



Washington
Metrorail
Safety
Commission

Request For Proposal RFP 2021.001

Solicitation for State Safety Oversight Agency (SSOA) Services Contract

Heather Obora

DATE: November 15, 2021

EMAIL: hobora@wmisc.gov

WASHINGTON METRORAIL SAFETY COMMISSION
RFP 2021.001 SSOA SERVICES

State Safety Oversight Agency (SSOA) Services

APPROVED FOR RELEASE



Sharmila Samarasinghe, COO

11/17/2021

Date

David Mayer, CEO and Contracting Officer

11/17/2021

Date

END OF SECTION

WASHINGTON METRORAIL SAFETY COMMISSION
RFP 2021.001 SSOA SERVICES

WASHINGTON METRORAIL SAFETY COMMISSION
(WMSC)

November 15, 2021

SUBJECT: RFP 2021.001 SSOA Services

REQUEST FOR PROPOSAL
FOR
STATE SAFETY OVERSIGHT AGENCY (SSOA) SERVICES

FOR THE
WASHINGTON METRORAIL SAFETY COMMISSION

Contract Period: One (1) year from date of commencement
With two (2) additional one (1) year options

ONE (1) ELECTRONIC SUBMISSION IS TO BE PROVIDED OF THE TECHNICAL
PROPOSAL AND THE COST PROPOSAL

ALL RESPONSES SHALL BE ADDRESSED AND RETURNED TO:

Heather A. Obora
Procurement Coordinator
Washington Metrorail Safety Commission
Via Email to: hobora@wmisc.gov

RESPONSES MAY RECEIVED PRIOR TO, BUT NO LATER THAN **MONDAY, JANUARY 10, 2022, AT 2:00 P.M.**, EASTERN STANDARD TIME AT THE ABOVE EMAIL ADDRESS. LATE BE RESPONSES WILL NOT BE ACCEPTED.

A Pre-Submittal Conference will be held for this solicitation action on Monday, November 22, 2021 at 10:00 A.M. Eastern Standard Time.

ISSUED BY

WASHINGTON METRORAIL SAFETY COMMISSION

David Mayer
Chief Executive Officer

Sharmila Samarasinghe
Chief Operating Officer

WASHINGTON METRORAIL SAFETY COMMISSION
RFP 2021.001 SSOA SERVICES

GENERAL INVITATION

The Washington Metrorail Safety Commission (WMSC) invites the submission of responses from firms (“Contractors”) that wish to be deemed qualified to provide State Safety Oversight Agency (SSOA) Services to the WMSC. WMSC reserves the right to (i) select one or more qualified Contractors to provide the services outlined herein; (ii) reject any and all responses; (iii) identify any areas where a conflict of interest may require limitations on a Contractor. Responses shall only be submitted electronically and include the name and address of the Contractor.

Questions regarding the RFP process should be directed to:

Washington Metrorail Safety Commission

ATTN: Heather Obora
Procurement Coordinator
Tel. (312) 965-2353
Email: hobora@wmsc.gov

Downloaded RFP’s

The RFP will be available for download from WMSC’s web site at:

<https://wmsc.gov/opportunities/business-opportunities>

Contractors who download the RFP waive their right to have clarifications and/or addenda sent to them. Such Contractors are responsible to check the web site for clarifications and/or addenda. Failure to obtain clarifications and/or addenda from the web site shall not relieve such Contractors from being bound by additional terms and conditions in the clarifications and/or addenda, if any, or from considering additional information contained therein in preparing their proposals. Note that there may be multiple clarifications and/or addenda. Any harm to a Contractor resulting from such failure shall not be valid grounds to protest award(s) made under this RFP.

Cost of Responding to RFP

Contractors shall bear all costs of responding to this RFP.

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NOTICE TO CONTRACTORS

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

- SOLICITATION, OFFER & AWARD FORM (Must be signed.)
- PRICE SCHEDULE
- REPRESENTATIONS AND CERTIFICATIONS
- PRE-AWARD DATA
- ACKNOWLEDGMENT OF AMENDMENTS (IF ANY)
- TECHICAL PROPOSAL
- CERTIFICATE OF INSURANCE
- SUSPENSION, DEBARMENT CERTIFICATION – APPENDIX A
- DISADVANTAGED BUSINESS ENTERPRISE - APPENDIX B

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

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GENERAL INFORMATION

1. GENERAL

A. PURPOSE

The Washington Metrorail Safety Commission (“WMSC”) is seeking an innovative, effective, proactive partner to perform State Safety Oversight Services. Contractor shall work with the WMSC to provide the staffing services set forth herein. Level of service stated below is approximate, is deemed on an “as needed basis” and may be adjusted by the WMSC to meet the day-to-day WMSC operational and surge capacity needs.

The following required staffing services, including the job titles or specialists, do not limit the WMSC from requesting additional staffing services of other technical specialists set forth in the RFP or Contractor’s submission that are required from the Contractor while this Contract is in effect. In such instances, the WMSC shall provide, in writing, required technical skills and/or experience sought to Contractor and request that such support be provided to WMSC within a prescribed timeframe.

The WMSC will coordinate with Contractor to ensure Contractor receives adequate notice to meet any additional service levels required by the WMSC and properly document the same in the administration of the contract.

B. PROGRAM MANAGER (PM) RELATIONSHIP TO WMSC

The PM will support WMSC’s Chief Operating Officer in the administration, delivery, and management of the State Safety Oversight operation; to augment WMSC staff; to monitor the performance of the staff under the project task orders; to monitor compliance of the staff with applicable law, and procurement policy; to provide reports in compliance with WMSC, FTA and grant requirements, where applicable; and to do all other things reasonably inferable from the Contract.

WMSC, acting through the Chief Operating Officer shall direct the PM’s performance of assigned projects and tasks. The PM will be responsible for maintaining procedures to ensure that all functional groups – both internal staff and external consultants responsible for overseeing the project/task’s planning and implementation are coordinated. The PM is responsible for providing the Chief Operating Officer with timely information and recommendations regarding decisions needed to enable the projects/tasks to be implemented in a timely and cost-effective manner.

The PM consultant will also ensure that the issued task order values are not exceeded and will communicate with the Chief Operating Officer and Procurement Coordinator should overruns be anticipated prior to the completion of the task order.

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C. TIME ACCOUNTING.

The PM will ensure that all time billed is allocated to specific projects where applicable to allow project costs to accurately reflect consulting time spent.

D. CONFIDENTIAL INFORMATION.

The PM services (known hereinafter as the PM) shall not divulge any confidential information which is acquired while performing the work under this Contract. The term “confidential” refers to information that may be considered proprietary to WMSC or any of its contractors.

E. INFORMATION FURNISHED BY THE WMSC.

WMSC shall furnish the PM with all necessary documents, as guidelines for work to be performed under this Contract.

F. SERVICES AND ESTIMATED LEVEL OF SERVICE.

The following are eight (8) specific services and estimated level of service anticipated by the WMSC:

- (1) Technical Specialist Vehicles. Level of Support: not expected to exceed 1400 hours/year (estimated)
- (2) Technical Specialist Signals and Communications. Level of Support: 500 hours/year (estimated)
- (3) Technical Specialist Traction Power. Level of Support: 250 hours/year (estimated)
- (4) Technical Specialist Accident Investigations/Emergency Management/Fire Life Safety. Level of Support: 500 hours/year (estimated)
- (5) Technical Specialist Track and Structure. Level of Support: 250 hours/year
- (6) Technical Specialist Operations. Level of Support: 250 hours/year
- (7) Safety Certification/Level of Service: 250 hours/year
- (8) Surge Capacity for any of the above roles or programmatic support in areas such as Agency Safety Plan (ASP), review, support with Audits of the WMSC such as FTA Triennial Audits, etc. Level of Service: 375 hours/year (estimated)

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A detail of the tasks anticipated to be performed for these specific services is provided in Part III-Technical Specification part of this solicitation.

G. AWARD OF THE CONTRACT

WMSC will award a Best Value contract to the responsible Contractor(s) for SSOA Services through a competitive selection process as described in the solicitation instructions.

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SOLICITATION, OFFER AND AWARD

SOLICITATION			
RFP 2021.001	<input type="checkbox"/> ADVERTISED <input checked="" type="checkbox"/> NEGOTIATED	01/10/2022	VIA EMAIL: hobora@wmisc.gov

Sealed offer in electronic original and 0 copies for furnishing the supplies or services in the schedules will be received by Commission until 2:00 P.M. Eastern Standard Time on January 10, 2022
 (Hour) (Date)

If this is an advertised solicitation, offers will be opened at that time.
CAUTION – LATE OFFERS: See Section 6 of Solicitation Instructions.

All offers are subject to the following:

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

Contractor's Phone Number _____ **Contractor's Email** _____

SCHEDULE					
ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	State Safety Oversight Agency (SSOA) Services				\$
	(See continuation of schedule on page 22)				

DUN & BRADSTREET ID NUMBER:

CONTRACTOR

Name and Address (Street, city, county, state, and zip code)	Name and Title of Person Authorized to Sign Offer (Print or Type)		
<input type="checkbox"/> Check if remittance is different from above — enter such address in Schedule	<table style="width: 100%;"> <tr> <td style="width: 60%;">Signature</td> <td style="width: 40%;">Offer Date</td> </tr> </table>	Signature	Offer Date
Signature	Offer Date		

AWARD (To be completed by The Commission)

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

ITEM NO.	QUANTITY	UNIT	UNIT PRICE

The total amount of this award is \$ _____ Award Date: _____

 Name of Contracting Officer (Print of Type)

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WASHINGTON METRORAIL SAFETY COMMISSION
SOLICITATION, OFFER AND AWARD

CONTINUATION SHEET

THE UNDERSIGNED ACKNOWLEDGES RECEIPT OF THE FOLLOWING AMENDMENTS
TO SOLICITATION **RFP 2021.001**

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

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PRICE SCHEDULE SHEET

NAME OF CONTRACTOR:						
SCHEDULE						
Number of Positions	Position Title	Labor Hour Cost per Hour	Multiplier - Benefits+Travel	Total Labor Cost per Week	Annualized Cost – Base Award	Annualized Cost – Option Year 1 and 2
	Program Manager					
	Technical Specialist Vehicles					
	Technical Specialist Signals and Communications					
	Technical Specialist Traction Power					
	Technical Specialist Accident Investigations/Emergency Management/Fire Life Safety					
	Technical Specialist Track and Structure					
	Technical Specialist Operations					
	Surge Capacity					
	Safety Certification					

Authorized Signature

Company Name

Date

WASHINGTON METRORAIL SAFETY COMMISSION
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SOLICITATION INSTRUCTIONS

1. Definitions

As used herein:

- a. The term "solicitation" means "Request for Proposal (RFP)" where the procurement is negotiated.
- b. The term "offer" means "proposal" where the procurement is negotiated.
- c. The term "Commission" means Washington Metrorail Safety Commission (WMSC).

2. Preparation of Offers

- a. Contractors are expected to examine the Request for Proposal and all referenced documents carefully. Failure to do so will be at the risk of the Contractor.
- b. The Contractor shall furnish the information required by the solicitation. The Contractor shall sign the solicitation and print or type his/her/its name on the Schedule and each Continuation Sheet thereof on which 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 authority unless such evidence has been previously furnished to the issuing office.
- c. Offers for supplies or services other than those specified will not be considered unless authorized by the solicitation.
- d. Contractor must state a definite time for delivery of supplies or for performance of services unless otherwise specified in the solicitation.
- e. Time, if stated as a number of days, will include Saturdays, Sundays and holidays.

3. Explanation to Contractors

Any explanation desired by a Contractor regarding the meaning or interpretation of the solicitation documents must be requested in writing and with sufficient time allowed for a reply to reach all Contractors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a Contractor concerning a solicitation will be furnished promptly to all Contractors as an amendment of the solicitation, if that information is necessary in submitting offers or if lack of such information would be prejudicial to other Contractors. All Requests should be addressed as follows and submitted via email, to Heather Obora, RFP No. 2021.001 State Safety Oversight Agency (SSOA) Services.

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4. Prior Representations

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

5. Acknowledgment of Amendments

Receipt of an amendment to a solicitation by a Contractor must be acknowledged (a) by signing and returning the amendment, (b) by identifying the amendment number and date on the Solicitation, Offer and Award Form, (c) and by expressly acknowledging the amendment on the designated form and including it as part of the proposal. Such amendment must be received prior to the hour and date specified in the solicitation. If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

6. Pre-Proposal Conference

For the purpose of clarifying the terms, conditions, and requirements of this Request for Proposal, a pre-proposal conference will be held via Zoom on Monday, November 19, 2021, due to the restrictive nature of the current COVID environment. Proposers are to email the Procurement Coordinator at hobora@wmssc.gov to register and receive the Zoom invite for the meeting. Questions will be addressed at the meeting and it is requested that Contractors submit questions in writing to WMSC, ATTN: Heather Obora via email at: hobora@wmssc.gov prior to the pre-proposal conference.

All questions concerning the terms, conditions, and requirements of this Request for Proposal must be received by the WMSC in writing no later than ten (10) calendar days before the date for receipt of proposals, on or before December 31, 2021.

7. Revisions prior to date set for receipt of proposals

- a. The right is reserved by the Commission to revise or amend the Scope of Work, Description of Work, etc. prior to the date set for the opening of proposals. Such revisions and amendments, if any, will be announced by an amendment to the Request for Proposal. Copies of such amendments as may be issued will be furnished to all prospective Contractors upon request. Revisions to the RFP will be posted on the WMSC website.
- b. If the revisions and amendments require material changes in quantities or price proposals, or both, the date set for the opening of proposals may be postponed by such number of days as in the opinion of the Commission that will enable Contractors to revise their proposals. In such cases, the amendment will include an announcement of the new date for the opening of proposals.

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8. Submission of Offers

- a. Offers and modifications thereof shall be delivered electronically to the email address specified in the solicitation. The Contractor shall show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the Contractor in the opening statement of the email.

9. Late Submissions, Modifications, and Withdrawals of Offers

- a. Any offer received at the email address designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it is the only offer received.
- b. Any modification of an offer, except a modification resulting from the Procurement Coordinator's request for "revised final proposals" offer, is subject to the same conditions as in subsection a. of this section.
- c. A modification resulting from the Procurement Coordinator's request for "revised final proposals" received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Commission.
- d. The Commission may in its sole discretion accept a late proposal in instances where the proposal left the hands of the Contractor before the set time of or receipt of proposals and acceptance of the late proposal will not delay the procurement or prejudice the other contractors.
- e. The only acceptable evidence to establish the time of receipt by the Commission is the time/date stamp on the email transmission received or other documentary evidence of receipt maintained by the Commission.
- f. Notwithstanding subsection a. of this section, a late modification of any otherwise successful offer that makes its terms more favorable to the Commission will be considered at any time it is received and may be accepted.
- g. Proposals may be withdrawn by written notice at any time before award.

10. Minimum Proposal Acceptance Period

- a. "Acceptance period," as used in the Solicitation Instructions, means the number of calendar days available to WMSC for awarding a contract from the current date specified in this solicitation for receipt of proposals or from the most current date specified of Revised Final Proposals if applicable.
- b. This section supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

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- c. WMSC requires a minimum acceptance period of 120 calendar days from the latest revised proposal.

11. Contract Award

This solicitation is a Request for Proposals:

- a. The Commission will award a Best Value contract resulting from this solicitation to the responsible Contractor(s) whose offer conforming to the solicitation will be technically most advantageous to the Commission, and cost or price and other factors, specified elsewhere in this solicitation, considered.
- b. The Commission may (1) reject the offer if such action is in the public interest, or (2) waive informalities and minor irregularities in offers received.
- c. The Commission may award a contract on the basis of the initial offer received, without discussions (other than discussions conducted for the purpose of minor clarifications). Therefore, the initial offer should contain the Contractor's best terms from a cost or price and technical standpoint. However, the Commission reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary.
- d. A written award or acceptance of offer emailed or otherwise furnished to the successful Contractor within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Commission may accept an offer whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the Commission.
- e. Neither financial data submitted with an offer, nor representations concerning facilities or financing will form a part of the resulting contract. However, if the resulting Contract contains a clause providing for price reduction for defective cost or pricing data, the contract price will be subject to reduction if cost or pricing data furnished is incomplete, inaccurate, or not current.
- f. The Commission may determine that an offer is unacceptable if the prices proposed are materially unbalanced between line items or sub-line items. An offer is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the offer will result in the lowest overall cost to the Commission even though it may be the low evaluated offer, or it is so unbalanced as to be tantamount to allowing an advance payment.

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12. Disadvantaged Business Enterprises Requirements

Attached as part of this solicitation are documents outlining the requirements for the Disadvantaged Business Enterprise (DBE) Program: **The DBE requirement goal for this Contract is 20% unless a good faith waiver is requested and approved.**

- a. For the Contractor to be considered responsible, the following documents (see Appendix B) shall be completed and submitted with the offer:

- (1) Schedule of DBE Participation
- (2) Letter of Intent to Perform as Subcontractor/Joint Venture (If applicable)
- (3) DBE Unavailability Certification (where applicable)

Written request for waiver when DBE participation is less than stated percent

- (4) DBE Monthly Status Report, after award, to the COTR and a final report at contract completion if DBE participation is applicable.

If the offer is \$100,000 or more and any portion of the written requirement is omitted, then the offer may be found to be unacceptable and subsequently rejected. Appendix B forms and/or waivers must be completed with great care by each Contractor to ensure that the offer is acceptable.

13. Opportunity for Disadvantaged Business Enterprises to Propose

The Commission hereby notifies all Contractors that it will affirmatively ensure that disadvantaged business enterprises will be afforded full opportunity to submit offers in response to this solicitation and will not be discriminated against on the basis of race, color, or national origin in consideration for award.

14. Notice of Protest Policy

- a. WMSC's policy and procedure for the administrative resolution of protests is set forth on Page 30 of the Commission's Procurement Manual. It contains strict rules for filing a timely protest, for responding to a notice that a protest has been filed, and other procedural matters.
- b. FTA Circular 4220.1F, addresses Bid Protests. FTA will only review protests regarding the alleged failure of the grantee to have a written protest procedure or alleged failure to follow such procedures, and only when submitted by an interested party. The term "interested party" is defined in the Commission's policy for handling protests.
- c. Alleged violation on other grounds must be submitted to the Contracting Officer who will decide the protest.

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- d. The judicial authorities having jurisdiction over court actions concerning protest decisions are the United States District Courts for the Districts of Maryland, Virginia, and the District of Columbia.

15. Pre-Award Information

- a. The Commission may conduct a pre-award survey to determine if the Contractor eligible for award is responsible both financially and technically and has the capability to perform the work of the contract in accordance with the requirements of the Specifications and within the times specified.
- b. Accordingly, in order that an offer be fully considered, EACH CONTRACTOR SHALL FURNISH THE FOLLOWING INFORMATION WITH THE PROPOSAL:
- (1) A completed and signed Pre-Award Evaluation Data form (furnished with the solicitation), including, but not limited to, the following: A statement of the Contractor's experience record, the type of concerns for which the work was performed, a statement by the financial institutions with which the Contractor conducts business and a list of contracts, if any, on which failure to complete within the specified time resulted in the assessment of liquidated damages.
 - (2) Complete financial statements for the last two years, including Statement of Financial Position (Balance Sheet), Results of Operations (Income Statement), Statement of Changes in Financial Position (Net Change in Resources) and Statement of Current and Retained Earnings.

16. Proposal Format Instructions/Requirements

The Contractor shall submit their proposal as follows:

a. **Proposal Format**

All information must be submitted with pages numbered for each item listed in subsection b. of this section. All information shall be submitted in standard 8 ½ x 11 paper size.

b. **Contents of Response** (Provide in the order listed and label the sections accordingly)

(1) **A Cover Letter.**

The cover letter shall:

- Be signed by an authorized representative of the firm(s);

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- Provide a commitment to provide the services described and the personnel specified in the qualification submission;
 - Commit the proposing firm to meeting the DBE goal requirements established by WMSC; and
 - Include a list of all proposed sub-consultants planned to be used including proposed DBE firms to fulfill the DBE commitment.
- (2) **Solicitation, Offer and Award Form.** The Solicitation, Offer and Award form must be appropriately completed and executed.
- (3) **Financial Statements.** Copies of audited financial statements or tax returns signed by the preparer for the two (2) previous years and the most recent quarterly report must be provided. Financial Statements must include auditor's letter or opinion, auditor's notes, balance sheet and statement of income/loss, if applicable. Each prime or joint venture partner must submit this information. The Commission reserves the right to accept alternative information and/or documentation submitted by Contractor(s).
- (4) **Insurance Requirements.** Evidence of current insurance coverage must be submitted. If Contractor's current coverage does not meet the requirements stated in Part II – General Insurance Requirements, the Contractor shall include a statement of a commitment to acquire the required insurance coverage, should it be selected for these services.
- (5) **Joint Ventures.** A copy of the executed joint venture agreement, if applicable, must be submitted.
- (6) **Work History with the Commission.** Indicate work history with the Commission for the past five (5) years. Provide scope of work, contract values, and Contractor's program manager (note most valuable to least valuable contracts). Provide total contract value for each year.
- (7) **Work History with Non-Commission Agencies.** Indicate work history with non-Commission agencies for the past five (5) years. Provide scope of work, contract values, and Contractor's program manager (note most valuable to least valuable contracts). Provide total contract value for each year, number of years with firm, address, contract person, telephone number, and renewal of contract, if applicable.

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- (8) **Representations and Certifications (Attachment A).** The Representations and Certifications attachment must be signed and submitted with this Proposal.
- (9) **Form W-9 (Attach W-9 Form and the Instructions (Attachment B)).** A current W-9 Form must be completed, signed and submitted with this Proposal.
- (10) **Revised DBE Plan (Appendix B).** Contractor must acknowledge that at the time of RFP, Appendix B must be completed, signed and submitted with this Proposal. Please note that specific roles and responsibilities of the DBE firms must be included. If the Contractor is a DBE or will be utilizing DBE sub-consultants, a certification from the governmental entity must be included.
- (11) **Licenses.** Submit copies of District of Columbia and any other licenses relevant to the performance of this Contract.
- (12) **Implementation Plan.** This plan must closely reflect the Scope of Services included in Part III – Technical Specifications, and include the following:
 - (i) One example of a long-term staff augmentation plan that addresses the diverse needs of a State Safety Oversight Agency. Provide a list of clients for which Contractor has developed project/task plans and indicate yearly and total value of the project.
- (13) **Qualifications of the Proposing Firms.**

The Contractor shall provide documentation of the technical competence and qualification of the firm to provide State Safety Oversight Agency (“SSOA”) services as evidenced by the following:

- a. Demonstrate the experience and qualifications of the firm in the satisfactory performance of SSOA services on projects of similar type of work, scope, and magnitude, particularly those related to major transit public or private agencies of comparable size and complexity. Greater consideration will be given to transit related projects. List three qualifying projects.

Project reference should include:

- 1. Project name
- 2. Location
- 3. Client
- 4. Total contract amount (and firm’s amount if different)
- 5. Principal in Charge

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6. Day-to-Day technical project manager(s) for compliance and project controls
 7. Key Staff
 8. Date completed or anticipated completion date
 9. Brief narrative of project description for each project identified and described above (one page per project maximum)
 10. Identify and provide telephone numbers for at least two (2) contact client references from the Client (in paragraph 3 of this subsection) for project. Verify that the persons are still employed by the client and that the telephone numbers are accurate.
- b. Provide an organization chart and a brief statement on the organizational structure and roles required for this scope of services, as well as plan of action to accomplish the range of activities required.
 - c. Identify the technical skill sets that will be provided to deliver the planning and implementation services for the SSOA. Consider disciplines specific to transit systems, as well as experience with project implementation and compliance oversight in transit systems.
 - d. Identify the technical skill sets that will be provided to perform complex audit and compliance analyses and program oversight analyses for larger scopes of work. List two (2) projects performed for large public transit entities. Special consideration will be given to projects related to transit.
 - e. Identify the technical skill sets that will be provided to support and/or implement a web-based project management system, as well as any systems required to facilitate the SSOA services.
 - f. Provide evidence that the firm(s) have the capacity to increase services quickly if the Commission chooses to. This could be demonstrated by describing resources available to the firm(s) in other locales or by describing a process to expedite hiring.

Experience will not be considered unless complete reference data is provided, which may affect the evaluation of the proposal.

(14) **Qualifications and Experience of Proposed Staff.**

- a. Indicate management, program and project personnel who will be assigned to the SSOA Services. Description of their specific roles and responsibilities and the estimated percentage of time each of these personnel will spend on this Contract. Provide evidence that a range of technical capabilities appropriate for the SSOA Services is included in the proposal, including areas specific to transit systems.

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- b. Submit a resume for each discipline mentioned in subsection d. of this section. Include title, education, background, applicable training, certifications, previous work experience and previous projects with the firm and length of services with the firm. Include two (2) references for each individual recommended in order to verify that the individual provided acceptable performance on projects similar in scope to the projects anticipated by the Commission.

Staff substitutions, between those indicated in the proposal and those who perform the actual work, may be made with the written consent of the Commission. The key staff of the PM shall remain in place for the duration of the contract.

- c. Describe the intended interfaces between the PM staff, the Commission's COO and the Commission's staff.
- d. Disciplines

The following list of staff disciplines is not all inclusive. Over the course of the Contract there may be a need for services from a discipline that is not listed below:

Program Management: Ability to show proven experience in providing the centralized control of a group of projects that are interdependent in terms of content, organization and time, and in understanding the goals and objectives in the completion of those projects. Must have exceptional oral and written communication skills.

Transit Safety Operations: Ability to show proven experience in developing performance measures and benchmarking with other transit agencies that have similar safety oversight programs as well as develop reporting systems and project expenditure forecasting. Must have exceptional analytical skills and oral and written communication skills.

Communications: Proposed staff from the proposing firm are required to be clear communicators verbally and in writing, with a professional command of the English language.

Experience and Qualification: Staff from the proposing firm for the corresponding technical specialty have to demonstrate qualifications, licenses, and experience that demonstrate professional command of the technical area. For any technical specialist in track, structures, mechanical, electrical areas staff from the proposing firms have to be able to demonstrate educational qualifications that correspond.

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Availability of Staff: Staff from the proposing firms have to be available as described in this scope/statement of work. If primary technical specialists' staff from proposing firms are unavailable as required, the proposing firm has secured such support to prevent any disruption to WMSC work that is be supported by said technical specialists.

Document Control: Must have working knowledge of the various electronic document management systems used within the transit industry.

Quality Assurance/Quality Control (QA/QC): Must have proven experience in developing a planned system of review of procedures following the implementation of QC procedures on a program. This planned system of review procedures must verify that quality control objectives were met, thus supporting the effectiveness of the QC program.

Contract/Task Management Support: Must have proven experience in managing Contract/Task deliverables and milestones. Must have proven experience in overall contract management. Must have proven experience in staff management (as it relates to issues and resolutions). Must have proven experience in task order close out processes. Must have proven experience in contractual management of multiple task orders and change orders.

- (15) Cost Proposal. Provide cost for yearly staffing per organizational plan. In addition, note other projected expenses to develop a total cost per year based on fiscal year 2022. The fee shall be inclusive of all expenses associated with or necessary to provide the required SSOA Services unless specifically stated. Any multiplier included must be explained in detail as to the calculation of said multiplier proposed.
- (16) Legal Actions. List and briefly describe all legal actions for the past five (5) years (2017-2021). This includes, but is not limited to, any legal action in which the Contractor has been a debtor in bankruptcy, a defendant in a lawsuit for deficient performance under a contract or agreement, a respondent in an administrative action for deficient performance or a defendant in a criminal action.
- (17) References. A minimum of three (3) non-Commission references from related projects of similar scope and magnitude for which the Contractor is currently providing services or has provided similar to the SSOA Services required herein. The company name, contact name, contact title and

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telephone number of the contact person must be provided. The Commission reserves the right to contact these references.

17. Restriction on Disclosure and Use of Data

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

- a. "This data furnished pursuant to this RFP shall not be disclosed outside the Commission, be duplicated, or used in whole or in part, for any purpose other than to evaluate the offer; provided that, if a contract is awarded on the basis of that offer, the Commission 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 Commission's right to use information contained in this data if it is or has been obtained by the Commission from another independent legitimate source.
- c. Except for the foregoing limitation, the Commission may duplicate, use, and disclose in any manner and for any purpose whatsoever and have others so do, all data furnished in response to this solicitation."

18. Evaluation of Options

The Commission will evaluate proposals for award purposes by adding the total price for the option years to the basic requirement. If applicable, evaluation of options will not obligate the Commission to exercise the options.

19. Basis for Award

Best Value

- a. Award Will Be Made to That Contractor(s):
 - (1) Whose offer is judged to be an integrated assessment of the evaluation criteria to be the most advantageous to the Commission based on technical merit and price ("best value"); and
 - (2) That the Commission deems responsible in accordance with WMSC Procurement Manual.
- b. Best Value Determination
 - (1) The technical merit of the proposal is significantly more important than the price, and price must be fair and reasonable.

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- (2) The Commission may select other than the lowest price proposal if it is determined by value analysis, or technical/cost trade-offs, that the proposal become more technically equivalent, then price becomes more important.
- c. Contractors are advised that award may be made without discussion or any contact with the Contractors concerning the offers received. Therefore, offers should be submitted initially on the most favorable terms that the Contractor can submit to the Commission.
- d. Price evaluation will be based on the sum of the total estimated prices of the base contract and any options.
- e. Affordability. The price proposals will be assessed for affordability. The Commission will not make an award for any proposal which proposes prices that would render the procurement infeasible.

20. Proposal Evaluation Criteria

Technical proposals will be evaluated based on the following criteria ordered in priority and weighted equally:

- (1) The professional qualifications and experience of the Contractor necessary to provide the Services as outlined herein;
- (2) The professional qualifications and experience of assigned personnel including the assigned personnel's ability to perform the Services as reflected by technical training and education, available staffing of adequate personnel, general experience and specific experience in provide the required Services.
- (3) The past performance of the Contractor on other contracts with the Commission and any other entity in terms of quality of work and compliance with performance schedules. The Evaluation committee may solicit from previous clients, including the Commission, other government agencies, or any other available sources, relevant information concerning the Contractor's record of past performance.
- (4) It should be noted that failure to submit a complete and comprehensive DBE Plan demonstrating compliance with the Commission's DBE Program may cause the Contractor to be deemed non-responsive and the Contractor may be disqualified.
- (5) Proposed Fee for Services
- (6) Longevity of business organization and financial stability of Contractor(s).

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- (7) Legal Actions which may affect performance of the services required under this RFP.
- (8) Compliance with the Insurance Requirements cited herein.
- (9) Quality of Implementation Plan
- (10) Submission of all Submittal Requirements listed in Article 16 of this RFP

21. Ratings for Proposal Evaluation Criteria

Each criterion will be rated using the Adjectival scoring method as follows:

Definition of Adjective Rankings:

Exceeds	Exceeds evaluation standards in a beneficial way to the Commission. Has many significant strengths and no weaknesses and is comprehensive and complete in all details.
Acceptable	Meets evaluation standards, weaknesses are correctable.
Marginal	Fails to meet evaluation standard; however, any significant deficiencies are correctable. Lacks essential information to support a proposal.
Unacceptable	Fails to meet an acceptable evaluation standard and the deficiency is uncorrectable. Proposal would have to undergo a major revision to become acceptable. Demonstrated lack of understanding of the Commission's requirements or omissions of major areas.

A rating of "Acceptable" is required to be eligible for award consideration. Contractor is cautioned to be aware of this standard when preparing your Proposal.

22. DEFINITIONS FOR TECHNICAL EVALUATION

Clarifications:	Communications with a Contractor for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the proposal. Unlike discussions, clarifications do not give the Contractor an opportunity to revise or modify its proposal, except to the extent that correction of apparent clerical mistake results in revisions.
Discussions:	Oral or written communications including negotiations between the Commission and a Contractor (other than clarifications) that involve information essential for determining the acceptability of the proposal or to cure identified defects in the proposal.

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Deficiencies:	Defects in the proposal which preclude acceptance. Involves any part of the Contractor's proposal which would not satisfy the Commission's minimum requirements established in the solicitation. Included failures to meet specifications, submit information, or questionable technical or management approaches. Items disclosed during discussions, evaluated in two categories: material-basis for rejection because further discussions would be meaningless; curable –may be corrected by clarifications or discussions and brought into the competitive range.
Weakness:	Includes ambiguities, lack of complete descriptions, errors in interpretation, omissions of essential information, inadequate information, all of which are considered curable in discussions. An excessive number of clarifications may constitute a weakness.
Strengths:	Elements of the proposal that meet or exceed the minimum requirements of the solicitation and provide an identified benefit to the Commission.

23. Price Proposal Evaluation

- a. The Commission will evaluate price proposals for reasonableness, completeness, and realism as appropriate. Each Contractor's cost will be evaluated in terms of the following which are equal in importance:
- b. Submittal of proposed prices for both the Base and the Options, if any, failure to do so will necessitate rejection of the proposal.
- c. Any offer which is materially unbalanced may be rejected. An unbalanced offer is one which is based on prices that are significantly overstated for some items and understated for other items.
- d. The Commission will compare the price proposals to the Commission's estimate and otherwise determine reasonableness by performing a price analysis if adequate competition exists. A cost analysis will be performed if adequate price competition does not exist, to ascertain whether or not the proposed price is fair and reasonable.
- e. In accordance with FAR 15.804-2 the Contractor shall provide certified cost or pricing data as requested by the Contracting Officer.

24. Type of Contract

The Commission will award a Cost Reimbursement Contract. The Contractor will be required to submit Monthly Invoices to the Commission's Contracting Officer Technical Representative (COTR) for payment approval.

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25. English Language and United States Currency

As regards 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 submitted shall be in United States dollars.

26. FEDERAL/LOCAL/STATE SALES TAX

WMSC TAX EXEMPTION

- a. Pursuant to Section 45 of the Washington Metrorail Safety Commission Compact, Pub. L. 115-54 (“WMSC Compact”), as adopted by the District of Columbia, the Commonwealth of Virginia, and the State of Maryland (“WMSC Jurisdictions”), the Commission has been accorded exemption from taxes as follows:

"The exercise of the powers granted by this WMSC Compact shall in all respects be for the benefit of the people of the District of Columbia, the Commonwealth of Virginia, and the State of Maryland and for the increase safety, commerce, and prosperity, and as the activities associated with this WMSC Compact shall constitute the performance of essential governmental functions, the Commission shall not be required to pay any taxes or assessments upon the services or any property acquired or used by the Commission under the provisions of this WMSC Compact or upon the income therefrom, and shall at all times be free from taxation within the District of Columbia, the Commonwealth of Virginia, and the State of Maryland."

27. CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)

- a. The work will be conducted under the general direction of the Commission’s Chief Executive Officer (“CEO”). Authority will be delegated to the Commission’s Office Manager (“COTR”) to take the following actions:
 - (1) Act as the principal point of contact with the Contractor. A copy of each item of incoming correspondence and a copy of any enclosures must also be submitted to the Contract Administrator (“CA”), Heather Obora.
 - (2) Review and approve invoices and payment estimates. Forward invoices and receipts to Accounting. In those cases, requiring release of final retained percentage of payment, the COTR will make her recommendations in writing to the CEO.

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- (3) Coordinate correspondence with the CA if its importance significantly impacts the contractual terms and obligations. Where such coordination is unnecessary, provide an information copy to the CA.
 - (4) Provide the CA with information copies of any memorandum for record which is relative to the contract.
 - (5) Notify the CEO whenever the COTR has reason to believe that the proposed not-to-exceed amount will be exceeded.
 - (6) Prepare the Commission estimate for proposed contract modifications. Participate in negotiations of modifications.
 - (7) Approve, in writing, the Contractor's progress schedule when required.
 - (8) Receive from the Contractor, monthly, if applicable, Disadvantaged Business Enterprise ("DBE") status reports and forward them to the CA.
- b. There are certain actions which are reserved for only the CEO. They are:
- (1) Approval of Contract modification quotations.
 - (2) Issuance of written orders to stop or resume work under Section 10, "Stop Work Orders," of the General Provisions.
 - (3) Negotiation with the Contractor for adjustment of Contract price or time.
 - (4) The COTR is not authorized to render final decisions under Section 7, "Disputes," of the General Provisions.
 - (5) The COTR is not authorized to issue Termination Notices.
 - (6) The presence or absence of the COTR must not relieve the Contractor from any requirements of the Contract.

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REPRESENTATIONS AND CERTIFICATIONS
(FEDERALLY FUNDED SUPPLY/SERVICE/CONSTRUCTION CONTRACTS)

REPRESENTATIONS

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 Contractor 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 _____.

2. AFFILIATION AND IDENTIFYING DATA

Each Contractor shall complete (a), (b) if applicable, and (c) below, representing that:

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

Name of Parent Company

Main Office Address (including ZIP Code)

- c. If the Contractor 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. No. of its parent company).

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

- d. If a Data Universal Numbering Systems (DUNS), number has not been established for the address entered on the Solicitation, Offer, and Award Form, the Contractor

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will arrange for the assignment of this number after award of a contract and will notify the Commission accordingly.

3. PREVIOUS CONTRACTS AND COMPLIANCE REPORTS

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

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

4. DISADVANTAGED BUSINESS ENTERPRISE

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

- a. It ☐ is, ☐ is not, a disadvantaged business enterprise.

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

"Socially and Economically Disadvantaged Individuals" is defined in Appendix B, Section 4, subsection I; and

- b. It ☐ is, ☐ is not, currently certified by the Commission as a disadvantaged business enterprise.

5. AFFIRMATIVE ACTION COMPLIANCE

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

- a. It has a workforce of _____ employees.

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- b. It [] has developed and has on file, or [] has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR Parts 60-1 and 60-2), or
- c. It [] has not previously had contracts subject to the written affirmative action program requirements of the rules and regulations of the Secretary of Labor.

CERTIFICATIONS

1. COVENANT AGAINST GRATUITIES

By submission of this offer, the Contractor 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 director, officer or employee of the Commission with the view toward securing favorable treatment in the awarding, amending, or the making of any determination with respect to the performing of the contract.

2. CONTINGENT FEE

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

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

3. CLEAN AIR AND WATER CERTIFICATION

This certification is applicable if the contract will be federally assisted and the offer exceeds \$100,000, or the Contracting Officer believes that orders under an indefinite contract in any year will exceed \$100,000 or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 7413(c)(1)) or the Water Act (33 U.S.C. 1319(c)) and is listed by the U.S. Environmental Protection Agency (EPA) as a violating facility, and the acquisition is not otherwise exempt:

- a. Any facility to be utilized in the performance of this proposed contract [] is, or [] is not listed on the EPA list of Violating Facilities;

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- b. Contractor will immediately notify the Contracting Officer, before award, of the receipt of any communications from the Administrator, or a designee of the EPA, indicating that any facility which it proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and
- c. Contractor will include a certification substantially the same as this certification, including this subsection, in every non-exempt subcontract.

4. DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

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

- a. 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.
 - (1) In accordance with the provisions of Appendix A to 49 Code of Federal Regulations (CFR) Part 29, the Contractor certifies to the best of its knowledge and belief that it and its principals:
 - (i) are not currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
 - (ii) have not, within a three-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;
 - (iii) 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 section; and
 - (iv) have not, within a three-year period preceding this offer, had one or more public transactions (Federal, State, or local) terminated for cause or default.
 - (2) Where the Contractor is unable to certify to any of the statements in this certification, the Contractor shall attach an explanation to this offer.

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- b. 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 the prime contract.
 - (1) In accordance with the provisions of Appendix B to 49 Code of Federal Regulations (CFR) Part 29, 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.
 - (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.
- c. The Certification required by subsection b. of this section shall be included in all applicable subcontracts and a copy kept on file by the prime contractor. The prime contractor shall be required to furnish copies of certifications to the Contracting Officer upon the Contracting Officer's request.

5. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

- a. By submission of this offer, the Contractor certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement:
 - (1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other Contractor or with any other competitor, as to any matter relating to such prices;
 - (2) Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the Contractor and will not be knowingly disclosed by the Contractor prior to the opening of bids (in the case of a sealed bid solicitation) or prior to award (in the case of a negotiated procurement), directly or indirectly, to any other Contractor or to any competitor; and
 - (3) No attempt has been made or will be made by the Contractor to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition.
- b. Each person signing this offer certifies that:
 - (1) He or she is the person in the Contractor's organization responsible within that organization for the decision as to the prices being offered herein and

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that he/she has not participated, and will not participate, in any action contrary to subsections a.(1) through (3) of this section; or

- (2) He or she is not the person in the Contractor's organization responsible within that organization for the decision as to the prices being offered herein, but that he/she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated; and will not participate, in any action contrary subsections a.(1) through (3) of this section, and as their agent does hereby so certify.

6. CERTIFICATION OF NONSEGREGATED FACILITIES

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

- a. By submission of this offer, the Contractor certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement:
 - (1) It does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control, where segregated facilities are maintained.
 - (2) The Contractor agrees that a breach of this certification is a violation of the Equal Opportunity provision in the contract.
 - (3) As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin, because of habit, local custom or otherwise.
 - (4) It further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will:
- b. Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity provision;
- c. Retain such certifications in its files; and
- d. Forward the following notice to such subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

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

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

7. NONDISCRIMINATION ASSURANCE

By submission of this offer, the Contractor 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, national origin, sex, age in the performance of this Contract. The Contractor is required to insert the substance of this provision in all subcontracts and purchase orders. Failure by the contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Commission deems appropriate. The Contractor further agrees by submitting this offer that it will include this certification, without modification, in all subcontracts and purchase orders.

8. CERTIFICATION OF RESTRICTIONS ON LOBBYING

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

- a. By submission of this offer, the Contractor certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that to the best of his or her knowledge or belief:
 - (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Contract, the undersigned shall complete and submit Standard Form--LLL, "Disclosure of Lobbying Activities."

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- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers and that all sub-recipients shall certify and disclose accordingly.
- b. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352, as amended. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

9. BUY AMERICA ACT CERTIFICATION

The Buy America requirements apply to federally assisted construction contracts, and acquisition of goods or rolling stock contracts valued at more than \$100,000. This section is not applicable for this solicitation.

- a. By submission of this offer, the Contractor certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement it will comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7 Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR 661.11.
- b. A Contractor must submit to the Commission the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors. Mark the applicable certifications below:

(1) Certification requirement for procurement of steel, iron, or manufactured products:

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

The bidder or Contractor hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.

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

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

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(2) Certification requirement for procurement of buses, other rolling stock and associated equipment:

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

The bidder or Contractor hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 CFR Part 661.11.

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

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

10. CERTIFICATION OF NON-DELINQUENT TAXES

This certification is applicable to federally assisted contracts.

- a. By submission of this offer, the Contractor certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement:
 - (1) It has not been convicted over the past three years of violating any federal criminal tax law or failed to pay any tax.
 - (2) It has certified if it has been notified of an unresolved tax lien or any unsatisfied federal tax delinquency in excess of \$3,000 and that it is paying tax debts through an installment agreement or have requested a collection due process hearing.
 - (3) The Contractor agrees that a breach of this certification is a violation of the Federal Acquisition Regulation.
 - (4) As used in this certification, the term "tax delinquency" means an outstanding debt for which a notice of lien has been filed in public records.
 - (5) It further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will:
- b. Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to Federal Acquisition Regulation;
- c. Retain such certifications in its files; and
- d. Forward the following notice to such subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

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

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

SIGNATURE BLOCK FOR ALL REPRESENTATIONS AND CERTIFICATIONS	
Name of Contractor: _____	
Name and Title of Authorized Representative: _____	
Print and Sign Name	
_____	_____
Title	Date

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PRE-AWARD EVALUATION DATA

PROJECT DESCRIPTION: _____

1. Name of Firm: _____
2. Address: _____
3. ☐ Individual ☐ Partnership ☐ Corporation ☐ Joint Venture
4. Date Organized _____.
State in which incorporated _____.
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 a list of similar current contracts which demonstrates your technical proficiency, each with contract amount, name of contracting party, character or type of work and percentage of completion.
8. Attach as SCHEDULE TWO 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 years
9. In the last two years have you ever been denied an award where you were Contractor?
If the answer is YES, attach as SCHEDULE THREE the full particulars regarding each occurrence.
10. Have you ever failed to complete, in the last two years, any contract on which you were the low Contractor?
If the answer is YES, attach as SCHEDULE FOUR, the full particulars regarding each occurrence.
11. Financial resources available as working capital for the Contract:
 - a. Cash on hand: \$ _____

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- b. Sources of credit: _____
12. Attach as SCHEDULE FIVE certified financial statements available for the last 2 years and letters from banks regarding credit as required by the Pre-Award Information section.
13. What percentage of work (contract amount) do you intend performing with your own personnel__%.
14. Attach as SCHEDULE SIX a list of all principal subcontractors and the percentage and character of work (contract amount) which each will perform. Principal items of work shall include, but not be limited to, those items listed in the Pre-Award Information section of the Request for Proposal/Invitation for Bid.
15. If the contractor or subcontractor is 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: _____

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PART II – GENERAL / SPECIAL PROVISIONS

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PART II, ARTICLE 1 - GENERAL PROVISIONS

1. DEFINITIONS

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

- a. “Commission” or “WMSC” means The Washington Metrorail Safety Commission established through a Joint Resolution approved by Congress, for the Commonwealth of Virginia, the State of Maryland and the District of Columbia (“WMSC Jurisdictions”), created by Interstate Compact by and between Maryland, Virginia, and the District of Columbia, pursuant to Public Law 115-54, approved August 22, 2017.
- b. “Commission Representative” if designated, is the person responsible for post award execution of a Commission contract in the most effective, economical, and timely manner. The Commission Representative is the Commission’s primary point of contact with its contractor. In addition, the Commission Representative is delegated authority to modify this Contract within specified dollar limits which are available upon request. The Commission may designate additional individuals, usually in the supervisory chain as the Commission Representative, who have dollar authority in excess of the Commission Representative’s stated authority (see also definition of Contracting Officer). The Commission Representative may, at his or her discretion, delegate Project responsibilities to a Project Representative and certain other responsibilities to other designees. Unless the contractor is directed to the contrary, all correspondence with respect to this Contract shall be sent to the Commission Representative.
- c. “Contracting Officer” means an employee within the WMSC’s office with authority duly delegated from the powers of the Chief Executive Officer to legally bind the Commission by signing a contractual instrument. Contracting Officers have the authority to make related determinations and findings, and take other significant actions including, but not limited to: awards, changes, modifications, final payments, suspensions, terminations, debarments, assessment of liquidated damages, and issuances of final decisions. The term includes certain other representatives of the Commission acting within delegated limits of authority. In general, the Commission’s primary point of contact for pre-award administration and fiscal closeout resides with the Contracting Officer, and the primary point of contact for the post-award contract administration may be either the Commission Representative or Contracting Officer’s Technical Representative.
- d. “Contracting Officer’s Technical Representative (COTR)” means a duly appointed individual assigned to perform contract administration activities as may be specifically authorized in regard to technical issues. A COTR does not have the authority to enter into contractual agreements including changes or modifications.

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- e. “FTA” means the U.S. Department of Transportation, Federal Transit Administration.
- f. “Project Representative” means the individual(s), including but not limited to the Chief Operating Officer, to whom the Commission Representative has delegated Project responsibilities. If a Project Representative is appointed, the Project Representative represents the Commission Representative on the Project within the limits of that delegation with respect to any part of the Work.
- g. Except as otherwise provided in this Contract, the term subcontracts includes purchase orders under this Contract.
- h. Wherever in the scope of the work the words directed, ordered, designated, prescribed, or words of like import are used, it shall be understood that the direction, requirement, order, designation, or prescription of the Contracting Officer is intended and similarly the words approved, acceptable, satisfactory, or words of like import shall mean approved by, or acceptable to, or satisfactory to the Contracting Officer, unless otherwise expressly stated.

2. CHANGES

- a. The Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this Contract, in any one or more of the following:
 - (1) Description of services to be performed.
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.).
 - (3) Place of performance of the services.
 - (4) Drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Commission, in accordance with the drawings, designs, or specifications.
 - (5) Method of shipment or packing of supplies.
 - (6) Place of delivery.
 - (i) If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Contract, whether changed or not changed by the order, the Contracting Officer shall make an equitable adjustment in the Contract price, the delivery schedule, or both, and shall modify the Contract.
 - (ii) The contractor must assert its right to an adjustment under this article within 30 days from the date of receipt of the written order.

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Any such adjustment to the contract price must be agreed upon prior to final payment of the contract price.

- (iii) If the contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.
- (iv) Failure to agree to any adjustment shall be a dispute under the Disputes section. However, nothing in this section shall excuse the contractor from proceeding with the contract as changed.

3. EXTRAS

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

4. PAYMENTS

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

5. DELAY OF WORK

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

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delivery or performance dates and any other contractual provision affected by such delay or interruption. However, no adjustment shall be made under this section for any delay or interruption

- (1) to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor; or
 - (2) for which an adjustment is provided or excluded under any other provision of this Contract.
- b. No claim under this section shall be allowed
 - (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved; and
 - (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such delay or interruption, but not later than the date of final payment under the Contract.

6. STOP WORK ORDER

- a. The Contracting Officer may, at any time, by written order to the contractor, require the Contractor to stop all, or any part of the work called for by this Contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a STOP WORK ORDER issued pursuant to this section. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either:
 - (1) Cancel the stop work order, or
 - (2) Terminate the work covered by such order as provided in the Termination for Convenience section of this Contract.
- b. If a stop work order issued under this section is cancelled or the period of the order or any extension thereof expires, the Contractor shall resume work. An equitable adjustment shall be made in the delivery schedule or Contract price, or both, and the Contract modified in writing accordingly, if:

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- (1) The stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract, and
 - (2) The Contractor asserts a claim for such adjustment within 30 days after the end of the period of work stoppage; provided that, if the Contracting Officer decides the facts justify such action, he may receive and act upon any such claim asserted at any time prior to final payment under this Contract.
- c. If a stop work order is not cancelled and the work covered by such order is terminated for the convenience of the Commission, the reasonable costs resulting from the stop work order shall be allowed in arriving at the termination settlement.

7. DISPUTES

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

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8. DEFAULT

- a. The Commission may, subject to the subsection c. of this section, by written notice of default to the Contractor, terminate the whole or any part of this Contract in any one of the following circumstances:
 - (1) If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or
 - (2) If the Contractor fails to perform any of the other requirements of this Contract, or so fails to make progress as to endanger performance of this Contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.
- b. In the event the Commission terminates this Contract in whole or in part as provided in subsection a. of this section, the Commission may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Commission for any excess costs for such similar supplies or services; provided, that the Contractor shall continue the performance of this Contract to the extent not terminated under this section.
- c. Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in its sovereign capacity or the Commission in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.
- d. If this Contract is terminated as provided in subsection a. of this section, the Commission, in addition to any other rights provided in this section, may require the Contractor to transfer title and deliver to the Commission, in the manner and to the extent directed by the Contracting Officer,

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- (1) any completed supplies, and
 - (2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this Contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in the possession of the Contractor in which the Commission has an interest. Payment for completed supplies delivered to and accepted by the Commission shall be at the Contract price. Payment for manufacturing materials delivered to and accepted by the Commission and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the Disputes section of this Contract. The Commission may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the Commission against loss because of outstanding liens or claims of former lien holders.
- e. If, after notice of termination of this Contract under the Section 8a. of this article, it is determined for any reason that the Contractor was not in default under this section, or that the default was excusable under this section, the rights and obligations of the parties shall, if the Contract contains a section providing for termination for convenience of the Commission, be the same as if the notice of termination had been issued pursuant to such section. If, after notice of termination of this Contract under this section, it is determined for any reason that the Contractor was not in default under this section, and if this Contract does not contain a section providing for termination for convenience of the Commission, the Contract shall be equitably adjusted to compensate for such termination and the Contract modified accordingly; failure to agree to such adjustment shall be a dispute concerning a question of fact within the meaning of the Disputes section of this Article.
- f. If the Contractor fails to deliver the supplies or perform the services within the time specified in this Contract, or any extension thereof, the actual damage to the Commission for the delay will be difficult or impossible to determine. Therefore in lieu of actual damages, the Contractor shall pay to the Commission fixed, and agreed liquidated damages for each calendar day of delay, the amount set forth elsewhere in this Contract. Alternatively, the Commission may terminate this Contract in whole or in part as provided in subsection a. of this section, and in that event the Contractor shall be liable, in addition to the excess costs provided in subsection b. of this section, for such liquidated damages accruing until such time as the Commission may reasonably obtain delivery or performance of similar supplies or services. The Contractor shall not be charged with liquidated damages

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when the delay arises out of causes beyond the control and without the fault or negligence of the Contractor, as defined in subsection c. of this section, and in such event, subject to the Disputes section, the Contracting Officer shall ascertain the facts and extent of the delay and shall extend the time for performance of the contract when in his judgment the findings of fact justify an extension.

- g. The rights and remedies of the Commission provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- h. As used in subsection c. of this section, the terms subcontractor and subcontractors mean subcontractor(s) at any tier.

9. TERMINATION FOR CONVENIENCE OF THE COMMISSION

- a. The performance of work under this Contract may be terminated by the Commission in accordance with this section in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Commission. Any such termination shall be affected upon delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.
- b. After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:
 - (1) Stop work under the Contract on the date and to the extent specified in the Notice of Termination;
 - (2) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the Contract which is not terminated;
 - (3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.
 - (4) Assign to the Commission, in the manner, at the time, and to the extent directed by the Contracting Officer, all of the rights, title, and interests of the Contractor under the orders and subcontracts so terminated, in which case the Commission shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
 - (5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of

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the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this section;

- (6) Transfer title to the Commission and deliver in the manner, at the times, and to the extent, if any, directed by the Contracting Officer:
 - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the work terminated by the Notice of Termination, and
 - (ii) The completed or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to the Commission;
 - (7) Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the type referred to in paragraph 6. of this subsection; provided, however, that the Contractor:
 - (i) Shall not be required to extend credit to any purchaser, and
 - (ii) May acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Office; provided, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Commission to the Contractor under this Contract or shall otherwise be credited to the price or cost of the work covered by the Contractor or paid in such other manner as the Contracting Officer may direct;
 - (8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and
 - (9) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the Commission has or may acquire an interest.
- c. After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim, in the form and with certification prescribed by the Contracting Officer. Such claims shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such one-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one-year period or any extension thereof. Upon failure of the Contractor to

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submit his termination claim within the time allowed, the Contracting Officer may, subject to any review required by the contracting agency's procedures in effect as of the date of execution of this Contract, determine, on the basis of information available to him, the amount, if any, due the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

- d. Subject to the provisions of this subsection, and subject to any review required by the contracting agency's procedures in effect as of the date of execution of this Contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this section, which amount, or amounts may include a reasonable allowance for profit on work done. Provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract price as reduced by the number of payments otherwise made and as further reduced by the Contract price of work not terminated. The Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in subsection f. of this section, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this section, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this subsection e. of this section.
- e. In the event of the failure of the Contractor and the Contracting Officer to agree, as provided in subsection d. of this section, upon the whole amount to be paid the Contractor by reason of the termination of work pursuant to this section, the Contracting Officer shall, subject to any review required by the contracting agency's procedures in effect as of the date of execution of this Contract, determine, on the basis of information available, the amount if any, due the Contractor by reason of the termination and shall pay to the Contractor the amounts determined as follows:
 - (1) For completed supplies accepted by the Commission (or sold or acquired as provided in paragraph b.(7) of this section) and not theretofore paid for a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the Contract, appropriately adjusted for any saving of freight or other charges;
 - (2) The total of:
 - (i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies paid or to be paid for under paragraph (1) of this subsection;

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- (ii) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph b.(5) of this section, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or Contractors prior to the effective date of the Notice of Termination, which amounts shall be included in the costs payable under subsection a. of this section; and
 - (iii) A sum, as profit on subparagraph (i) of this paragraph, determined by the Contracting Officer pursuant to Section 49.202 of the Federal Acquisition Regulations (48 CFR 49.202), in effect as of the date of execution of this Contract, to be fair and reasonable; provided, however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this subsection d. of this section and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and
- (3) The reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this Contract.
- (4) The total sum to be paid to the Contractor under paragraphs (1) and (2) of this subsection shall not exceed the total Contract price as reduced by the number of payments otherwise made and as further reduced by the Contract price of work not terminated. Except for normal spoilage, and except to the extent that the Commission shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in paragraph (1) and (2) of this subsection, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Commission, or to a buyer pursuant to subsection b.(7).
- f. Costs claimed, agreed to, or determined pursuant to subsections c., d., and e. of this section shall be in accordance with the applicable contract cost principles and procedures in Subpart 31.1 of the Federal Acquisition Regulations (48 CFR 31.1) in effect on the date of this Contract.
- g. The Contractor shall have the right to appeal, under the Disputes section of this Contract from any determination made by the Contracting Officer under paragraphs d. or e. of this subsection, except that, if the Contractor has failed to submit his

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claim within the time provided in paragraph d. of this subsection and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph d. or e. of this subsection, the Commission shall pay to the Contractor the following:

- (1) if there is on right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer; or
 - (2) if an appeal has been taken, the amount finally determined on such appeal.
- h. In arriving at the amount due the Contractor under this section there shall be deducted
 - (1) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this Contract;
 - (2) any claim which the Commission may have against the Contractor in connection with this Contract; and
 - (3) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to this section, and not otherwise recovered by or credited to the Commission.
- i. If the termination hereunder be partial, prior to the settlement of the terminated portion of this Contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.
- j. The Commission may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this Contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this section, such excess shall be payable by the Contractor to the Commission upon demand, together with interest computed at the rate of six percent (6%) per annum for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Commission; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until 10 days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reasons of the circumstances.

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

10. FEDERAL, STATE AND LOCAL TAXES

- a. Except as may be otherwise provided in this Contract, the Contract price includes all applicable Federal, State, and Local taxes and duties.
- b. Nevertheless, with respect to any Federal excise tax or duty on the transactions or property covered by this Contract, if a statute, court decision, written ruling, or regulation takes effect after the Contract date, and:
 - (1) Results in the Contractor being required to pay or bear the burden of any such Federal excise tax or duty or increase in the rate thereof which would not otherwise have been payable on such transactions or property, the Contract price shall be increased by the amount of such tax or duty or rate increase, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the Contract price as a contingency reserve or otherwise; or
 - (2) Results in the Contractor not being required to pay or bear the burden of, or in his obtaining a refund or drawback of, any such Federal excise tax or duty which would otherwise have been payable on such transactions or property or which was the basis of an increase in the Contract price, the Contract price shall be decreased by the amount of the relief, refund, or drawback, or that amount shall be paid to the Commission, as directed by the Contracting Officer. The Contract price shall be similarly decreased if the Contractor, through his fault or negligence or his failure to follow instructions of the Contracting Officer, is required to pay or bear the burden of, or does not obtain a refund or drawback of, any such Federal excise tax or duty.
- c. subsection b. of this section shall not be applicable to social security taxes or to any other employment tax.
- d. No adjustment of less than \$100 shall be made in the Contract price pursuant to subsection b. of this section.
- e. As used in subsection b. of this section, the term Contract date means the date set for bid opening, or if this is a negotiated contract, the Contract date. As to additional supplies or services procured by modification to this Contract, the term Contract date means the date of such modification.

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

11. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME COMPENSATION

Pursuant to Section 102 (Overtime):

- a. **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b. **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of subsection a. of this section, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subsection a. of this section, in the sum of \$ 10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subsection a. of this section.
- c. **Withholding for unpaid wages and liquidated damages** - The Commission shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subsection b. of this section.

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- d. **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the provisions set forth in this section and also a provision requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in this article.

Section 107 (OSHA):

Contract Work Hours and Safety Standards Act

- (i) The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, "Safety and Health Regulations for Construction" 29 CFR Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.
- (ii) **Subcontracts** - The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

12. WALSH-HEALEY PUBLIC CONTRACTS ACT – Not applicable for this solicitation

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

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- a. All stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may be hereafter, be in effect.
- b. All employees whose work relates to this Contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped worker may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

13. EMPLOYMENT RESTRICTION WARRANTY

- a. The Contractor warrants that it will not offer employment to any officer or employee of the Commission who has been involved, directly or indirectly, in any matter of financial interest to the Contractor until at least one year after the officer or employee has ceased involvement in or responsibility for the matter.
- b. The Contractor further warrants that it will not employ any WMSC officer or employee who has had direct responsibility for any matter of financial interest to the Contractor within the year prior to the retirement or termination of the officer or employee until at least one full year after such officer or employee has left the employment of the Commission.
- c. The one-year requirement described in subsections a. and b. of this section may be waived at the discretion of the Contracting Officer if the WMSC employee or former employee has been subject to a Reduction in Force; in such case, the Contracting Officer will provide the Contractor with a letter to that effect.
- d. If a waiver is granted, or if a former employee of WMSC is eventually hired, the Contractor shall be responsible for ensuring that the former employee is not directly involved in negotiating or otherwise dealing with WMSC on any matter over which such employee had responsibility during his or her period of employment at WMSC.
- e. Should the Contractor fail to comply with subsections a., b. or d. of this section, the Contracting Officer shall have the right to withhold payment under this Contract in an amount not to exceed 2% of the total Contract amount as liquidated damages to the Commission, such withholding to be in addition to any other withholding under this Contract. Further, the Contracting Officer shall consider such violation in evaluating the Contractor's responsibility in connection with award of any other Commission Contract.

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14. OFFICIALS NOT TO BENEFIT

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

15. COVENANT AGAINST CONTINGENT FEES

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

16. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT – Not applicable for this solicitation

This section shall be applicable only if the amount of this Contract exceeds \$10,000.

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

17. NOTICE TO THE COMMISSION 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

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

18. ATENT INDEMNITY – Not applicable for this solicitation

- a. If the amount of this Contract is in excess of \$10,000, the Contractor shall indemnify the Commission and its officers, agents, and employees against liability, including costs, for infringement of any United States letters patent arising out of the manufacture or delivery of supplies under this Contract. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Commission of the suite or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to:
 - (1) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner or performance of the Contract not normally used by the Contractor;
 - (2) an infringement resulting from addition to, or change in, such supplies or components furnished which addition or change was made subsequent to delivery or performance by the Contractor; or
 - (3) a claimed infringement which is settled without the consent of the Contractor, unless required by final decree of court of competent jurisdiction.

19. ROYALTY INFORMATION – Not applicable for this solicitation

- a. When the response to this solicitation contains costs or charges for royalties totaling more than \$250, the following information shall be furnished with the offer, proposal, or quotation on each separate item of royalty or license fee:
 - (1) Name and address of licensor;
 - (2) Date of license agreement;

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- (3) Patent numbers, patent application serial numbers or other basis on which the royalty is payable;
 - (4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
 - (5) Percentage or dollar rate of royalty per unit;
 - (6) Unit price or Contract item;
 - (7) Number of units; and
 - (8) Total dollar amount of royalties.
- b. In addition, if specifically requested by the Contracting Officer prior to execution of the Contract, a copy of the current license agreement and identification of applicable claims of specific patents shall be furnished.

20. RIGHTS IN TECHNICAL DATA

- a. The Commission shall have the right to use, duplicate or disclose technical data, which includes computer software, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so:
- (1) Any manuals, instructional materials prepared for installation, operation, maintenance or training purposes;
 - (2) Technical data pertaining to end items, components or processes which were prepared for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data; e.g., specification control drawings, catalog sheets, outline drawing; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software);
 - (3) Other technical data which has been, or is normally furnished without restriction by the Contractor or subcontractor;
 - (4) Other specifically described technical data which the parties have agreed will be furnished without restriction.
- b. The Commission shall have the right to use, duplicate, or disclose technical data other than that defined in subsection a. of this section in whole or in part, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data, be:
- (1) released or disclosed in whole or in part outside the Commission,

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- (2) used in whole or in part by the Commission for manufacture, or
 - (3) used by a party other than the Commission except for emergency repair or overhaul work only, by or for the Commission where the item or process concerned is not otherwise reasonably available to enable timely performance of the work; provided, that the release or disclosure thereof outside the Commission shall be made subject to a prohibition against further use, release or disclosure.
- c. Technical data provided in accordance with subsection b. of this section shall be identified by a legend which suitably recites the aforesaid limitation. Nothing herein shall impair the right of the Commission to use similar or identical data acquired from other sources.
- d. The term technical data as used in this section means technical writing, computer software, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of a technical nature, whether copyrighted, which are specified to be delivered pursuant to this Contract. The term does not include financial reports, cost analyses, and other information incidental to Contract administration. Computer software as used in this section means computer programs, computer data bases, and documentation thereof.
- e. Material covered by copyright:
 - (1) The Contractor agrees to and does hereby grant to the Commission, and to its officers, agents and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for Commission purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all technical data now or hereafter covered by copyright.
 - (2) No such copyrighted matter shall be included in technical data furnished hereunder without the written permission of the copyright owner for the Commission to use such copyrighted matter in the manner above described.
 - (3) The Contractor shall report to the Commission (or higher-tier contractor) promptly and in reasonable written detail each notice or claim of copyright infringement received by the Contractor with respect to any technical data delivered hereunder.
- f. Relation to patents: Nothing contained in this section shall imply a license to the Commission under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Commission under any patent.
- g. Any dispute under this section shall be subject to the Disputes section of this Contract.

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

21. AUDIT RECORDS-NEGOTIATION

- a. This section is applicable if this Contract was entered into by means of negotiation and shall become operative with respect to any modification to this Contract whether this Contract was initially entered into by means of negotiation or by means of formal advertising.
- b. As used in this section, “records” includes 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.
- c. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price re-determinable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Contract. This right of examination shall include inspection at all reasonable times of the Contractor’s plants, or parts of them, engaged in performing this Contract.
- d. If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this Contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor’s records, including computations and projections, related to the proposal for the contract, subcontract, or modification; the discussions conducted on the proposal(s), including those related to negotiating; pricing of the contract, subcontract or modification; or performance of the contract, subcontract or modification.
- e. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating the effectiveness of the Contractor’s policies and procedures to produce data compatible with the objectives of these reports; and the data reported.
- f. The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence described above, for examination, audit or reproduction, until 3 years after final payment under this Contract or for any shorter

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period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other requirements of this Contract. In addition—

- (1) If this Contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and
 - (2) The Contractor shall make available records relating to appeals under the Disputes section or to litigation or the settlement of claims arising under or relating to this Contract until such appeals, litigation, or claims are fully resolved.
- g. The Contractor shall insert a provision containing all the terms of this section, including this subsection, in all subcontracts under this Contract that exceed the simplified acquisition threshold (currently \$100,000 or less) and –
- (1) That are cost reimbursable, incentive, time-and-material, labor-hour, or price re-determinable type or any combination of these;
 - (2) For which cost or pricing data are required; or
 - (3) That require the contractor to submit reports as discussed in subsection e. of this section.

22. GRATUITIES

- a. In connection with performance of work required under this Contract, or any changes or modifications relative thereto, the giving of or offering to give gratuities (in the form of entertainment, gifts or otherwise) by the Contractor, or any agent, representative or other person deemed to be acting on behalf of the Contractor, or any supplier or subcontractor furnishing material to or performing work under this Contractor, or any agent, representative or other person deemed to be acting on behalf of such supplier or subcontractor, to any Director, Officer or employee of the Commission; or to any Director, Officer, employee or agent of any of the Commission's agents, consultants, representatives or other persons deemed to be acting for or on behalf of the Commission with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract is expressly forbidden. The terms of this section shall be strictly construed and enforced in the event of violations hereto.
- b. Reported instances of the giving or offering to give gratuities within the context of this section will be investigated by the Board of Commissioners 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 section has been committed. If such probable cause is found to exist, the Board of Commissioners,

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or its duly authorized representative, shall formally notify the suspected donor corporation or individual in writing of the particulars of the event; and provide such donor the opportunity to be heard on the matter. The aims of the investigations and hearing shall be to ensure due process and to preserve the best interests and rights of all parties by the full and fair disclosure of all relevant and material information. Accordingly, the Board of Commissioners, or its duly authorized representative, shall require production of all pertinent documents and records, and sworn testimony from witnesses. If, after notice and hearing, or notice of the opportunity to be heard, the Board of Commissioners, or its duly authorized representative, finds that a violation of this section has been committed, the Commission shall have the right to:

- (1) Require that the individual(s) giving or offering the gratuity be removed from further participation on any Commission projects (be terminated);
 - (2) Deny the Contractor any general and administrative (“G&A”) mark-ups for all changes and/or modifications found to be tainted by the giving of or offering to give gratuities;
 - (3) Preclude the Contractor from bidding on, receiving or participating as a joint venture, subcontractor or otherwise in any Commission project for a period of five (5) years;
 - (4) Have complete access to all the Contractor's financial books, records and accounts for the purpose of performing a comprehensive audit of the entire project.
 - (5) In the event of repeated violations of this section or of gross or extreme conduct indicative of a corrupt intent to gain special advantage, by written notice to the Contractor, terminate the right of the Contractor to proceed under the Contract.
- c. The existence of the facts upon which the Board of Commissioners, or its duly authorized representative, makes findings in connection with investigations and hearings in consonance herewith shall be an issue and may be reviewed in any competent court.
- d. In the event this Contract is terminated as provided in subsection b.(5) of this section, the Commission shall be entitled
- (1) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor, and
 - (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in any amount (as determined by the Board of Commissioners or its duly authorized representative) which shall be not less

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than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

- e. The rights and remedies of the Commission provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

23. CONVICT LABOR

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

24. LIMITATION ON WITHHOLDING PAYMENTS

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

- a. Withholdings pursuant to any section relating to wages or hours of employees;
- b. Withholdings not specifically provided for by this Contract; and
- c. The recovery of overpayment.

25. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA — PRICE ADJUSTMENTS

- a. This section shall become operative only with respect to any modification of this Contract which involves aggregate increases and/or decreases in costs plus applicable profits in excess of \$100,000 unless the modification is priced on the basis of adequate competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The right to price reduction under this section is limited to defects in data relating to such modification.
- b. If any price, including profit, or fee, negotiated in connection with any price adjustment under this Contract was increased by any significant sums because:

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- (1) The Contractor furnished cost or pricing data which was not complete, accurate and current as certified in the Contractor's Certificate of Current Cost or Pricing Data;
- (2) A subcontractor, pursuant to the sections of this Contract entitled SUBCONTRACTOR COST OR PRICING DATA or SUBCONTRACTOR COST OR PRICING DATA--PRICE ADJUSTMENTS or any subcontract provision therein required, furnished cost or pricing data that was not complete, accurate and current as certified in the subcontractor's Certificate of Current Cost or Pricing Data;
- (3) A subcontractor or prospective subcontractor furnished cost or pricing data that was required to be complete, accurate and current and to be submitted to support a subcontract cost estimate furnished by the Contractor but which was not complete, accurate and current as of the date certified in the Contractor's Certificate of Current Cost or Pricing Data; or
- (4) The Contractor or a subcontractor or prospective subcontractor furnished any data, not within paragraphs (1) or (3) of this subsection, which was not accurate, as submitted; the price shall be reduced accordingly and the Contract shall be modified in writing as may be necessary to reflect such reduction. However, any reduction in the Contract price due to defective subcontract data of a prospective subcontractor, when the subcontract was not subsequently awarded to such subcontractor, will be limited to the amount (plus applicable overhead and profit markup) by which the actual subcontract, or the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor, provided that the actual subcontract price was not affected by defective cost or pricing data.

NOTE: Since the Contract is subject to reduction under this section by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the Contractor may wish to include an section in each such subcontract, requiring the subcontractor to appropriately indemnify the Contractor. However, the inclusion of such an section and the terms thereof are matters for negotiation and agreement between the Contractor and the subcontractor and are not binding upon the Commission. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted to his lower tier subcontractors.

26. SUBCONTRACTOR COST AND PRICING DATA-PRICE ADJUSTMENTS

- a. Subsections b. and c. of this section shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this Contract which involves a price adjustment in excess of \$100,000. The requirements of this section shall be limited to such price adjustments.

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

27. NEW MATERIAL

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

28. ORDER OF PRECEDENCE

Any inconsistency in this solicitation or Contract shall be resolved by giving precedence in the following order: (a) Contract Amendments/Modifications; (b) Solicitation Offer and Award Forms; (c) Representations and Certifications; (d) Price Proposal as Negotiated; (e) General Provisions; (f) WMSC Standard Specifications and Technical Specifications of the Contract, whether incorporated by reference or otherwise; (g) other documents, exhibits, and attachments; and (h) drawings, if any. In the event of a conflict within, between or among all the above listed order of precedent, the more stringent requirement shall apply.

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29. CORRECTION OF DEFICIENCIES

a. Definitions: As used in this section:

- (1) Deficiency means any condition or characteristics in any supplies (which term shall include related technical data) or services furnished hereunder, which is not in compliance with the requirements of this Contract.
- (2) (Correction means any and all actions necessary to eliminate any and all deficiencies.
- (3) Supplies mean the end item(s) furnished by the Contractor and related services required under this Contract.

b. General:

- (1) The rights and remedies of the Commission provided in this section:
 - (i) Shall not be affected in any way by any other provisions under this Contract concerning the conclusiveness of inspection and acceptance; and
 - (ii) Are in addition to and do not limit any rights afforded to the Commission by any other article of this Contract.
- (2) This section shall apply only to those deficiencies discovered by either the Commission or the Contractor within one year after acceptance.
- (3) The Contractor shall not be responsible under this section for the correction of deficiencies in Commission furnished property, except for deficiencies in installation, unless the Contractor performs or is obligated to perform any modifications or other work on such property. In that event, the Contractor shall be responsible for correction of deficiencies to the extent of such modifications or other work.
- (4) The Contractor shall not be responsible under this section for the correction of deficiencies caused by the Commission.

c. Deficiencies in accepted supplies or services:

- (1) Notice to Contractor - Recommendation for Correction: If the Contracting Officer determines that a deficiency exists in any of the supplies or services accepted by the Commission under this Contract, he shall promptly notify the Contractor of the deficiency, in writing, within 30 days. Upon timely notification of the existence of such a deficiency, or if the Contractor independently discovers a deficiency in accepted supplies or services, the

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Contractor shall promptly submit to the Contracting Officer his recommendation for corrective actions, together with supporting information in sufficient detail for the Contracting Officer to determine what corrective action, if any, shall be undertaken.

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

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result of such correction of deficiencies, except as may be agreed to by the Commission in a supplemental agreement with adequate consideration.

- (2) It is hereby specifically recognized and agreed by the parties hereto that this section shall not be construed as obligating the Commission to increase the Contract price of this Contract.
- f. Failure to correct: If the Contractor fails or refuses to
 - (1) present a detailed recommendation for corrective action in accordance with subsection c. of this section,
 - (2) correct deficiencies in accordance with subsection c.(3) of this section, or
 - (3) prepare and furnish data and reports in accordance with subsection c.(3) of this section,
- g. The Contracting Officer shall give the Contractor written notice specifying the failure or refusal and setting a period after receipt of the notice within which it must be cured. If the failure or refusal is not cured within the specified period, the Contracting Officer may, by contract or otherwise, as required:
 - (1) Obtain detailed recommendations for corrective action;
 - (2)
 - (a) Correct the supplies or services, or
 - (b) Replace the supplies or services; and if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of nonconforming supplies for the Contractor's account in a reasonable manner, in which case the Commission is entitled to reimbursement from the Contractor or from the proceeds for the reasonable expenses of care and disposition, as well as for excess costs incurred or to be incurred; and
 - (3) Obtain applicable data and reports and charge to the Contractor the cost occasioned to the Commission thereby.
- h. Correction of deficient replacements and re-performances: Any supplies or parts thereof corrected or furnished in replacement and any services re-performed pursuant to this section shall also be subject to the section to the same extent as supplies or services initially accepted.
- i. Disassembly/reassembly expense: The Contractor shall be liable for reasonable cost of disassembly/reassembly of larger items necessary to remove the supplies to be inspected and/or returned for correction or replacement.

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30. ASSIGNMENT

- a. Except as otherwise provided in this section, the Contractor shall not transfer any of its rights and obligations under this Contract to third parties without the prior consent of the Commission. The Commission may recognize a third party as successor in interest to the Contract in the event of a transfer of all or substantially all of the assets of the Contractor, a Division of the Contractor involved in the performance of the Contract, or a Parent company providing a performance guarantee 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 of the transfer shall be within the discretion of the Contracting Officer after review of the facts and circumstances surrounding each request. At the discretion of the Contracting Officer, the Contracting Officer may conduct an evaluation of the successor party's capability to perform the Contract in the same manner and to the same extent the Contracting Officer was empowered to conduct 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, it may terminate this Contract for the convenience of the Commission.
- b. Claims for monies due or to become due the Contractor from the Commission under this Contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any institution, upon written notice of such assignment to the Commission. Any such assignment or reassignment shall cover all amounts payable under this Contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. It is the Commission's intent to recognize assignments only to bona fide lending institutions; therefore, assignment to any private corporation, business or individual which does not qualify as such is specifically prohibited.
- c. Any attempt to transfer by assignment not authorized by this section shall constitute a breach of the Contract and the Commission may for such cause, terminate the Contract with the Default provision of these General Provisions, and the Contractor shall be liable to the Commission under the Default section.

31. PRICING OF ADJUSTMENTS

- a. When costs are a factor in any determination of a Contract price adjustment pursuant to the Changes and Changed Conditions section or any other provision of this Contract, such costs shall be in accordance with the Subpart 31.1 of the Federal Acquisition Regulations (48 CFR 31.1).
- b. Notwithstanding any interpretation of the aforementioned contract cost principles and procedures to the contrary, the Commission will not be liable for interest, however represented, on or as a part of any claim, request, proposal or adjustment,

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including equitable adjustments, whether said claim, request, proposal or adjustment, including equitable adjustments, arises under the Contract or otherwise.

- c. Where general and administrative expense is recoverable as part of any pricing adjustment under this Contract, the adjustment shall be based on the relationship between the Contractors' total general and administrative expenses allowable under FAR Part 31 cost principles for all construction-type operations during the fiscal or calendar year covering the actual performance period of the work included in this pricing adjustment, and the Contractor's total cost input (excluding General and Administrative costs) for construction-type operations during the same period, expressed as a percentage, applied to the direct and overhead contract costs included in the pricing adjustment.

32. CERTIFICATE OF CURRENT COST OR PRICING DATA

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

33. ACCOUNTING AND RECORD KEEPING

- a. Applicability. This section shall become effective for and shall apply to any adjustment in the price of this Contract initiated by the Contractor or the Commission. However, where the original amount of this Contract is less than \$1 million, subsection c. of this section does not apply unless the adjustment is expected to exceed \$50,000.
- b. Forward Priced Adjustments. Unless expressly waived in writing in advance by the Contracting Officer, the Contractor shall furnish to the Contracting Officer a cost proposal in advance of performance of any work for which a price adjustment is requested under this Contract. The proposal format shall be as detailed in section 39. The Contractor shall originate such records as are necessary to substantiate all elements of the pricing proposal, current to the date of agreement on the pricing adjustment. Such records supporting the costs of each pricing adjustment request shall be specifically segregated and identified in the Contractor's accounting system as being applicable to the pricing adjustment request.
- c. Post Pricing Adjustments. In addition to the records required to be originated under b. above, in the event pricing of an adjustment under this Contract is not agreed upon between the Contractor and the Contracting Officer prior to the commencement of work for which the pricing adjustment is requested, the Contractor and any subcontractor engaged in work for which the pricing adjustment

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is requested, shall maintain accounts and original cost records specifically segregated and identified by job order or other appropriate accounting procedures approved by the Contracting Officer of all incurred costs related to the work for which the pricing adjustment is requested. The Contractor shall maintain accounts and records which segregate and account for the costs of all work associated with that part of the project for which the pricing adjustment is requested and shall allocate the costs so accumulated between (1) work required under the base Contract; (2) work requested to be reimbursed under the pricing adjustment; and (3) other claim, including but not limited to, changes, differing site conditions, and the like. The accounts and records so established shall accumulate such costs under logical costs groups, such as material, labor, equipment, subcontracts, field overhead and the like. The Contractor shall record these costs on a form approved by the Contracting Officer. Subject to agreement between the Contractor and the Contracting Officer, or upon direction of the Contracting Officer for work under section 58, the Contractor shall use Form C-113 (Daily Report - Labor Materials and Equipment). The terms of section 58.d of this Contract shall apply regardless of the form used.

- d. Availability. The accounts, records and costs information required to be originated under b. and c. above together with all other accounts, records and costs information related to this Contract shall be maintained and made available by the Contractor and subcontractor(s).
 - (1) At the office of the Contractor or subcontractor(s) at all reasonable times for inspection, audit, reproduction or such other purposes as may be required by the Contracting Officer or by anyone authorized access to the records by the Contracting Officer or pursuant to any other provisions of this Contract.
 - (2) Until the expiration of three years from the date of payment of the final \$100 (final payment) under this Contract or such lesser time as is specified in Subpart 4.7 of the Federal Acquisition Regulations and for such longer period, if any, as is required by applicable statute, or by other section of this Contract, or by subparagraphs (i) and (ii) of this paragraph:
 - (i) If the Contract is completely or partially terminated, for a period of three years from either the date of any resulting final settlement or the date of final payment whichever is the greater period; and
 - (ii) If a pricing adjustment is involved in any appeal under the Disputes section of this Contract or in any litigation related to this Contract, for a period of one (1) year following the final disposition of the appeal or litigation.
- e. When asserting a claim under the various provisions of this Contract, the Contractor shall grant the Commission access to review and ascertain the validity of the

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accounting records being maintained for segregation of costs, including base cost records, and to audit such costs as are deemed appropriate by the Contracting Officer. No payment shall be made to the Contractor on its claim until such records are made available and access is permitted.

- f. Limitation on Pricing Adjustment. In the event the Contractor or any subcontractor fails to originate or to maintain, or to make available any accounts or records as required under this or any other section of the Contract, any pricing adjustment or portion thereof previously granted by the Contracting Officer for which records are not available shall be rescinded and recomputed, or if a pricing adjustment has not yet been granted shall be computed, in an amount not to exceed the direct costs for the affected work for which accounts or records are not available, plus a single mark-up for indirect expenses not to exceed ten percent of the direct costs so determined by the Contracting Officer. The adjustment will be established by the Contracting Officer based upon, at his or her election, either,

- (1) an audit of any existing books and records of the Contractor or subcontractor; or
- (2) a Commission estimate adopted by the Contracting Officer, or
- (3) a combination of (1) and (2);

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

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

34. COST OR PRICING DATA

- a. The Contractor shall submit to the Contracting Officer, either actually or by specific identification in writing, cost or pricing data under the conditions described in this subsection and certify that, to the best of his knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of the date of execution, which date shall be as close as possible to the date of agreement on the negotiated price of the Contract modification. The cost or pricing data shall be submitted at the time the Contractor submits his proposal for the pricing of any modification to this Contract, whether or not cost or pricing data was required in connection with the initial pricing of the Contract, when the modification involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed \$100,000, or less at the discretion of the Contracting Officer.

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The submittal of certified cost or pricing data shall not be required if the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The Contractor agrees that the terms adequate price competition and established catalog or market prices of commercial items sold in substantial quantities to the general public shall be determined by the Contracting Officer in accordance with the guidelines as set forth in Subpart 15.4 of the Federal Acquisition Regulations (48 CFR 15.4).

- b. Cost or pricing data consists of all facts existing up to the time of agreement on price which prudent buyers and sellers would reasonably expect to have a significant effect on the price negotiations for the modification. The definition of cost or pricing data embraces more than historical accounting data; it also includes where applicable, such factors as subcontractor, supplier and Contractor quotations, non-recurring costs, changes in construction methods, unit cost trends such as those associated with labor efficiency and any management decisions which could reasonably be expected to have a significant bearing on costs under the proposed modification and the Contract work. Cost or pricing data consists of all facts which can reasonably be expected to contribute to sound estimates of future costs as well as to the validity of costs already incurred. Cost or pricing data, being factual, is that type of information which can be verified. Because the certificate pertains to cost or pricing data, it does not make representations as to the accuracy of the Contractor's judgment on the estimated portion of future costs or projections. The certificate does, however, apply to the data upon which the Contractor's judgment is based.

35. CIVIL RIGHTS

- a. Compliance with Nondiscrimination Requirements. During the performance of this Agreement, Contractor for itself, its assignees, and successors in interest (hereinafter collectively referred to as "Contractor") agrees as follows:
 - (1) Compliance with Regulations: Contractor will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
 - (2) Non-discrimination: Contractor, with regard to the work performed by it during the term of this Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of Contractors, including procurements of materials and leases of equipment. Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment

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practices when this Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

- (3) Solicitations for Agreements, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential contractor or supplier will be notified by Contractor of Contractor's obligations under this Agreement and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
 - (4) Information and Reports: Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the FTA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish the information, Contractor will so certify to Commission or the FTA, as appropriate, and will set forth what efforts it has made to obtain the information.
- b. Sanctions for Noncompliance: In the event of Contractor's noncompliance with the Non-discrimination provisions of this Agreement, Commission will impose such sanctions as it or the FTA may determine to be appropriate, including, but not limited to (a) withholding payments to Contractor under the Agreement until Contractor complies, or (b) cancelling, terminating, or suspending the Agreement, in whole or in part.
 - c. Incorporation of Provisions: Contractor will include this section in every contract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. Contractor will take action with respect to any contract or procurement as Commission or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Contractor becomes involved in, or is threatened with litigation by a contractor, or supplier because of such direction, Contractor may request Commission to enter into any litigation to protect the interests of Commission. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.
 - d. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

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- (1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- (2) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- (3) 49 CFR Part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- (4) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- (5) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- (6) The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- (7) Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;
- (8) The FTA’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- (9) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- (10) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, Contractor must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087-74100); and

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- (11) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

36. CONFLICT OF INTEREST

- a. Neither the Contractor nor any person or company affiliated with it shall have, during the term of this Contract and any extensions thereof, any contractual or other financial relationship with the Commission, with any Commission prime Contractor, or with any subcontractor or supplier to any Commission prime Contractor other than the contractual relationship established under this Contract, unless an exception is granted as described below.
- b. Upon request of the Contractor and upon full disclosure and for good cause the Contracting Officer may in his sole discretion grant an exception to the requirement of a., above, when in his judgment the exception will not create a conflict between the Contractor's duties and obligations under this Contract and the duties and obligations imposed on the Contractor under the contractual or other relationship for which an exception is requested.
- c. If, during the performance of this Contract and any extension thereof, the Contractor becomes aware of any relationship, financial interest, or other activity in which it or an affiliated person or company is involved which is not in compliance with the subsection a. of this section, it shall promptly notify the Contracting Officer in writing and fully disclose all circumstances thereof. Should the Contracting Officer not grant an exception to the requirements of this section, the Contractor shall, within ten (10) days of written notice from the Contracting Officer to do so, take all action necessary to comply with the terms of subsection a. of this section.
- d. If the Contractor fails to comply with the terms of this section, the Contracting Officer, may withhold payments due under the contract until such time as the Contractor is in compliance or, should the non-compliance remain uncorrected at the expiration of ten (10) days from written notice from the Contracting Officer as provided in subsection c. of this section, terminate the contract for default pursuant to the Default section of this Contract.
- e. The Contractor in performing this Contract shall avoid any conduct which might result in or give the appearance of creating for Commissioners, Officers or employees of the Commission in their relationship with the Contractor any conflicts of interest or favoritism and/or the appearance thereof and shall avoid any conduct which might result in a Director, Officer or employee failing to adhere to the Standards of Conduct adopted by the Commission's Board of Commissioners.

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- f. Any determination by the Contracting Officer under this section shall be final and shall be considered a question of fact within the meaning of the Disputes section of this article.

37. SUBCONTRACT PAYMENTS

- a. The Contractor shall, under this Contract, establish procedures to ensure timely payment of amounts due pursuant to the terms of their subcontracts. The Contractor shall pay each subcontractor for satisfactory performance of its contract, no later than ten (10) days from the date of the Contractor's receipt of payment from the Commission for work by that subcontractor. The Contractor shall also release, within ten (10) days of satisfactory completion of all work required by the subcontractor, any retention withheld from the subcontractor.
- b. The Contractor shall certify on each payment request to the Commission that payment has been or will be made to all subcontractors in accordance with subsection a. of this section. The Contractor shall notify the contracting officer or other delegated authority representative with each payment request, of any situation in which scheduled subcontractor payments have not been made.
- c. If a subcontractor alleges that the Contractor has failed to comply with this section, the Contractor agrees to support any Commission investigation, and, if deemed appropriate by the Commission, to consent to remedial measures to ensure subcontractor payment that is due.
- d. The Contractor agrees that the Commission may provide appropriate information to interested subcontractors who want to determine the status of Commission payments to the Contractor.
- e. Nothing in this section is intended to create a contractual obligation between the Commission and any subcontractor or to alter or affect traditional concepts of privity of contract between all parties.

38. PATENT AND RIGHTS IN DATA

- a. Rights in Data - The following requirements apply to each contract involving experimental, developmental or research work:
 - (1) The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to:

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computer software, engineering drawings and associated lists; specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to Project administration.

(2) The following restrictions apply to all subject data first produced in the performance of this Contract.

(a) Except for its own internal use, the Commission or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Commission or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution

(b) In accordance with 49 CFR § 18.34 and 49 CFR § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1. and (2)(b)2. of this section. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Commission or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Commission and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data

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as defined in paragraph (a) of this subsection and shall be delivered as the Federal Government may direct. This subsection, however, does not apply to adaptations of automatic data processing equipment or programs for the Commission or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Commission and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Commission or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Commission nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Commission or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Commission or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

- (3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Commission and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations,

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"Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

- (4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- b. Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:
 - (1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Commission and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
 - (2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Commission and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.
 - (3) The Contractor also agrees to include the requirements of this section in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

39. ACCESS TO RECORDS

- a. The Contractor agrees to provide the Commission, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 CFR. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

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

40. BUY AMERICA - Not applicable for this solicitation

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

41. CLEAN AIR

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

42. CLEAN WATER

- a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* The Contractor agrees to report each violation to the Commission and understands and agrees that the Commission will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

43. ENERGY CONSERVATION

- a. The Contractor agrees to comply with mandatory standards and policies relating to the energy efficiency which are contained in the applicable state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
- b. The Contractor agrees to include the requirements of this section in all subcontracts under this Contract.

44. FEDERAL CHANGES

Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the relevant grant agreement between the purchaser and FTA, 2 CFR Part 200 and FTA Circular 4220.1F as they may be amended or promulgated from time to time during the term of this Agreement. Contractor's failure to comply shall constitute a material breach of this Agreement.

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

45. FLY AMERICA REQUIREMENTS

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U. S. flag carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

46. GOVERNMENT-WIDE DEBARMENT OR SUSPENSION

- a. The Contractor is bound by its certification contained in its offer to the Commission that neither the Contractor, its principals, or affiliates, are excluded or disqualified,

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as defined at 49 CFR 29.940 and 29.945. The certification is a material representation of fact, relied upon by the Commission 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 Commission, 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 49 CFR 29, Subpart C, throughout the term of this Contract.

- b. The Contractor agrees to include this requirement in all subcontracts at all tiers under this Contract.

47. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

- a. The preceding sections include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (“DOT”), whether expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E or any revisions thereto, are hereby incorporated by reference. Anything to the contrary notwithstanding, all DOT or FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Commission requests which would cause the Commission to be in violation of the FTA terms and conditions.
- b. The Contractor agrees to include this section in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the section shall not be modified, except to identify the subcontractor who will be subject to the provisions.

48. LOBBYING

- a. The Contractor is bound by its certification contained in its offer to the Commission regarding the use of federal or non-federal funds to influence or attempt to influence any Federal officer or employee regarding the award, execution, continuation, or any similar action of any Federal grant or other activities as defined in 31 U.S.C. 1352, 49 CFR Part 19, or 49 CFR Part 20. The Contractor agrees to comply with this requirement throughout the term of the Contract.
- b. The Contractor agrees to include these requirements in all subcontracts at all tiers under this Contract.

49. NO OBLIGATION BY THE FEDERAL GOVERNMENT

- a. The Commission and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Commission, Contractor or any

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other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

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

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

51. RECOVERED MATERIALS

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

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

52. RIGHTS IN DATA AND COPYRIGHTING - FTA

- a. The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists; specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to Project administration.
- b. The following restrictions apply to all subject data first produced in the performance of this Contract.
 - (1) Except for its or WMSC's own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of the U.S. Government, until such time as the Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to Agreements with academic institutions.
 - (2) In accordance with 49 CFR § 18.34 and 49 CFR 19.36, the Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, the following subject data for Federal Government purposes:
 - (i) Any subject data developed under this Contract whether or not a copyright has been obtained; and
 - (ii) Any rights of copyright to which the contractor purchases ownership with Federal assistance.
- c. When the Federal Transit Administration (FTA) provides financial assistance for a planning, research, development, or a demonstration project, it is FTA's general intention to increase mass transportation knowledge, rather than limit the benefits of the Project to participants in the Project. Therefore, unless FTA determines otherwise, the Contractor agrees that, in addition to the rights set forth in subsection b.(2) of this section, FTA may make available to any FTA recipient, sub-recipient, third party contractor, or third-party subcontractor, either FTA's license in the copyright to the subject data derived under this Contract or a copy of the subject

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data first produced under this Contract. If this Contract is not completed for any reason whatsoever, all data developed under this Contract shall become subject data as defined in subsection a. of this section and shall be delivered as the Government may direct.

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

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

54. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS

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

- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other

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things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor, or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

- (2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

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PART II, ARTICLE 2 - SPECIAL PROVISIONS

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PART II, ARTICLE 2 - SPECIAL PROVISIONS

1. PERIOD OF PERFORMANCE

- a. The period of performance is a maximum of 365 calendar days commencing on the date of award.
- b. If applicable, all required safety, insurance, bonds and pre-employment background checks must be complete before commencing work on site.

2. DELIVERY SCHEDULE

- a. The Commission requires delivery as specified below:
 - (1) Provide reports on findings of the evaluation of each task assigned in the State Safety Oversight Services. Formal and informal recommendation for changes and improvements will be documented and executed. Develop presentations and reports as necessary. Provide implementation support to various WMSC offices as assigned.
 - (2) Processes and procedures for reporting on task order implementation.
 - (3) Implementation of a process and/or system to obtain projected quarterly expenditure forecasts by project.
 - (4) Completion of all assigned task orders and annual service orders as specified by WMSC and within the cost and time constraints expressed therein.
 - (5) All deliverables become the property of WMSC, to be used as required by WMSC.

3. OPTIONS/OPTION QUANTITIES

- a. The Commission has the unilateral right to extend the contract by exercising the option or options (as applicable) subject to all terms and conditions herein.
- b. The Commission may exercise the option(s) (if any) by written notice to the Contractor prior to commencement of the option period; provided, that the Commission shall give the contractor a preliminary notice of its intent to extend at least 30 days before the contract expires. The preliminary notice does not commit the Commission to an extension.

4. AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR

Funds are not presently available for performance under this Contract beyond the fiscal year which ends June 30, 2022. The Commission's obligation for performance of this Contract beyond that date is contingent upon the availability of funds from which payment

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for contract purposes can be made. No legal liability on the part of the Commission for any payment may arise for performance under this Contract until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing, by the Contracting Officer. Any option exercised by the Commission which will be performed in whole or in part in a subsequent fiscal year is subject to availability of funds in the subsequent fiscal year is subject to availability of funds in the subsequent fiscal year and will be governed by the terms of this section.

5. PRICING

Prices on the Cost Proposal Schedule Sheet(s) submitted must include all associated costs, including but not limited to, travel, markups, overhead, and profit. Multiplier pricing should be clearly reflected and delineated in a separate spreadsheet specifying the line item detail of stated multiplier.

6. PAYMENT TERMS

- a. Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award and will be taken if payment is made within the discount period indicated in the offer by the Contractor.
- b. Partial payments are authorized upon receipt of supplies or services, acceptance by the COTR, and a properly executed invoice.

7. BILLING AND PAYMENT

- a. Payment will be made Net 30 after receipt and acceptance of a properly completed and accepted invoice. Invoices are to be electronically submitted to Bill.com with a copy of the invoice sent to Sharmila Samarasinghe via email to the address provided at the time of contract execution.
- b. Invoices shall contain the following information: date, contract and order number (if any), item numbers, description of supplies or services, sizes, quantities, unit prices, and extended totals. Final invoices must clearly be marked "FINAL" and cite the amount of the contract, amount previously paid, and the balance due.

8. POINT OF CONTACT

All inquiries are to be directed to:

Washington Metrorail Safety Commission
Attn: Heather Obora
Phone: (312) 965-2353
Email: hobora@wmisc.gov

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9. CONTRACTOR PERSONNEL

- a. The Contractor shall replace employees who the Commission judges to be incompetent, careless, unsuitable or otherwise objectionable, or whose continued use is deemed contrary to the best interests of the program. The reason for replacement will be discussed between the Contractor and the Commission before a replacement request is issued. Upon receipt of a written request from the Commission, the Contractor shall proceed with the replacement unless the Contractor is able to demonstrate that the Commission request is unreasonable. The replacement request will include the desired replacement date and the reason for the request. The Contractor shall affect the replacement in a manner that does not impact quality, cost or schedule.

10. MOST FAVORED CUSTOMER

The Contractor shall voluntarily provide the Commission with the benefits of any more favorable terms it has, or negotiates, with any organization or facility whose circumstances and operations are substantially the same as those of the Commission.

11. 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. Any failure by the Contractor to do so will not relieve the Contractor from responsibility for successfully performing work without additional expense to the Commission. The Commission assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations are expressly stated in the Contract.

12. INDEMNITY

Consultant shall indemnify, defend and hold harmless WMSC, its commissioners, officers, employees and agents, from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorney's fees), of whatsoever kind and nature for all bodily injury and property damage liability sustained by WMSC that is caused by the negligence of Consultant; provided, however, the Consultant shall indemnify, defend and hold harmless WMSC, its directors, officers, employees and agents, from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorney's fees) for all bodily injury or property damage suffered by the Consultant or its employees while providing services under the Contract, irrespective of any negligence or fault on the part of WMSC or its employees.

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13. GENERAL INSURANCE REQUIREMENTS

Consultant shall procure, at its sole cost and expense, and shall maintain in force at all times during the term of this Contract, the insurance outlined in section 14. All insurance companies must have an A.M. Best rating of “A-/VII” or better and be approved by WMSC. All required insurance policies must

- (1) Be written in accordance with the requirements as applicable;
- (2) Be endorsed to include a provision that the policy shall not be canceled, materially changed, or non-renewed without at least thirty (30) days prior written notice to WMSC Office of Insurance;
- (3) State or be endorsed to provide that the coverage afforded under Consultant’s policies shall apply on a primary basis and not on an excess or contributing basis with any policies that may be available to WMSC, and
- (4) Have self-insurance retentions or policy deductibles no greater than \$100,000, unless approved in writing by WMSC, whose approval shall not be unreasonably withheld.

Policies must be written on an occurrence basis; a claims made basis is not acceptable, except for Professional Liability.

Consultant shall furnish evidence of all required insurance prior to the start of any work on WMSC property. Certificates of insurance (COI) and all applicable endorsements may be submitted to WMSC in lieu of copies of insurance policies. However, WMSC reserves the right to request copies of policies of any required insurance as denoted below. If requested by WMSC, Consultant shall deliver to WMSC within thirty (30) days of the request, a copy of such policies, certified by the insurance carrier as being true and complete.

COIs shall 1) disclose any deductible, sublimit, self-insured retention, aggregate limit or any exclusions to the policy that materially change the coverage; 2) show WMSC as an additional insured for Commercial General Liability and Automobile Liability; 3) reference the contract number, and 4) expressly reference the inclusion of all required endorsements. All endorsements must include policy numbers.

At least two (2) weeks prior to the expiration of the policies, Contractor shall provide renewal COIs and all applicable endorsements to WMSC, with terms and limits no less favorable than the expiring insurance policies.

Evidence of insurance coverage – insurance certificates and endorsements (and the complete Railroad Protective Liability policy, if applicable) – stating the work to be performed shall be submitted to WMSC at least ten (10) business days prior to commencement of operations and from time to time at WMSC request. Consultant shall not be allowed to proceed until the evidence of insurance has been received and approved in writing by WMATA. All evidence of insurance shall be sent via email to:

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Washington Metrorail Safety Commission
Attn: Heather Obora
Email: hobora@wmisc.gov

14. Required Insurance

Commercial General Liability Insurance with minimum limits of \$1,000,000 per occurrence/\$2,000,000 aggregate, written on an occurrence form. The coverage shall include:

Contractual liability
Personal and advertising injury liability
Products and completed operations liability
Independent contractor's liability
Terrorism coverage
Additional Insured Endorsement naming WMSC

Workers' Compensation Insurance meeting the statutory requirements of the jurisdiction where the work will be performed, including Employer's Liability coverage with minimum limits of \$1,000,000 each accident or disease.

Business Automobile Liability Insurance with minimum combined single limits of \$1,000,000 per occurrence covering Consultant against claims for bodily injury and property damage arising out of the ownership, maintenance or use of any owned, hired, or non-owned motor vehicle. WMSC shall be added as an additional insured on the policy.

Professional Liability/Errors and Omissions Insurance with minimum limits of \$10,000,000 per claim covering actual or alleged negligent acts, errors or omissions committed by the Consultant in the performance of activities under this Contract, regardless of the type of damages. If the insurance is on a claim(s) made basis, Consultant shall maintain continuous insurance coverage during the term of this Contract. The policy retroactive date must coincide with or precede the effective date of Consultant's services under the Contract and shall continue until the termination of the Contract. The policy must allow for reporting of circumstances or incidents that might give rise to future claims, and an extended reporting period of at least one year must be purchased in the event ongoing coverage is not maintained.

15. LAWS AND REGULATIONS

Each Contractor shall be responsible to fully inform themselves of the requirements for and to comply with any applicable State of Maryland, Commonwealth of Virginia, District of Columbia, Federal and jurisdictional laws and regulations governing the service to be provided under the contract. Further, each contractor shall be responsible to obtain, at its own cost and expense, any and all licenses/permits required to transact business in any political jurisdictions to be serviced.

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16. FEDERAL/LOCAL/STATE SALES TAX

- a. Pursuant to the WMSC 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 Commission has been accorded exemption from taxes as follows:

“The Commission 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 Contractor certifies that none of the taxes as to which the Commission is exempt are included in its proposal price(s) or the final Contract Price. In the event that the Commission learns that any taxes to which the Commission is exempt are included in the final Contract Price, the Commission 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.

17. PRIME CONTRACTOR DBE RESPONSIBILITIES

- a. If the contract value is over \$100,000, the prime contractor will be responsible for submitting a monthly report of the status of its DBE subcontractors as outlined in Appendix B.
- b. Reports shall be submitted monthly to the Commission Representative.

18. CONTRACTING OFFICER’S TECHNICAL REPRESENTATIVE (COTR)

- a. The work will be conducted under the general direction of the Contracting Officer. Commission will be delegated to the Contracting Officer's Technical Representative (COTR) to take the following actions;

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- (1) Act as the principal point of contact with the contractor. Submit a copy of each item of incoming correspondence and a copy of any enclosures shall also be submitted to the Contract Administrator;
 - (2) Approve in writing the contractor's progress schedule and submittals when required;
 - (3) Inspect the work for compliance with the contract;
 - (4) Review and approve invoices and payment estimates. Forward invoices and receipts to accounting. Bring to the attention of the Contracting Officer any significant discrepancies in, or disputes concerning, contractor invoices of payments. In those cases, requiring release of final retained percentages of payment, the COTR will make his recommendations in writing to the Contracting Officer;
 - (5) Coordinate correspondence with the Procurement Coordinator if its importance significantly impacts the contractual terms and obligations;
 - (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 Commission estimate for Proposed Contract Modifications. Participate in negotiations of modifications;
 - (10) Approve, in writing, the contractor's progress schedule when required;
 - (11) Receive from the contractor, monthly, if applicable, DBE status;
 - (12) Maintain a comprehensive file record of documents and correspondence concerning contract activities and actions;
 - (13) Provide the Procurement Coordinator 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 the contract is ready for closeout. Return the file, containing all records, correspondence, etc., to the Procurement Coordinator.
- b. There are certain actions which are reserved for only the Contracting Officer. They are:
- (1) Approval of contract modification proposals and/or other unilateral actions.

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- (2) Issuance of written orders to stop and/or resume work under Section 10, "Stop Work Orders", of the General Provisions.
 - (3) Negotiation with the Contractor for adjustment of contract price and/or time.
 - (4) The COTR is not authorized to render final decision under the Disputes section of the General Provisions.
 - (5) The COTR is not authorized to issue Termination Notices pursuant to the terms of this Contract.
- c. The presence or absence of the COTR or his inspectors shall not relieve the Contractor from any requirements of the contract.

19. ORGANIZATIONAL CONFLICT OF INTEREST

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

20. RIGHTS IN TECHNICAL DATA - UNLIMITED

[This section, when used, supersedes General Provision Section No. 24, "Rights in Technical Data"].

- a. The Commission or any third party designated by the Commission to assist it in the administration of this Contract, or the inspection or verification of the product produced under this Contract, shall have the right to use, duplicate or disclose technical data, which includes computer software, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so:
- (1) Any manuals, instructional materials prepared for installation, operation, maintenance or training purposes;
 - (2) Technical data pertaining to end items, components or processes which were prepared for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data; e.g., specification control drawings, catalog sheets, outline drawing; except for the computer software it means data identifying source, functional characteristics, and

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performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software);

- (3) Other technical data which has been, or is normally furnished without restriction by the Contractor or subcontractor;
 - (4) Other specifically described technical data which the parties have agreed will be furnished without restriction;
 - (5) All computer software regardless of whether it is technical data as defined In Section 25 of this Article, including the source code, algorithm, process, formulae, and flow charts, which is developed or materially modified by the Contractor for the Commission or for which the Commission is required by federal law or regulation to provide a royalty-free, irrevocable and nonexclusive license to the federal government.
- b. The Commission shall have the right to use, duplicate, or disclose technical data other than that defined in subsection a. of this section in whole or in part, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data, be
- (1) Released or disclosed in whole or in part outside the Commission,
 - (2) Used in whole or in part by the Commission for manufacture, or
 - (3) Used by a party other than the Commission except for: (i) emergency repair or overhaul, (ii) where the item or process concerned is not otherwise reasonably available to the Commission to enable timely performance of the work, or (iii) administration of this Contract or the inspection or verification of the product produced under this Contract where the third party has a written contract with the Commission to perform these efforts. In all cases described in this paragraph, the release or disclosure outside of the Commission shall be subject to a written prohibition against further use, release or disclosure by the party receiving the technical data.
- c. Technical data provided in accordance with subsection b. of this section shall be identified by a legend which suitably recites the aforesaid limitation. Nothing herein shall impair the right of the Commission to use similar or identical data acquired from other sources.
- d. Where any item is purchased as a separate line item in the contract, that purchase includes all integral parts of that item, including any computer software, source codes, algorithms, processes, formulae, and flow charts. As such, the Commission 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 have or permit others to do so. Should disclosure of the computer software be required only under this subsection, then the Contracting

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Officer may waive the provisions of this subsection if he certifies in writing that the item is commercially available from multiple sources and the product from any of those sources will be fully compatible with existing Commission property.

- e. The term technical data as used in this section means technical writing, computer software, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of a technical nature, whether or not copyrighted, which are specified to be delivered pursuant to this Contract. The term does not include financial reports, cost analyses, and other information incidental to Contract administration. Computer software as used in this section means computer programs, computer data bases, and documentation thereof.
- f. Material covered by copyright:
 - (1) The Contractor agrees to and does hereby grant to the Commission, and to its officers, agents and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for Commission purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all (i) technical data and (ii) computer software covered by Section 25.a.(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 Section 25.a.(5) furnished hereunder without the written permission of the copyright owner for the Commission to use such copyrighted matter in the manner above described.
 - (3) The Contractor shall report to the Commission (or higher-tier contractor) promptly and in reasonable written detail each notice or claim of copyright infringement received by the Contractor with respect to any (i) technical data or (ii) computer software covered by Section 25.a.5. provided to the Commission.
- g. Relation to patents: Nothing contained in this section shall imply a license to the Commission under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Commission under any patent.
- h. Any dispute under this section shall be subject to the Disputes section of this Contract.
- i. Notwithstanding any other payment provision in this Contract, the Contracting Officer may retain from payment up to 10 percent of the contract price until final delivery and acceptance of the technical data defined in this section and as required to be furnished by the bid schedule or the contract specification.

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21. LIQUIDATED DAMAGES

- a. The Contractor understands that if it fails to complete portion of and/or all of the work as described herein Period of Performance of these Special Provisions, the Commission will suffer damages which have been estimated and are specified below:
- b. The Contactor agrees that if it does not complete the work within the specified Period of Performance, then the Contractor shall pay to the Commission as liquidated damages, Termination for Default, Damages for Delay, the sum of \$2,000 per calendar day as separate damages for each specified failed completion requirement in a. above.

22. FORCE MAJEURE

The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage under the following circumstances:

- a. If the delay in performing this work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the Commission in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers at any tier arising from causes other than normal weather beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers.
- b. The rights and remedies of the Commission provided in this section are in addition to any other rights and remedies provided by law or under this Contract.

23. GARNISHMENT OF PAYMENTS

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

24. GOVERNING LAW

This Contract shall be deemed to be a Contract under and shall be governed by the law of the District of Columbia, exclusive of its conflict of law principles, and the common law of the U.S. Federal contracts including precedents of the Federal Boards of Contract Appeals.

25. 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 in which the

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work is being performed, as well as the Department of Labor OSHA standards pertaining to the safe performance of the work. In the absence of a specific Construction Industry Standard, the Contractor would be 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, and the American National Standards Institute (ANSI) guidelines. For contracts in which work is performed on, or interfaces with the Metrorail System, the Contractor shall also comply with the publication titled Metrorail Safety Rules and Procedures Handbook. Further, the Contractor shall ensure that all methods of performing the work do not involve danger to the personnel employed thereon, the public and private property, whether or not these methods are cited or indicated in the Contract documents. Should charges of violation of any of the above be issued to the Contractor in the course of the work, a copy of each charge shall be immediately forwarded to the Commission Representative.

- b. The contractor shall provide, at the site of the work, a first aid kit which shall be fully equipped to meet the needs of the anticipated work force.

26. NOTIFICATION OF FEDERAL PARTICIPATION

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

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PART III - TECHNICAL SPECIFICATIONS

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PART III - TECHNICAL SPECIFICATIONS

1. General

The Washington Metrorail Safety Commission (WMSC), as the SSOA, is seeking assistance with its oversight responsibilities related to rail transit safety. This Request for Proposal (RFP) seeks contractor support and assistance in developing and implementing WMSC's State Safety Oversight Program (SSOP) for its client to meet all requirements as established in federal law by 49 U.S.C. § 5329(e) and promulgated by rules in 49 CFR Part 674. The selected Contractor(s) will assist WMSC in the implementation of its work effort. The selected contractor will assist in completing specific elements, as determined by the WMSC, in its execution of the SSOP. As WMSC works toward assisting its client in achieving full compliance with FTA regulations in 49 CFR Part 674, the contractor services will include ongoing oversight activities under 49 CFR Parts 674 that begin upon contract execution. Once WMSC's client achieves full compliance with 49 CFR Part 674, the contractor services will continue to include ongoing oversight activities compliant with 49 CFR Part 674.

2. Objectives

MAP-21 authorizes a comprehensive Public Transportation Safety Program, codified by 49 U.S.C. 5329. As part of this comprehensive program, section 5329(e) significantly revises the existing State Safety Oversight (SSO) requirements and increases oversight responsibilities by States.

The work efforts represented in this procurement will assist WMSC, the State Safety Oversight Agency (SSOA) in meeting these requirements.

3. Current Operations

In enacting MAP-21, Congress differentiated between a State Safety Oversight Agency (SSOA) and a State Safety Oversight Program (SSOP).

In essence, a SSOA is a State agency that is obliged to interpret, administer, and enforce the State statutes enacted by a State legislature and the State regulations and program standards developed by a Governor and his or her designees in the executive branch of State government.

An SSOP is the collection of laws, rules, and administrative standards that define the minimum requirements for safety of rail public transportation in the State; the financial, physical, and human resources necessary to establish and maintain the SSOA; and the system of checks and balances, within State government, that holds an SSOA accountable for its actions.

The Commonwealth of Virginia, State of Maryland and the District of Columbia, currently adheres to the FTA requirements of 49 CFR Part 674 regarding rail transit safety and

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WMSC serves as the SSOA for these three jurisdictions. There is a single, regional transit authority, WMATA, which is subject to oversight by the Commission.

The scope of work will include the review and evaluation of the WMSC's client in executing its SSOA responsibilities. The selection of technical specialists to fill these requirements will be at the discretion and direction of the Chief Operating Officer.

A. **THE SCOPE OF SERVICES IS DIVIDED INTO THE FOLLOWING DETAILED SERVICES AND FUNCTIONS:**

- (1) **Technical Specialist Vehicles:** Level of Support: not expected to exceed 1400 hours/year (estimated)

Assist in the following:

- (i) Inspect the condition of client's rail vehicles (revenue and non-revenue, such as the track geometry vehicle);
- (ii) Perform detailed assessments, as required by FTA Safety Advisories, WMSC Program Standard safety certification requirements, NTSB Safety Recommendations, and other requirements, as appropriate
- (iii) Audit areas of client's Agency Safety Plan involving vehicles (i.e., maintenance, training, etc.), providing a thorough report detailing any findings
- (iv) Assist in FTA, NTSB or other agency investigations of client's rail vehicles, as needed
- (v) Provide review and ensure client's capital projects follow requirements involving rail vehicles
- (vi) Participate in relevant WMSC-led meetings
- (vii) Provide review and ensures client's capital projects follow requirements involving rail vehicles (safety certification).
- (viii) Other rail vehicle related SSOA activities, as directed

- (2) **Technical Specialist Signals and Communications.** Level of Support: 500 hours/year (estimated)

Assist in the following:

- (i) Inspect the condition of client's radio and communications infrastructure; performs detailed assessments as required by FTA Safety Advisories, WMSC Program Standard safety certification

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- requirements, NTSB Safety Recommendations, and other requirements, as appropriate
- (ii) Assist in FTA, NTSB or other agency investigations of client's signal systems, as needed
 - (iii) Provide review and ensures client's capital projects follow requirements involving radios and communications systems
 - (iv) Participate in relevant WMSC led meetings
 - (v) Inspect the condition of client's signal and train control infrastructure; performs detailed assessments as required by FTA Safety Advisories, WMSC Program Standard requirements, NTSB Safety Recommendations, and other requirements, as appropriate
 - (vi) Audit areas of client's Agency Safety Plan involving train signals, controls, and communications (i.e. maintenance, training, etc.) providing a thorough report detailing any findings.
 - (vii) Provide review and ensures client's capital projects follow requirements involving signal, ATC, and communications systems (safety certification).
 - (viii) Participate in relevant WMSC-led meetings, and serves as WMSC representative in relevant client or other agency meetings
 - (ix) Provide support of other rail signals and communications related SSOA activities, as directed
- (3) Technical Specialist Traction Power. Level of Support: 250 hours/year (estimated)

Assist in the following:

- (i) Provide analyst level support on an as-needed basis on all traction power related state safety oversight work activities on the client's system and manager documentation.
- (ii) Inspect the condition of client's traction power infrastructure; performs detailed assessments as required by FTA Safety Advisories, WMSC Program Standard safety certification requirements, NTSB Safety Recommendations, and other requirements, as appropriate.
- (iii) Audit areas of client's Agency Safety Plan involving traction power (i.e. maintenance, training, etc.) providing a thorough report detailing any findings
- (iv) Assist in FTA, NTSB or other agency investigations of client's traction power systems, as needed

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- (v) Provide review and ensures client's capital projects follow requirements involving traction power systems (safety certification)
 - (vi) Participate in relevant WMSC-led meetings
 - (vii) Conduct inspections with support from technical program specialists
 - (viii) Participate in relevant triennial reviews that relate to traction power
 - (ix) Provide support of other traction power related SSOA activities, as directed
- (4) Technical Specialist Accident Investigations/Emergency Management/Fire Life Safety. Level of Support: 500 hours/year (estimated)

Assist in the following:

- (i) Provide analyst level support to Operations SME, on an ongoing frequency on all accident investigations on the client's system and manages documentation
- (ii) Assist in audits of client's Agency Safety Plan involving hazard management and accident investigations (i.e. maintenance, training, etc.), providing a thorough report detailing any findings
- (iii) Assist in leading investigations for investigations that client elects to investigate independently;
- (iv) Assist in FTA, NTSB or other agency investigations of client, as needed
- (v) Participate in relevant WMSC-led meetings, and serves as WMSC representative in relevant client or other agency-led meetings
- (vi) Provide day to day ongoing support to Operations SME, as needed
- (vii) Inspect the condition of client's Subway Fire-Life Safety Equipment (stand pipes, exits, call boxes, exhaust fans, etc.), and lighting; perform detailed assessments as required by FTA Safety Advisories, WMSC Program Standard safety certification requirements, NTSB Safety Recommendations, and other requirements, as appropriate
- (viii) Audit areas of client's Agency Safety Plan involving Subway Fire-Life Safety Equipment (i.e. maintenance, training, etc.) and emergency preparedness, providing a thorough report detailing any findings
- (ix) Provide review and ensure client's capital projects follow requirements involving public safety/emergency management

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- (x) Conduct inspections
 - (xi) Participate in triennial audits relevant to emergency management
 - (xii) Other emergency management, fire/life safety SSOA activities, as directed
- (5) Technical Specialist Track and Structure. Level of Support: 250 hours/year (estimate)As needed

Assist in the following:

- (i) Provide ongoing project analyst support to Track and Structures SME
 - (ii) Inspects the condition of client's static structures, including buildings, bridges, and tunnels; performs detailed assessments as required by FTA Safety Advisories, WMSC Program Standard safety certification requirements, NTSB Safety Recommendations, and other requirements, as appropriate
 - (iii) Audit areas of client's Agency Safety Plan involving track (i.e. maintenance, training, Fire/Life Safety etc.), providing a thorough report detailing any findings
 - (iv) Assist in FTA, NTSB or other agency investigations of client's track, as needed
 - (v) Participates in relevant WMSC-led meetings, and serves as WMSC representative in relevant client or other agency-led meetings
 - (vi) Inspects the condition of client's track infrastructure; performs detailed assessments as required by FTA Safety Advisories, WMSC Program Standard safety certification requirements, NTSB Safety Recommendations, and other requirements, as appropriate
 - (vii) Provide review and ensure client's capital projects follow requirements involving track and infrastructure
 - (viii) Participates in relevant WMSC-led meetings
 - (ix) Other track and structures related SSOA activities, as directed
- (6) Technical Specialist Operations. Level of Support: 250 hours/ year (estimate)

Assist in the following areas:

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- (i) Provides analyst level day to day support to Operations SME in corrective action plan management
- (ii) Provides analyst level day to day support to Operations SME on triennial safety and
- (iii) Security audits
- (iv) Review client programmatic documents such as Agency Safety Plans and procedures
- (v) Audit areas of client's Agency Safety Plan involving areas such as Rail Operations, Supervision, Control, Emergency Procedures, Track Access, and associated training; as well as Drug and Alcohol Program, Employee Fitness for Duty/Hours of Service, providing a thorough report detailing any findings
- (vi) Assist in FTA, NTSB or other agency investigations of client's signal systems, as needed
- (vii) Provide review and ensure client's capital projects follow requirements involving operating practices
- (viii) Participates in relevant WMSC-led meetings
- (ix) Other operations related SSOA activities, as directed
- (7) Safety Certification/Level of Service: 250 hours/year
- (8) Surge Capacity for any of the above roles or programmatic support in areas such as Agency Safety Plan (ASP), review, support with Audits of the WMSC such as FTA Triennial Audits, etc.
Level of Service: 375 hours/year
(estimated)

B. TECHNICAL DIRECTION

The work will be conducted under the general direction of the Chief Operating Officer. Specific individuals from the Office of Safety Operations may be designated by the Chief Operating Officer as Program Managers (PMs) assigned to this Contract.

The Chief Operating Officer will provide direction and assignments to the PM.

C. RESPONSIBILITIES

Provide professional, technical and safety oversight assistance to evaluate and implement the safety oversight functions to support the WMSC which includes but is not limited to: organizational structure review, initiate processes to streamline project delivery, recommend and implement project controls, establish and support contract management and establish project delivery systems with existing systems or augment existing systems,

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prepare review and audit of operations, policy and procedures of WMSC client and ensure compliance is all applicable laws and regulations applicable to the client's operation.

ADDITIONAL REQUIREMENTS

a. General

All correspondence shall be addressed to the Chief Operating Officer in relation to task orders issued against this Contract.

b. Specific

The Program Manager (PM) shall attend or be represented at meetings and conferences with officials of WMSC as requested. All such meetings and conferences shall be made a matter of record. The PM is responsible for preparing a memorandum stating the time and place of the meeting, the names and departmental identification of those present, and maintain minutes of matters discussed and agreements reached therein.

c. Technical Files and Other Data

Documentation produced under this Contract and provided by WMSC for reference purposes shall become the property of WMSC. It shall be maintained neatly and protected from undue deterioration and shall be made available in electronic and other format upon request by WMSC for reference purposes or retention and shall not be disposed of unless such disposal is authorized by the Chief Operating Officer.

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APPENDIX A

**Certification Regarding Debarment, Suspension and Other
Ineligibility and Voluntary Exclusion**

The Contractor, _____, certifies by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or WMSC. The above Contractor further certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801 *et seq.*, are applicable to the proposal.

Where the Contractor is unable to certify any of the statements in this certification, the Contractor must attach an explanation to this proposal.

Authorized Official

Title of Authorized Official

Date

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APPENDIX B

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

1. DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENT:

- a. The DBE requirements of the Commission's DBE Program Plan apply to this Contract. Accordingly, the Contractor shall carry out the requirements of the Commission's DBE Program Plan and this Appendix in the award and administration of U.S. Department of Transportation (US DOT) assisted contracts.

2. POLICY:

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

3. CONTRACT GOAL:

If the Contractor is not a DBE, then the Contractor agrees that the DBE goal for this Contract will be met by subcontracts or by joint ventures with DBE's. The goal set forth for this Contract is **20%** of the final Contract price, including amendments and modifications. The amount of DBE participation will be determined by the dollar value of the work performed and/or supplies furnished by DBE firms as compared to the total value of all work performed and/or supplies furnished under this Contract. The Contractor shall have met this goal if the Contractor's DBE participation meets or exceeds this goal.

- a. In cases where work is added to the Contract by modification such that additional DBE participation is necessary to meet this goal, the Contractor shall increase the participation of one or more firms listed on the "Schedule of DBE Participation" or submit additional DBE firms to meet the goal. In cases where work is deleted from the Contract, the goal shall be applicable to the new Contract amount. The Contractor shall be permitted to meet the goal by revising its DBE participation, provided, however, that the revision shall not result in DBE participation that is less than the original goal.

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

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4. DEFINITIONS:

- a. **Contractor.** Contractor means one who participates, through a contract or subcontract (at any tier), in a US DOT assisted highway, transit or airport program.
- b. **DBE.** A DBE means a for-profit small business concern that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged individuals or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- c. **Good Faith Efforts.** “Good faith efforts” means efforts to achieve a DBE goal or other requirements of the Commission’s DBE Program Plan which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the goal program requirement.
- d. **Joint Venture.** Joint Venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture is commensurate with its ownership interest.
- e. **Personal Net Worth.** Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual’s personal net worth does not include the individual’s ownership interest in an applicant or participant DBE firm; or the individual’s equity in his or her primary place of residence. An individual’s personal net worth includes only his or her own share of assets held jointly or as community property with the individual’s spouse.
- f. **Race-conscious.** Race-conscious means a measure or program this is focused specifically on assisting only DBEs, including women-owned DBEs.
- g. **Race-neutral.** Race-neutral means a measure or program that is, or can be, used to assist all small businesses. For the purposes of the DBE program, race-neutral includes gender -neutrality.
- h. **Small Business Concern.** Small business concern means, with respect to firms seeking to participate as DBE's in US DOT assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR Part 26.65(b).
- i. **Socially and Economically Disadvantaged Individual.** The phrase “socially and economically disadvantaged individual” means any individual who is a citizen (or

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other lawfully admitted permanent resident) of the United States and who is any individual who the Commission finds to be a socially and economically disadvantaged individual on a case-by-case basis, and any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

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

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

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

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

- a. When a DBE participates in a contract, only the value of the work actually performed by the DBE is counted towards the DBE goal.

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- (1) This amount includes the entire amount of that portion of a construction contract that is performed by the DBE's own forces. This amount includes the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
 - (2) This amount includes the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the contract, towards the DBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.
 - (3) When a DBE subcontracts part of its work under the contract to another firm, the value of the subcontract work may be counted towards the DBE goal only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count towards the DBE goal.
- b. When a DBE performs as a participant in a joint venture, the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that a DBE performs with its own forces towards the DBE goal may be counted.
- c. Expenditures to a DBE contractor towards the DBE goal may be counted only if the DBE is performing a commercially useful function on that contract.
- (1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the Commission will consider the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
 - (i) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

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- (2) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work, the Commission will presume that the DBE is not performing a commercially useful function.
- d. The following factors will be used to count expenditures with DBE's for materials or supplies towards the DBE goal:
 - (1) If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies will be counted towards the DBE goal. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the contract.
 - (2) If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies will be counted towards the DBE goal. A regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided in this subsection if this person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this subsection.
 - (3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials and supplies required on a job site, may be counted towards the DBE goal, provided the fees are reasonable and are not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves may not be counted towards the DBE goal.

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- e. Participation by a firm that is not currently certified as a DBE by the Commission at the time of contract award, does not count towards the DBE goal. All DBE firms must be pre-certified: certification of firms must be in place prior to the due date of bids and proposals on which the firm wishes to participate as a DBE.
- f. The dollar value of work performed under the contract by a firm whose DBE certification has expired, does not count towards the DBE goal.
- g. The participation of a DBE subcontractor does not count towards the Contractor's DBE goal until the amount being counted towards the goal has been paid to the DBE.

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

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

- a. Completed "Schedule of DBE Participation" with pre-certified DBEs sufficient to meet the above goal. If the Contractor is a DBE firm and intends to satisfy the appropriate DBE requirement with its own firm, he/she must indicate in the Schedule the area of work and percentage it will perform to satisfy the goal.
- b. Executed "Letters of Intent to Perform as a Subcontractor/Joint Venture" (Page B-13). If the Contractor is not a DBE then he/she must attach these letters from each DBE listed on the Schedule.
- c. Justification for grant of relief (waiver of DBE goal). If in the submittal of its bid/proposal, the Contractor fails to meet the DBE goal above, the Contractor has the burden of furnishing sufficient documentation with its bid/proposal of its "good faith efforts" to justify a grant of relief (waiver) from the goal or portion of the goal. Such justification shall be in the form of a detailed report. The following is a list of actions which shall be considered as part of the bidder's/Contractor's good faith efforts to obtain DBE participation. This list is neither a mandatory checklist nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases:
 - (1) Soliciting through all reasonable and available means (e.g. attendance at pre-bid/proposal meetings, advertising and/or written notices) the interest of all certified DBE's who have the capability to perform the work of the contract. The Contractor must solicit this interest within sufficient time to allow the DBE's to respond to the solicitation. The Contractor must

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determine with certainty if the DBE's are interested by taking appropriate steps to follow up initial solicitations.

- (2) Selecting portions of the work to be performed by DBE's in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- (3) Providing interested DBE's with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- (4)
 - (a) Negotiating in good faith with interested DBE's. It is the bidder's/Contractor's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBE's that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBE's to perform the work. "DBE Unavailability Certifications" shall be completed as appropriate.
 - (b) A Contractor using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as the contract goal into consideration. However, the fact that there may be some additional costs involved in finding and using DBE's is not in itself sufficient reason for a bidder's/Contractor's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the Contractor of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBE's if the price difference is excessive or unreasonable.
- (5) Not rejecting DBE's as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-

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solicitation of bids/proposals in the contractor's efforts to meet the project goal.

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

7. BID AND PROPOSAL REQUIREMENTS (APPARENT SUCCESSFUL CONTRACTOR):

All DBE firms must be pre-certified at time of bid/proposal.

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

- a. A copy of the current certification letter(s).
- b. DBE Manufacturer's Affidavit, if applicable, must be submitted in order to receive 100 percent of the allowable credit for expenditures to DBE manufacturers/suppliers. By submission of this Affidavit, the Contractor certifies this it is satisfied that the manufacturer meets the requirements of 49 CFR Part 26.
- c. Schedule B Information for Determining Joint Venture Eligibility, if applicable. Submittal shall be signed by all parties, dated and notarized.
- d. Copy of Joint Venture Agreement, if applicable. Submittal shall be signed by all parties, dated and notarized.
- e. Certification letter of the DBE regular dealer/supplier, if applicable. If the Contractor wants to receive the maximum allowable credit of its expenditures for material(s) or supplies required under this Contract, from DBE regular dealers/suppliers, the DBE must submit a signed and notarized statement on their letterhead, that they are a regular dealer of the material(s) or supplies. By submission of this statement, the Contractor certifies that it is satisfied that the subcontractor is a regular dealer/supplier that meets the requirements of 49 CFR Part 26.

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8. CONTRACT ADMINISTRATION REQUIREMENTS:

The following requirements apply after contract award:

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

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

- b. The Contractor shall monitor the performance of, collect and report data on DBE participation to WMSC, on the attached "Prompt Payment Report-Prime Contractor's Report" and "Prompt Payment Report-Subcontractor's Report", which shall be submitted monthly with each payment request. Failure to submit these reports may result in suspension of contract payments. The Contractor shall certify with each payment request that payment has been or will be made to all subcontractors due payment, within ten (10) days after receipt of payment from the Commission for work by that subcontractor. The Contractor shall inform the COR or AR, with their payment request, of any situation in which scheduled subcontractor payments have not been made.

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

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

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- (5) Inability to furnish a reasonable performance or payment bond, if required.
 - (6) Inability to obtain, or loss of, a license necessary for the performance of the particular category of work.
 - (7) Failure or inability to comply with a requirement of law applicable to contractors and subcontractors on a construction, alteration or repair project.
 - (8) Failure or refusal to execute the subcontract in accordance with the terms of an offer submitted to the Contractor prior to the Contractor's submission of its bid/proposal, but only where the contracting officer or other delegated authority's representative can ascertain with reasonable certainty the terms of such offer. In the absence of any other factors, such a failure or refusal will be considered an unusual situation only if the Contractor obtained, prior to bidding/proposing, an enforcement commitment from the subcontractor involved.
 - (9) Failure to comply with the terms and conditions of this Contract or those of its subcontract or joint venture agreement.
- d. Within 30 days thereafter, the Contractor shall, if necessary to achieve the Appendix B goal, make every reasonable effort to subcontract the same or other work to other DBE firms. The Contractor must have the prior written approval of the contracting officer before substitution for a DBE subcontractor, regardless of the reason for substitution. Failure to obtain Commission approval could result in the Contractor being found non-compliant with the requirements of Appendix B.
- e. The contractor shall forward copies of all subcontracts to WMSC at the time of their execution.
- f. If the contracting officer or other delegated authority's representative determines that the Contractor has failed to comply with this Appendix B, he will notify the Contractor of such non-compliance and the action to be taken. The Contractor shall, after receipt of such notice, take corrective action. If the Contractor fails or refuses to comply promptly, the contracting officer or other delegated authority's representative may issue a "stop work order" stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop work order shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor. When the Commission proceeds with such formal actions, it has the burden of proving that the Contractor has not met the requirements of this Appendix, but the Contractor's failure to meet its Appendix B goal shall shift to it the requirement to come forward with evidence to show that it has met the good faith requirements of this Appendix. Where the Contractor, after exhausting all its administrative and legal remedies and procedures is found to have failed to exert a "good faith effort" to involve DBE's in the work as herein provided,

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the Commission may declare the Contractor ineligible to receive further Commission contracts for three years from the date of the finding.

- g. The Contractor agrees to cooperate in any studies or surveys as may be conducted by the Commission which are necessary to determine the extent of the Contractor's compliance with this Appendix.
- h. The Contractor shall keep records and documents for three (3) years following performance of this Contract to indicate compliance with this Appendix. These records and documents, or copies thereof, shall be made available at reasonable times and places for inspection by any authorized representative of the Commission and will be submitted upon request together with any other compliance information which such representative may require.
- i. If the Commission, the FTA or the US DOT has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements regarding the DBE Program, the matter shall be referred to the WMSC.
- j. Failure by the Contractor to carry out the requirements of this Appendix is a material breach of this Contract, which may result in the termination of this Contract under the Default provision of this Contract or such other remedy as the Commission deems appropriate.

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SUMMARY OF SUBMITTALS

With the Bid/Proposal

- (1) Completed “Schedule of DBE Participation” with pre-certified DBEs.
- (2) Executed “Letters of Intent to Perform as a Subcontractor/Joint Venture”.
- (3) Justification for grant of relief (waiver of DBE goal), if applicable. Include completed “DBE Unavailability Certifications” as appropriate.

Bid and Proposal Requirements (Apparent Successful Contractor)

- (1) Copy of the current WMATA certification letter for each proposed DBE.
- (2) DBE Manufacturer’s Affidavit, if applicable, must be submitted in order to receive 100 percent of the allowable credit for expenditures to DBE manufacturers/suppliers.
- (3) Schedule B Information for Determining Joint Venture Eligibility, if applicable.
- (4) Copy of Joint Venture Agreement, if applicable.
- (5) Certification letter of the DBE regular dealer/supplier, if applicable.

After Contract Award

- (1) “Prompt Payment Report-Prime Contractor’s Report” – submitted monthly.
- (2) “Prompt Payment Report-Subcontractor’s Report” - submitted monthly.
- (3) Request to substitute DBE contractor – submitted as required.
- (4) Copies of subcontracts-submitted at the time of their execution.

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SUBMIT WITH BID/PROPOSAL
SCHEDULE OF DBE PARTICIPATION

Contract No. _____

Project Name _____

Name of Contractor

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

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

Signature of Contractor Representative

Title

Date

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Contract Number: _____

LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR/JOINT VENTURE

TO: _____
(Name of Contractor)

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

<i>an individual</i>	<i>a corporation</i>
<i>a partnership</i>	<i>a joint venture</i>

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

at the following price: \$

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

<i>Name of DBE Subcontractor/Joint Venture</i>	<i>Phone Number</i>
<i>Address</i>	<i>WMSC Contractor ID Number</i>
<i>Signature & Title</i>	<i>Date</i>

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

To: _____
(Name of DBE)

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

WORK ITEMS	PROJECTED DBE COMMENCEMENT DATE	PROJECTED DBE COMPLETION DATE
---------------	---------------------------------------	--

(Date)

(Name of Prime Contractor & Acceptance Signature)

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SUBMIT WITH BID / PROPOSAL
DBE UNAVAILABILITY CERTIFICATION

I, _____, _____, of _____
(Name) (Title) (Contractor)

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

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

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

Signature:

Date:

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

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

(Signature of DBE Contractor)

(Title)

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DBE Certification Instructions

Important Notice

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

Instructions

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

General *(All firms must submit documents under General)*

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

Corporations

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

Partnerships

Partnership Agreement

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Proprietorships

IRS Employer ID Number

WMATA Contractor ID#

Recertification Review

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

AFFIDAVIT ENCLOSURE

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

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**WASHINGTON METRORAIL SAFETY COMMISSION
DISADVANTAGED BUSINESS ENTERPRISE
DISCLOSURE AFFIDAVIT**

<p>1. NAME AND ADDRESS: (Company Name, Street Address, City, State, Zip)</p> <p>TELEPHONE: ()</p>	<p>2. PRESUMPTIVE GROUP: <input type="checkbox"/> Black American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Other <input type="checkbox"/> Hispanic American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Women Nation of Family Origin (i.e., Mexico, Korea, Jamaica, Africa, India, etc.): FURTHER PROOF OF ETHNICITY MAY BE REQUIRED</p>
<p>3. CONTACT PERSON: (Name, Title, Telephone)</p>	<p>SEX: <input type="checkbox"/> Male <input type="checkbox"/> Female</p> <div style="text-align: right;"><input type="checkbox"/> U.S. Citizen</div> <div style="text-align: right;"><input type="checkbox"/> Permit Resident (attach copy)</div>
<p>4. NATURE OF FIRM'S BUSINESS:</p> <hr/> NAICS CODE:	<p>6. ARE YOU AFFILIATED WITH ANY CONTRACTOR ORGANIZATIONS? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p style="text-align: center;">If so, please list which ones:</p>
<p>5. YEARS FIRM HAS BEEN IN BUSINESS:</p>	
<p>7. HAS YOUR COMPANY EVER BEEN CERTIFIED AS A MINORITY DISADVANTAGED OR WOMEN-OWNED BUSINESS?</p> <p><input type="checkbox"/> YES WHAT AGENCY?</p> <p><input type="checkbox"/> NO</p>	<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>9a. NUMBER OF EMPLOYEES:</p> <p>OWNERSHIP:</p> FULL TIME PART TIME OTHER </div> <div style="width: 50%;"> <p>10. TYPE OF OWNERSHIP</p> <p>(Check One)</p> <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Joint Venture <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Corp. <input type="checkbox"/> Other </div> </div>
<p>8. HAS YOUR BUSINESS EVER BEEN DENIED CERTIFICATION AS A MINORITY BUSINESS ENTERPRISE?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>If yes, explain in REMARKS (#25 Page 3)</p>	<p>9b. GROSS RECEIPTS (Last 3 Years)</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>YEAR_____ \$ _____</p> <p>YEAR_____ \$ _____</p> </div> <div style="width: 50%;"> <p><input type="checkbox"/> Corporation</p> <p><input type="checkbox"/> Limited Liability Corp.</p> <p><input type="checkbox"/> Other</p> </div> </div>

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	YEAR _____ \$ _____ /																				
<p>11. CURRENT BOARD OF DIRECTORS:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; width: 25%;"><u>NAME AND POSITION</u></th> <th style="text-align: center; width: 10%;"><u>ETHNIC GROUP</u></th> <th style="text-align: center; width: 10%;"><u>SEX</u></th> <th style="text-align: center; width: 20%;"><u>DATE OF SERVICE WITH COMPANY</u></th> <th style="text-align: left; width: 35%;"><u>FULL ADDRESS (Number, Street, City, State, Zip)</u></th> </tr> </thead> <tbody> <tr><td>_____</td><td style="text-align: center;"> </td><td style="text-align: center;"> </td><td style="text-align: center;"> </td><td style="text-align: center;"> </td></tr> <tr><td>_____</td><td style="text-align: center;"> </td><td style="text-align: center;"> </td><td style="text-align: center;"> </td><td style="text-align: center;"> </td></tr> <tr><td>_____</td><td style="text-align: center;"> </td><td style="text-align: center;"> </td><td style="text-align: center;"> </td><td style="text-align: center;"> </td></tr> </tbody> </table>		<u>NAME AND POSITION</u>	<u>ETHNIC GROUP</u>	<u>SEX</u>	<u>DATE OF SERVICE WITH COMPANY</u>	<u>FULL ADDRESS (Number, Street, City, State, Zip)</u>	_____					_____					_____				
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<p>13. CURRENT COMPANY OFFICERS:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; width: 25%;"><u>VOTING NAME AND POSITION</u></th> <th style="text-align: center; width: 10%;"><u>ETHNIC GROUP</u></th> <th style="text-align: center; width: 10%;"><u>SEX</u></th> <th style="text-align: center; width: 20%;"><u>DATE OF OWNERSHIP</u></th> <th style="text-align: left; width: 35%;"><u>INTEREST OR SHARES OWNED (Class & Quantity)</u></th> </tr> </thead> <tbody> <tr><td>_____</td><td style="text-align: center;"> </td><td style="text-align: center;"> </td><td style="text-align: center;"> </td><td style="text-align: center;"> </td></tr> <tr><td>_____</td><td style="text-align: center;"> </td><td style="text-align: center;"> </td><td style="text-align: center;"> </td><td style="text-align: center;"> </td></tr> <tr><td>_____</td><td style="text-align: center;"> </td><td style="text-align: center;"> </td><td style="text-align: center;"> </td><td style="text-align: center;"> </td></tr> </tbody> </table>		<u>VOTING NAME AND POSITION</u>	<u>ETHNIC GROUP</u>	<u>SEX</u>	<u>DATE OF OWNERSHIP</u>	<u>INTEREST OR SHARES OWNED (Class & Quantity)</u>	_____					_____					_____				
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<p>14. NUMBER OF SHARES AUTHORIZED, ISSUED & OUTSTANDING:</p> <p>Preferred _____</p> <p>Common _____</p> <p>Other _____</p>	<p>15. INDICATE SOURCE(S) AND AMOUNT OF CAPITAL INVESTED IN COMPANY BY PERSONS AFFILIATED WITH THE ENTERPRISE:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; width: 60%;"><u>Source</u></th> <th style="text-align: left; width: 40%;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td></tr> <tr><td>_____</td><td>_____</td></tr> </tbody> </table>	<u>Source</u>	<u>Amount</u>	_____	_____	_____	_____	_____	_____												
<u>Source</u>	<u>Amount</u>																				
_____	_____																				
_____	_____																				
_____	_____																				
<p>16. IDENTIFY YOUR BONDING COMPANY, BANK AND SOURCES OF LETTERS OF CREDIT:</p>	<p>17. WHAT IS YOUR BONDING LIMIT?</p> <p style="text-align: center;">\$ _____</p>																				

WASHINGTON METRORAIL SAFETY COMMISSION
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<p><u>Bonding Company</u> <u>of Credit</u></p> <p>_____/_____/_____ _____/_____/_____ _____/_____/_____</p>	<p><u>Bank</u></p> <p>_____/_____/_____ _____/_____/_____ _____/_____/_____</p>	<p><u>Letter</u></p> <p>_____/_____/_____ _____/_____/_____ _____/_____/_____</p>	<p>18. WHO DETERMINES WHAT JOBS THE COMPANY WILL UNDERTAKE? (Name and Title)</p>																
<p>19. WHO NEGOTIATES FOR SURETY BONDS AND SIGNS FOR INSURANCE AND PAYROLL?</p> <p><u>Surety and/or</u> <u>Performance Bonds</u> <u>Insurance</u></p> <p>_____/_____/_____ _____/_____/_____ _____/_____/_____</p>	<p><u>Payroll</u></p> <p>_____/_____/_____ _____/_____/_____ _____/_____/_____</p>		<p>20. WHO WILL BE RESPONSIBLE FOR ONSITE PROJECT SUPERVISION? (Name and Title)</p>																
<p>21. LIST THE THREE LARGEST PROJECTS IN DOLLAR AMOUNTS COMPLETED BY YOUR COMPANY DURING THE LAST THREE YEARS; INDICATE PRIME CONTRACTORS OF THESE PROJECTS OR PROCUREMENTS:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; border-bottom: 1px solid black;"><u>PROJECT/PROCUREMENT</u></th> <th style="text-align: left; border-bottom: 1px solid black;"><u>DOLLAR AMOUNT</u></th> <th style="text-align: left; border-bottom: 1px solid black;"><u>DATE COMPLETED</u></th> <th style="text-align: left; border-bottom: 1px solid black;"><u>PRIME CONTRACTOR</u></th> </tr> </thead> <tbody> <tr> <td style="border-bottom: 1px solid black;"> </td> <td style="border-bottom: 1px solid black;"> </td> <td style="border-bottom: 1px solid black;"> </td> <td style="border-bottom: 1px solid black;"> </td> </tr> <tr> <td style="border-bottom: 1px solid black;"> </td> <td style="border-bottom: 1px solid black;"> </td> <td style="border-bottom: 1px solid black;"> </td> <td style="border-bottom: 1px solid black;"> </td> </tr> <tr> <td style="border-bottom: 1px solid black;"> </td> <td style="border-bottom: 1px solid black;"> </td> <td style="border-bottom: 1px solid black;"> </td> <td style="border-bottom: 1px solid black;"> </td> </tr> </tbody> </table>				<u>PROJECT/PROCUREMENT</u>	<u>DOLLAR AMOUNT</u>	<u>DATE COMPLETED</u>	<u>PRIME CONTRACTOR</u>												
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22. PRIOR AND CURRENT COMPANY CLIENTS: (Company Name, Street Address, City, State, Zip) (Attach if necessary)

23a. LIST MAJOR EQUIPMENT:

PRODUCTS OR SERVICES
TYPE QUANTITY

23b. LIST ALL PRODUCTS AND/OR SERVICES RENDERED:

24. REMARKS:

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

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

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

_____ Signature of Affiant	_____ Printed Name
-------------------------------	-----------------------

Date: _____ State: _____ County: _____

On this _____ day of _____, 19_____,

Before me appeared _____
(Name)

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

(Name of Firm)

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

Sworn and subscribed before me _____ (Seal)

(Notary Public)

Commission Expires: _____

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WASHINGTON METRORAIL SAFETY COMMISSION
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DBE MANUFACTURER'S AFFIDAVIT

I hereby declare and affirm that I am _____ (Title)
and duly authorized representative of _____ (Name of Company),
a _____ owned and controlled enterprise
whose address _____

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

Equipment

<u>Type</u>	<u>Function</u>	<u>Model</u>	<u>Age</u>	<u>Make</u>
-------------	-----------------	--------------	------------	-------------

Number of employees involved in the manufacturing process: _____

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

_____ Signature of Affiant	_____ Printed Name
.....	
Date: _____ State: _____ County: _____	

WASHINGTON METRORAIL SAFETY COMMISSION
RFP 2021.001 SSOA SERVICES

On this _____ day of _____, 19_____,
before me appeared _____

(Name)

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

(Name of Firm)

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

(Seal)

Sworn and subscribed before me

(Notary Public)

Commission Expires: _____

WASHINGTON METRORAIL SAFETY COMMISSION
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DISADVANTAGED BUSINESS ENTERPRISE (DBE)
WASHINGTON METRORAIL SAFETY COMMISSION
PROMPT PAYMENT REPORT
PRIME-CONTRACTOR'S REPORT

This Report is required to be submitted to WMSC pursuant to requirements of WMSC DBE Program plan §2.5 and §26.29 of 49 CFR Part 26.

Contract No.: _____

Name of Prime Contractor: _____

Project
Name: _____

Name of Sub-Contractor	DBE (Y/N)	Type of Work	Date Work Accepted	Work Hours	Agreed Upon Price	Amount Paid	Date of Payment

Name and Title

Signature

Date

WASHINGTON METRORAIL SAFETY COMMISSION
RFP 2021.001 SSOA SERVICES

DISADVANTAGED BUSINESS ENTERPRISE (DBE)
WASHINGTON METRORAIL SAFETY COMMISSION
PROMPT PAYMENT REPORT
SUBCONTRACTOR'S REPORT

This Report is required to be submitted to the WMSC, pursuant to requirements of WMSC DBE Program plan §2.5 and §26.29 of 49 CFR Part 26.

Name of Prime Contractor _____ **Contract No.:** _____

Project
Name: _____

Name of DBE Sub-Contractor: _____

(Check One)
☐ **Regular Pay**
☐ **Return of**

Retainer
Name of Non-DBE Sub-Contractor: _____

Type of Work	Date Work Accepted	Work Hours	Agreed Upon Price	Amount Received	Date of Payment

Name and Title: _____ **Signature:** _____
Date: _____

WASHINGTON METRORAIL SAFETY COMMISSION
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Information For Determining Joint Venture Eligibility

Page 1

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

Contact Person: _____ Telephone: _____

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

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

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

Contact Person: _____ Telephone: _____

Status of firm: ☐ DBE. ☐ Non-Minority.

Does firm have current WMATA DBE certification? ☐ Yes ☐ No

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

Contact Person: _____ Telephone: _____

Status of firm: ☐ DBE. ☐ Non-Minority.

Does firm have current WMATA DBE certification? ☐ Yes ☐ No

.....

Describe the nature of the Joint Venture business:

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

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

.....

WASHINGTON METRORAIL SAFETY COMMISSION
RFP 2021.001 SSOA SERVICES

Information For Determining Joint Venture Eligibility

Page 2

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

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

TOTALS:

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

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

Name: _____ Race: _____

Title: _____ Sex: ☐ Male ☐ Female

Company affiliation: _____

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

Name: _____ Race: _____

Title: _____ Sex: ☐ Male ☐ Female

Company affiliation: _____

3. *Supervision of field operations:*

Name: _____ Race: _____

Title: _____ Sex: ☐ Male ☐ Female

Company affiliation: _____

WASHINGTON METRORAIL SAFETY COMMISSION
RFP 2021.001 SSOA SERVICES

Information For Determining Joint Venture Eligibility

Page 3

.....

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

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

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

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

(NAME OF FIRM)

(NAME OF SECOND FIRM)

(SIGNATURE OF AFFIANT)

(SIGNATURE OF AFFIANT)

(PRINT NAME)

(PRINT NAME)

(TITLE)

(TITLE)

(DATE)

(DATE)

.....

WASHINGTON METRORAIL SAFETY COMMISSION
RFP 2021.001 SSOA SERVICES

Information For Determining Joint Venture Eligibility

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.....
.

Date: _____ State: _____ County: _____

On this _____ day of _____, 19____,

before me appeared _____
(Name)

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

(Name of Firm)

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

(Seal)

Sworn and subscribed before me _____
(Notary Public)

Commission Expires: _____

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

On this _____ day of _____, 19____,

before me appeared _____
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(Notary Public)

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