from either the date of any resulting final settlement or the date of final payment, whichever is later. If a pricing adjustment is involved in any dispute or litigation related to this Contract, such records shall be maintained for a period equal to the later of three (3) years from the date of final payment or one (1) year following the final disposition of the dispute or litigation.
- (e) **Subcontracts.** The Contractor shall insert this article, in all subcontracts that exceed \$150,000.

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

Funds are not guaranteed for performance under this Contract beyond the current fiscal year that ends on June 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 the Contracting Officer whenever the COTR has reason to believe that the Contractual not-to-exceed amount will be exceeded;
 - (9) Prepare the Authority's estimate for proposed Contract modifications. Participate in negotiations for modifications;
 - (10) Approve, in writing, the Contractor's progress schedule when required.
 - (11) 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;
 - (12) Maintain a comprehensive file/record of documents and correspondence concerning Contract activities and actions;
 - (13) 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;
 - (14) Execute 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;
 - (15) 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
 - (16) The presence or absence of the COTR or his or her inspectors shall not relieve the Contractor from any requirements of this Contract.
 - (17) 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 from the date of Notice to Proceed (NTP) through five years after final acceptance of the last car delivered, including all options if exercised and any additional quantities ordered, as defined in the Acceptance of Supplies article.

2. 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.

3. 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) 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.
- (c) 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.
- (d) 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.
 - (e) 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—
 - (i) The option contains a fixed or maximum fee; or
 - (ii) 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 option 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.
 - (f) The Contract modification or other written document that notifies the Contractor of the exercise of the option shall cite this article as authority.

4. **OPTIONS**

This Contract consists of a base quantity of 256 railcars, plus two (2) 104 railcar options, a third option of 120 railcars, and optional VMI and Extended Warranties, exercised solely at the discretion of the Authority. Each order of railcars shall include an initial set of spare parts as defined in the approved Recommended Spare Parts List.

- (a) The Authority has the unilateral right to exercise Option #1 (104 cars) by giving written notice of the exercise to the Contractor at any time prior to base order NTP + 54 months (Date TBD).

- (b) The Authority has the unilateral right to exercise Option #2 (104 cars) by giving written notice of the exercise to the Contractor at any time prior to base order NTP + 60 months (Date TBD).
- (c) The Authority has the unilateral right to exercise Option #3 (120 cars) by giving written notice of the exercise to the Contractor at any time prior to 5 years from the final acceptance of the last railcar of the most recent order.
- (d) The Authority has the unilateral right to exercise Option #4, a Vendor Managed Inventory (VMI) at any time after NTP, based on the terms and conditions to be mutually agreed upon by the parties.
- (e) The Authority has the unilateral right to exercise Option #5, Extended Warranties at any time prior to final payment.

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. **OPTION PRICE ADJUSTMENT**

Time for Option Price Adjustment: The price (Option Price) for the option items listed in the Price Schedule shall be subject to a one-time adjustment (either up or down) at the time that WMATA exercises the option under this contract. The Option Price Adjustment will be calculated two different ways – Methods A and B. The method that results in the lower price adjustment will be selected. No Option Price Adjustment will be made if an option is exercised within twelve (12) months of any previous order including the base order.

Method A

- (a) Price for the options shall be adjusted for the following two factors:
 - Changes in Labor indices
 - Changes in Material indices

- (b) Adjustment to the Car Price for changes in Labor Indices shall be made as set forth below, based upon the change in the following Labor Indices, as determined by comparing the Base Labor Indices to the Current Labor Indices at the time option(s) are exercised. Each labor index shall be 50% of the labor price adjustment.

CEU3133530008 - Average Hourly Earnings of Production and Non-Supervisory Employees, Electrical Equipment, Not Seasonally Adjusted

CEU313360008 - Average Hourly Earnings of Production and Non-Supervisory Employees, Transportation Equipment, Not Seasonally Adjusted

These indices are published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS).

- (c) Adjustment to the Car Price, for changes in Material Indices shall be made, based upon the change in the following Material indices, as determined by comparing the Base Material Indices to the Current Material Indices at the time option(s) are exercised. Each material index shall be 50% of the material price adjustment.

WPU10 - Metals and Metal Products, Not Seasonally Adjusted

WPUID61113 - Materials for Durable Manufacturing, Not Seasonally Adjusted

These indices are published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS).

- (d) The adjustment to the Car Price shall be based on changes in the labor and material indices identified herein as described below.

- (1) 40% of the Car Price shall be deemed to constitute the labor cost.

- (2) 40% of the Car Price shall be deemed to constitute the material cost.

- (3) No adjustment will be made on 20% of the Car Price.

- (4) The Base Labor Indices and Base Material Indices are the arithmetic average of the indices for the three months prior to contract award.

- (5) The Current Labor Indices and Current Material Indices shall be the arithmetic average of the indices for the three months prior to the time options are exercised.

- (e) In the event the US Department of Labor, Bureau of Labor Statistics discontinues an index cited in this Contract, the parties agree to use the index identified by the BLS as the appropriate substitute for the discontinued index for use in determining the price adjustments.

The calculation of the labor and material adjustment is as follows:

- (1) The Base Labor or Material Indices shall be subtracted from the Current Labor and Material Indices, respectively and the difference computed as a plus or minus figure.

- (2) The difference shall be divided by the appropriate Base Index and the resulting quotient carried to four decimal places.

- (3) The quotient from above shall be multiplied by the dollar amount of the appropriate apportioned cost and the resulting product carried to two decimal places.

- (4) The product shall be added or subtracted to the base price to arrive at the adjusted price.

Method B

- (a) Price for the option(s) shall be adjusted for the following index:
Changes in Transportation Equipment-Railroad Cars index
- (b) Adjustment to the Car Price for changes in Transportation Equipment-Railroad Cars index shall be made as set forth below, based upon the change in the following index, as determined by comparing the Base Index to the Current Index at the Time for Option Price Adjustment. The index shall be 100% of the price adjustment.
- WPU144204 – Transportation Equipment-Railroad Cars, Not Seasonally Adjusted
This index is published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS).
- (c) The adjustment to the Car Price shall be based on changes in the Transportation Equipment-Railroad Cars index as follows:
- (1) 80% of the Car Price shall be subject to the adjustment
 - (2) No adjustment will be made on 20% of the Car Price.
 - (3) The Base Index shall be the arithmetic average of the final indices for the three months prior to contract award.
 - (4) The Current Index shall be the arithmetic average of the final indices for the three months prior to the Time for Option Price Adjustment.
- (d) In the event the US Department of Labor, Bureau of Labor Statistics discontinues an index cited in this Contract, the parties agree to use the index identified by the BLS as the appropriate substitute for the discontinued index for use in determining the price adjustments.

The calculation of the adjustment is as follows:

- (1) The Base Index shall be subtracted from the Current Index, respectively, and the difference computed as a plus or minus figure.
- (2) The difference shall be divided by the Base Index and the resulting quotient carried to four decimal places.
- (3) The quotient from above shall be multiplied by the dollar amount of 80% of the base price and the resulting product carried to two decimal places.
- (4) The product shall be added or subtracted to the base price to arrive at the adjusted price.

8. LIQUIDATED DAMAGES

Both time and quality are of the essence to this Contract. In the event of an unexcused delay or other performance failure under this Contract beyond the period of performance, beyond the period designated for correction, or beyond any agreed-upon extensions thereto, the Authority shall be paid damages. Since the amount of such damages and the loss to the Authority will be extremely difficult

to ascertain, it is hereby expressly agreed that such damages will be liquidated and paid as outlined below. Depending on the nature of the delay(s) and/or performance failure(s) the liquidated damages may compound and shall cumulate. The liquidated damages shall not be construed as penalties.

The Authority shall have the right to deduct such liquidated damages from any monies due or which may become due to the Contractor under this Contract. If the amount that becomes due is less than liquidated damages owed to the Authority, the Contractor shall pay the difference upon the Contracting Officer's demand. Liquidated damages may be assessed at any time after they occur, but prior to the final payment. Liquidated damages are not waived by conditional or final acceptance of the railcars or related supplies or services.

Item	Description	Rate	Period
1	Late Delivery	\$1168.00/day/car	Until delivery is completed
2	Over- Weight (The required weight shall not exceed 82,500 lbs.)	82,500-83,500 lbs.: \$65.00/lbs. 83,500-84,000 lbs.: \$69.00/lbs. 84,000-84,500 lbs.: \$72.00/lbs.	One Time Assessment
3	Different weight of A and B car	>1500 lbs. between A and B car: \$6.00/lb.	One Time Assessment
4	Different weight of A end and B end car	>2% : \$6.00/.lb	One Time Assessment
5	Weight Lateral Imbalance	>20,000 inch-lb.: \$6.00/.lb	One Time Assessment
6	Offload	Weekday:\$8,400 Saturday : \$5,200.00 Sunday: \$4,120.00	Reliability Demonstration Period (9 months)
7	Availability	LD=\$1833.00 *(Numbers of Cars * (90% - Actual Availability))	Reliability Demonstration Period (9 months)
8	MDBF-INS	LD = (20,000-Actual MDBF-INS) * \$8.33	Reliability Demonstration Period (9 months)
9	MDBF-ALL	LD = =(10,000-Actual MDBF-ALL) * \$8.33	Reliability Demonstration Period (9 months)
10	MDBD	LD = (200,000-Actual MDBD) * \$8.33	Reliability Demonstration Period (9 months)
11	MTTR	LD = Q - Average MTTR) (Hourly rate) * # of PI (Base order Cars) * life of railcars * Inflation factored over 40 year life of cars	One Time Assessment

(a) **Delivery**

- (1) In accordance with the delivery requirements, the Contractor shall be required to deliver to the Authority a specific number of transit cars in accordance with the approved contract delivery schedules. Failure on the part of the Contractor to deliver the required number of units or failure to deliver units in the required time shall cause the assessment of liquidated damages pursuant to this clause in the sum of \$1168.00 per car per calendar day beyond the specified delivery date as detailed in Chapter III, Delivery Schedule.

- (2) Liquidated damages may be excused, and will not be assessed, for late delivery if the Contractor can substantiate that the delay was beyond its control and without the fault or negligence of the Contractor including but not limited to language as set forth in Chapter II, Section 9, Extensions of Time/Force Majeure. Delays of subcontractors will not deems to be beyond the Contractor’s control.

(b) **Weight:**

The total damaged assessed per weight limits are tied to costs associated with the energy consumption requirements of the railcars, additional infrastructure decrement and increased maintenance efforts.

Liquidated damages will be assessed by the Authority as follows when the specified weight is exceeded, as shown on the weight tickets of a scale meeting the requirements of the Technical Specifications, Section 1.5.1, Weight Requirements and Load Definition, unless the excess is attributable to a change made in accordance with Chapter IV—Changes/ Pricing Adjustments, Section 1. Change Orders.

Liquidated damages will be assessed by Authority when the weight of a finished pair of cars is in excess of the maximum permissible Ready-To-Run Weight (AW0). Liquidated damages for weight will be based on the average actual weight of all pairs of cars. Liquidated damages will be assessed according to the following table:

Up to 1,000 pounds overweight	\$65/pound for all overweight pounds;
From 1,000-pound overweight up to 1,500 pounds overweight	\$69/pound for all overweight pounds;
From 1,500-pound overweight up to 2,000 pounds overweight	\$72/pound for all overweight pounds;
In excess of 2,000 pounds overweight	Cars will not be accepted.

- (1) Liquidated damages of \$6.00 per pound will be assessed by the Authority when the difference in ready-to-run weight between the “A” and “B” cars of a married pair of a finished pair of cars is in excess of the maximum permissible weight of 1,500 pounds. Liquidated damages will be based on the average actual weight difference of all pairs of cars.
- (2) Liquidated damages of \$6.00 per pound will be assessed by the Authority when the difference in weight of the two ends of a car exceeds 2% of the ready to run weight of a finished car, measured at the trucks. Liquidated damages will be based on the average actual weight difference of all pairs of cars.
- (3) Liquidated damages of \$6.00 per inch-pound will be assessed by the Authority when the weight of a car is in excess of permissible lateral imbalance of 20,000 inch-lb. Liquidated damages will be based on the average actual weight of all pairs of cars.

(c) **Offload**

Offload LD will be assessed per offload/per 8 car consist (warranty period).

The Authority will assess liquidated damages for each incident of a chargeable fault or failure which causes a revenue 8 car consist to be offloaded.

Damages will be assessed at three (3) separate rates:

Weekday LD per offload = \$8,400.00

Saturday LD per offload = \$5,200.00

Sunday LD per offload = \$4,120.00

(d) **Reliability, Availability and Maintainability:**

Failure to meet the minimum requirements detailed in Technical Specifications Section 7 will result in Liquidated damages. Damages will be assessed as per the following items detailed below - Availability, MDBF-INS, MDBF-ALL, MDBD, MTTR, and Offload.

(1) Availability - assessed per car/per month

Each Eight (8) car consist shall maintain a fleet wide availability of no less than 90%, calculated daily during revenue hours. Failure to meet the requirement will result in Liquidated damages assessed per month / per car, using the formula below:

Daily average revenue per car = \$1,833.00

LD=\$1,833 [X *(90% - Y)]

Where:

X – Average Number of Conditionally Accepted Cars for each calendar month

Y – % Average Monthly Availability

For Example:

If the average number of Conditionally Accepted cars for the month of March, and the availability for the month of March is 85%, which is below the spec requirement of 90%, then the Availability LD is calculated as follows:

$\$1,833.00 * [200 (90\%-85\%)] = \$18,330.00 (LD)$

Refer to TS 7.4 for Availability Requirements.

(2) Mean Distance Between Failure - In Service (MDBF-INS) assessed per month.

Each Railcar shall meet a minimum MDBF-INS of 20,000 miles. Failure to meet the requirement will result in Liquidated Damages calculated monthly and assessed at a rate based on lost revue per mile. Revenue per mile is \$8.33. Any variance in mileage below the MDBDF-INS will be \$8.33 per mile calculated and assessed monthly

For Example:

If the MDBF-INS for the month of March is 17,000 miles, which is below the spec requirement of 20,000, LD for March will be as follows:

$(20,000 - 17,000) * \$8.33 = \$24,990.00$

Refer to TS 7.3 for Reliability Requirements. This LD will remain in force until the reliability demonstration period is successfully completed.

- (3) Mean Distance Between Failure ALL (MDBF-ALL) assessed per month.

Each Railcar shall meet a minimum MDBF-ALL of 10,000 miles. Failure to meet the requirement will result in Liquidated Damages calculated monthly and assessed at a rate based on lost revue per mile. Revenue per mile is \$8.33. Any variance in mileage below the MDBDF-ALL will be calculated and assessed at \$8.33 per mile.

For Example:

If the MDBF-ALL for the month of March is 8,000 miles, which is below the spec requirement of 10,000, LD for March will be as follows:

$$(10,000 - 8,000) * \$8.33 = \$16,660.00$$

Refer to TS 7.3 for Reliability Requirements. This LD will remain in force until the reliability demonstration period is successfully completed.

- (4) Mean Distance Between Delay (MDBD) assessed per month.

The Base Railcar fleet and subsequent optional railcars and any additional quantities ordered shall meet a minimum MDBD of 200,000 miles, 1 year after conditional acceptance. Failure to meet the requirement will result in Liquidated Damages calculated monthly and assessed at a rate based on lost revenue per mile. Revenue per mile is \$8.33. Any variance in mileage below the MDBD will be calculated and assessed at \$8.33 per mile.

For Example:

If the MDBD for the month of March is 190,000 miles, which is below the spec requirement of 200,000, LD for March will be as follows:

$$(200,000 - 190,000) * \$8.33 = \$8,330.00$$

Refer to TS 7.3 for Reliability Requirements. This LD will remain in force until the reliability demonstration period is successfully completed.

- (5) Mean Time to Repair (MTTR) assessed after RAM of the Last conditionally accepted car.

Mean Time to Repair is “average time required to bring the system from a failed state to an operational state”.

Major systems repairs shall not exceed an MTTR of more than the duration detailed in “System Maintainability Requirements in MTTR” (Exhibit 7-4) in the Technical Specifications.

LD shall be based on the MTTR (calculated as a single damage, to include future dollar costs, accounting for inflation) assuming a fleet life of 40 years.

MTTR takes into consideration diagnostic, repair (or replacement), and re-test times only.

Q = Actual hours to repair

Average MTTR per spec= 1.17

PI inspection * 4 times per year (Periodic Inspection)

LD = (Q - Average MTTR) (Hourly rate) * # of PI (Base order Cars) * life of railcars * Inflation factored over 40 year life of cars

WMATA will assess LDs on MTTR after the last conditionally accepted car has entered the Reliability, Availability and Maintainability (RAM) Demonstration period, but not before the end of the warranty period of the first Conditionally Accepted car.

Refer to TS 7.5 for Reliability Requirements.

(e) Limitation

Liquidated damages will be limited, for all causes, to a maximum of 10% of the unit price of the Transit Car (A car or B car) as listed in the Price Schedule for which an assessment is applied

(f) Termination

WMATA may terminate this contract in whole or in part, under the Termination for Default article, if delivery or performance is delayed beyond the limits of the agreed Project Schedule or if contract requirements cannot be met. In such case, the Contractor is liable for liquidated damages accruing until WMATA reasonably obtains delivery or performance of similar supplies or services. These liquidated damages are in addition to excess costs of re-procurement under the Termination for Default article.

9. CONTRACTOR PERFORMANCE INCENTIVES

(a) Weight

- (1) A weight incentive will be assessed by the Authority when the weight of a finished pair of cars is below the AW0 weight requirement in the Technical Specifications and the cars meet all of the technical requirements. For up to 2,500 pounds average underweight WMATA will provide an incentive payment of \$13/pound for all underweight pounds. Incentive payments for weight will be based on the average actual weight of all pairs of cars.

(b) Reliability

- (1) A reliability incentive (Refer to TS 7.3 for Reliability Requirements) of \$500 per base order car will be assessed if the entire base order meets its reliability requirements of more than 21,000 miles for nine (9) continuous months during the reliability demonstration period, **OR**
- (2) A reliability incentive (Refer to TS 7.3 for Reliability Requirements) of \$1000 per base order car will be assessed if the entire base order meets its reliability requirements of more than 22,000 miles for nine (9) continuous months during the Reliability Demonstration Period.

10. 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 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.

11. **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.

12. **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.

13. **NOTIFICATION OF BANKRUPTCY OR INSOLVENCY**

In the event the Contractor becomes insolvent or files or has filed against it a petition in bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of such to the Contracting Officer.

This notification shall be furnished as soon as possible, but in no event more than ten (10) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all WMATA Contract numbers for all WMATA contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract.

CHAPTER III – DELIVERY/ACCEPTANCE/INSPECTIONS/DEFICIENCIES**1. DELIVERY AND CONDITIONAL ACCEPTANCE SCHEDULE**

- (a) Delivery of the base contract four pilot cars shall occur no later than NTP + 36 months (Date TBD)
- (b) Delivery of the base contract four production cars shall occur no later than NTP + 42 months (Date TBD)
- (c) Conditional acceptance of the base contract four pilot cars and four production cars shall occur no later than NTP + 48 months (Date TBD).
- (d) Delivery and conditional acceptance of the remaining base order (248) cars shall begin immediately after conditional acceptance of the pilot cars at a rate of 16 cars per month, unless otherwise agreed. Conditional acceptance of all base order cars shall occur no later than NTP + 66 months (Date TBD).
- (e) Delivery of special tools and test equipment shall meet the dates required in the Technical Specifications of this solicitation. Refer to TS 9.5.3 Special Tools (CDRL)
- (f) Delivery of manuals, drawings and technical data shall meet the requirements of the contract data requirement list (CDRL) in the Technical Specifications.
- (g) Delivery of training shall meet the dates required in the Technical Specifications. Refer to TS 2.5.1 Master Program Schedule (CDRL).
- (h) Delivery of the approved recommended spare parts shall meet the dates required in Chapter III, Article 11 Spare Parts of this solicitation.
- (i) Delivery and conditional acceptance of option cars shall immediately follow the base order delivery and conditional acceptance, using a delivery rate of 16 cars per month, as agreed. There shall be no gap in commencement of delivery of option cars unless approved by the Authority. Should WMATA decide to exercise an option, at its sole discretion, WMATA and the parties will negotiate the date to avoid a gap in delivery.
- (j) Delivery of cab simulator shall occur no later than conditional acceptance of the four Pilot Cars (Date TBD).

2. SPECIAL DELIVERY INSTRUCTIONS

- (a) Rail cars shall be delivered F.O.B. Washington Metropolitan Area Transit Authority Commissioning Facility at Greenbelt Yard S&I Shop, 5801 Sunnyside Avenue, College Park, Maryland 20740. The Contractor shall be responsible for the transportation of the rail cars and placement of the rail cars onto the Authority's tracks at the Commissioning Facility.
- (b) Spare parts shall be delivered in accordance with Chapter III, Article 12 Spare Parts.
- (c) Simulator, Special tools and test equipment shall be delivered as directed by the COTR.

- (d) There shall be no more than four Quad units (16 cars) of unaccepted cars (i.e. cars undergoing or preparing for qualification and/or acceptance testing or undergoing repairs under the cognizance of the Contractor) on the Authority's property at any time.

3. **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.

4. **INSPECTION AND TESTING OF SUPPLIES**

- (a) The Contractor shall provide and maintain an inspection system acceptable to the Authority covering supplies under this Contract and shall tender to the Authority for acceptance only supplies that have been inspected in accordance with the inspection system and that the Contractor determines to be in conformity with this Contract's requirements. As part of the system, the Contractor shall prepare records evidencing the nature and result of all inspections. These records shall be made available to the Authority during the term of the Contract and thereafter in accordance with the "Audit and Inspection of Records" article of this Contract. The Authority may perform reviews and evaluations as reasonably necessary to

ascertain compliance with this article. These reviews and evaluations shall be conducted in a manner that will not unduly delay the Contract. Reviews, whether exercised or not, do not relieve the Contractor of its obligations under this Contract.

- (b) The Authority has the right to inspect and test all supplies under this Contract, to the extent practicable, at all places and times, including during manufacturing, and before acceptance. The Authority shall perform inspections and tests in a manner that will not unduly delay the Contract. The Authority assumes no Contractual obligation to perform any inspection and/or test nor shall the Authority's failure to perform any inspection and/or test relieve the Contractor of any obligation under this Contract.
- (c) If the Authority performs inspection(s) or test(s) on the Contractor's or subcontractor's premises, the Contractor shall furnish, and shall require subcontractors to furnish, without additional cost, all reasonable facilities and assistance for the safe and convenient performance of these inspections or tests.
- (d) When supplies are not ready at the time specified for inspection or testing, the Contracting Officer may charge the Contractor for any additional, associated costs. The Contracting Officer may also charge the Contractor for any additional costs of inspection or testing when prior rejection makes re-inspection or retesting necessary.

5. ACCEPTANCE OF SUPPLIES

- (a) The Authority shall accept or reject the railcars, spare parts and simulator (supplies) as provided in this Contract. The Authority's failure to inspect and/or accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability upon the Authority, for nonconforming supplies.
- (b) The Authority's final acceptance shall be deemed conclusive, except for latent defects, fraud, willful misconduct, gross mistakes amounting to fraud or as otherwise provided in this Contract. In such instances, the Authority, in addition to any other rights and remedies it has under this Contract, at law or in equity, shall have the right:
 - (1) To direct the Contractor, at no increase in Contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or, if the Contracting Officer determines, at the Contractor's facility, in accordance with a reasonable delivery schedule as may be agreed upon between the parties. The Contracting Officer may reduce the Contract price, if the Contractor fails to meet such delivery schedule; or
 - (2) Within a reasonable time after the Contractor's receipt of a Notice of Defects or Nonconformance, the Contracting Officer may reduce the Contract price, as is equitable under the circumstances, if he or she elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the costs of transportation. If the Contractor fails to perform or act as required in this Article and does not cure such failure within a period of ten (10) calendar days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Authority shall have the right by contract or otherwise, to replace or correct such supplies and charge to the Contractor the Authority's costs.

- (i) If this contract provides for the performance of Authority quality assurance at source, and if requested by the Authority, the Contractor shall furnish advance notification of the time when the Contractor's inspection or tests will be performed in accordance with the terms and conditions of this Contract; and when the supplies will be ready for the Authority's inspection. The Authority's request shall specify the period and method of the advance notification and the COTR to whom it shall be furnished. Requests shall not require more than two (2) workdays of advance notification if the Authority representative is in residence in the Contractor's plant, nor more than seven (7) workdays in other instances.

6. **RESPONSIBILITY FOR INSPECTION**

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

7. **FINAL ACCEPTANCE**

- (a) The Contracting Officer shall notify the Contractor of final acceptance of the cars upon completion of all tests prescribed in the Technical Specifications, including completion of the Reliability Program test and before final payment, if he or she finds that the cars are in good order and conform to the Specifications in all respects.
- (b) The Contracting Officer shall notify the Contractor of final acceptance of spare parts upon delivery in good order and verification that no further configuration changes are required to make them compatible with the final "as built" configuration of the car and its systems.
- (c) The Contracting Officer shall notify the Contractor of final acceptance of portable and bench test equipment upon delivery in good order and verification that no further configuration changes are required to make them compatible with the final "as built" configuration of the car and its systems.
- (d) The Contracting Officer shall notify the Contractor of final acceptance of operations and maintenance manuals and spare parts catalogues upon delivery in good order and verification that no further configuration changes are required to make them compatible with the final "as built" configuration of the car and its systems.
- (e) The Contracting Officer shall notify the Contractor of final acceptance of as-built drawings upon delivery in good order and verification that no further configuration changes are required to make them compatible with the final "as built" configuration of the car and its systems.
- (f) The Contracting Officer shall notify the Contractor of final acceptance of the User Education Program at its conclusion in a manner satisfactory to the Authority and upon the delivery of all appropriate lesson plans, training aids, training films, and other specified materials.
- (g) Payments will be initiated by final acceptance, as specified in the article entitled "Payment Milestones/Performance Based Payments." At the Authority's discretion, the percentage retained for final acceptance may be adjusted downward upon determination by the Contracting Officer that final acceptance is achievable and likely.

8. CONDITIONAL ACCEPTANCE

- (a) The transit cars will be accepted as four-car (quad) units. At its discretion, the Authority may conditionally accept the cars although not completely conforming to the Specifications. The Authority will provide a written notice of conditional acceptance or rejection of the transit cars within 30 days of completion of Acceptance Tests or, in the case of spare parts, verification of receipt on the Authority's property.
- (b) Notice of conditional acceptance indicates that the cars and/or parts meet minimum standards for revenue service however, deficiencies remain that the Contractor must resolve for final acceptance to occur. "Minimum standards for revenue service" are defined as having no conditions that would lead to an open failure service report and having no operating restrictions. The notices of conditional acceptance will include lists of such deficiencies known to exist at the time of the conditional acceptance. Such deficiencies shall not limit the Authority's rights to correct or eliminate deficiencies subsequently discovered. Specifically stated, the Authority does not waive any contractual rights, including the right to terminate for default, or assess liquidated damages by conditionally accepting any supplies or services under this Contract.
- (c) Upon conditional acceptance of a car, the Contractor will have a 90-day period in which to correct all deficiencies listed on the Notice of Conditional Acceptance. Should the Contractor elect not to correct any or all of the deficiencies in the allotted time, the Authority shall, at its sole discretion, have the right to issue a Notice of Final Acceptance and deduct the total value of these defects from the amount being retained pending final acceptance.
- (d) Conditional Acceptance of the first four pilot cars shall not be granted until the Draft Manuals and Draft Illustrated Parts Catalogs have been approved by the Authority. The Authority requires a minimum of thirty (30) days for the review process. The Illustrated Parts Catalogs must include, but is not limited to, the Original Equipment Manufacturer (OEM) name and original part numbers.
- (e) Conditional acceptance of 248 base contract cars shall occur no later than NTP + 81 months (Date TBD).

9. NEW MATERIAL (SUPPLIES)

Unless this Contract specifies otherwise, the Contractor represents that any railcars, simulators or spare parts and related supplies to be provided under this Contract are new (not used or reconditioned, and not of such age or so deteriorated as to impair their usefulness or safety). If at any time during the performance of this Contract, the Contractor believes that furnishing supplies or components that are not new is in the Authority's best interests, the Contractor shall notify the Contracting Officer immediately in writing. The Contractor's notice shall include the reasons for the request, along with any proposed price reduction, that the Authority may take if the Contracting Officer agrees to authorize such supplies or components. The Contracting Officer's authorization to use such supplies or components shall be final and binding and not subject to further review pursuant to the "Disputes" article of this Contract or otherwise.

10. SPARE PARTS

This contract involves provisioning of three type of spare parts: initial spare parts, spare parts for warranty, and maintenance spare parts. Through this contract, WMATA will purchase initial spare parts to accompany the base cars and any options exercised or future quantities ordered. Initial spares

consist of consumables, replacement, repairable, and overhaul parts. Spare parts for warranty will be provided by the Contractor at no additional cost to the Authority. Maintenance spares will be purchased either under the Vendor Managed Inventory (VMI) option or through separate contracts. Although WMATA is seeking to procure only initial spares, WMATA requires a comprehensive spare parts plan as outlined below.

11. SPARE PARTS PLAN

- (a) The Contractor shall manage spare parts provisioning for the railcars delivered under this Contract. Provisioning shall be based on the Contractor's warranty requirements (Chapter III, Article 12, Warranty), the initial spare parts as listed in the Price Schedule, and an established plan for spare parts inventory for maintaining the railcars for 20 years.
 - (1) The Contractor shall submit a Spare Parts Provisioning Plan (CDRL 2-13) as part of the Conceptual Design Review.
 - (i) The provisioning plan shall specify the processes that the Contractor will employ to ensure sufficient spare parts are on-hand for performing the preventative maintenance as outlined in the Periodic Inspection Manual (TS 8.1.7.5) and the warranty requirements on the accepted railcars.
 - (ii) The provisioning plan shall emphasize the measures from a spare parts perspective for keeping the accepted railcars available for revenue service.
 - (iii) The provisioning plan shall reference a list of recommended spare parts that will be developed throughout the railcar design phases.
 - (iv) The provisioning plan shall describe the process that will enable the Authority to establish an inventory of spare parts for the railcars delivered under this Contract.
 - (2) The Contractor shall submit at the time of the Final Design Review, a Recommended Spare Parts List (CDRL 2-14) for the equipment to be furnished. The list shall be created using the Contractor's Bill of Materials and shall be updated as the railcar design and assembly progresses. All items in the Recommended Spare Parts List shall be referenced in the Illustrated Parts Catalog (TS 8.1.7.6).

The Recommended Spare Parts List shall be based on the Contractor's experience with similar equipment in service on other transit systems, the Authority's operating conditions as determined from the Operational Characteristics Analysis (TS 3.2.2.1), and performance of preventive maintenance as outlined in the Periodic Inspection Manual (TS 8.1.7.5).

The recommended spare parts shall be grouped into four categories as listed below:

- (i) **Consumable Parts** - Parts that are regularly replaced as part of the scheduled maintenance of the railcar, and that once replaced are not expected to be reused. Examples of consumable parts are brake pads, air filters, and windshield wiper blades. Quantities shall be based on the parts necessary to maintain a 64 Quad-Unit consist for one year based on an annual operating mileage of 100,000 miles.

- (ii) **Replacement Parts** - Parts that are not regularly replaced as part of the scheduled maintenance of the railcar, but that are expected to require replacement due to external causes such as vandalism, abuse, or accidents. Once replaced, the parts are not expected to be reused. Examples of replacement parts are seat cushion covers and windows. Quantities shall be based on the parts necessary to maintain 64 Quad-Unit consists until a mid-life overhaul at approximately 20 years of operation based on an annual operating mileage of 100,000 miles.
 - (iii) **Repairable Parts** - Parts that are not regularly replaced as part of the scheduled maintenance of the railcar, but that are expected to require replacement due to random failure. Once replaced, the parts are expected to be repaired and returned to the parts inventory. Examples of repairable parts are electrical assemblies, printed circuit boards, and destination signs. Quantities shall be based on the parts necessary to maintain 64 Quad-Unit consists until a mid-life overhaul at approximately 20 years of operation based on an annual operating mileage of 100,000 miles.
 - (iv) **Overhaul Parts** - Parts that are scheduled to be replaced at planned intervals. Once replaced the parts are expected to be overhauled or reconditioned for further use. Overhaul parts are normally provided in kit form, with the kit containing those parts usually replaced during an overhaul. Examples of overhaul parts are pneumatic assemblies, gear units, and motors. Quantities shall be based on the parts necessary to maintain 64 Quad-Unit consists until the first overhaul cycle is due based on an annual operating mileage of 100,000 miles.
- (3) Information shall be provided for each item on the Recommended Spare Parts List according to the tables in the Technical Specification section TS 25.
 - (4) The quantities of recommended spare parts shall be based upon the Reliability Prediction (TS 7.3.1), usage rate, and lead time with consideration given to:
 - (i) Wear - Quantity requirements shall be based on the total population of items installed in equipment on the railcars and mean time between failures.
 - (ii) Repairable Items - Quantity requirements shall be based on the degree to which an item is capable of being repaired or reconditioned to a serviceable operational condition.
 - (iii) Long Lead Time - Components which are not available from commercial distributors or manufacturers within 30 calendar days.
 - (5) The Contractor shall apply a single control numbering system to organize the spare parts list and to provide for efficient tracking of pricing, ordering, and receiving. Individual sub-supplier numbering systems will be cross-referenced and subservient to the Contractor's system. The control numbering system shall be proposed to and approved by the Authority (CDRL 2-15) prior to submittal of the first Recommended Spare Parts List.
 - (6) All data received from the Contractor shall be in a format that can be directly imported into the Authority's Maximo System.

- (7) Submittal of the Recommended Spare Parts List shall be based on the following schedule:
 - (i) Final Design Review - Complete Recommended Spare Parts List including consumable, replacement, repairable, and overhaul parts.
 - (ii) 6 months before delivery of pilot cars - Revised Recommended Spare Parts List for consumable, replacement, and repairable parts.
 - (iii) One year after acceptance of pilot cars - Revised Recommended Spare Parts List for overhaul parts.
 - (iv) Two years after acceptance of pilot cars - Final Recommended Spare Parts List for consumable, replacement, repairable, and overhaul parts.
- (8) Each edition of the Recommended Spare Parts List shall identify the revisions from the previous submittal as additions, deletions or revised information. Each revision to the list shall address adjustments to recommended quantities of individual parts and unit pricing.

12. **SPARE PARTS DELIVERY**

The Contractor is advised that the Authority has the unilateral right to order spare parts beyond the initial delivery of the base and option cars (Chapter II, Article 4, "Options") from any vendor pursuant to another contract.

- (1) The total base spare parts price shall not exceed 10% of the total base vehicle price, as detailed on the Price Schedule. The total option spare parts price shall not exceed 10% of the total option vehicle price.
- (2) Spare parts delivery will be based on the Contractor's lead-times. The Contractor shall seek the Authority's approval of the lead-times for delivery of spare parts.
- (3) Delivery of the Approved Recommended Spare Parts per Chapter II, Article 4, "Options" for the base order shall occur in accordance with the following schedule:
 - (i) Delivery of the pilot cars - Complete consumable spare parts delivered to the Authority's warehouse.
 - (ii) Acceptance of pilot cars - Complete replacement spare parts and complete repairable spare parts delivered to the Authority's warehouse.
 - (iii) 6 months before any scheduled overhaul - Overhaul parts delivered to Authority's warehouse.
- (4) The Recommended Spare Parts List and subsequent revisions to the list, together with cost and pricing data and a certificate of Current Cost and Pricing Data from the Contractor and all applicable subcontractors and suppliers, shall be furnished to the Contracting Officer. Such cost and pricing data shall be subject to audit by the Authority. The Authority shall negotiate fair and reasonable prices for spare parts prior to final approval of the Recommended Spare Parts List.

Set, assembly, or group prices must be further broken down to show the unit price of each sub-element that makes up the set or group. For example, the unit price of each circuit board in a set of boards must be provided and a motor-gear assembly, while it may be offered at a single unit price, must also include a breakdown with prices of each element used in repair and maintenance of the assembly, such as bearings, gears, etc.

The Contractor's markup on spare parts provided by subcontractor's or sub-vendors shall not exceed 10%.

- (5) Unless otherwise directed by the Contracting Officer or his or her designated representative, spare parts shall be delivered F.O.B. at the receiving platform of the Authority's Metro Supply Facility, 8201 Ardwick-Ardmore Road, Landover, Maryland 20801. The parts shall be properly packaged or crated so as to prevent damage during shipment and long-term storage.

Shipping documentation, including bills of lading and packing lists shall clearly identify the shipment as "CONTRACT CQ19038-8K SPARE PARTS". In addition to any other identifiers, e.g. subcontractor part number, etc., all items shall be identified to the control numbering system addressed above. The following instructions shall appear in bold lettering on each page of the packing list:

Receiving Supervisor:

Notify the Authority (Contract CQ19038-8K) of material received in this shipment. A signed copy showing quantities actually received shall be forwarded to the COTR.

- (6) The Contractor shall provide for the modification or replacement of any spare part which is not in accordance with the final approved system and/or equipment configuration. This applies to cases such as where equipment design modifications are introduced into components during or subsequent to the production period to improve reliability or performance.
- (7) The spare parts shall not be available to the Contractor to satisfy its obligations under Chapter 3, Warranty, unless, and to the extent authorized by the Authority, and then only to the extent new or in-kind replacement is made at the earliest possible time.

13. **WARRANTY**

- (a) The Contractor warrants all railcars, components, parts, and equipment furnished under this Contract against defects or failures, as defined herein, for the specific periods stated in this Article. The Contractor's on-site staff shall provide technical assistance, 24 hours per day, 7 days per week and troubleshooting support.
- (b) Any defect or failure occurring prior to commencement of the warranty period shall be covered under the 'Inspection' and 'Correction of Deficiencies' Articles.
- (c) For purposes of this Article, "defect or failure" shall mean any condition, whatsoever the cause, whereby a railcar, simulator, component, part or equipment shall require maintenance, repair, or replacement or otherwise fail to conform to the Specifications other than:
- (1) Scheduled maintenance recommended by the Contractor and accepted by the Authority, including repair or replacement of consumable items where the item has met the minimum life expectancy generally recognized in the industry for such item; and

- (2) Maintenance, repair, or replacement resulting solely from causes beyond the control and without the fault or negligence of the Contractor.
- (d) The Authority reserves the right to perform normal, routine maintenance and periodic inspections without voiding the warranty.
- (e) The warranty period(s) shall commence, for each individual car, when that car is conditionally accepted and shall run for:
- (1) Ten years for carbody, carbody structures, under floor equipment supports, and truck structural parts;
 - (2) Five years for axles, blower motors, bearings, axle journal bearings, special tools and test equipment;
 - (3) Six years for traction motors and propulsion gear units;
 - (4) Three years for the propulsion system;
 - (5) Two years for all elements, components, parts and equipment furnished under the Contract; not mentioned above;
 - (6) Optional two-year extension consecutive to the two-year warranty.
- (f) Consumable items, such as brake pads, light bulbs, air filters, and windshield wiper blades, shall not be subject to the warranties set forth in the subparagraphs above, but shall have a minimum life expectancy generally recognized in the industry for such an item. If during the warranty period, a consumable item exhibits a defect caused by defective manufacture or design and more than 10% of the consumable item exhibits the defect and/or fail, the Contractor shall replace the item in every railcar, spare part or simulator supplied under the Contract.
- (g) The warranty period(s) shall not run while a car is out of service for warranty work, field modifications, or modifications necessary to correct defective design, materials, or workmanship and shall be extended one day for each day that a railcar is not available for service.
- (h) In the event that there is a Fleet Defect as described below, the warranty period for any work performed to correct the Fleet Defect shall be two years from the completion of the work on the last railcar.
- (i) In the event any railcar, simulator, component, part or equivalent (supplies) exhibits a defect or failure within the warranty period including all warranty extensions, the Contractor shall furnish a replacement part and repair the supply to ready for revenue status within 24 hours of receipt of the record of the deficiency. All costs associated with the removal, replacement, and reinstallation of equipment and materials necessary to access the work area shall be borne by the Contractor. All shipping and handling costs shall be borne by the Contractor.

In order to meet the 24-hour repair onsite requirement, the Contractor shall:

- (1) Assume that the railcars will be repaired at any of the Authority's maintenance shops 24 hours a day, 7 days a week, and 365 days a year.
- (2) Coordinate the scope of any warranty work and the optimum manner of accomplishing such work taking into account out-of-service time, manpower requirements, skill levels, space restraints, and other relevant factors with the applicable shop superintendent;

- (3) Minimize downtime of the affected equipment while repairs are being done.
- (j) Failure to comply with the 24-hour repair requirement of the preceding subparagraphs shall not relieve the Contractor from the obligation to repair the railcar.
 - (1) Should the Contractor fail to satisfactorily comply with the 24-hour requirement, the Authority may assume responsibility for the diagnosis and repair of the railcar. In this case, the Contracting Officer, in his or her discretion shall offset the contract payments or the retainage by the amount of costs incurred by the Authority in diagnosing and repairing the railcar including, without limitation, costs for materials, supplies, equipment, direct and indirect costs and other costs reasonably allocable and allowable under Federal Acquisition Regulation (FAR) part 31 for performance of the corrective work.
 - (2) The Contracting Officer or his or her authorized representative may authorize removal of spare parts from the Authority inventory's for the Contractor's warranty work. In such case, the Contractor shall furnish a new replacement part within 45 calendar days of receipt of the part along with the record of the deficiency and warranty repair signed by an authorized representative of the Contracting Officer. Failure to comply with the 45-calendar-day requirement shall not relieve the Contractor from the obligation to furnish the part. The Contractor shall pay the cost of the part plus transportation costs which shall be deducted from the retainage payment.
 - (3) The Authority reserves the right to perform such repair work without voiding any warranties.
 - (k) The Contractor shall submit a Warranty Plan (CDRL 2-12) that describes how the warranty will be implemented and managed. The plan shall address Contractor's and subcontractors' staffing, parts provisioning, engineering support, warranty documentation, and parts disposition.
 - (1) The Contractor shall maintain a log of defects and failures found in the equipment, and of any adjustments and/or changes made in order to repair such defects and failures. A weekly summary of the warranty logs signed by the Contractor's Resident Engineer shall be submitted to the Authority.
 - (2) The Contractor and Authority shall meet on a monthly basis to review the warranty work.
 - (3) As part of the monthly review, the Contractor shall list any spare parts obtained from the Authority, per paragraphs (j) (1) of this Article, and the return date. The Contractor shall maintain the spare parts list throughout the duration of the warranty.
 - (l) Where defects or failures of components, parts, or equipment exceed the requirements set forth below, the Contracting Officer shall declare a Fleet Defect or Reliability Failure and the Contractor shall retrofit or replace all of the components, parts, or equipment of the fleet on all delivered and non-delivered railcars that the Contracting Officer deems to contain the defect or failure, regardless of whether all of the components, parts, or equipment in the fleet installed or rehabilitated under this Contract have exhibited the defect or failure and regardless of the warranty status.
 - (1) Fleet Defect – A fleet defect shall be declared if:
 - (i) 5% of the total quantity of identical components used for the same function, in the same assembly, subsystem, or system, or identical failures affecting conditionally accepted vehicles.

- (ii) Identical components used for the same function, in the same assembly, subsystem, or system affecting 10% of the conditionally accepted vehicles.
 - (iii) Fleet Defects will be evaluated during an 18-month moving window and may be declared any time the count reaches the Fleet Defect quantity beginning with conditional acceptance of the first married pair of vehicles and extending until expiration of the warranty period or extended warranty period on the last married pair of vehicles.
- (2) Reliability Failure - A Reliability failure shall be declared if:
 - (i) The system reliability requirements specified in Exhibit 7-3 in Section 7 of the Technical Specifications are not met at the conclusion of the reliability test.
 - (ii) The Mean Distance Between Delay (MDBD) requirement of 200,000 miles specified in Exhibit 7-2 in Section 7 of the Technical Specifications is not met.
- (m) In the event of a Fleet Defect or Reliability Failure, the Authority will, if deemed necessary not conditionally accept any additional railcars until such time as the fleet defect is corrected or reliability and/or MDBD for the existing railcars meets the Contract requirements.
- (n) In the event of any Fleet Defects or Reliability Failures as specified above, the Authority shall have the right at the sole discretion of the Contracting Officer, to direct the Contractor to correct the defect or cause of failure, including performance of any design or engineering studies or analyses reasonably necessary to such correction, within 60 calendar days of receipt of the Contracting Officer's notice. Should the Contractor fail to satisfactorily comply with the requirements, the Contracting Officer may exercise any of three options:
 - (1) WMATA may perform any engineering or design studies or analyses reasonably necessary and may return to the Contractor for repair, replacement or retrofit any component or part of equipment that is necessary for correction. Upon receipt, the Contractor shall repair the item and return it to the Authority, or furnish a replacement or retrofit the defective or failed component or part within 60 calendar days. Failure to comply with the 60 calendar day requirement shall not relieve the Contractor from the obligation to furnish the part.
 - (2) Obtain correction of the defect or cause of failure, including performance of any engineering or design studies or analyses reasonably necessary to such correction, by any reasonable means. When the Contracting Officer has directed the Contractor to correct the defect or cause of failure and it fails to do so within 60 calendar days, the Authority may contract with another company to complete the work.
 - (3) Direct that no corrective measures be taken and, modify the Contract as necessary to reflect such action, including an equitable adjustment (reduction) in the Contract price in accordance with the Changes article.
- (o) The Contractor shall be liable to and shall reimburse the Authority for all costs incurred by the Authority in correcting, or obtaining the correction of, a defect or failure covered by this Article including, without limitation, costs for materials, supplies, equipment, and other direct and indirect costs reasonably allowable pursuant to FAR part 31 and allocable to performance of corrective work. Where the Authority contracts for all or part of such corrective action, such costs shall be reimbursable by the Contractor.

- (p) All costs incurred by the Contractor for performing corrective actions, or for delays incident thereto, shall be solely the Contractor's responsibility. The Contractor shall also prepare and furnish to the Authority, data and reports applicable to any correction required under this Article (including revision and updating of all other affected data called for under this Contract) at no increase in the Contract price. The Authority shall not be liable for any costs incurred by the Contractor in complying with this Article.
- (q) The Contractor shall bear the risk of lost components, parts, or equipment while in transit to or from the Contractor's facility.
- (r) The period of performance of this Contract shall not be extended nor shall the Contractor's liability for liquidated damages be reduced as a result of delay in performance of the Contract caused, in whole or in part, by compliance with this Article.
- (s) Any component, part, or equipment replaced by the Authority under this Article shall be disposed of by the Authority in the manner requested by the Contractor and at the Contractor's expense. If the Contractor fails to furnish disposition instructions after reasonable notice from the Contracting Officer requesting such instructions, the Contracting Officer will dispose of such items in the manner which, in the Contracting Officer's sole judgment, is appropriate under the circumstances.
- (t) The rights and remedies of the Authority under this Article are in addition to any of WMATA's contractual rights, including, but not limited to, those accrued under the Inspection and Testing Article and/or the Acceptance Article of this Contract, as well as all other rights at law or in equity.
- (u) The Authority has unilateral right to exercise the option to extend any existing warranty for an additional one or two years, at any point up to the end of the warranty period on the last cars

14. WARRANTY OF SERVICES

- (a) Definitions.

"Acceptance," as used in this clause, means the act(s) of WMATA's authorized representative by which WMATA approves specific services, in partial or complete performance of the Contract.
- (b) Notwithstanding inspection and acceptance by WMATA, the Contractor warrants that all services performed under this Contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Contract. The Contracting Officer shall give written notice of any defect or nonconformance to the Contractor within thirty (30) days from the date of acceptance by WMATA. This notice shall state either --
 - (1) That 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 work initially performed. 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.

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

15. CORRECTION OF DEFICIENCIES

- (a) Definitions: As used in this article:

- (1) Deficiency means any conditions or characteristics in any supplies (including related technical data) or services furnished hereunder, that are not in compliance with this Contract's requirements.
- (2) Correction means any and all actions necessary to eliminate any and all deficiencies.

- (b) The rights and remedies of the Authority provided in this article:

- (1) Shall not be affected in any way by any other provisions under this Contract concerning the conclusiveness of inspection and acceptance; and
- (2) Are in addition to and do not limit any rights afforded to the Authority by any other article of this Contract.
- i. The Contractor shall not be responsible under this article for the correction of deficiencies in Authority furnished property, except for deficiencies in installation, unless the Contractor performs or is obligated to perform any modifications or other work on such property. In that event, the Contractor shall be responsible for correction of deficiencies to the extent of such modifications or other work.
- ii. The Contractor shall not be responsible under this article for the correction of deficiencies caused by the Authority.

- (c) Deficiencies in accepted supplies or services:

- (1) If the Contracting Officer discovers that a deficiency exists in any of the supplies or services accepted by the Authority under this Contract, he or she shall promptly notify the Contractor of the deficiency, in writing. Upon timely notification of the existence of such a deficiency, or if the Contractor independently discovers a deficiency in accepted supplies or services, the Contractor shall (within 30 days) submit to the Contracting Officer, its recommendation for corrective action, together with supporting information, in sufficient detail for the Contracting Officer to make a decision on a Corrective Action Plan.
- (2) Within a reasonable amount of time after receipt of the Contractor's recommendations for a Corrective Action Plan, the Contracting Officer shall provide the Contractor with written notice of WMATA's Corrective Action Plan, if any, to be implemented.
- (3) The Contractor shall promptly comply as agreed to by the parties with WMATA's

corrective action plan at no increase in the Contract price. The Contractor shall also furnish to the Authority, data and reports applicable to any correction required under this Article (including revision and updating of all other affected data called for under this Contract) at no increase in the Contract price.

- (4) In the event of timely notice of a decision not to correct or only to partially correct a deficiency, the Contractor shall promptly negotiate with the Contracting Officer for an equitable reduction in Contract price that will be reflected in a modification to this Contract.
- (5) If the Contractor becomes aware at any time before acceptance by the Authority (whether before or after tender) that a deficiency exists in any supplies or services, it shall promptly inform the Contracting Officer, in writing, together with its detailed recommendation for corrective action.
- (6) In no event shall the Authority be responsible for delays under this Contract as a result of the Contractor's obligations to correct deficiencies. There shall be no adjustment to the delivery schedule or period of performance as a result of the Contractor's correction of deficiencies, unless the Contracting Officer agrees to an adjustment in a written modification to this Contract. This article shall not be construed as obligating the Authority to increase the Contract price. When the Authority returns supplies to the Contractor for correction or replacement, and when the Contractor returns them to the Authority, the Contractor shall be liable for transportation charges. The Contractor shall bear the risk of loss or damage for the supplies while in transit.
- (7) If the Contractor fails to present a detailed recommendation for corrective action; fails to correct deficiencies or fails to furnish data and reports in accordance with the above requirements, the Contracting Officer shall provide the Contractor with a written cure notice, specifying the time within which such failure must be cured. If the failure is not cured within the specified period, the Contracting Officer may, by contract or otherwise: correct the supplies or services, or replace them. If the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of deficient supplies in a reasonable manner. Upon disposition, the Authority is entitled to reimbursement from the Contractor or to set-off from the Contract amount, the reasonable expenses of care and disposition, of deficient supplies as well as any other associated costs. In such case, the Authority may obtain applicable data and reports and charge to the Contractor, the cost occasioned thereby.
- (8) Any supplies corrected or replaced and any services re-performed shall be subject to this Article to the same extent as supplies or services initially accepted.
- (9) The Contractor shall be liable for the reasonable costs of disassembly or re-assembly necessary to remove the supplies to be returned for correction or replacement.

16. **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.

17. **FIRST ARTICLE INSPECTION**

- (a) The Contractor shall cooperate in a First Article Inspection (FAI) on all major systems and components, subassemblies, Pilot A-car and B-car, and the first production A-car and B-car. The Contractor shall propose a list of all FAI activities for the Authority's approval. The Contractor shall submit control samples of materials and finishes with its Technical Proposal.
- (b) The Contractor shall deliver one (1) unit of each major system and component, subassembly, Pilot A-car and B-car, and the first production A-car and B-car to the Authority for first article (pre-production) tests. The shipping documentation shall contain this Contract number and the lot/item identification number. The characteristics for the first article inspection and its testing requirements are stated in Section 5.1.3.7.1 of technical specifications.
- (c) A FAI will not be conducted until the design drawings of the article, and any control samples required to evaluate subjective characteristics, have been approved or conditionally approved. If conditionally-approved drawings and control samples are used, they must be finally approved at the FAI as represented in the Inspection Article.
- (d) An FAI will only be performed on a component built using approved production processes and tooling, materials and manpower, and shall establish new quality standards for the balance of like components.
- (e) The FAI requirements shall be established jointly by the Authority and the Contractor through the establishment of a Book of Standards for FAI, detailing FAI standards for the railcars. Photographs and/or video of the FAI shall be used to document results and shall be retained by the Contractor and the Authority for subsequent reference during production.
- (f) The Contracting Officer or designee shall notify the Contractor, in writing, of the conditional approval, approval, or disapproval of the first article. The notice of conditional approval or approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this Contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite the reasons for the disapproval.
- (g) If the first article is disapproved, the Contractor, upon the Authority's request, shall submit an additional first article for testing. After each request, the Contractor shall make any necessary modifications, or repairs to the first article or select another first article for testing. The Contractor shall pay for all costs related to these tests. The Contractor shall furnish any additional first article under this Contract within the time specified by the Authority. The Contracting Officer may make an equitable adjustment to the Contract for any schedule extension related to these tests, at no cost to the Authority.
- (h) Unless otherwise provided in the Contract, the Contractor:
 - (1) Shall remove and dispose of any first article from the Authority's test facility at the Contractor's expense.
- (i) The Contractor is responsible for providing operating and maintenance instructions, spare parts support, and repairs to the first article during any first article test.
- (j) The Authority will inspect the first article in accordance with the Contract's requirements. A written report will be forwarded to the Contractor in accordance with this article.

18. F.O.B. DESTINATION

- (a) The Contractor shall furnish all supplies to be delivered under this Contract "F.O.B. Destination." As used herein, "F.O.B. Destination" means:
- (1) Free of expense to WMATA on board the carrier's conveyance, and in the case of railcars, delivered to Washington Metropolitan Area Transit Authority's Commissioning Facility at Greenbelt Yard S&I Shop, 5801 Sunnyside Avenue, College Park, Maryland 20740;
 - (2) In the case of capital spares, they shall be delivered to WMATA's warehouse unloading platform, or receiving dock, at the Contractor's expense in accordance with the Spare Parts Article. The special tooling and test equipment shall be delivered at the Contracting Officer's Technical Representative's direction.
 - (3) WMATA shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery of the supplies to the destination, unless such charges are caused by WMATA's acts or omissions, acting in its Contractual capacity. If the Contractor uses a rail carrier or freight forwarder for less than full carload shipments, the Contractor shall assure that the carrier will furnish tailgate delivery, if transfer to truck is required to complete delivery to WMATA.
- (b) The Contractor shall be responsible for the transportation of the railcars and placement onto the Authority's tracks at the Commissioning Facility. There shall be no more than four Quad units (16 cars) of unaccepted cars (i.e. cars undergoing or preparing to undergo qualification and/or acceptance testing or undergoing repairs under the Contractor's control) on the Authority's property at any time.
- (c) For all delivered items, the Contractor shall:
- (1) Pack and mark the shipment to comply with this Contract's specifications;
 - (2) Prepare and distribute commercial bills of lading;
 - (3) (Deliver the shipment in good order and condition to the delivery point specified in the Contract;
 - (4) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by WMATA at the delivery point specified in the Contract;
 - (5) Pay and bear all charges to the specified point of delivery.

19. QUALITY ASSURANCE/QUALITY CONTROL

- (a) The Contractor shall be responsible for quality assurance (QA) and for assuring that the work conforms to the requirements of this Contract contained in TS 5.1 of the Technical Specifications. The Contractor shall maintain an effective and economical quality control program planned and developed to satisfy this Contract's requirements. The Contractor shall ensure Contract compliance by all subcontractors and suppliers. Surveillance of subcontractors shall include sampling and review of products, records, procedures, processes, manufacturing operations, and Quality Control methods.

- (b) The Contractor shall maintain documented evidence of these activities and make it available to the Authority upon request.
 - (1) The Contractor shall appoint a dedicated QA Manager at each facility, subject to approval, who has appropriate training, experience, and qualifications to oversee the QA process, and the authority to accept or reject and/or stop work, if necessary.
 - (2) The Contractor shall also appoint an individual who will serve as the single coordinator for project quality assurance for all Contractor facilities.
 - (3) All Contractor, subcontractor, and supplier quality assurance efforts, including the Quality Assurance Program Plan of each, shall be in compliance with the requirements of the following standards. Where those requirements differ from the terms of the Contract, the more stringent requirements shall take precedence:
 - (i) ANSI/ISO/ASQ 9001. The Contractor shall be registered under ISO 9000 to obtain compliance with this requirement.
 - (ii) The Federal Transit Administration's requirement FTA-PA-27-5194-12.1

Quality Assurance Program Plan: The Contractor shall submit a work-specific Quality Assurance Program Plan for approval due at the Kick-Off Meeting. **Quality Assurance Program Plan (CDRL 5-1).**

- (a) The Plan shall include a company policy statement that clearly defines its objectives and the Contractor's commitment to quality.
- (b) The Plan shall define the authority of the Contractor's Quality Assurance Department, reflecting its independence from the production function:
 - (1) The QA Manager must report to an officer or top-level manager within the Contractor's organization, not to the Contractor's project manager for this project.
 - (2) Responsibility for the quality assurance function shall be so placed within the Contractor's organization that meeting schedule and cost projections will not compromise the quality of supplies and/or services delivered under the terms of this Contract.
 - (3) The Plan shall clearly indicate that quality assurance personnel have sufficient authority and organizational freedom to ensure that nonconforming or discrepant products or services will not be delivered to the Authority.
 - (4) Any conflicts that may arise as a result of this provision shall be brought to the Authority's attention by the Contractor's Quality Assurance designee and shall be resolved to the Authority's satisfaction prior to the shipment of affected items.
- (c) Management responsibility for the quality assurance function shall be set forth in the Contractor's policy statement.
 - (1) The Contractor shall appoint a dedicated QA Manager with appropriate training, experience and qualifications to oversee the QA process, and the authority to accept or reject work and/or stop work, if necessary. The individual proposed

- for this position shall be approved by the Authority before starting work on the project.
- (2) Organizational charts shall be submitted to show individuals in the Contractor's and all sub-contractors' organizations involved in the QA function, showing the reporting relationships among all management staff.
 - (3) Quality assurance responsibilities shall be established for every department.
- (d) The Plan shall provide objective, technical evidence of the adequacy of the Contractor's Quality Assurance Program to ensure product compliance.
- (1) It shall regulate procedures, methods, and processes to ensure compliance with all Contract requirements.
 - (2) At a minimum, the Contractor shall incorporate written procedures identified in this Section into its Quality Assurance Program.
 - (3) Procedures shall define methods to implement and maintain the Contractor's QA Program. Engineering, procurement, manufacturing, and inspection procedures, and test plans shall be developed using the methods and procedures found in the Contractor's Quality Assurance Manual.
 - (4) Quality assurance procedures pertaining to engineering and design shall be reviewed as part of the project's kick-off meeting (See Technical Specifications, Section 2.5.2, Project Kick-off Meeting).
- (e) The Plan shall include work-specific quality organization and inspection flow charts for the Contractor and all major subcontractors at various manufacturing and assembly operations for critical quality functions, including, but not limited to the following:
- (1) Receiving inspection and source inspection;
 - (2) In-process and final inspections;
 - (3) Non-conforming material;
 - (4) Material Review Board;
 - (5) Testing products;
 - (6) Contract compliance;
 - (7) Corrective action and prevention Recurrence procedures;
 - (8) Software QA requirements, (See Section 6 of the Technical Specifications, Software Quality Assurance);
- (f) The Plan shall contain or refer to a comprehensive collection of forms for documentation of quality control activities. Forms shall be designed to ensure compliance of materials, processes, personnel, and products to the approved design drawings and applicable specifications (see Section 5.1.2.15 of the Technical Specifications, Quality Assurance Procedures).
- (g) The Plan shall provide procedures to control reliability and maintainability activities.
- (h) The approved Quality Assurance Program Plan including all manuals, procedures, and instructions shall be subject to periodic audits by the Contractor and the Authority, including any third party who may assist the Authority in this function. Audits will assess

implementation of the Quality Assurance Program.

- (i) The Plan shall include an Inspection and Testing Plan. (CDRL 5-2, Inspection and Test Plan)
 - (1) The Inspection and Testing Plan shall show major manufacturing and inspection milestones on a schedule, including planned dates for submittals and be integrated with the Master Program Schedule, (See Technical Specifications, Section 2.5.1, Master Program Schedule).
 - (2) The Inspection and Testing Plan shall identify Contractor inspection points and the Authority's witness and hold point inspections. The Plan will be used by the Authority's quality assurance representative to identify the Contractor's inspection and test witness points.
 - (3) The Inspection and Testing Plan, and its attendant schedule, shall be updated and submitted to the Authority for approval as milestone dates or other significant items change.
 - (4) Quality Assurance Manual

The Contractor's and major subcontractor's Quality Assurance Manual shall be submitted for Authority review, and used as a reference when performing Authority inspections, assessments, and audits. **(CDRL 5-3, Quality Assurance Manuals)**

20. PROGRESS SCHEDULE

- (a) The Contractor shall prepare, maintain, and update a progress schedule. It shall be a critical path network diagram of sufficient detail to show how mandatory milestones are intended to be met. Sufficient information shall be shown to enable proper control and monitoring of the work. The Progress Schedule shall show intended time for starting and completing each activity; the duration and interrelationship of each activity including: submittal and approval times of drawings, data, samples, and tests; delivery of sub-supplier material and equipment; equipment removal and installations; car shipments; acceptance tests; and other significant items related to the progress of the work.
- (b) Timely submittal and revision of the Progress Schedules is essential to ensure the satisfactory prosecution of the work. If the Contractor fails to submit the required schedule within the times stipulated, the Authority, in addition to all other remedies for such default, may withhold payments otherwise due, and may direct the Contractor to take remedial measures, as provided in these terms and conditions. All schedules submitted shall show the effects of any occurrence upon which the Contractor has based or will base any claim or notice of potential claim for an extension of time, for additional compensation, or for both, regardless of the cause and shall expressly call the Authority's attention thereto. Failure to do so in the case of any occurrence shall conclusively preclude the Contractor from asserting any claim for additional compensation, damages, or schedule extension.
- (c) The schedules required in Technical Specifications Section 2, Program Management and Commissioning, when approved, shall be the basis for monitoring and controlling progress under the Contract and shall remain effective without change throughout the remainder of the project. If, in Contracting Officer's opinion, the Contract falls behind the approved schedule, he or she shall direct the Contractor to take such steps as may be necessary to improve his progress. The Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, or the amount of facilities dedicated to the project, at no additional cost to the Authority. The Contracting Officer shall also direct the Contractor to submit for approval such supplementary schedule or schedule as may be

deemed necessary to demonstrate the manner in which the agreed rate of progress will be regained, all without additional cost to the Authority.

- (d) Failure of the Contractor to comply with the requirements and directions of the Contracting Officer under this Article shall be grounds for determination by the Contracting Officer that the Contractor is not prosecuting the work with such diligence as will ensure completion within the time specified. Upon such determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part thereof, in accordance with the Termination for Default Article.
- (e) Submittals shall include pertinent scheduling documents as specified by the Contracting Officer.

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, direct and implement change orders, within the general scope of this Contract, including but not limited to one or more of the following:
- (i) Nature and/or extent of services to be performed or supplies to be furnished;
 - (ii) Time of performance (i.e., hours of the day, days of the week, etc.); or
 - (iii) Place of performance of the services or delivery of the supplies.
 - (iv) Drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Authority.
 - (v) Method of shipment or packing of 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 to 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, 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 notification shall constitute a waiver of its right to seek an adjustment in the Contract price or time required for such performance.
- (g) In no event shall the Contractor be entitled to payment for change orders, additional or extra supplies or services or other modifications to this Contract, unless the Contracting Officer authorizes, it in writing.

2. PRICING OF ADJUSTMENTS

- (a) The parties agree that, notwithstanding any interpretation of contract cost principles to the contrary, the Authority will not be liable for interest, however represented, on or as a part of any claim, request, proposal or adjustment, including equitable adjustments, whether it arises under the Contract or otherwise.
- (b) As part of its proposal for any Contract modification requiring a price adjustment in excess of \$150,000, the Contractor shall submit to the Contracting Officer, cost or pricing data under the conditions described in this paragraph and certify that, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete and current as of the date submitted. At the Contracting Officer's discretion, the Contractor, may be required to submit cost or pricing data for price adjustments less than \$150,000.
- (c) The Contractor shall ensure that this Article is included in all subcontracts at any tier, if the value of the subcontracted work exceeds \$150,000.

3. ACCOUNTING AND RECORD KEEPING FOR ADJUSTMENTS

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

incurred, segregable costs related to the work for which the pricing adjustment is requested. The Contractor shall maintain accounts and records that segregate and account for the costs of all work associated with that part of the Contract for which the pricing adjustment is requested. The Contractor shall allocate the costs so accumulated between: (1) work required under the base Contract; (2) work requested to be reimbursed under the pricing adjustment; and (3) work claimed or determined to be related to other actual or proposed adjustments, including but not limited to, changes orders, differing site conditions, and the like. The accounts and records so established shall accumulate such costs under logical costs groups, such as material, labor, equipment, subcontracts, field overhead and the like. The Contractor shall record these costs on a form approved by the Contracting Officer.

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

CHAPTER V – INVOICES/PAYMENTS/ DEDUCTIONS**1. BILLING AND PAYMENT**

- (a) The Authority shall pay and the Contractor shall accept the amounts set forth in the Price Schedule as full compensation for all costs and expenses of completing 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. PAYMENT MILESTONES/PERFORMANCE BASED PAYMENTS

- (a) The Contractor may submit requests for payment of milestone or performance-based payments, within thirty (30) days of the events described herein, in a form and manner that is acceptable to the Contracting Officer. Unless the Contracting Officer directs otherwise, all performance based payments in any period for which payment is requested shall be included in a single request, appropriately itemized and totaled.
- (b) The Contractor shall not be entitled to payment of a request for performance based payments prior to the successful accomplishment of the event or performance criterion for which payment is requested. The Contracting Officer or his or her designee shall determine whether the event or performance criterion for which payment has been requested has been successfully accomplished in accordance with the terms and conditions of this Contract. The Contracting Officer may, at any time, require the Contractor to substantiate the successful performance of any event or performance criterion that it represents as being payable.
- (c) The approval of a request for a performance based payment does not constitute either conditional or final acceptance under this Contract, and specifically does not excuse the Contractor from performance of any obligations under this Contract.
- (d) If at any time, the amount of payments under this Contract exceed any limitations in this Contract, the Contractor shall repay the excess to WMATA. Unless the Contracting Officer determines otherwise, such excess shall be credited as a reduction in unliquidated performance based payment balances.
 - (1) The Contracting Officer may reduce or suspend performance based payments, liquidate performance based payments by deduction from any payment under this Contract, or take a combination of these actions, after finding one of the following:
 - (2) The Contractor failed to comply with any material requirement of this Contract;
 - (3) Performance of this Contract is endangered by the Contractor's failure to make progress or its unsatisfactory financial condition;
 - (4) The Contractor is seriously delinquent in the payment of any subcontractor or supplier under this Contract, in the ordinary course of business.
- (e) Title to property described in this paragraph shall vest in WMATA upon conditional acceptance in accordance with the Title and Risk of Loss article.
- (f) Before conditional acceptance by WMATA, the Contractor shall bear the risk of loss in accordance with the Title and Risk of Loss article. If any property is lost, stolen, damaged or destroyed, The Contractor shall be deemed not in compliance with this Contract, and the associated milestone shall not be paid, or the Contractor shall refund the related performance based payments.
- (g) The Contractor shall maintain records and controls adequate for administration of this Article. The Contractor shall have no entitlement to performance based payments during any time that the Contracting Officer determines that the Contractor's records or controls were not accurate.

- (h) The Contractor shall promptly furnish reports, certificates, financial statements or other pertinent information that the Contracting Officer requests for administration of this Article or to determine that an event or other criterion triggering a milestone payment has been successfully accomplished. The Contractor shall give WMATA reasonable opportunity to examine and verify the Contractor’s records and to examine and verify the Contractor’s performance of this Contract for administration of this Article.
- (i) If this Contract is terminated for default pursuant to the Termination for Default Article, the Contractor shall, upon demand, repay WMATA the amount of any unliquidated performance based payments. In such case, WMATA shall be liable for no payments except as provided in the Default Article.
- (j) Applicable payment items shall be those set forth in the Price Schedule. Milestone payments will be made upon satisfactory completion and acceptance of each line item in accordance with the milestone allocation percentages listed below which are synonymous with the program phases shown in Exhibit 2-1 of the Technical Specifications.
- (k) Technical Specifications, Exhibit 2-2, Contract Data Requirements List (CDRL), assigns a due date for each CDRL item. The Contractor shall review Exhibit 2-2 of the Technical Specifications and submit recommended changes to the due dates for approval based on the Master Program Schedule.
- (l) The Contractor shall assign all deliverables not listed in Exhibit 2-1 to one of the 13 specific Program Phases in the Master Program Schedule.
- (m) Progress on CDRLs and deliverables will be measured at the phase completion meetings.
- (n) Payments will be made for the listed payment milestones. Partial payments for the listed payment milestones will be considered, but generally will not be made.

BASE PAYMENT MILESTONES

Base Payment Milestones	Percentage of Contract less Spare Parts
1. Program Kick Off	Subtotal 1.00%
a. Approval of Subcontractors (SP 24)	0.50%
b. Completion and Approval of Project Kick Off Activities (TS 2.5.2, Project Kick-off Meeting)	0.50%

Base Payment Milestones	Percentage of Contract less Spare Parts
2. Mobilization	Subtotal 3.00%
<ul style="list-style-type: none"> a. Delivery of Subcontracts for the following Primary Systems: 1.00% <ul style="list-style-type: none"> 1) Carbody 2) Coupler and Drawbar 3) Passenger Seating 4) Door Operators and Controls 5) HVAC 6) Interior Lighting System (overhead & emergency lighting) 7) Auxiliary Power Supply 8) Low Voltage Power Supply 9) Propulsion 10) Friction Brakes 11) Trucks (truck frames, wheels, axles, and gearboxes) 12) Automatic Train Control 13) Communication and Monitoring Systems b. Approval of Operational Characteristics Analysis (TS 3.2.2.1) 0.50% c. Approval of Master Program Schedule (CDRL 2-2) 0.50% d. Approval of Quality Assurance Plan (CDRL 5-1) 0.50% e. Approval of Program Management Plan (CDRL 2-1) 0.50% 	
3. Conceptual Design	Subtotal 2.00%
<ul style="list-style-type: none"> a. Approval of preliminary Reliability Prediction (CDRL 7-2) 0.17% b. Approval of Drawing List (CDRL 2-16) 0.17% c. Approval of Configuration Management Plan (CDRL 2-8) 0.17% d. Approval of Arrangement Drawings (CDRL 2-17) and Dynamic Outline Drawing (CDRL 2-18) 0.17% e. Completion and Approval of Conceptual Design Review Deliverables, Including Approval of CDR Packages (CDRL 2-20) 1.33% 	
4. Preliminary Design	Subtotal 4.00%
<ul style="list-style-type: none"> a. Approval of Systems Engineering Plan (CDRL 2-4) 0.80% b. Approval of Overall System Functional Description (CDRL 2-6) 0.40% c. Approval of System Functional Description for each system (CDRL 2-7) 0.40% d. Approval of Carbody Stress Analysis (TS 10.4.7) 0.20% e. Approval of Cab Soft Mock-up (TS 2.16.1) 0.20% f. Completion and Approval of Preliminary Design Review Deliverables, Including Approval of PDR Packages (CDRL 2-21) 2.00% 	

Base Payment Milestones	Percentage of Contract less Spare Parts
5. Final Design	Subtotal 5.00%
a. Approval of Underfloor Equipment Mock-up	0.50%
b. Approval of Master Test Plan (CDRL 3-1)	1.00%
c. Approval of Final Design for Carbody and Trucks (CDRL 2-22)	0.50%
d. Approval of Final Design for APS, LVPS, Propulsion and Friction Brakes (CDRL 2-22)	0.50%
e. Approval of Final Design for Door System, HVAC, ATC, Coupler, and Lighting, and Cab Simulator (CDRL 2-22)	1.00%
f. Approval of Final Design for Communications and Monitoring Systems (CDRL 2-22)	0.50%
g. Completion and Approval of Final Design Review Deliverables, Including Approval of FDR Packages (CDRL 2-22)	1.00%
6. First Article Inspection	Subtotal 2.00%
a. Approval of A-car / Underfloor Equipment Mock-up (CDRL 2-24)	0.57%
b. Approval of Carbody Compression Test (TS 3.5.2)	0.14%
c. Approval of Truck Static Load Test (TS 3.4.10.2.1) and Truck Overload Test (3.4.10.2.2)	0.14%
d. Approval of Combined Systems Test (TS 3.6.13)	0.29%
e. Approval of Carbody and Truck First Article Inspection	0.29%
f. Completion and Approval of First Article Inspection Activities	0.57%
7. Pilot Car Production	Subtotal 15.00%
a. Approval of Climate Room Testing (HVAC Qualification Test)	1.88%
b. Completion and Approval of Pilot Production Activities	1.88%
c. Acceptance of First Article Inspection of the Pilot Cars	1.88%
d. Acceptance of First Article Inspection of the Production Cars	1.88%
e. Delivery of 4 Pilot Cars to WMATA Site	3.74%
f. Delivery of 4 Production Cars to WMATA Site	3.74%
8. Pilot Car Qualification Testing	Subtotal 14.00%
a. Completion and Approval of Pilot Car Qualification Testing Activities	1.87%
b. Approval of Vehicle Design Qualification Tests, On-site Qualification Tests, and delivery of Cab Simulator	2.80%
c. Safety and Security Certification Achieved	1.87%
d. Conditional Acceptance of 4 Pilot Cars including Car History Books	1.87%
e. Conditional Acceptance of first 4 Production Cars including Car History Books	1.87%
f. Completion and Approval of 8 car Burn-In Testing (TS 3.11.6)	3.72%

Base Payment Milestones	Percentage of Contract less Spare Parts
9. Serial Production	Subtotal 42.00%
a. Completion and Approved Delivery and Inspection of each Carbody at the Site of Final Assembly including Pilot Cars 5.0% @ 1/248 of	10.50%
b. Delivery of Cars @ 1/240 of	10.50%
c. Conditional Acceptance of Production Cars including Car History Books @ 1/240 of	21.00%
10. Training	Subtotal 1.00%
a. Completion and Approval of Training Activities	0.50%
b. Completion of Operations Training Program	0.25%
c. Completion of Maintenance Training Program	0.25%
11. Manuals	Subtotal 1.00%
a. Completion and Approval of the Manuals Activities	
b. Submittal of Draft Manuals	
c. Approval of Final Draft Manual	
d. Approval of Final Published Manuals	
e. Delivery and Acceptance of Manual Support System	
12. Special Tools and Test Equipment	Subtotal 1.00%
a. Delivery, Demonstration and Acceptance of Portable Test Units, Software and Licenses	0.50%
b. Delivery, Installation, Demonstration and Acceptance of Bench Test Equipment, including meeting repair times.	0.25%
c. Delivery and Acceptance of Special Tools	0.25%
13. Delivery and Acceptance of As Built Drawings	Subtotal 1.00%
14. Warranty	Subtotal 2.00%
a. Completion of two-year warranty period items	1.33%
b. Completion of five-year warranty period items	0.67%
15. Reliability	Subtotal 2.00%
a. MDBD goal of 25,000 miles attained (Exhibit 7-2)	0.15%
b. MDBD goal of 50,000 miles attained (Exhibit 7-2)	0.35%
c. MDBD goal of 200,000 miles attained (Exhibit 7-2)	0.50%
d. Reliability test successfully completed	1.00%

Base Payment Milestones	Percentage of Contract less Spare Parts
16. Final Acceptance	Subtotal 4.00%
a. Final Acceptance of Pilot and Production Cars @ 1/248 of	2.80%
b. Final Acceptance of the User Education Program	0.30%
c. Final Acceptance of All Operation and Maintenance Manuals and Spare Parts Catalogs, with correct part identification	0.30%
d. Final Acceptance of All Portable and Bench Test Equipment, and Cab Simulator	0.30%
e. Final Acceptance of As Built Drawings	0.30%
Total for Base Order	100%

OPTION PAYMENT MILESTONES

For each option exercised, the following milestone percentages of each option total price will be paid:

Option Payment Milestones	Percentage of Contract less Spare Parts
1. Option Kick Off Activities (TS 2.5.2)	2.00%
a. Notice to Proceed	
b. Approval of Master Program Schedule	
c. Approval of Program Management Plan	

Option Payment Milestones	Percentage of Contract less Spare Parts
2. Signing of Contract for Placement of Primary Subcontractors a. Carbody b. Coupler and Drawbar c. Passenger Seating d. Door Operators and Controls e. HVAC f. Interior Lighting System (overhead & emergency lighting) g. Auxiliary Power Supply h. Low Voltage Power Supply i. Propulsion j. Friction Brakes k. Trucks (truck frames, wheels, axles, and gearboxes) l. Automatic Train Control m. Communication and Monitoring Systems	10.00%
3. Completion and Approved Delivery and Inspection of Each Carbody at the Site of Final Assembly at 1/xxxth* of:	8.00%
4. Acceptance of Cars: a. Delivery of Cars @ 1/xxxth of b. Conditional Acceptance of Cars including Car History Books @ 1/xxxth of c. Acceptance of cars @ 1/xxxth of	25.00% 40.00% 10.00%
5. Completion of Warranty Period: a. Completion of two-year warranty period items b. Completion of five-year warranty period items	2.00% 1.00%
6. Completion of Reliability Test	2.00%
Total for Option Order	100%

Notes to Table:

Where "xxx" is the quantity of each specific option.

3. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA – MODIFICATIONS

If the Contracting Officer determines that any price, including profit or fee, previously negotiated in connection with any modification to this Contract involving changes in cost plus applicable profit in excess of \$150,000 was based upon the Contractor's or subcontractor's cost or pricing data that was not complete, accurate or current, such that the amount the Authority paid to the Contractor for such price adjustment was greater than the Contractor would have been entitled 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.

4. 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.

5. 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 180 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 180 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 as detailed above. 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 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 180 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 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 or 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's 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 obligations under this Contract.
- (b) Contractor shall indemnify, defend and hold harmless the Authority, its Board members, employees and agents, against any and all claims, liabilities, losses, demands, damages, penalties, costs, charges, remedial costs, environmental claims, fees or other expenses including attorneys' fees, related to, arising from or attributable to any effluent or other hazardous waste, residue, contaminated soil or other similar material discharged from, removed from, or introduced on, about or under the job site. The foregoing indemnity does not apply to loss or damage due to preexisting conditions, whether known or unknown.
- (c) If any action or proceeding relating to this indemnification is brought against the Authority, then upon written notice from the Authority to the Contractor, the Contractor shall, at its own expense, resist or defend such action or proceeding by counsel approved by the Authority in writing. No approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend the same. The Authority reserves the right to use its own counsel under this indemnity at Contractor's sole cost and expense.
- (d) Contractor understands and agrees to its responsibility to provide indemnification to the Authority pursuant to this clause. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements. The failure of Contractor's insurance to fully fund any indemnification shall not relieve the Contractor of any obligation hereunder.

2. INSURANCE REQUIREMENTS

If the offeror does not currently carry all of the required insurance for this RFP, a current certificate of insurance (COI) evidencing the insurance that the offeror does carry and a letter from its insurance agent/broker stating that 'if our client (the offeror) is awarded the contract, the required coverage will be provided' will suffice.

(a) **MINIMUM REQUIRED INSURANCE: MINIMUM LIMITS OF INSURANCE**

INSURANCE TYPE	LIMITS	BASIS
Workers' Compensation	Statutory	
Employers' Liability	\$1,000,000	Each Accident
	\$1,000,000	Disease Policy Limit
	\$1,000,000	Disease Each Employee
Commercial General Liability		
	\$25,000,000	Each Occurrence Limit
	\$25,000,000	General Aggregate Limit
	\$25,000,000	Products-Completed Operations Limit
Business Auto Liability		
	\$5,000,000	Combined Single Limit

Railroad Protective Liability Insurance (RRP)		
	\$5,000,000	Each Occurrence Limit
	\$10,000,000	Aggregate Limit
Professional Liability		
	\$3,000,000	Each Claim

(b) **MINIMUM REQUIRED INSURANCE: MINIMUM INSURANCE COVERAGES AND COVERAGE PROVISIONS**

- (1) Contractor is required to maintain the prescribed insurance outlined in this Article during the entire period of performance under this contract. The Notice to Proceed (NTP) will not be issued until all required insurance has been accepted by WMATA.
- (2) The prescribed insurance coverage and limits of insurance are the minimum required coverages and limits. Contractor is encouraged, at its sole cost and expense, to purchase any additional insurance coverages and/or limits of insurance that Contractor deems prudent and necessary to manage risk in the completion of this Contract.

- (3) Upon written request from WMATA, Contractor shall provide copies of any requested insurance policies, including applicable endorsements, within five (5) business days of such request.
- (4) Receipt, review or communications regarding certificates of insurance (COI), insurance policies, endorsements, or other materials utilized to document compliance with these Minimum Insurance Requirements does not constitute acceptance by WMATA.
- (5) Insurance companies must be acceptable to WMATA and must have an A. M. Best rating of at least A- VII.
- (6) Unless otherwise noted, "Claims Made" insurance policies are not acceptable.
- (7) Any insurance policy utilizing a Self-Insured Retention (SIR) requires written approval from WMATA.
- (8) Contractor must incorporate these Minimum Insurance Requirements into contract requirements of all subcontractors of every tier, however, Contractor, at its sole peril, may amend these Minimum Insurance Requirements for its subcontractors, but doing so does not relieve Contractor from its respective liability to WMATA.
- (9) Compliance with these Minimum Insurance Requirements does not relieve Contractor from Contractor's respective liability to WMATA, even if that liability exceeds the Minimum Insurance Requirements.

(c) **COVERAGE-SPECIFIC REQUIREMENTS**

Commercial General Liability

- (1) Commercial General Liability (CGL) shall be written on ISO Occurrence Form CG0001 (12/04) or its equivalent. Equivalency determination shall be made in WMATA's sole and unreviewable discretion.
- (2) Required minimum limits of coverage may be achieved through a combination of the aforementioned CGL coverage form and an Umbrella/Excess Liability coverage form(s), provided that the Umbrella/Excess Liability coverage form(s) provides the same or broader coverage than the prescribed CGL coverage form.
- (3) Policy shall be endorsed with Additional Insured Endorsement(s) in compliance with the "Additional Insured" Section below.
- (4) Policy shall be endorsed with a Waiver of Subrogation Endorsement(s) in compliance with the "Waiver of Subrogation" section below.
- (5) The definition of "Insured Contract" shall be modified to provide coverage for contractual liability for any contracts involving construction or demolition operations

that are within 50 feet of a railroad, and sidetrack agreements. Evidence of this modification shall be provided to WMATA along with all other required documents.

- (6) Defense Costs (Allocated Loss Adjustment Expense) must be included and outside of the policy limits for all primary liability and Umbrella/Excess Liability policies.

Business Auto Liability

- (1) Business Automobile 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 Automobile Liability minimum Combined Single Limit requirements may be obtained through the combination of a primary business automobile liability policy and an Umbrella/Excess Liability policy provided that the Umbrella/Excess Liability policy complies with items 2 and 3 above.
- (5) MCS-90 Endorsement 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 automobile liability limits of \$5,000,000 per occurrence are also required as is form CA 99 48, for broadened coverage for pollution liability.
- (6) Non-Owned Disposal Site (NODS) Endorsement providing coverage for the Contractor's legal liability arising out of pollution conditions at the designated non-owned disposal site are required.

Railroad Protective Liability

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

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

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

Professional Liability Insurance

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

(d) OTHER**Additional Insured**

- (1) Contractor and subcontractors at every tier are required to add WMATA and WMATA's Board of Directors as additional insureds on all required insurance including excess liability policies, with the exception of Workers' Compensation and Professional Liability insurance policies.
- (2) Coverage provided to an Additional Insured shall be primary and non-contributory to any other insurance available to the Additional Insured, including coverage afforded to the WMATA as an additional insured by subcontractors, and from other third parties.
- (3) Coverage provided to any Additional Insured shall be for claims arising out of both ongoing operations and products and completed operations hazards.
- (4) Coverage available to any Additional Insured under the products and completed operations hazards can only be limited to the applicable statute of repose in the jurisdiction(s) where the Contract's 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 endorsements 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

Additionally:

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

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 conditional 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.
- (c) Authority Furnished Property
 - (1) WMATA retains title to all WMATA-furnished property. WMATA furnished property shall not become a fixture, or lose its identity as personal property by being attached to any real property. The Contractor shall use WMATA's property, furnished under this Contract, only for performing this Contract, unless the Contracting Officer approves otherwise. Modifications or alterations of WMATA property are prohibited, unless they are (i) Reasonable and necessary due to the Technical Specifications for this Contract; (ii) Required for normal maintenance; or (iii) Otherwise authorized by the Contracting Officer. Risk of loss is on the Contractor for WMATA-furnished property, i.e. the Contractor is liable for loss, theft, damage or destruction to WMATA property while it is in the Contractor's possession or control. The Contractor shall take all reasonable actions necessary to protect WMATA's property from loss, theft, damage or destruction. The Contractor shall do nothing to prejudice WMATA's rights to recover against third parties for any loss, theft, damage or destruction to WMATA's property.

4. INAPPLICABILITY OF CLAUSES REQUIRING UNAUTHORIZED OBLIGATIONS

- (a) Except where the Chief Procurement Officer specifically agrees in writing, when any supply or service acquired under this Contract is subject to any End User License Agreement

(EULA), Terms of Service (TOS), Master Agreement, Terms and Conditions or similar legal instrument or agreement, that includes any clause requiring WMATA to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability or that would create an unauthorized obligation, the following shall govern:

- (1) Any such clause is unenforceable against WMATA.
 - (2) Neither WMATA nor any authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind WMATA or any WMATA authorized end user to such clause.
 - (3) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.
- (b) When any supply or service acquired under this Contract is subject to any End Use License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, any clause requiring WMATA to pay pre-judgment interest, taxes to which it is exempt, or automatic fines is void and without effect.

CHAPTER VIII – INTELLECTUAL PROPERTY RIGHTS**1. PATENT INDEMNITY**

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

- (a) 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;
- (b) 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
- (c) 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 – 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 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.
- (j) Proprietary Data shall be deposited into escrow by the Contractor.
- (1) The Contractor shall arrange for third party escrow of all Technical Data including but not limited to, software source code and other deliverables which constitute Proprietary Data with a recognized escrow service approved by WMATA and in accordance with an Escrow Agreement acceptable to the Contractor and WMATA.
 - (2) The Escrow Agreement shall permit WMATA to timely and efficiently obtain Proprietary Data due to unforeseen circumstances so that the Authority may continue to satisfactorily use and maintain the Work provided under the Contract. At the minimum the Proprietary Data must be verifiable and the Escrow Agreement must provide that it will be delivered to WMATA in the event of Contractor bankruptcy, Contract termination based upon Contractor default, refusal by Contractor to provide maintenance support, or discontinuance of the product.

- (3) The duration of the Escrow Agreement shall be equal to the expected life expectancy of the Work at the time of Contract execution.

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

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

5. **ROYALTY INFORMATION**

- (a) When an offer contains costs or charges for royalties totaling more than \$250, the following information shall be furnished with the offer on each separate item of royalty or license fee:
- (1) Name and address of licensor;
 - (2) Date of license agreement;
 - (3) Patent numbers, patent application serial numbers or other basis on which the royalty is payable;
 - (4) Brief description, including any part or model numbers of each Contract item or component on which the royalty is payable;
 - (5) Percentage or dollar rate of royalty per unit;
 - (6) Unit price or Contract item;
 - (7) Number of units; and
 - (8) Total dollar amount of royalties.
- (b) In addition, at the Contracting Officer's request, prior to execution of the Contract, the successful offeror will provide copies of any current license agreements and identify applicable claims of specific patents.

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 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 (N/A)**4. 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—
 - (i) The worker is paid or is in an approved work or training program on a voluntary basis;
 - (ii) Representatives of the local union's central bodies or similar labor union organizations have been consulted;
 - (iii) 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;
 - (iv) 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
 - (v) 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. HAZARDOUS MATERIAL IDENTIFICATION AND SAFETY DATA SHEETS

- (a) The Contractor agrees to submit a Safety Data Sheet (U.S. Department of Labor Form OSHA-20), as prescribed in Federal Standard No. 313B, for all hazardous materials five (5) days before delivery of the material, whether or not listed in Appendix A of the Standard. This obligation applies to all materials delivered under this Contract that involve exposure to hazardous materials or items containing these materials.
- (b) "Hazardous material," as used in this clause, is defined in Federal Standard No. 313B, in effect on the date of this Contract.
- (c) Neither the requirements of this clause nor the Authority's acts or omissions shall relieve the Contractor of any responsibility or liability for the safety of the Authority's, personnel or property.
- (d) Nothing contained in this Article shall relieve the Contractor from complying with applicable Federal, state, and local laws, codes, ordinances, and regulations (including the requirement to obtain licenses and permits) in connection with hazardous materials.

- (e) The Authority's rights in data furnished under this Contract regarding hazardous materials are as follows:
- (1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to (a) apprise personnel of the hazards that they may be exposed to in using, handling, packaging, transporting, or disposing of hazardous materials (b) obtain medical treatment for those affected by the materials; and (c) have others use, duplicate, and disclose the data for the Authority for these purposes.
 - (2) To use, duplicate, and disclose data furnished under this Article in precedence over any other provision of this Contract providing for rights in data.
 - (3) The Authority is not precluded from using similar or identical data acquired from other sources.
 - (4) The data shall not be duplicated, disclosed, or released outside of the Authority, in whole or in part, for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this clause applies -

"This data furnished under this Contract shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the Contracting Officer's permission. This legend shall be marked on any reproduction of this data."
 - (5) The Contractor shall not place any restrictive legend on any data that (i) the Contractor or any subcontractor previously delivered to the Authority without limitations; or (ii) should be delivered without limitations under the "Rights in Technical Data" clause.
- (f) The Contractor shall insert this article, with appropriate changes in the designation of the parties, in subcontracts at any tier (including purchase designations or purchase orders) under this Contract involving hazardous materials.

10. NOT USED

11. NOT USED

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) 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)**

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

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 Article.
- (f) If the proposed measures are determined to be acceptable to the Contracting Officer, he or she may grant a specific exception to this restriction, when in the Contracting Officer's judgment, the exception will not create a conflict between the Contractor's duties and obligations under this Contract and the duties and obligations imposed on the Contractor under another contractual or other relationship.

- (g) If the Contractor fails to comply with the terms of this clause, and no fraud is suspected, the Contracting Officer, may withhold payments due under this Contract until such time as the Contractor is in compliance or, should the non-compliance remain uncorrected at the expiration of ten (10) days from the Contracting Officer's written notice as provided in paragraph (b), terminate the contract for default pursuant to this Contract.
- (h) If fraud is suspected, the Authority's only remedy prior to a final determination by a court of competent jurisdiction is to report the matter to WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the Offices of Inspectors General of any state or Federal agency providing funding under this Contract and/or appropriate Federal, state and/or local law enforcement authorities.
- (i) The Contractor, in performing this Contract, shall avoid any conduct that might result in or give the appearance of creating for Board members or employees of the Authority in their relationship with the Contractor, any conflicts of interest or favoritism and/or the appearance thereof and shall avoid any conduct that might result in a Board member, or employee failing to adhere to any Code of Ethics or standards of conduct adopted by the Authority's Board of Directors.
- (j) The Contracting Officer's determination under this clause shall be final and shall be considered a question of fact within the meaning of the "Disputes" article of this Contract.

22. CONTRACTOR PERSONNEL

- (a) The Authority may direct the replacement of the Contractor's employees reasonably deemed to be unsuitable by the Contracting Officer, or whose continued participation in the work is deemed contrary to the best interests of the Authority. Except in circumstances deemed exigent by the Contracting Officer, the reason for replacement will be discussed between the Contractor and the Authority before a replacement directive is issued. Upon receipt of a written replacement directive from the Authority specifying the date by which the replacement must occur, the Contractor shall proceed with the replacement and shall do so in a manner that minimizes, to the greatest extent practicable, any impact upon the Contract.
- (b) Contractor personnel required to work on WMATA's property must obtain a WMATA vendors' badge and successfully complete the mandatory safety training that must be renewed yearly. The Contractor must advise its affected personnel that, to obtain a vendor's badge, a signed waiver to perform a background check is required.
- (c) The Contractor acknowledges that award of this Contract was based partly upon the past experience of the proposed program manager and program team. As such, the Contractor shall assign the same personnel identified in the Technical Proposal as key personnel to the positions shown in the Contractor's proposed program organization.
- (d) Key personnel shall remain in the assigned positions unless circumstances beyond the Contractor's control occur, such as leaving the program because of retirement, resignation, death, disability, personal hardship, or termination of employment.
- (e) Replacements for key personnel shall be subject to the Contracting Officer's Technical Representative's approval. Key personnel shall be replaced by an equally qualified individual in accordance with Section 2.4, Staffing Requirements.

- (f) In the event the Contractor elects to remove any key personnel (see Technical Specifications, Section 2.4, Staffing Requirements) from the program without the Authority's approval, the Contractor shall pay to the Authority the following assessment for each individual removed during the time period indicated below:

First Year of Contract	\$1,000,000
Second Year of Contract	\$1,000,000
Third Year of Contract	\$1,000,000
Fourth Year of Contract	\$500,000
Remaining	\$100,000

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 this 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.

6. AUTHORITY REPRESENTATIVES FACILITY

- (a) At each plant where production, fabrication, or installation of materials is performed, the Contractor shall provide to Authority's representatives two marked parking spaces and two private lockable heated and air-conditioned offices. The offices shall be adequately lighted with convenient access to restrooms. The Contractor shall also supply for the Authority representatives use: desks, chairs, locker facilities, filing cabinets, utilities, and telecommunication lines to include two telephones with unrestricted outside lines, separate high-speed internet lines, one fax line to be shared between the two offices and one copy machine with sorting and scanning capabilities.
- (b) The Contractor shall provide maintenance and services at each site throughout the term of the Contract to include janitorial services for cleaning the offices, all utilities, security measures and area protection equal to that used by the Contractor, uniform lighting in the offices of not less than 100 foot-candles at desk height, and the same level of maintenance and service as provided for Contractor employees.
- (c) Copies of all drawings and other data produced by the Contractor under this Contract shall also be made available to the Authority's representatives.
- (d) Upon a specific request from the Authority, the Contractor shall extend to the Authority its full cooperation and, at no cost to the Authority, provide facilities at the location of major subcontractor(s) for subsystems such as propulsion, brakes, automatic train control, and HVAC to enable convenient inspection of subsystem components and equipment.

7. CONTRACTOR'S VALUE IMPROVEMENT PROPOSALS

The Contractor is invited to submit, during the design and construction of the cars, proposals for changing the requirements of the Contract which improve the value of the cars. Such proposals shall be written in detail submitted to the Authority and shall indicate that the proposal:

- (a) Would result in a unit reduction in the total Contract price and would not impair any essential function or characteristic of the cars such as safety, service life, reliability, economy of operation, ease of maintenance, and necessary standardized features; or would result in no change in the total Contract amount, but would result in an improvement to any essential function or characteristic of the cars.
- (b) Would not detrimentally affect the delivery dates required.
- (c) Would require a change in the Contract Documents.

The Authority may accept, in whole or in part, any proposal submitted pursuant to this Article by issuing a Change Order that will identify the proposal on which it is based. In the case of a cost reduction proposal, the Change Order will provide for an equitable adjustment to the Contract price and will change any affected provisions of the Contract.

The equitable adjustment to the Contract price shall be established by determining the total decrease in Contractor's cost of performance resulting from the accepted changes (taking into account the cost of implementation by the Contractor). The total estimated decrease will be distributed to the individual Contract items in proportion to the amount each one is affected by the change. The Contract prices therefore will be reduced by 50% of such decrease, which shall represent full compensation to the Contractor for submitting an acceptable cost reduction proposal.

The Authority will not be liable for any delay in acting upon, or for any failure to act upon, any proposal submitted pursuant to this Article. The decision of the Authority as to the acceptance of any such proposal under this Contract shall be final. The submission of a proposal by the Contractor shall not in itself affect the rights or obligations of either party under this Contract.

8. ADVANCE COST AGREEMENT

Within 30 days after Notice of Award, the Contractor shall make available for audit review, information on its accounting system used to project direct and indirect cost applicable to possible Contract changes. The Authority's office responsible for Contract audit, to the extent possible, will review and approve said accounting system. When appropriate and if possible, as a result of the audit review, Advance Cost Agreements should be executed between the Authority and the Contractor. The Cost Agreements shall be supplemental agreements to the Contract.

9. CONTRACTOR RIGHT-OF-WAY TRAINING

All Contractor and subcontractor personnel and/or their technical representatives or assistants performing on-site work, inspection, or testing involving access to the Authority's right-of-way shall have successfully completed a Right-of-Way (ROW) training course administered by the Authority.

10. CONTRACT MANAGEMENT OFFICE

The Contractor shall establish a Contract Management Office within the continental U.S. through which all Contract actions, correspondence, and documentation will be coordinated. The Contract Office shall at all times have an authorized representative with full authority to represent and act for the Contractor. Additionally, from delivery of the first pilot car up through acceptance of all four pilot cars, the Contractor's lead technical representative shall be present at the Contract Management Office.

11. PARTNERING

AUTHORITY PARTNERING POLICY: The Authority along with the Contractor and its principal subcontractors and suppliers shall develop a comprehensive and cohesive partnering program for the effective and efficient completion of this Contract. This partnership will strive to draw on the strength of each organization in an effort to achieve a quality project, completed within budget and on schedule. This partnership will be bilateral in make-up and participation of the parties is required. The partnering workshop(s) will be conducted by a professional facilitator at an offsite location convenient to the project within 45 days of Contract award. Attendees (Contractor and subcontractors) will be mutually agreed to by the Authority and the Contractor. Follow-up workshops may be conducted during the course of the Contract as agreed to between the Contractor and the Authority.

The establishment of a partnership charter for on this project will not change the legal relationship of the parties to the Contract nor relieve either party from any terms of the Contract.

All costs associated with initiating and maintaining this partnership, outside of participant's salaries and travel and travel-related costs, will be agreed to by both parties and will be shared equally through an allowance identified in the Unit Price Schedule which represents the Authority's share in the program.

Allowance for Partnership Costs:

- (a) An allowance of \$120,000 is listed in the Price Schedule to provide funds for the Authority's share of services for a Professional Facilitator and for the expenses of the partnering workshop(s).
- (b) The Contractor will be paid for the Authority's share of hiring a Professional Facilitator and for conducting the workshop(s) on an invoice basis from the \$120,000 allowance in accordance with the Contract payment provisions. No cost incurred by the Contractor above the Authority's \$120,000 share will be compensated by Authority.

Partnership Goals:

For the Contractor and the Authority to work together proactively through a cohesive partnership with the objective to build a quality product on time, at a satisfactory cost to the Authority, with a satisfactory profit to the Contractor (fostering a win-win relationship).

- (a) To establish and maintain an atmosphere of trust with timely, positive, and ongoing communications.
- (b) To reach a mutual understanding on how the project will be managed.
- (c) To resolve disputes at the lowest working-level possible.
- (d) To avoid confrontation and disputes among the parties.

12. POST AWARD CONFERENCE & SUBCONTRACTING PROGRAM REVIEW

The Contracting Officer will conduct a post-award conference. The Contracting Officer will designate the time and place of the conference and will also designate the Authority and Contractor personnel to attend.

Upon notification of the date of the conference, the Contractor shall prepare and provide to the Contracting Officer at the conference its anticipated list of firms to be awarded subcontracts for all major items, including, but not limited to, the following equipment and systems:

- (a) Carbody;
- (b) Propulsion;
- (c) Friction Braking;
- (d) Automatic Train Control;
- (e) Trucks;
- (f) Auxiliary Power Supply and Low-Voltage Power Supply;
- (g) Battery;
- (h) Heating, Ventilation, and Air Conditioning;
- (i) Door Operation and Control;
- (j) Coupler and Drawbar;
- (k) Lighting;
- (l) Network and Trainline Control Systems;
- (m) Passenger Information System;
- (n) Vehicle Monitoring and Diagnostic System.

The list shall be comprised of subcontractors proposed in the Technical Proposal Worksheet ([Attachment A](#)). The subcontractors for the equipment/systems listed above shall be subject to the Contracting Officer's final approval. Subcontractor approval shall neither affect the Contract price nor relieve the Contractor of any responsibility for performing the Contract.

13. APPROVAL OF CONTRACTOR DRAWINGS & OTHER TECHNICAL DATA

Wherever in the Contract Specifications the Contractor is required to submit drawings or other technical data (hereinafter referred to collectively as "technical data") for the Authority's approval during the progress of the work, electronic copies of such technical data shall be provided, as further detailed in the Technical Specifications. The technical data shall be complete and detailed and shall be submitted using standard transmittal forms or Contractor forwarding letters in accordance with instructions furnished by the Contracting Officer.

The Contractor's technical data shall be checked for completeness and accuracy and approved by the Contractor before they are submitted for the COTR's approval. Technical data submitted without the Contractor's approval affixed thereon may be returned to the Contractor for resubmission.

The Contractor's schedule shall provide a minimum of thirty calendar days for approval or return for correction of the submitted technical data. The thirty-day period shall start at the time of receipt of the data by the Contracting Officer.

The approval of technical data will be general and shall not be construed as:

Permitting any deviation or departure from the Contract requirements, unless such deviation or departure has been specifically identified and a Contract modification requested by the Contractor has been approved by the Authority.

Relieving the Contractor of the responsibility for correcting the data to be compliant with the Contract's requirements and to eliminate any errors, including erroneous details, dimensions, materials, and the like included in the submitted data and not detected in the Authority's approval process.

Approval of technical data or lack thereof shall not be considered as withholding the right or inhibiting in any way the Contractor's responsibility to proceed with the work or otherwise delaying the manufacture of the materials and/or equipment pending such approval.

The Authority will make every effort to meet or to shorten the thirty-day approval response time. To enhance the Authority's response time to the maximum extent possible, the Contractor shall identify those instances where expedited Authority approval is particularly desirable.

14. CONDITIONS AFFECTING THE WORK

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and extent of the work and the general and local conditions which can affect the work or the cost thereof. The Contractor's failure to ascertain the nature or extent of the work will not relieve the Contractor from responsibility for successfully performing work without additional expense to the Authority. The Authority assumes no responsibility for any understanding or representations concerning conditions made by any of its employees or agents prior to the execution of this Contract, unless such understanding or representations are expressly stated in this Contract.

CHAPTER XI – ADDITIONAL PROVISIONS**1. AMERICANS WITH DISABILITIES ACT ACCESSIBILITY –**

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

2. RETAINAGE

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

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. **BONDING REQUIREMENTS – GENERAL**

- (a) Performance and Payment Bonding Requirements. The Contractor must, as a condition to the issuance of a Notice to Proceed, furnish performance and payment bonds on forms acceptable to the Authority when necessary to protect the WMATA's interests.
- (b) The Contractor shall be required to obtain performance bonds, as follows:
 - (1) The penal amount of performance bonds shall be one hundred percent (100%) of the original Contract price.
 - (2) WMATA may require additional performance bond protection when the Contract price is increased. The increase in protection shall generally equal one hundred percent (100%) of the increase in Contract price. WMATA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- (c) The Contractor shall be required to obtain payment bonds as follows:
 - (1) Fifty percent (50%) of the Contract price, if it is not more than \$1,000,000;
 - (2) Forty percent (40%) of the Contract price, if it is more than \$1,000,000, but not more than \$5,000,000; or
 - (3) Two and one half million (\$2,500,000), if the Contract price is more than \$5,000,000.
- (d) The Performance bond shall continue in full and effect, decreasing by an amount equal to 50% of the original balance upon delivery and conditional acceptance of the first 256 cars. Corporations executing the bonds as sureties must be among those appearing on the U.S. Treasury Department's list of approved sureties and must be acting with the limitations set forth therein. This bond is to guarantee the Contractor's compliance with all terms and conditions of this Contract.
- (e) All alterations, extensions of time, extra work, and other changes authorized pursuant to the Changes Article by the Contract Documents may be made without giving notice to or securing the consent of the surety or sureties on the Performance Bond(s).

- (f) Upon the Authority's exercise of the Option(s), the Performance Bond(s) will be adjusted to equal fifty percent (50%) of the ordered value. Adjustments may be in the form of a modification to the original Bond(s) or by the addition of another bond.

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's 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 employ and assign a full-time Safety Superintendent for Contracts involving "safety sensitive" functions. (See Combined Glossary attached hereto for a definition). The Safety Superintendent shall have a minimum of three (3) years of construction safety experience and hold an OSHA thirty (30) hour course card. He or she shall have the ability to develop and conduct safety training courses. He or she shall be familiar with industrial hygiene equipment and testing as required for the protection of all employees. The Safety Superintendent shall be employed exclusively for the purpose of supervising the safety of persons on or about the worksite and the property affected thereby. The Safety Superintendent shall also be responsible for providing first aid at the worksite and must have a current Red Cross First Aid Certificate. The Contractor shall notify the Contracting Officer a reasonable amount of time beforehand, any time that the Safety Superintendent will not be on site during work hours. If, at any time, the worksite is without the services of an approved Safety Superintendent for a period of three (3) calendar days or more, the work may be closed down at the Contracting Officer's discretion. The Safety Superintendent must be acceptable to the Contracting Officer and his or her performance will be reviewed on a continuing basis. If the Safety Superintendent's effectiveness is below standard, the Contractor shall provide immediate replacement at the Contracting Officer's direction. Once employed, the Safety Superintendent shall not be changed without the Contracting Officer's permission. The Safety Superintendent can be terminated at any time, at the Contracting Officer's discretion.
- (c) The Contractor shall provide, at the site of the work, a first aid kit which shall be fully equipped to meet the needs of the anticipated work force.

- (d) The Contractor shall follow all appropriate RAIL Operational Rules, Operational Administrative Procedures (OAPs), Standard Operational Procedures (SOPs) and General and Special Orders while on the operational railroad and all Start-Up Rules and Manager's Notices when in declared start-up areas.

2. **CRIMINAL BACKGROUND CHECK REQUIREMENT**

- (a) As a prerequisite to eligibility for a WMATA-issued identification and access badge ("One Badge"), access to WMATA's customers, property, or confidential information, and in consideration for this Contract, the Contractor shall have the sole responsibility for, and shall assure, adequate criminal background screenings on a routine basis of all of its personnel who are or will be working on WMATA's premises (whether they receive a One Badge or not) or otherwise have access to WMATA's customers, property, or confidential information.
- (b) Contractor shall implement, not later than Notice to Proceed, a criminal background check screening of the Contractor's personnel that shall take into consideration (1) the nature of the services or work being performed under the contract with particular regard for the individual's access to, and interaction with, WMATA's customers, property, and confidential information; (2) the nature or gravity of the offense or conduct resulting in a criminal conviction; and (3) the time that has lapsed since the conviction and/or completion of the sentence.
- (c) The Contractor shall contract with, or otherwise engage, a reputable third-party vendor to conduct the required criminal background screenings and shall provide the vendor with a copy of its criminal background check screening policies and procedures.
- (d) The Contractor shall not place any person on or engage any person under this Contract, unless that person passes the Contractor's criminal background screening. At the end of each calendar quarter, the Contractor shall certify to the Contracting Officer's Technical Representative on a form provided, its compliance with this criminal background screening requirement and confirm that all persons required to be screened passed the Contractor's criminal background screening before working on this Contract. For the sole purpose of monitoring the Contractor's compliance, WMATA reserves the right to request additional documents or perform its own criminal background screening of Contractor's personnel. The Contracting Officer will inform the Contractor, in writing, of any proposed action within a reasonable time before such action is taken.
- (e) 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.
- (f) The Contractor will include this requirement in all subcontracts under this Contract, and receive certifications from its subcontractors to ensure that its subcontractors' personnel who are or will be working on WMATA's premises (whether they receive a One Badge or not) or otherwise have access to WMATA's customers, property, or confidential information undergo the required criminal background checks.

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.

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BOND FORMS

PERFORMANCE BOND	
Contract No.:	Contract Date:
Penal Sum of Bond:	
Date Bond Executed:	
<p>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.</p> <p>THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into the contract identified above:</p> <p>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.</p> <p>IN WITNESS WHEREOF, the Principal and Sureties have executed this performance bond and have affixed their seals on the date set forth above.</p> <p align="center">Principal(s)</p>	
1. Firm Name and Address: Signature: _____ Name and Title:	Corporate Seal State of Inc.:
2. Firm Name and Address: Signature: _____ Name and Title:	Corporate Seal State of Inc.:
3. Firm Name and Address: Signature: _____ Name and Title:	Corporate Seal State of Inc.:

PERFORMANCE BOND – Page 2

Corporate Sureties				
Surety A	Surety Name and Address: Signature: _____ _____ Name and Title:		Liability Limit \$	(Seal)
Surety B	Surety Name and Address: Signature: _____ _____ Name and Title:		Liability Limit \$	(Seal)
Surety C	Surety Name and Address: Signature: _____ _____ Name and Title:		Liability Limit \$	(Seal)

Attach additional pages as needed.

Bond	
Premium	
Schedule	Total Premium \$

Instructions

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

PAYMENT 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 promptly make payment to all claimants as hereinafter defined supplying labor and material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Sureties being hereby waived, then the above obligation shall be void and of no effect, otherwise it shall remain in full force and effect, subject, however, to the following conditions:

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

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

Principal(s)

1. Firm Name and Address: Signature: Name and Title:	State of Inc.:	Corporate Seal
2. Firm Name and Address: Signature: Name and Title:	State of Inc.:	Corporate Seal
3. Firm Name and Address: Signature: Name and Title:	State of Inc.:	Corporate Seal

Corporate Sureties

Surety	Surety Name and Address:	Liability Limit	(Seal)
A	Signature:	\$	
	Name and Title:	State of Inc.:	
Surety	Surety Name and Address:	Liability Limit	(Seal)
B	Signature:	\$	
	Name and Title:	State of Inc.:	
Surety	Surety Name and Address:	Liability Limit	(Seal)
C	Signature:	\$	
	Name and Title:	State of Inc.:	

Attach additional pages as needed.

Instructions

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

TECHNICAL SPECIFICATIONS

(Attached)



(DoubleClick red tag above to open attachment)

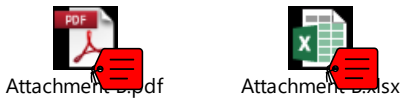
ATTACHMENTS

ATTACHMENT A – Technical Proposal Worksheet



(DoubleClick red tag above to pen attachment)

ATTACHMENT B – 8000 Series Railcars Technical Specifications Compliance Matrix



Or

(DoubleClick red tag above to pen attachment)

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: The formal written acceptance by the Authority that all work, or a specific portion thereof, under the Contract has been satisfactorily completed.

ACCEPTANCE, CONDITIONAL (CONDITIONAL ACCEPTANCE): Formal written notice from the Authority, that the work has not been fully or finally accepted, but with a defined set of conditions identified for achieving final acceptance.

AMENDMENT: Written instructions issued prior to the date set for receipt of proposals or Best and Final Offers to clarify, revise, add or delete provisions to the Request for Proposals.

APPROVED EQUAL: An item, material, or method offered as a substitute for that designated herein, for which approval in writing has been obtained from the Authority. The burden of proof that a substitute is, in fact, equal shall rest with the Contractor.

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 (BAFO): A revision to the initial proposal submitted at the Contracting Officer's request, generally following discussions with offerors in the competitive range. After review of BAFO, the Contracting Officer 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 more terms of the Contract which, if material, may constitute a basis for termination for default.

CHANGE or CHANGE ORDER: A written alteration issued, upon agreement of both parties or unilaterally by the Authority, to modify the Contract, generally directing changes to the Scope of Work, schedule 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, adjustment to schedule, 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 explain certain aspects of their proposals or to resolve minor irregularities, informalities or clerical errors.

COMPETITIVE RANGE: Those initial proposals that are determined by the Contracting Officer to have a reasonable chance of being selected for award and that may be selected for negotiations or discussions to the extent that he or she deems appropriate. Proposals not in the competitive range are given no further consideration. Offerors will be notified of exclusion from the competitive range.

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 award, administration, and final settlement.

CONTRACTING OFFICER TECHNICAL REPRESENTATIVE (COTR): The person to whom the Contracting Officer delegates the authority and responsibility for post award administration of the Contract. The Contracting Officer's Technical Representative is the Authority's primary point of contact with the 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 and 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.

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.

DISCUSSIONS: Negotiations or exchanges relating to the solicitation between an offeror and the Authority that may occur 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 by submitting a Best and Final Offer (BAFO).

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

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

EVALUATION CRITERIA: Those factors to be considered by the Authority, in determining the successful proposal.

EXPLANATION: Additional information or clarification provided by the Contracting Officer 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.

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.

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 statement 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. A minor irregularity does not confer a competitive advantage or benefit not enjoyed by other offerors and does not adversely impact the Authority's interests.

NOTICE TO PROCEED (NTP): 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 (OCI): A circumstance 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.

PERIOD OF PERFORMANCE: The period of performance is from the date of Notice to Proceed (NTP) through five years after final acceptance of the last car delivered, including all options if exercised and any additional quantities ordered, as defined in the Acceptance of Supplies article.

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 Officer, 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.

SIMILAR: Generally the same, but not necessarily identical.

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

SOLICITATION: This Request for Proposals (RFP).

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, corporation, or other business entities that have a contractual obligation with the Contractor or other subcontractors.

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

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, as determined by the Authority.

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

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.

TECHNICAL SPECIFICATIONS: The portion of this Contract or Request for Proposals that describes specifically what is to be done by the Contractor. It may include technical specifications, performance outcomes, dates and time of performance, quality requirements, etc.

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