

Metropolitan Washington Airports Authority
PROCUREMENT AND CONTRACTS DEPT.
SOLICITATION OFFER AND AWARD

| | | | |
|--|--|--|-----------|
| Metropolitan Washington Airports Authority Procurement and Contracts Dept., MA-29 2733 Crystal Drive Arlington, VA 22202 | | 1. FOR INFORMATION CALL NAME: Michael Grealy TELEPHONE NUMBER: (No Collect Calls) 703-572-0822 | |
| 2. SOLICITATION NUMBER 8-17-C013 | 3. TYPE OF SOLICITATION REQUEST FOR PROPOSALS (RFP) | 4. DATE ISSUED August 16, 2017 | |
| SOLICITATION | | | |
| 5. DESCRIPTION OF SUPPLIES, SERVICES, CONSTRUCTION | | | |
| <p>The Contractor shall furnish all necessary labor, materials, and supervision to provide real estate legal services on an as-needed basis, relating to the Dulles Corridor Metrorail Project Phase 2 in accordance with the Statement of Work included at Section X, Attachment 01.</p> <p>*Refer to Section X, Attachment 02, Evaluation Criteria, for documentation required in response to this solicitation.</p> <p>All questions concerning this solicitation must be submitted by 3:00 PM September 5, 2017 via the Airports Authority's website at: http://www.mwaa.com/business/current-contracting-opportunities</p> <p>Note: This solicitation has a 0% DBE participation requirement.</p> <p>NOTE: CONTRACTORS ARE RESPONSIBLE FOR VERIFYING NUMBER AND DATES OF AMENDMENTS PRIOR TO SUBMITTING A PROPOSAL. FAILURE TO ACKNOWLEDGE AN AMENDMENT MAY RESULT IN PROPOSAL BEING DETERMINED NON-CONFORMING.</p> | | | |
| 6. BOND REQUIREMENTS | | | |
| PAYMENT BOND: None | | PERFORMANCE BOND: None | |
| 7. PRE-PROPOSAL CONFERENCE | | | |
| None | | | |
| 8. DEADLINE FOR OFFER SUBMISSION | | | |
| Sealed offers in original and 6 copies to perform the work or to furnish the supplies or services in the Schedule are due at the place specified at the top of this form by 2:00 P.M. local time, September 18, 2017 . Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time the offers are due. Proposals will not be publicly opened. | | | |
| OFFER (Must be fully completed by offeror) | | | |
| 9. NAME AND ADDRESS OF OFFEROR (Include Zip Code) | | 11. REMITTANCE ADDRESS (If different than Item9) | |
| | | | |
| | | 12A. E-MAIL ADDRESS | |
| | | | |
| 10A. TELEPHONE NUMBER | 10B. FAX NUMBER | 12B. COMPANY INTERNET WEBSITE | |
| | | | |
| NOTICE: Offer shall be valid for 60 days | | | |
| 13. ACKNOWLEDGMENT OF AMENDMENTS (This offeror acknowledges receipt of amendments to this solicitation - give number and date of each) | | 14A. NAME & TITLE OF PERSON AUTHORIZED TO SIGN OFFER | |
| AMENDMENT NO. | | | |
| | | | |
| DATE | | 14B. SIGNATURE | 14C. DATE |
| | | | |
| AWARD (To be completed by MWAA) | | | |
| 15. ACCEPTED AS TO ITEMS NUMBERED | | 20A. NAME OF CONTRACTING OFFICER | |
| | | Michael Grealy | |
| 16. CONTRACT NUMBER | 17. AMOUNT | 20B. SIGNATURE OF CONTRACTING OFFICER | |
| 8-17-C013 | | | |
| 18. DATE OF AWARD | 19. CONTRACT EFFECTIVE DATE | | |
| | | | |

SECTION II - TABLE OF CONTENTS**SECTION I - SOLICITATION OFFER AND AWARD** **I-1****SECTION II - TABLE OF CONTENTS** **II-1****SECTION III - PRICE SCHEDULE** **III-1****SECTION IV - REPRESENTATIONS AND CERTIFICATIONS** **IV-1**

| | | |
|----|--|------|
| 01 | PARENT COMPANY AND IDENTIFYING DATA | IV-1 |
| 02 | TYPE OF BUSINESS ORGANIZATION | IV-1 |
| 03 | AUTHORIZED NEGOTIATORS | IV-1 |
| 04 | DISADVANTAGED BUSINESS ENTERPRISE REPRESENTATION | IV-2 |
| 05 | MINORITY BUSINESS ENTERPRISE REPRESENTATION | IV-2 |
| 06 | WOMEN BUSINESS ENTERPRISE REPRESENTATION | IV-3 |
| 07 | CONTRACTOR IDENTIFICATION | IV-3 |
| 08 | CERTIFICATE OF INDEPENDENT PRICE DETERMINATION | IV-3 |
| 09 | SUBCONTRACTORS | IV-4 |
| 10 | CERTIFICATION OF COMPLIANCE WITH EMPLOYMENT ELIGIBILITY VERIFICATION, FORM I-9 | IV-5 |
| 11 | CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS | IV-5 |
| 12 | INSURANCE AFFIDAVIT | IV-6 |

SECTION V - SOLICITATION PROVISIONS **V-1**

| | | |
|----|---|-----|
| 01 | SOLICITATION DEFINITIONS | V-1 |
| 02 | RESERVED | V-1 |
| 03 | PROCUREMENT PROCESS – BEST VALUE RFP | V-1 |
| 04 | RESERVED | V-1 |
| 05 | OFFEROR'S QUALIFICATIONS | V-1 |
| 06 | PRE-AWARD SURVEY | V-2 |
| 07 | ACKNOWLEDGMENT OF AMENDMENTS TO SOLICITATIONS | V-2 |
| 08 | CONTRACT AWARD | V-2 |

| | | |
|--|---|--------------|
| 09 | EXPLANATION TO PROSPECTIVE OFFERORS | V-2 |
| 10 | PREPARATION OF OFFERS | V-2 |
| 11 | SUBMISSION OF OFFERS | V-3 |
| 12 | LATE SUBMISSION, MODIFICATIONS, AND WITHDRAWALS OF OFFERS | V-4 |
| 13 | SOLICITATION COSTS | V-5 |
| 14 | TYPE OF CONTRACT | V-5 |
| 15 | MINIMUM PROPOSAL ACCEPTANCE PERIOD | V-5 |
| 16 | PLACE OF PERFORMANCE | V-5 |
| 17 | RESTRICTION ON DISCLOSURE AND USE OF DATA | V-5 |
| 18 | STATEMENT OF UNDERSTANDING | V-6 |
| 19 | SITE INVESTIGATION | V-6 |
| 20 | OFFER DOCUMENTS | V-6 |
| 21 | PROTESTS | V-6 |
| 22 | RESERVED | V-7 |
| 23 | NOTICE TO LOW OFFERORS | V-7 |
| 24 | TITLE VI SOLICITATION NOTICE | V-7 |
| SECTION VI - SPECIAL PROVISIONS | | VI-1 |
| 01 | USE OF CONTRACT BY OTHER JURISDICTIONS | VI-1 |
| 02 | CONTRACTOR PERFORMANCE EVALUATION | VI-1 |
| 03 | LIMITATION OF OBLIGATIONS AND LIABILITIES | VI-2 |
| 04 | CONTRACT AMOUNT AND FUNDING | VI-2 |
| 05 | TRAVEL EXPENSES | VI-2 |
| SECTION VII - CONTRACT PROVISIONS | | VII-1 |
| 01 | SCOPE OF WORK | VII-1 |
| 02 | PRE-PERFORMANCE CONFERENCE | VII-1 |
| 03 | VEHICLE REGISTRATION AND PARKING | VII-1 |
| 04 | AIRPORT REGULATIONS | VII-1 |
| 05 | SAFETY REQUIREMENTS | VII-1 |

| | | |
|-----------|--|---------------|
| 06 | DAMAGE REPORTS | VII-1 |
| 07 | DAMAGE OR LOSS OF CONTRACTOR'S PROPERTY | VII-1 |
| 08 | WORKING HOURS | VII-1 |
| 09 | AUTHORITY FURNISHED FACILITIES | VII-2 |
| 10 | AUTHORITY FURNISHED EQUIPMENT | VII-2 |
| 11 | AUTHORITY FURNISHED UTILITIES | VII-2 |
| 12 | CONTRACTOR PERSONNEL | VII-2 |
| 13 | WORKMANSHIP AND INSPECTION | VII-2 |
| 14 | BILLING INSTRUCTIONS | VII-2 |
| 15 | LIABILITY INSURANCE | VII-3 |
| 16 | CONTRACT TERM | VII-5 |
| 17 | CORRESPONDENCE PROCEDURES | VII-5 |
| 18 | DISPUTES | VII-5 |
| 19 | TERMINATION FOR CONVENIENCE OF THE AUTHORITY | VII-8 |
| 20 | DEFAULT | VII-11 |
| 21 | INTERPRETATION OR MODIFICATION | VII-12 |
| 22 | RESERVED | VII-12 |
| 23 | ACCIDENT AND FIRE REPORTING | VII-12 |
| 24 | INDEMNIFICATION | VII-12 |
| 25 | LICENSES AND PERMITS | VII-13 |
| 26 | SUPERVISION | VII-13 |
| 27 | KEY PERSONNEL | VII-13 |
| 28 | CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR) AUTHORITY | VII-13 |
| 29 | RESERVED | VII-14 |
| 30 | NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT | VII-14 |
| 31 | PATENT INDEMNITY | VII-14 |
| 32 | CHANGES | VII-14 |
| 33 | INSPECTION OF SERVICES | VII-15 |

| | | |
|----|---|--------|
| 34 | WARRANTY OF SERVICES | VII-15 |
| 35 | RESERVED | VII-16 |
| 36 | RESERVED | VII-16 |
| 37 | EXCUSABLE DELAYS | VII-16 |
| 38 | ORDER OF PRECEDENCE | VII-16 |
| 39 | MODIFICATION PROPOSALS - PRICE BREAKDOWN | VII-16 |
| 40 | CLAIMS FOR ADDITIONAL COSTS | VII-17 |
| 41 | TAXES | VII-17 |
| 42 | PAYMENTS | VII-17 |
| 43 | PUBLICITY RELEASES | VII-19 |
| 44 | OPTION TO EXTEND THE TERM OF THE CONTRACT | VII-19 |
| 45 | OPTION TO EXTEND SERVICES | VII-19 |
| 46 | AUDIT AND INSPECTION OF RECORDS | VII-19 |
| 47 | CONSENT TO ASSIGNMENT | VII-20 |
| 48 | NOTIFICATION OF OWNERSHIP CHANGES | VII-20 |
| 49 | COMPLIANCE WITH EMPLOYMENT ELIGIBILITY VERIFICATION, FORM I-9 | VII-20 |
| 50 | RESERVED | VII-20 |
| 51 | GENERAL CIVIL RIGHTS PROVISIONS | VII-20 |
| 52 | TITLE VI CLAUSES FOR COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS | VII-20 |
| 53 | TITLE VI LIST OF PERTINENT NONDISCRIMINATION AUTHORITIES | VII-21 |

**SECTION VIII - VOLUNTARY DISADVANTAGED BUSINESS ENTERPRISE (DBE),
MINORITY BUSINESS ENTERPRISE(MBE) AND WOMAN BUSINESS ENTERPRISE
(WBE) PARTICIPATION**

| | | |
|----|--|---------------|
| | | VIII-1 |
| 01 | OBLIGATIONS | VIII-1 |
| 02 | DISADVANTAGED, MINORITY AND WOMAN-OWNED BUSINESS PARTICIPATION (D/M/WBE) | VIII-1 |
| 03 | ELIGIBILITY | VIII-1 |
| 04 | D/M/WBE PARTICIPATION | VIII-2 |
| 05 | POST-AWARD COMPLIANCE | VIII-3 |
| 06 | DEFINITIONS | VIII-4 |

SECTION IX - RESERVED

IX-1

SECTION X - ATTACHMENTS

X-1

- 01 STATEMENT OF WORK
- 02 EVALUATION CRITERIA AND PROPOSAL SUBMISSION REQUIREMENTS
- 03 INSURANCE AFFIDAVIT
- 04 FEDERAL REQUIREMENTS

SECTION III - PRICE SCHEDULE

The Price Schedule for this solicitation is in Microsoft Excel format and downloadable at:

<http://www.mwaa.com/business/current-contracting-opportunities>

This Price Schedule must be submitted in both electronic and hard copy. The electronic copy of the Price Schedule must be submitted in its original Microsoft Excel Format on either a CD-ROM or USB Flash Drive. The structure of the schedule is protected and shall not be modified in any way. Modified schedules may be deemed non-conforming to the solicitation. In the event of a discrepancy between the hard copy and the Microsoft Excel file on CD-ROM or USB Flash Drive, the hard copy will take precedence.

SECTION IV - REPRESENTATIONS AND CERTIFICATIONS

01 PARENT COMPANY AND IDENTIFYING DATA

A. A "parent" company, for the purpose of this provision, is one that owns or controls the activities and basic business policies of the offeror. To own the offeror's company means that the parent company must own at least 51% of the voting rights in that company. A company may control an offeror as a parent company even though not meeting the requirement for such ownership if the parent company is able to formulate, determine, or veto basic policy decisions of the offeror through the use of dominant minority voting rights, use of proxy voting, or otherwise.

B. The offeror [] is, [] is not (check applicable box) owned or controlled by a parent company.

C. If the offeror checked "is" in paragraph B. above, it shall provide the following information:

Name and Main Office Address of
Parent Company (include zip code)

Parent Company's Employer's
Identification Number

D. If the offeror checked "is not" in paragraph B. above, it shall insert its own Employer's Identification Number on the following line:

_____.

E. The offeror (or its parent company) [] is, [] is not (check applicable box) a publicly traded company.

F. The offeror shall insert the name(s) of its principal(s) on the following line:

_____.

02 TYPE OF BUSINESS ORGANIZATION

The offeror, by checking the applicable box, represents that:

A. It operates as [] a corporation incorporated under the laws of the State of _____, [] an individual, [] a partnership, [] a nonprofit organization, or [] a joint venture.

B. If the offeror is a foreign entity, it operates as [] an individual, [] a partnership, [] a nonprofit organization, [] a joint venture, or [] a corporation, registered for business in _____ (country).

03 AUTHORIZED NEGOTIATORS

The offeror represents that the following persons are authorized to negotiate on its behalf with the Authority in connection with this solicitation:

04 DISADVANTAGED BUSINESS ENTERPRISE REPRESENTATION

A. Representation The offeror represents and certifies as part of its offer that it [] is, [] is not a Disadvantaged Business Enterprise.

B. Definition A Disadvantaged Business Is:

1. A small business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

“Small business concern” means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

“Socially and economically disadvantaged individuals” means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act. The Authority shall make a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged. The Authority also may determine, on a case-by-case basis, that individuals who are not a member of one of the following groups are socially and economically disadvantaged.

- (a) “Black American”, which includes persons having origins in any or the Black racial groups of Africa;
- (b) “Hispanic American”, which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;
- (c) “Native American”, which includes persons who are American Indian, Eskimos, Aleut, or Native Hawaiian;
- (d) “Asian-Pacific American”, which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas; and
- (e) “Asian-Indian American”, which includes persons whose origins are from India, Pakistan, and Bangladesh.
- (f) Women

C. Certification As verification of this representation, the offeror is encouraged to attach a copy of a current MBE/WBE certification from any agency to be used for the Authority's monitoring of MBE/WBE participation in its program

05 MINORITY BUSINESS ENTERPRISE REPRESENTATION

A. Representation. The offeror represents that it [] is, [] is not a Minority Business Enterprise.

- B. Definition. A **Minority Business Enterprise** is:
1. A firm of any size which is at least **51%** owned by one or more minority persons or, in the case of a publicly-owned corporation, at least **51%** of all stock must be owned by one or more minority persons; and whose management and daily business operations are controlled by such persons. A person is considered to be a minority if he or she is a citizen of lawful resident of the United States and is:
 - a. Black (a person having origins in any of the black racial groups in Africa);
 - b. Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
 - c. Portuguese (a person of Portugal, Brazilian, or other Portuguese culture or origin, regardless of race);
 - d. Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); or
 - e. American Indian and Alaskan Native (a person having origins in any of the original peoples of North America.)
- C. Certification. As verification of this representation, the offeror is encouraged to attach a copy of a current MBE/WBE certification from any agency to be used for the Authority's monitoring of MBE/WBE participation in its program.

06 WOMEN BUSINESS ENTERPRISE REPRESENTATION

- A. Representation. The offeror represents that it [] is, [] is not a Women Business Enterprise.
- B. Definitions. A **Women Business Enterprise** is:
1. A firm of any size which is at least **51%** owned by one or more women or, in the case of a publicly-owned corporation, at least **51%** of stock must be owned by one or more such women; and
 2. Whose management and daily business operations are controlled by such persons.
- C. Certification. As verification of this representation, the offeror is encouraged to attach a copy of a current MBE/WBE certification from any agency to be used for the Authority's monitoring of MBE/WBE participation in its program.

07 CONTRACTOR IDENTIFICATION

Each offeror is requested to fill in the appropriate information set forth below:

DUNS Identification Number _____ (this number is assigned by Dun and Bradstreet, Inc., and is contained in that company's Data Universal Numbering System (DUNS). If the number is not known, it can be obtained from the local Dun & Bradstreet office. If no number has been assigned by Dun & Bradstreet, insert the word "none.")

08 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION

- A. The offeror certifies that --

- 1. The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (a) those prices, (b) the intention to submit a offer, or (c) the methods or factors used to calculate the prices offered;
- 2. The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
- 3. No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

B. Each signature of the offeror is considered to be a certification by the signatory that the signatory:

- 1. Is the person in the offeror's organization responsible for determining the prices being offered in its offer, and that the signatory has not participated and will not participate in any action contrary to subparagraphs A.1. through A.3. above; or
- 2. a. Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs A.1. through A.3. above

(Insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization);

- b. As an authorized agent, does certify that the principals named in subdivision B.2.a. above have not participated, and will not participate, in any action contrary to subparagraphs A.1. through A.3. above.
- c. As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs A.1. through A.3. above.

C. If the offeror deletes or modifies subparagraph A.2. above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

09 SUBCONTRACTORS

The offeror represents that it intends to utilize the below listed subcontractor(s) if it is awarded a contract as a result of this solicitation.

| <u>NAME OF SUBCONTRACTOR</u> | <u>SUBCONTRACTOR ADDRESS</u> |
|------------------------------|------------------------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

Once contract award has been made, the prime contractor shall not deviate from use of the above subcontractor(s) without prior submission and Contracting Officer approval of revised LDBE Exhibits, as applicable.

10 CERTIFICATION OF COMPLIANCE WITH EMPLOYMENT ELIGIBILITY VERIFICATION, FORM I-9

The offeror certifies that it [] has [] has not read and [] is [] is not in compliance with the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 U.S.C. 1324a) and the regulations issued there under. The offeror also certifies that its subcontractors are in compliance with the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 U.S.C. 1324a) and the regulations issued there under.

11 CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

- A. 1. The Offeror certifies, to the best of its knowledge and belief, that -
- a. The Offeror and/or any of its Principals -
- (1) Have [] have not [] been debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal, state, or local agency within the three (3) year period preceding this offer;
 - (2) Have [] have not [] had contractor or business license revoked within the three (3) year period preceding this offer;
 - (3) Have [] have not [] been declared non responsible by any public agency within the three (3) year period preceding this offer;
 - (4) Have [] have not [], within the three (3) year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or sub-contract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; violation of labor, employment, health, safety or environmental laws or regulations;
 - (5) Have [] have not [], within the three (3) year period preceding this offer, been indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subparagraph A.1.a.(4). of this provision; and
 - (6) All performance evaluations within the three (3) year period preceding this offer have [] have not [] received a rating of satisfactory or better. If not, please provide a copy of the evaluation with detailed explanation.
- b. The Offeror has [] has not [] within the three (3) year period preceding this offer, had one or more contracts terminated for default by any Federal, state or local agency.
2. "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business

entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

- B. The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- C. A certification that any of the items in paragraph A. of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.
- D. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph A. of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- E. The certification in paragraph A. of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, the Contracting Officer may terminate the contract resulting from this solicitation for default.

12 INSURANCE AFFIDAVIT

The Offeror and their insurance agent, broker, or representative must review the insurance provisions to understand their requirements and cost to contract with the Airports Authority. The Insurance Affidavit form, which is included at Section X – Attachment 03, must be completed by the Offeror and its insurance provider. The Airports Authority may declare any offer as non-responsible without this affidavit, or made with an incomplete affidavit form.

The Offeror is required to review any insurance requirements that may be required to ensure it has adequate insurance or it will obtain the required insurance if awarded a Contract. Proof of insurance must be submitted before a Contract can be executed and insurance coverage must remain in effect during the term of the Contract.

For purpose of defining Additional Insured and Waiver of Subrogation, the term “MWAA or Airports Authority” shall mean the elected officials, boards, officers, employees, agents, and representatives of the Board.

SECTION V - SOLICITATION PROVISIONS**01 SOLICITATION DEFINITIONS**

"Offer" means "proposal" in negotiation. "Solicitation" means a Request for Proposals (RFP) in negotiation. "The Authority" means Metropolitan Washington Airports Authority.

02 RESERVED**03 PROCUREMENT PROCESS – BEST VALUE RFP**

A. The Airports Authority is using a competitively negotiated procurement process to award this contract and selection will be made on a best value basis. Award will be made to the firm whose offer is judged to be an integrated assessment of the evaluation criteria that are listed in Section X – Attachment 02, Proposal Submission and Evaluation Criteria, to be the most advantageous to the Authority based on technical merit and price (“best value”).

B. Best Value Determination:

1. The technical merit of the proposal is significantly more important than the price, and price must be fair, reasonable and affordable.
2. The Airports Authority may select other than the lowest price proposal if it is determined by value analysis, or technical/cost tradeoffs, that the proposal is most advantageous. Price becomes more important as proposals become more technically equivalent.

C. Price Evaluation:

1. Price evaluation will be based on the total price in Section III, Price Schedule, to include all option years, if applicable.
2. Price proposals will be assessed for affordability. The Authority will not make an award for any proposal which proposes prices that would render the procurement infeasible.

04 RESERVED**05 OFFEROR'S QUALIFICATIONS**

A. Offers will be considered only from responsible individuals, partnerships, joint ventures, corporations or other private organizations demonstrating that they have the ability, experience and demonstrated resources to complete work in a timely manner and maintain a staff of regular employees adequate to ensure continuous performance of the work. Labor relations measured by standards of compensation, promptness in meeting obligations, and frequency of personnel changes, among other things, will be considered in determining whether an offeror has an established operating organization.

B. Prior to award of contract, the Contracting Officer may require the apparent successful offeror to submit the following:

1. List of the equipment to be used to perform the contract work.
2. Number of employees and hours each will work per day.
3. List of work to be subcontracted.
4. List of firms for whom similar work has been performed in the past five (5) years and a description of the work accomplished for each firm.
5. Qualifications and experience of key project individuals.

6. Documentation showing that the offeror has provided reasonable and customary pricing based on industry standards.

06 PRE-AWARD SURVEY

The Authority reserves the right to perform or to have performed, an on-site survey of the offeror's facilities or previous work products and to investigate its other capabilities. This survey will serve to verify the data and representations submitted, and to determine that the offeror has overall capability adequate to meet the contract requirements.

07 ACKNOWLEDGMENT OF AMENDMENTS TO SOLICITATIONS

Offerors shall acknowledge receipt of any amendment to this solicitation (a) by signing and returning the amendment; (b) by identifying the amendment number and date in the space provided for this purpose on the Solicitation Offer and Award form; or (c) by letter or facsimile. The Authority must receive the acknowledgment by the time specified for receipt of offers.

08 CONTRACT AWARD

- A. The Authority will award a contract resulting from this solicitation to the responsible offeror whose offer, conforming to the solicitation, will be most advantageous to the Authority, cost or price and other factors specified elsewhere in this solicitation, considered.
- B. The Authority may (1) request "best and final offers," (2) reject any or all offers if such action is in the Authority's best interest, (3) accept other than the lowest offer, and/or (4) waive informalities and minor irregularities in offers received.
- C. The Authority may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.
- D. Prompt payment discounts may be offered, however, the Authority will evaluate the cost of the offer without the offeror's prompt payment discount.

09 EXPLANATION TO PROSPECTIVE OFFERORS

Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a written reply to reach all prospective offerors 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 prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors.

10 PREPARATION OF OFFERS

- A. Offerors are expected to examine the drawings, Statement of Work (SOW), Price Schedule, and all instructions. Failure to do so will be at the offerors' risk.
- B. Multiple/alternate offers will not be considered unless this solicitation authorizes their submission.
- C. Offerors shall furnish the information required by the solicitation. Offerors shall sign the offer and print or type its name on the Price Schedule and each continuation sheet on which they make entries.

Erasures or other changes must be initialed by anyone signing the offers. Offers signed by agents shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

- D. For each item offered, offerors shall (1) show the unit price/cost, including, unless otherwise specified, packaging, packing, and preservation, and (2) enter the extended price/cost for the quantity of each item offered in the "Amount" column of the Price Schedule. In case of discrepancy between a unit price/cost and an extended price/cost, the unit price/cost will be presumed to be correct; subject, however, to correction to the same extent and in the same manner as any other mistake.
- E. Offers for services other than those specified will not be considered unless authorized by the solicitation.
- F. Offerors must perform the required services within the time specified in the solicitation.
- G. Time, if stated as a number of days, will include Saturdays, Sundays, and holidays.
- H. In evaluation and consideration of this procurement, the Authority, when deemed in its best interest, reserves the right to make multiple and/or split awards.
- I. The Authority may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Price Schedule, offers may be submitted for quantities less than those specified. The Authority reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the offer.
- J. A written award or acceptance of offer mailed or otherwise furnished to the successful offeror 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 Authority may accept an offer (or part of an offer, as provided in paragraph E above), 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 Authority.
- K. Neither financial data submitted with an offer, nor representations concerning facilities for 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.

11 SUBMISSION OF OFFERS

- A. Offers and modifications thereof shall be submitted in sealed envelopes or packages showing the name and address of the offeror, the solicitation number, and the time specified for receipt. Envelopes or packages should be addressed and delivered to the following location:

Metropolitan Washington Airports Authority
Procurement and Contracts Department, MA-29
2733 Crystal Drive
Arlington, VA 22202

- B. Offers and modifications thereof which are submitted via any form of electronic transmission such as facsimile (FAX) or email will not be considered unless authorized by this solicitation.

- C. Offers, modifications thereof, and all documentation submitted in support of the offer, including but not limited to, written narrative, enclosures, submittal, examples of past work, financial statements, and videos will become the property of the Authority and will not be returned.

12 LATE SUBMISSION, MODIFICATIONS, AND WITHDRAWALS OF OFFERS

- A. Any offer received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and:
1. Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th); or
 2. Was sent by overnight express delivery service (i.e. FedEx, UPS, U.S. Postal Service Express Mail, or other similar guaranteed delivery service) in time to have arrived prior to the date and time specified for receipt of offers.
 3. Was sent by mail or by overnight express delivery service (or was electronically transmitted via fax if authorized), and it is determined that the late receipt was due solely to mishandling by the Authority after receipt at the Authority's offices.
 4. Is in the Authority's best interest to accept the offer.
- B. Any modification or withdrawal of an offer except a modification resulting from the Contracting Officer's request for "best and final" offer is subject to the same conditions as in paragraph A.1. through 4. above.
- C. The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the offer, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerks to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.
- D. The only acceptable evidence to establish the time of receipt at the Authority installation is the time/date stamp of that installation on the offer wrapper or other documentary evidence of receipt maintained by the installation.
- E. The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service.
- F. Notwithstanding paragraph A. above, a late modification of an otherwise successful offer that makes its terms more favorable to the Authority will be considered at any time it is received and may be accepted.

- G. Offers may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and that person signs a receipt for the offer.

13 SOLICITATION COSTS

This solicitation does not commit the Authority to pay any costs incurred in the preparation or submission of any offer or to procure or contract for any work.

14 TYPE OF CONTRACT

The Authority contemplates award of a unit price contract resulting from this solicitation.

15 MINIMUM PROPOSAL ACCEPTANCE PERIOD

- A. "Acceptance period," as used in this provision, means the number of calendar days available to the Authority for awarding a contract from the date specified in this solicitation for receipt of proposals.
- B. The Authority requires a minimum acceptance period of 180 calendar days from the receipt of proposals.

16 PLACE OF PERFORMANCE

All work will be performed at the offeror's place of business and at:

Dulles Corridor Metrorail Project (DCMP)

Metropolitan Washington Airports Authority
Dulles Metrorail Office
198 Van Buren Street, Suite 300
Herndon, VA 20170

17 RESTRICTION ON DISCLOSURE AND USE OF DATA

Offerors who include in their offers data that they do not want disclosed to the public for any purpose or use by the Authority except for evaluation purposes, shall--

- A. Mark the title page with the following legend:

"This offer includes data that shall not be disclosed outside the Authority and shall not be duplicated, used, or disclosed-in whole or in part-for any purpose other than to evaluate this offer. If, however, a contract is awarded to this offeror as a result of-or in connection with-the submission of this data, the Authority shall have the right to duplicate, use or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Authority's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets]"; and

- B. Mark each sheet of data it wishes to restrict with the following legend:

"Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal."

18 STATEMENT OF UNDERSTANDING

By submission of this offer, the Offeror acknowledges that it has read and thoroughly understands the Statement of Work, agrees to all terms and conditions stated herein, and acknowledges that it can perform all work as required.

19 SITE INVESTIGATION

By submission of this offer, the Offeror acknowledges that it has investigated and/or satisfied itself as to the conditions affecting the work and its nature and location, and the general and local conditions (including but not limited to equipment and facilities needed to perform the work) which can affect the work or the cost thereof. Any failure by the Offeror to acquaint itself with the available information shall not relieve it from responsibility for estimating properly the difficulty or cost of successfully performing the work. The Authority assumes no responsibility for any conclusions or interpretations made by the offeror on the basis of the information made available by the Authority.

20 OFFER DOCUMENTS

Refer to Section X, Attachment 02, Evaluation Criteria, for documentation required in response to this solicitation.

21 PROTESTS

- A. Protests must be typewritten and hand-delivered or mailed to the Manager of the Procurement and Contracts Department, (MA-29). Protests can be hand-delivered to Metropolitan Washington Airports Authority, 2733 Crystal Drive, Arlington, VA 22202 or mailed to Metropolitan Washington Airports Authority, 1 Aviation Circle, Washington, DC 20001-6000. If a protest is mailed, it should be sent by registered or certified mail, return receipt requested. Protests sent by facsimile machine will not be considered to meet the applicable deadline unless the original is hand-delivered or mailed and received by the Procurement and Contracts Department Manager prior to the applicable deadline.
- B. If a potential offeror believes it has grounds to protest any terms or conditions contained in or omitted from a solicitation issued by the Authority or an amendment to that solicitation, the potential offeror must file its protest with the Authority's Procurement and Contracts Department Manager. The protest must be received by the manager by the earlier of the following two dates: (1) Fourteen (14) days after issuance date of the solicitation or the date of the solicitation amendment containing the terms and conditions that are the subject of the protest, or (2) the due date for bids or proposals.
- C. If an unsuccessful offeror on an Authority solicitation believes it has grounds to protest the rejection of its bid or proposal, or the award of a contract (other than grounds relating to the terms or conditions contained in or omitted from a solicitation or solicitation amendment), that offeror must file its protest with the Procurement and Contracts Department Manager. The protest must be received by the manager within seven (7) calendar days after the date of the Authority's letter notifying the offeror that its bid or proposal was unsuccessful or not accepted.
- D. The Procurement and Contracts Department Manager will attempt to respond to a protest within seven (7) days from receipt of the protest. If the manager determines that additional time will be required to respond to the protest, the manager will, within seven (7) days, notify the protestor of the time period within which a response will be made.

- E. The Authority's President and Chief Executive Officer may proceed with Award of the contract and notice-to-proceed while a protest is pending if he determines it to be in the Authority's best interest to do so.

22 RESERVED**23 NOTICE TO LOW OFFERORS**

The fact that an offeror submits the lowest offer does not automatically mean that it will be awarded the contract. Other factors, such as conformity of the offer to the solicitation, the offeror's responsibility, and any change in the Authority's requirements, must be considered. No contractual obligation or liability on the part of the Authority shall exist unless and until the contract is awarded. Therefore, no offeror should begin work on the services called for by this solicitation until after formal notice of contract award has been made by the Authority.

24 TITLE VI SOLICITATION NOTICE

The Metropolitan Washington Airports Authority, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

SECTION VI - SPECIAL PROVISIONS

01 USE OF CONTRACT BY OTHER JURISDICTIONS

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

The Metropolitan Washington Airports Authority is the Lead Agency in this procurement and has included this MAPT Cooperative Rider Clause in this solicitation indicating its willingness to allow other public entities to participate pursuant to the following Terms and Conditions:

A. Terms

1. Participating entities, through their use of the Cooperative Rider Clause, agree to the terms and conditions of the resulting contract to the extent that they can be reasonably applied to the participating entity.
2. Participating entities may also negotiate additional terms and conditions specific to their local requirements upon mutual agreement between the parties.

B. Other Conditions - Contract and Reporting

1. The contract resulting from this solicitation shall be governed by and 'construed in accordance with the laws of the State/jurisdiction in which the participating entity officially is located;
2. To provide to MWCOCG and/or BMC contract usage reporting information, including but not limited to quantity, unit pricing and total volume of sales by entity, as well reporting other participating entities added on the contract, on demand and without further approval of contract participants;
3. Contract obligations rest solely with the participating entities only;
4. Significant changes in total contract value may result in further negotiations of contract pricing with the lead agency and participating entities.

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

A list of the participating members of the Mid-Atlantic Purchasing Team can be found at the following websites:

- <http://www.mwcog.org/purchasing-and-bids/cooperative-purchasing/member-links>
- <http://www.baltometro.org/our-work/cooperative-purchasing/brcpc-representatives>

02 CONTRACTOR PERFORMANCE EVALUATION

The Airports Authority will conduct periodic written evaluations of the contractor's performance at various intervals throughout the life of this contract. Input for these evaluations will be provided by the Contracting Officer's Technical Representative (COTR), Contracting Officer, and, where appropriate, the end user. The COTR will be responsible for completing the evaluation forms and reviewing their contents with the contractor. The intervals at which these evaluations will be conducted will be established prior to commencement of performance and the contractor advised accordingly.

These evaluations should be looked upon as a partnering tool between the contractor and the Airports Authority. It is hoped that they will help the contractor improve performance and communications when needed, as well as provide an opportunity for the Airports Authority to recognize positive performance. It is the Airports Authority's intent to use these evaluations to help keep communications open between the parties and foster achievement of a quality end product.

03 LIMITATION OF OBLIGATIONS AND LIABILITIES

Any and all obligations of the Airports Authority under this Agreement, and any and all liabilities of the Airports Authority that may arise under this Agreement, shall be limited to the Airports Authority's Dulles Corridor Enterprise Fund (which is used to finance the Dulles Toll Road's ongoing capital program and the construction of the Dulles Metrorail Project), and any claim based on any such obligation or liability of the Airports Authority shall be limited to the revenues and assets of the Dulles Corridor Enterprise ("Enterprise"). Within its Dulles Corridor Enterprise, the Airports Authority operates, maintains and improves the Dulles Toll Road and undertakes the construction of the Project. No obligation of the Airports Authority under this Agreement, and no liability of the Airports Authority that may arise under this Agreement, shall constitute an obligation or liability of, or give rise to a claim against, or create any recourse against the Airports Authority's Aviation Enterprise Fund (which is used to finance the operation, maintenance, improvements, operating expenses and other activities of Ronald Reagan Washington National Airport and Washington Dulles International Airport), or any of the revenues or assets of the Aviation Enterprise.

04 CONTRACT AMOUNT AND FUNDING

The ceiling amount for the base contract period shall not exceed \$1,000,000.00. A minimum of one task project will be issued under this contract. The maximum number of task projects issued will be contingent upon the requirements of the Authority and amount of funds available. Individual task orders will be funded separately. The Contractor shall not perform any work which is not funded.

05 TRAVEL EXPENSES

A. Lodging/Meals/Incidental Expenses.

1. Each consultant required to travel overnight in performance of this contract shall be reimbursed for lodging, meals and incidental expenses at the rates specified by GSA (<http://www.gsa.gov> – search "Per Diem") for the locations being visited. Receipts are not required.
2. The amount for meals and incidental expenses includes state sales tax (where applicable) and a 15% gratuity. On the day of departure, 75% of the applicable rate will apply. On the last day of travel, 75% of the applicable rate will apply. Receipts are not required.

B. Air Travel:

The Authority shall reimburse for air travel at the coach rate. The Contractor is expected to obtain discount fares to the extent possible. Travel shall be by the route that is most cost effective to the Authority. The Contractor shall bear any additional costs incurred as a result of deviations from this route for personal reasons. Travel time shall not be compensated. Legible receipts are required.

C. Local Transportation:

1. Taxi/limousine/airport bus – Reasonable expenses reimbursable at actual cost. Receipts are required. Transportation expenses between places of lodging or business and places where meals are taken are not allowed unless suitable meals cannot be obtained at the site.
 2. Rental automobiles – Reasonable expenses reimbursable at actual cost. **Rental automobiles shall be used only when it will effect a savings or other advantage or when the use of other transportation is not feasible.** Rental automobiles should be limited to sub-compact models when available. A legible copy of the rental agreement is required to support costs. Rental of other than a sub-compact is allowable when sub-compacts are not available. Receipts are required.
 3. Private automobile - Use of private automobiles will be reimbursed at the current IRS business mileage rate.
 4. Tolls and parking charged for the use of ferries, roads, bridges, and tunnels while traveling to and from commercial carriers and parking charges at destination are reimbursable at actual cost. Receipts are required.
- D. Telephone: Actual cost of business telephone charges incurred by Contractor while in travel status is reimbursable. Personal telephone charges are not allowable. Receipts are required.
- E. Other
1. Other actual expenses incurred in the performance of this contract, exclusive of normal operating expenses, and as approved by the Authority, shall be reimbursed. Receipts or invoices are required on each individual item under this category.
 2. **Non-reimbursable costs** include expense for entertainment, first-class airfare, contributions, personal telephone and facsimile charges, dues and subscriptions, alcoholic beverages, expenses for transportation and lodging for personal pursuits, gifts, gratuities, and other charges expressly disallowed under the terms of the agreement.

SECTION VII - CONTRACT PROVISIONS**01 SCOPE OF WORK**

The Contractor shall provide all labor, materials, equipment and supervision for real estate legal services on an as-needed basis, relating to the Dulles Corridor Metrorail Project Phase 2 in accordance with the Statement of Work included at Section X, Attachment 01.

02 PRE-PERFORMANCE CONFERENCE

Prior to commencement of work, the Contractor shall meet in conference with the Contracting Officer and the Contracting Officer's Technical Representative (COTR) to discuss and develop mutual understandings related to scheduling and administration of work.

03 VEHICLE REGISTRATION AND PARKING

The Contractor's employees will **NOT** be provided parking for their personal cars when performing the services called for in this contract.

04 AIRPORT REGULATIONS

The Contractor and its employees shall become familiar with, and shall be governed by, all Authority regulations as posted or as indicated by this contract or by the Contracting Officer and/or COTR. Operators of all equipment on airport property shall comply with all licensing requirements of the State of Virginia.

05 SAFETY REQUIREMENTS

- A. Prior to commencement of work, the Contractor shall meet in conference with the COTR to discuss and develop mutual understandings relevant to the administration for the safety programs of the facility.
- B. If the Contractor fails or refuses to promptly comply with safety requirements, the Contracting Officer and/or the COTR may issue an 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 stoppage shall be made subject to claim for extension of time or for excess costs or damages to the Contractor.

06 DAMAGE REPORTS

In all instances where Authority property and/or equipment is damaged by Contractor employees, a full report of the fact and extent of such damage shall be submitted, in writing, to the Contracting Officer's Technical Representative (COTR) within 24 hours of the occurrence.

07 DAMAGE OR LOSS OF CONTRACTOR'S PROPERTY

The Contractor is responsible for taking that action necessary to protect its supplies, materials, and equipment and the personal property of its employees from loss, damage, or theft.

08 WORKING HOURS

- A. Normal working hours for Authority employees are Monday through Friday, 7:30 A.M. to 4:00 P.M., except for Federal Holidays. Overtime working hours are Monday through Friday, Saturdays, Sundays, and Federal Holidays, 4:00 P.M. to 7:30 A.M. The ten Federal Holidays observed at the Authority are:

| | |
|------------------------------------|---------------|
| New Year's Day | Labor Day |
| Martin Luther King, Jr.'s Birthday | Columbus Day |
| President's Day | Veterans' Day |
| Memorial Day | Thanksgiving |
| Independence Day | Christmas |

- B. When one of the above designated holidays falls on a Sunday, the following Monday will be observed as a legal holiday. When a legal holiday falls on a Saturday, the preceding Friday is observed as a holiday.

09 AUTHORITY FURNISHED FACILITIES

There will be no Authority furnished facilities under this contract.

10 AUTHORITY FURNISHED EQUIPMENT

There will be no Authority furnished equipment under this contract.

11 AUTHORITY FURNISHED UTILITIES

There will be no Authority furnished utilities under this contract

12 CONTRACTOR PERSONNEL

The Contracting Officer may, at any time under this contract, require an investigation of Contractor personnel. When notified of such a requirement, the Contractor shall have completed on each employee who would have a requirement to visit and/or work at an Authority Facility, such investigative forms as are furnished by the Contracting Officer.

13 WORKMANSHIP AND INSPECTION

- A. All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may, in writing, require the Contractor to remove any employee from work that the Contracting Officer deems incompetent or careless.
- B. Further, the Authority may, from time to time, make inspections of the work performed under this contract. Any inspection by the Authority does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements.

14 BILLING INSTRUCTIONS

The Contractor shall submit, no more than once each month, an original of both its invoices and the Authority's Invoice Attachment Form (Exhibit J), listing all subcontractors and their activities, either electronically via e-mail to invoices@mwaa.com or in hard copy to the following address:

Metropolitan Washington Airports Authority
Accounting Department, MA-22B
1 Aviation Circle
Washington, DC 20001-6000

Failure to include required Exhibit J Attachment may delay payment of your invoice.

Invoices shall be properly identified with the Contractor's name, address and applicable contract/purchase order number. Invoices without proper identification will be returned to the sender. Invoices in excess of one (1) per month will be returned to the contractor.

The Contractor is encouraged to utilize banks owned and controlled by Disadvantaged Business Enterprises. To obtain a list of Disadvantaged Business Enterprise banks, contact the Department of Supplier Diversity at 703-417-8625.

15 LIABILITY INSURANCE

The Contractor shall procure and maintain at its expense during the contract period the following insurance coverage from an insurance company or companies possessing a rating of A- VII or higher from the A.M. Best Company or an equivalent rating service. **THE METROPOLITAN WASHINGTON AIRPORTS AUTHORITY SHALL BE NAMED AS AN ADDITIONAL INSURED** on Commercial General Liability (including completed operations), Commercial Auto Liability and, if such a policy is required, Environmental Impairment Liability. All of the policies required of the Contractor shall contain a waiver of subrogation provision to waive all rights of recovery under subrogation or otherwise against the Airports Authority. Contractor shall advise the Airports Authority of any cancellation, non-renewal, or material change in any policy within five business days of notification of such action. All of the policies required of the Contractor shall be primary and the Contractor agrees that any insurance maintained by the Airports Authority shall be non-contributing with respect to the Contractor's insurance.

Insurance Coverage and Minimum Limits

A. Commercial General Liability

Shall be a limit of not less than \$5,000,000 per occurrence. Coverage shall include, but not be limited to, Bodily Injury and Property Damage to Third Parties, Contractual Liability, Products-Completed Operations, Personal Injury and Advertising Injury Liability, Premises-Operations, Independent Contractors and Subcontractors, and Fire Legal Liability. The Products-Completed Operations coverage shall be provided for a minimum of one year following final acceptance of the work except in the case of construction, in which case the coverage shall be provided for a minimum of five years following final acceptance of the work.

B. Commercial Automobile Liability

Shall be a limit of not less than \$1,000,000 per occurrence for any vehicle. If any portion of the Contractor's work will occur on the Airport Operations Area (AOA), the required limit shall be \$2,000,000 per occurrence.

C. Professional Liability (if required)

Shall be a limit of not less than \$1,000,000 per claim with a \$1,000,000 aggregate for all employees for contracts with an annual value of \$500,000 and less. For contracts with an annual value over \$500,000, the required limits shall be not less than \$2,000,000 per claim with a \$2,000,000 aggregate for all employees. There shall be an extended reporting period provision of not less than two years. When Environmental Impairment Liability is also required, the Professional Liability shall not contain any exclusion or limitation related to Environmental Impairment.

D. Environmental Impairment Liability (if required)

Shall be a limit of not less than \$1,000,000 per occurrence for bodily injury, property damage, and environmental cleanup costs caused by pollution conditions, both sudden and non-sudden. This requirement can be satisfied by either a separate environmental liability policy or through a modification to the Commercial General Liability policy. Evidence of either must be provided.

E. Workers Compensation and Employers Liability

Workers Compensation shall be at Virginia Statutory Limits. Contractor shall satisfy all compulsory requirements relating to workers compensation in any jurisdiction in which benefits may be claimed. Employers Liability shall be a limit of not less than \$1,000,000 for bodily injury by accident and \$1,000,000 each employee for bodily injury by disease.

F. "All Risk" Property (Contractor's Property)

Replacement cost coverage under an "All Risk" policy for any of the Contractor's real or personal property used or situated on Airports Authority's property.

By requiring insurance herein, the Airports Authority does not represent that coverage and limits will necessarily be adequate to protect Contractor, and such coverage and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to the Airports Authority in this Contract. The Contractor may use commercial umbrella/excess liability insurance so that Contractor has the flexibility to select the best combination of primary and excess limits to meet the total insurance limits required by this Contract. Any umbrella or excess liability coverage must be at least as broad as the primary coverage and contain all coverage provisions that are required of the primary coverage.

The Airports Authority reserves the right at any time throughout the term of the Contract to adjust the aforementioned insurance requirements, if, in Airports Authority's reasonable judgment, the insurance required by the Contract is deemed inadequate to properly protect the Airports Authority's interest. The Airports Authority reserves the right to modify portions of the insurance requirements for the apparent successful offeror for good cause.

The failure of the Airports Authority at any time to enforce the insurance provisions, to demand such certificate or other evidence of full compliance with the insurance requirements, or to identify a deficiency from evidence that is provided shall not constitute a waiver of those provisions nor in any respect reduce the obligations of the Contractor to maintain such insurance or to defend and hold the Airports Authority harmless with respect to any items of injury or damage covered by this Contract.

The Contractor shall provide the Contracting Officer with a valid Certificate of Insurance, in advance of the performance of any work and as soon as possible after renewal, exhibiting coverage as required by the Metropolitan Washington Airports Authority's contract terms and conditions. The Contractor is responsible to ensure that all Subcontractors independently carry insurance appropriate to cover the Subcontractors' exposures, or are covered under the Contractor's policies. The Certificate of Insurance shall be provided on the industry standard form (ACORD 25) or other form acceptable to the Airports Authority. **The Certificate of Insurance shall be issued to:**

Procurement and Contracts Department
Metropolitan Washington Airports Authority
1 Aviation Circle
Washington, DC 20001-6000

16 CONTRACT TERM

The period of performance under this contract will be a three year base plus one option year.

17 CORRESPONDENCE PROCEDURES

All correspondence, except that which is technical in nature, will be directed to the Contracting Officer at the following address. Technical correspondence shall be forwarded to the Contracting Officer's Technical Representative (COTR), with a copy forwarded to the Contracting Officer.

Metropolitan Washington Airports Authority
Procurement and Contracts Department, MA-29
198 Van Buren Street
Herndon, VA 20170
Attn.: Michael Grealy

18 DISPUTES

A. General

This contract provision sets forth the Authority's disputes procedures for disputes under remedy-granting contract provisions and non-material breaches of contract. It applies to all disputes except disputes based upon a material breach of contract.

It is the Authority's policy to encourage resolution of disputes by mutual agreement between the Contracting Officer and the Contractor. Consistent with this intent, the Authority requires, as a condition precedent to the initiation of litigation, the exhaustion of the administrative disputes procedure described in this contract provision. If the dispute is not resolved by the administrative disputes procedure, the contractor may proceed to court litigation in accordance with the agreements contained in this contract.

B. Waiver of Jury Trial

To the fullest extent permitted by law, the Contractor and the Authority hereby waive their respective rights to a trial by jury on any dispute or claim or cause of action upon, arising under, arising out of or related to, the contract. In addition, the Contractor and the Authority hereby waive their respective rights to trial by jury in any other proceeding or litigation of any type brought by any of the contracting parties against the other party whether with respect to contract claims or actions, tort claims, or otherwise. Without limiting the foregoing, the Authority and the Contractor further agree that their respective rights to a trial by jury are waived as to any action, counterclaim, or other proceeding that seeks, in whole or in part, to challenge the validity or enforceability of the contract. This waiver of jury trial shall also apply to any subsequent amendments, modifications, renewals or supplements to the contract.

C. Performance Pending Dispute

The contractor shall proceed diligently with performance of the contract's requirements, including the disputed portions, pending resolution of any dispute.

D. Steps of Administrative Disputes Procedure

1. Claim Submission

The Contractor shall submit a written claim signed and certified as true and accurate and that it is made in good faith based upon supporting facts and cost and pricing data that are current, accurate and complete as of date of submission and date of any agreement; the claim and certifications shall be made by a duly authorized officer of the Contractor. The claim at a minimum shall include a) the basis of liability; b) basis of request for additional compensation, time extension request or other relief requested; c) a narrative that fully explains the basis for liability; d) the claim must state that it is made in good faith, that the supporting facts and cost and pricing data are current, accurate and complete as of the date of certification, and the amount of additional compensation, time of performance, or other relief requested reasonably and accurately reflect the added cost, added time of performance, and other damage the Contractor reasonably believes it has incurred; and e) the claim must include or specifically reference all actual cost accounting records, actual schedule data, as-built data, or other data or facts that relate to any aspect of the Contractor's claim.

2. Prohibited Claim Formats

Monetary claims based on anticipatory profits are prohibited. Monetary claims requests based on a total cost approach are prohibited. Time extension requests or claims on a total time approach are prohibited.

E. Claims Review and Disposition

1. Contracting Officer Discussions

Discussions between the Contracting Officer and the Contractor concerning the claim presented shall occur within a reasonable period of time after submission of the certified claim and receipt by the Contracting Officer of sufficient information, including, but not limited to, information resulting from an audit, if deemed necessary. Discussions shall be conducted in good faith for the resolution of the dispute, including the exchange of relevant information. If requested by the Contracting Officer, the COTR shall provide the Contracting Officer with a written response to the claim that references the applicable provisions of the statement of work, contract requirements, and applicable contract provisions and may include a specific request that the COTR obtain additional information or audit access, or both. The Contractor shall provide such additional information or audit access and failure to promptly provide such information or access shall be a bar to the claim.

2. Alternative Dispute Resolution (ADR)

Non-binding evaluative mediation is established as the ADR for this contract. The parties agree that the following procedures shall apply:

- a. Selection of the neutral mediator shall be as made by the parties; a neutral means an individual who is trained or experienced in conducting dispute resolution proceedings and in providing dispute resolution services related to significant construction contracts.
- b. All statements made as a part of the proceeding and all memoranda, work products or other materials made during the course of the mediation are deemed confidential and are to be treated in accordance with Virginia Code Section 8.01-576.10; in addition, the

statements and any written materials are considered privileged settlement discussions, are not party admissions, and are made without prejudice to any party's legal position, if mediation does not result in an agreement.

- c. Materials prepared for the mediation are not subject to disclosure in any other judicial or administrative proceeding.
- d. Informal discovery is permissible in the form of production or inspection of certain categories of documents.
- e. The parties agree to split evenly the costs of the mediator and any incidental costs associated with holding the mediation.

3. Impasse and Litigation

If the ADR procedure does not result in an agreement, an impasse can be declared.

4. Contracting Officer's Final Decision

Upon the declaration of an impasse, the Contractor shall request a written final decision by the Contracting Officer. The Contracting Officer shall issue a final decision within sixty (60) calendar days from receipt of the request and adequate documentation unless the dispute is determined to be complex in nature. The final decision of the Contracting Officer shall be final and conclusive unless within thirty (30) calendar days from receipt of the Contracting Officer's final decision, the Contractor mails or otherwise furnishes a written notice of appeal to the Manager, Procurement and Contracts Department.

5. Litigation

Following the completion of the administrative disputes resolution process without an agreement as indicated by the timely receipt of a notice of appeal, the dispute may be resolved by litigation without a jury before a court of competent jurisdiction within the Commonwealth of Virginia.

F. Remedies for inappropriate claims

The following remedies are provided for the Authority's use in the event the Contractor submits reckless or frivolous claims or false, misleading, or material misrepresentations relating to claims.

1. Remedies for Reckless or Frivolous Claims

In the event that the Contractor makes a claim against the Authority and the Contractor's claim, as certified by an officer of the contractor, is a) found by a court to be based on any reckless statement contained in the certification of the claim or b) is found by a court to be of frivolous nature or materially overstated in amount, then the Contractor shall be liable to the Authority and shall pay to it a percentage of costs incurred by the Authority in investigating, analyzing, negotiating, mediating and litigating (including attorneys' fees) the frivolous or overstated claim. The percentage of costs referenced shall be equal to the percentage of the contractor's total claim which is determined through litigation to be the result of a reckless statement or frivolous claim. "Frivolous" shall mean having no basis in law or in fact. This remedy is a contractual remedy and does not otherwise affect the other rights of the Authority in law or in equity.

2. Remedies for False or Misleading Statements or Material Misrepresentation

Any claim by the Contractor that is based on false or reckless statements that mislead the Authority or material misrepresentations shall entitle the Airports Authority to a full recovery of all costs incurred by the Authority in investigating, analyzing, negotiating, mediating and litigating (including attorneys' fees) the claim. This remedy is a contractual remedy and does not otherwise affect the other rights of the Authority in law or in equity.

19 TERMINATION FOR CONVENIENCE OF THE AUTHORITY

- A. The Authority may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Authority's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.
- B. After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause;
1. Stop work as specified in this notice.
 2. Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
 3. Terminate all subcontracts to the extent they relate to the work terminated.
 4. Assign to the Authority, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Authority shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 5. With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
 6. As directed by the Contracting Officer, transfer title and deliver to the Authority (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Authority.
 7. Complete performance of the work not terminated.
 8. Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Authority has or may acquire an interest.
 9. As directed or authorized by the Contracting Officer, use its best efforts to sell and/or return at the Authority's expense to manufacturers, suppliers, or distributors for full credit less any applicable restocking charges, any property of the types referred to in subparagraph 6. above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any

payments to be made by the Authority under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

- C. After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this one-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after one year of any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- D. Subject to paragraph C. above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph D. or paragraph E. below, exclusive of costs shown in subparagraph E.3. below, may not exceed the total contract price as reduced by A. the amount of payments previously made and (B) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph E. below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- E. If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph D. above:
1. The Contract price for completed supplies or services accepted by the Authority (or sold or acquired under subparagraph B.9. above) not previously paid for, adjusted for any saving of freight and other charges.
 2. The total of -
 - a. The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph E.1. above;
 - b. The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision a. above; and
 - c. A sum, as profit on subdivision a. above, determined by the Contracting Officer in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision c. and shall reduce the settlement to reflect the indicated rate of loss.
 3. The reasonable costs of settlement of the work terminated, including -
 - a. Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

- b. The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - c. Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- F. Except for normal spoilage, and except to the extent that the Authority expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph E. above, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Authority or to a buyer.
- G. The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraphs C., E., or I., except that, if the Contractor failed to submit the termination settlement proposal within the time provided in paragraphs C. or I., and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraphs C., E., or I., the Authority shall pay the Contractor (1) the amount determined by the Contracting Officer, if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.
- H. In arriving at the amount due the Contractor under this clause, there shall be deducted -
- 1. All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;
 - 2. Any claim which the Authority has against the Contractor under this contract; and
 - 3. The agreed price for, or the proceeds of, sale of materials, supplies or other things sold or sold under the provisions of Paragraph B.9 of this clause and not recovered by or credited to the Authority.
 - 4. The amount credited to the Contractor for materials, supplies or other things that are returned to the manufacturers, suppliers or distributors in accordance with Paragraph B.9 of this clause and not recovered by or credited to the Authority.
- I. If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination, unless extended in writing by the Contracting Officer.
- J. 1. The Authority may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes that the total of these payments will not exceed the amount to which the Contractor will be entitled.
2. If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Authority upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other

disposition of termination inventory until ten (10) days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

- K. Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for three years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Authority, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

20 DEFAULT

- A. If the Contractor: 1) fails to comply with the terms of this contract; 2) refuses or fails to prosecute the work, or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension; or 3) fails to complete the work within this time, the Authority may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Authority may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plants on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Authority resulting from the Contractor's refusal or failure to comply with the contract or to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Authority in completing the work.
- B. The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause, if:
1. The delay in completing the work or failure to comply with contract terms arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Authority in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the Authority, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers, and
 2. The Contractor, within ten (10) days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay or failure to comply with contract terms. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended.
- C. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Authority.
- D. The rights and remedies of the Authority in this clause are in addition to any other rights and remedies provided by law or under this contract.

21 INTERPRETATION OR MODIFICATION

Except as otherwise provided in this contract, no oral statement of any person and no written statement of anyone other than the Contracting Officer, shall modify or otherwise affect the terms or meaning of the contract or specifications. All requests for interpretation or modifications shall be made in writing to the Contracting Officer.

22 RESERVED**23 ACCIDENT AND FIRE REPORTING
(Applicable to contracts performed on authority owned or leased property)**

- A. The Contractor shall immediately report to the Contracting Officer and the Contracting Officer's Technical Representative (COTR) any accident or fire occurring at the site of the work which causes:
1. A fatality or as much as one lost workday on the part of any employee of the Contractor or subcontractor at any tier;
 2. Damage to Authority property, either real or personal;
 3. Damage to Contractor or subcontractor owned or leased motor vehicles or mobile equipment;
 4. Damage because of which a contract time extension may be requested.
- B. Accident and fire reports required by paragraph (A) above shall be accomplished by the following means:
1. Accidents or fires resulting in a death, hospitalization of five or more persons, or destruction of Authority property (either real or personal) the total value of which is estimated at \$100,000 or more, shall be reported immediately by telephone to the Contracting Officer and Contracting Officer's Technical Representative (COTR), and shall be confirmed in writing within 24 hours to the Contracting Officer. Such communication shall state all known facts as to the extent of injury and damage and as to the cause of the accident or fire.
 2. Other accident and fire reports required by paragraph A. above may be reported by the Contractor using a State, private insurance carrier, or Contractor accident report form which states extent of injury and damage and cause of accident or fire. Such report shall be mailed or otherwise delivered to the Contracting Officer within 48 hours subsequent to the occurrence of the accident or fire.
- C. The Contractor shall assure compliance by subcontractors at all tiers with the provisions of this clause.

24 INDEMNIFICATION

- A. To the fullest extent permitted by law, the Contractor shall hold harmless and indemnify the Authority, the Authority's employees, and the Authority's agents, contractors, subcontractors, and consultants, and agents and employees of any of them, from and against all claims, suits, damages, losses, expenses, and attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, suit, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury or damage to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused by negligent acts or omissions of the Contractor, or any of its subcontractors, their agents or anyone directly or indirectly employed by them, regardless

of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

- B. In claims against any person or entity indemnified under this provision by an employee of the Contractor, a subcontractor, an employee of a subcontractor, or an agent of the Contractor or a subcontractor, the indemnification obligation under this provision shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

25 LICENSES AND PERMITS

The Contractor shall, without additional expense to the Authority, be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal, State, and Municipal laws, codes and regulations, in connection with the prosecution of the work.

26 SUPERVISION

The Contractor shall arrange for satisfactory supervision of the contract work. The Contractor or its supervisors shall be available at all times, when the Contractor work is in progress. It is the Authority's policy that the Authority will not supervise the Contractor's employees, directly or indirectly.

27 KEY PERSONNEL

The key personnel specified in the Contractor's proposal are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact on the program. No diversion of key personnel shall be made by the Contractor without the written consent of the Contracting Officer. The listing of key personnel may be amended from time to time during the course of the contract to either add or delete personnel or positions, as appropriate, subject to prior approval of the Contracting Officer.

The Contractor shall require in each subcontract a provision that requires the subcontractor to advise the Contractor promptly of any significant changes in the organization of such subcontractor, and the Contractor shall promptly advise the Contracting Officer of any such changes reported to the Contractor or otherwise discovered by the Contractor.

28 CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR) AUTHORITY

The Contracting Officer may designate Authority personnel to act as his or her authorized representatives for one or more contract administration functions not involving a change in the scope, price, terms, or conditions of the contract. Such designation will be in writing, set forth by a separate letter signed by the Contracting Officer, and will contain specific instructions as to the extent to which the representative may take action for the Contracting Officer. Such designation will not contain authority to sign contractual documents, nor authorize the designee to order contract changes, modify contract terms, or create any liability on the part of the Authority.

29 RESERVED**30 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT**

- A. The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.
- B. In the event of any claim or suit against the Authority, 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 Authority, 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 Authority except where the Contractor has agreed to indemnify the Authority.

31 PATENT INDEMNITY

Except as otherwise provided, and except to the extent infringement was caused by the Authority, the Contractor agrees to indemnify the Authority and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any Letters Patent of the United States arising out of the performance of this contract.

32 CHANGES

- A. The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, 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.); or
 3. Place of performance of the services.
- B. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether 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.
- C. The Contractor must submit any "proposal for adjustment" (hereafter referred to as proposal) under this clause within 30 days from the date of receipt of the written order. If however, the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.
- D. 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.
- E. Failure to agree to any adjustment shall be a dispute under the Disputes clause. Nothing in this clause however, shall excuse the Contractor from proceeding with the contract as changed.

33 INSPECTION OF SERVICES

- A. Definitions. "**Services,**" as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.
- B. The Contractor shall provide and maintain an inspection system acceptable to the Authority covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Authority during contract performance and for as long afterwards as the contract requires.
- C. The Authority has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Authority shall perform inspections and tests in a manner that will not unduly delay the work.
- D. If any of the services do not conform with contract requirements, the Authority may require the Contractor to perform the services again in conformity with contract requirements at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the Authority may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce the contract price to reflect the reduced value of the services performed.
- E. If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Authority may (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Authority that is directly related to the performance of such service or (2) terminate the contract for default.

34 WARRANTY OF SERVICES

- A. Definitions. "**Acceptance,**" as used in this clause, means the act of an authorized representative of the Authority by which the Authority assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services, as partial or complete performance of the contract.

"**Correction,**" as used in this clause, means the elimination of a defect.
- B. Notwithstanding inspection and acceptance by the Authority or any provision concerning the conclusiveness thereof, the contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Contracting Officer shall give written notice of any defect or nonconformance to the Contractor within 30 days from the date of acceptance by the Authority. This notice shall state either (1) that the Contractor shall correct or reperform any defective or nonconforming services, or (2) that the Authority does not require correction or reperformance.
- C. If the Contractor is required to correct or reperform, it shall be at no cost to the Authority, and any services corrected or reperformed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or reperform, the Contracting Officer may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the Authority thereby, or make an equitable adjustment in the contract price.
- D. If the Authority does not require correction or reperformance, the Contracting Officer shall make an equitable adjustment in the contract price.

35 RESERVED**36 RESERVED****37 EXCUSABLE DELAYS**

- A. Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Authority in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.
- B. If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless -
1. The subcontracted supplies or services were obtainable from other sources;
 2. The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and
 3. The Contractor failed to comply reasonably with this order.
- C. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Authority under the termination clause of this contract.

38 ORDER OF PRECEDENCE

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- A. Price Schedule (excluding the specifications);
- B. Representations and Certifications
- C. Solicitation Provisions;
- D. Special Provisions;
- E. Contract Provisions;
- F. Other documents, exhibits, and attachments;
- G. The specifications/Statement of Work; and
- H. The drawings, if applicable.

39 MODIFICATION PROPOSALS - PRICE BREAKDOWN

The Contractor, in connection with any proposal it makes for a contract modification, shall furnish a price breakdown, itemized as required by the Contracting Officer. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract, and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if

the proposal includes a time extension, a justification therefore shall also be furnished. The proposal, together with the price breakdown and time extension justification, shall be furnished by the date specified by the Contracting Officer.

40 CLAIMS FOR ADDITIONAL COSTS

If the Contractor wishes to make a claim for an increase in the contract sum, it shall give the Authority written notice of the intent to do so within twenty (20) calendar days following the occurrence of the event giving rise to the claim. This notice shall be given by the Contractor prior to proceeding to execute the work, except in an emergency endangering life or property. No such claim shall be valid unless so made. Any change in the contract sum resulting from such claim shall be authorized by contract modification.

41 TAXES

The Contractor is responsible for all applicable Federal, state, and local taxes of all kinds on materials, labor, or services furnished by it or arising out of its operations under the contract. Such taxes shall include, without limitation, sales, use, excise, employee benefit and unemployment taxes, customs duties, and income taxes.

42 PAYMENTS

- A. The Authority shall pay the Contractor the contract price as provided in this contract.
- B. The Authority strongly recommends that contractors participate in a program whereby payments under this contract are made via electronic funds transfer into the contractor's bank. Contractor requests to initiate such service shall include the bank name, address, account number, contact person, telephone number, and American Bankers Association (ABA) 9-digit identifying number. The initial request and any subsequent changes must be signed by the contractor's signatory of the contract and shall be submitted directly to the Authority's Finance Office (MA-22B).
- C. The Authority shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates provided by the Contractor and approved by the Contracting Officer. The Contractor shall furnish to the Authority the Invoice Attachment Form (See Exhibit J) which will be included with each invoice submission. This Form shall provide information on all subcontractors, each subcontractor's scope of services, and the subcontract dollar amount for those services. When reviewing the Contractor's invoicing for the reporting period, the Authority will use the Invoice Attachment Form as verification of subcontracting activities and payments. If requested by the Contracting Officer, the Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration if:
 1. Such consideration is specifically authorized by this contract; and
 2. The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

Failure to include required Exhibit J Attachment may delay payment of your invoice.

- D. If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. If

however, satisfactory progress has not been made, the Contracting Officer may retain a maximum of ten (10) percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount which the Contracting Officer considers adequate for protection of the Authority and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each portion of work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

- E. All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Authority, but shall not be construed as:
1. Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or
 2. Waiving the right of the Authority to require the fulfillment of all the terms of the contract.
- F. The Authority shall pay the amount due the Contractor under this contract after:
1. Completion and acceptance of all work;
 2. Presentation of a properly executed voucher; and
 3. Presentation of releases of all claims, liens and encumbrances against the Authority arising by virtue of this contract. The release shall identify other claims, liens and encumbrances, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract have been assigned. Any assignment must be approved by the Contracting Officer.
- G. The Authority shall make payments within 30 calendar days after receipt of a proper invoice in the office designated to receive the invoice.
- H. The Contractor promises that it will pay its subcontractors within 10 days following receipt of payment from the Authority. The prime contractor also agrees to return any retainage withheld from subcontractors within 10 days after the subcontractor has satisfactorily completed its work. Any delay or postponement of payment may not take place without prior approval of the Authority. A finding of non-payment is a material breach of this Contract. The Authority may, at its option, increase allowable retainage or withhold progress payments unless and until the Contractor demonstrates timely payment of sums due subcontractors. Provided, however, that the presence of a "pay when paid" clause in a subcontract shall not preclude Authority inquiry into allegations of nonpayment. Provided, further, that the remedies above shall not be employed when the Contractor demonstrates that failure to pay results from a bona fide dispute with its subcontractor or supplier. The Contractor shall incorporate this provision into all subcontracts in excess of \$5,000 that results from this contract.
- I. Contractor Submission Of W-9 Required Prior to Contract Award
- As a prerequisite for contract award, the contractor shall complete all parts of the Internal Revenue Service ("IRS") Form W-9 (Request for Taxpayer Identification Number and Certification). Contract award will not be made until the completed W-9 has been received by the Authority. The W-9 form and instructions are available to contractors by accessing the IRS website at www.irs.gov and inserting the form number "W-9".

The W-9 information is requested so that we may determine the need to file IRS Form 1099 in connection with payments made by the Authority to the contractor. To assure accurate maintenance of your firm's status, the submission of the W-9 is required for each contract or purchase order executed by and between the Authority and its contractors. If the term of the contract exceeds one year, the Authority may request periodic resubmission of the W-9. If the contractor fails to submit the form by the deadline stated in the resubmission request, the Authority may refuse to pay invoices until the form has been submitted.

43 PUBLICITY RELEASES

Publicity releases in connection with this contract will not be made by the contractor unless prior written approval is obtained from the Manager, Procurement and Contracts Department.

44 OPTION TO EXTEND THE TERM OF THE CONTRACT

The Authority may extend the term of this contract by written notice to the Contractor within 30 days of contract expiration. The Authority will give the Contractor a preliminary notice of its intent to extend at least 60 days prior to contract expiration. This preliminary notice shall not commit the Authority to an extension. If the Authority exercises an option, the extended contract shall be considered to include this option provision. The extended contract shall be at the rates specified in the Price Schedule. The total duration of this contract, including the exercise of any options under this provision, shall not exceed four years.

45 OPTION TO EXTEND SERVICES

The Authority may require continued performance of any services within the limits and at the rates specified in the Price Schedule. This option provision may be exercised more than once, but the total extension hereunder shall not exceed six (6) months. The Contracting Officer may exercise the option by written notice to the Contractor within thirty (30) days of contract expiration.

46 AUDIT AND INSPECTION OF RECORDS

The Contractor shall maintain records and the Contracting Officer shall, until the expiration of five years after final payment under this Contract have access to and the right to examine any pertinent books, documents, papers and records of the Contractor involving the formation of the contract, transactions related to the Contract, and information technology system records for the purpose of inspection, making audit, examination, excerpts and transcriptions. The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the Contracting Officer shall until the expiration of five years after final payment under the Contract have similar access to and the right to examine any pertinent books, documents, papers and records of the subcontractor(s) involving all aspects of the subcontract including formation. Upon request of the Contracting Officer, Contractor and its subcontractors shall, in a form acceptable to the Contracting Officer, submit a third party attestation report regarding its policies, controls, processes and security.

The Contracting Officer shall have all of the aforementioned rights for all types of contracts including fixed price contracts. The rights include without limitation the right to examine costs and information technology system records as they relate to this Contract. The Authority's rights hereunder are in addition to any other audit and inspection rights under the Contract. The Authority reserves these rights because cost and internal control information is frequently needed to investigate performance issues and whether it is in the Authority's interest to exercise other reserved rights under the contract. The Contracting Officer shall have the broad rights of audit and inspection including but not limited to, the right to examine books, records, documents and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature that have been incurred for the performance of this Contract. Such right of examination shall include

inspection at all reasonable times of the Contractor's labor, materials, plant or such parts thereof, or other costs or revenues as may be expended or received as a part of the performance of the Contract.

When costs are a factor in any request for an equitable price adjustment pursuant to a remedy granting provision of the Contract, the Contractor shall maintain separate accounts by specific designation or other suitable accounting procedure of all incurred segregable, direct costs, less allocable credits. Failure to maintain such cost records is a bar to any claim, legal or equitable, for such costs.

47 CONSENT TO ASSIGNMENT

The Contractor shall obtain the written consent of the Contracting Officer prior to any assignment of all or any part of this contract.

48 NOTIFICATION OF OWNERSHIP CHANGES

The Contractor shall notify the Contracting Officer in writing when the Contractor becomes aware that a change in its ownership is certain to occur. The Contractor shall also include this provision in all subcontracts under this contract, requiring each subcontractor to notify the Contracting Officer in writing when the subcontractor becomes aware that a change in its ownership is certain to occur.

49 COMPLIANCE WITH EMPLOYMENT ELIGIBILITY VERIFICATION, FORM I-9

The Contractor shall ensure that it is in compliance with the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 U.S.C. 1324a) and the regulations issued there under, and that it will maintain compliance as long as any work is being performed under this contract with the Authority. The Contractor shall also ensure that its subcontractors are in compliance with the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 U.S.C. 1324a) and the regulations issued there under, and that its subcontractors will maintain compliance as long as they are performing any work under this contract with the Authority.

50 RESERVED

51 GENERAL CIVIL RIGHTS PROVISIONS

The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Contractor and subcontractors from the solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

52 TITLE VI CLAUSES FOR COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

During the performance of this contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the Contractor) agrees as follows:

- A. Compliance with Regulations. The Contractor (hereinafter includes consultants) 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 Contract.
- B. Non-Discrimination. The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not

participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

- C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- D. Information and Reports. The 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 Airports Authority or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Airports Authority or the FAA as appropriate, and will set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the Airports Authority will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to: Withholding payments to the Contractor under the contract until the Contractor complies; and/or cancelling, terminating, or suspending a contract, in whole or in part.
- F. Incorporation of Provisions. The Contractor will include the provisions of paragraphs A. through F. in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Airports Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, the Contractor may request the Airports Authority to enter into any litigation to protect the interests of the Airports Authority. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

53 TITLE VI LIST OF PERTINENT NONDISCRIMINATION AUTHORITIES

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest, agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- 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);
- 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);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- 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;

- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- 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);
- 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;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- 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;
- 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, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- 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.*).

SECTION VIII - VOLUNTARY DISADVANTAGED BUSINESS ENTERPRISE (DBE), MINORITY BUSINESS ENTERPRISE(MBE) AND WOMAN BUSINESS ENTERPRISE (WBE) PARTICIPATION

The U.S. Department of Transportation's Disadvantaged Business Enterprise (DBE) Program is applicable to certain airport contracts that involve U.S. Department of Transportation federal grants. The contract to be awarded under this solicitation is subject the provisions described below.

01 OBLIGATIONS

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract or subsequent subcontracts.

02 DISADVANTAGED, MINORITY AND WOMAN-OWNED BUSINESS PARTICIPATION (D/M/WBE)

There is no DBE participation goal for this contract. However, the Authority is strongly committed to achieving significant participation in its contracting programs by business enterprises that are owned and operated by disadvantaged individuals, minorities and women (D/M/WBEs) regardless of the size of the enterprise. All offerors are strongly encouraged to take active steps to maximize the participation of D/M/WBEs in this contract.

To monitor and evaluate D/M/WBE participation in its contracting programs, the Authority is collecting information on the voluntary efforts made by offerors in securing D/M/WBE participation for this contract. All offerors are encouraged to provide information relating to these efforts and return it with their offer.

If an offer includes D/M/WBE participation, the offeror shall include this information on the Contract Participation Form (Exhibit D) submitted with the offer. The offeror should also attach the DBE certification letter from the Airports Authority or other certifying entity for each DBE. If MBE/WBE participation has been obtained the offeror should attach MBE/WBE certification letters. If certification letters are not provided with the offer, or if D/M/WBE participation is obtained after contract award, the contractor shall provide D/M/WBE certification letters to the Contracting Office promptly upon request.

The contractor is required to identify on the Invoice Attachment Form (Exhibit J) any expenditures to all first tier subcontractors including those who are D/M/WBE. (Note: Exhibits D and J are available from the Business Information section of the Authority's website at <http://www.mwaa.com>).

The D/M/WBE information requested above will be used to assist the Authority in monitoring D/M/WBE participation for this contract and will not be used to determine to whom this contract will be awarded.

03 ELIGIBILITY

To be eligible for participation as a DBE, a company must be a business organized for profit and must qualify as a Disadvantaged Business Enterprise (DBE) under 49 CFR Part 26. DBE certification must be obtained from the Virginia Unified Certification Program (the Metropolitan Washington Airports Authority and the Virginia Department of Minority Business Enterprise), in accordance with the criteria specified in 49 CFR Part 26.

To be eligible for participation as a "Minority Business Enterprise" (MBE) a business concern must be at least 51 percent owned and controlled by one or more minority (African American, Hispanic American, Native American, Asian-Indian American, Asian Pacific American) individuals. The firm's management and daily business operations must be controlled by one or more of the qualifying individuals who own it.

To be eligible for participation as a "Women Business Enterprise" (WBE) the business concern must be at least 51 percent owned and controlled by one or more female individuals. The firm's management and daily business operations must be controlled by one or more of the qualifying individuals who own it.

04 D/M/WBE PARTICIPATION

A. By signing its offer, the offeror, if awarded this contract, commits to make voluntary efforts to obtain D/M/WBE participation for this contract.

B. Offeror Conformance with D/M/WBE Requirements

1. Documents to be Submitted With Offer

Contract Participation Form - All offerors shall submit a Contract Participation Form (Exhibit D) with their offers. Exhibit D is to list all firms that are participating in the contract (including D/M/WBE firms) and provide all information required by the Exhibit. This form must be signed and dated by the prime contractor's representative.

2. Documents to Be Submitted After Offer Submission

Letters of Intent - The apparent successful offeror shall submit original signed Letters of Intent (Exhibit E) from each of the D/M/WBEs, if any, identified on the Contract Participation Form (Exhibit D). These Letters of Intent must be submitted within three (3) business days after the Contracting Officer's request. Each Letter of Intent shall be completely filled out and signed by the D/M/WBE and co-signed by the offeror. A detailed description of the D/M/WBE's scope of work must be provided on Exhibit E.

In an RFP process, the signed Letter of Intent represents intent by the D/M/WBE to perform the subcontract at the price stated on the Contract Participation Form (Exhibit D), if the offer is accepted by the Authority without negotiation. However, if price negotiation occurs, the offeror shall submit to the Authority a revised Exhibit D with its revised offer, and within three (3) business days after the Contracting Officer's request. Letter(s) of Intent (Exhibit E). The offeror is not required to renegotiate prices with any D/M/WBE s identified on the initial Exhibit D; consequently, the revised Exhibit D submitted after negotiations between the Authority and the offeror is not required to show any change to the original price agreed to by the D/M/WBE.

3. Failure to Submit Documents and Information

Failure to submit Contract Participation Form (Exhibit D), Letters of Intent (Exhibit E), may result in rejection of the offer.

C. The Authority's Department of Supplier Diversity will assist offerors by identifying Authority certified DBE firms and MBE/WBE firms. Upon request, a directory of Local Disadvantaged, Disadvantaged, Minority Owned, Women Owned firms will be provided for information only. The Authority does not warrant or guarantee the performance capability of any firms listed therein. The Authority's Department of Supplier Diversity may be contacted at (703) 417-8660, or at the following address: Metropolitan Washington Airports Authority, Department of Supplier Diversity, 1 Aviation Circle, Washington, DC 20001-6000.

05 POST-AWARD COMPLIANCE**A. Compliance Reviews**

1. The Authority may conduct post-award compliance reviews to ensure that the named D/M/WBEs on the original or, as a result of contract modification, amended Contract Participation Form (Exhibit D), submitted to and accepted by the Authority, perform the work as assigned, and at least at the agreed price that was identified on Exhibit D. The Authority may use the Invoice Attachment Form (Exhibit J), or other appropriate information, to verify the participation of each D/M/WBE subcontractor identified on Exhibit D, as submitted by the prime contractor. Delineated on these forms will be the activities of all first tier subcontractors, including D/M/WBEs, for the purpose of monitoring the progress of all phases of the contract. The invoice attachment form will be submitted by the prime contractor with every invoice submitted.
2. The Authority is committed to equitable treatment, meaningful utilization of, and timely payment and return of retainage to, subcontractors, including D/M/WBE subcontractors. All offerors are advised that the contract resulting from this solicitation will include the following subcontractor payments and return of retainage clause:

“The Contractor is required to pay its Subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Contractor’s receipt of payment for that work from the Airports Authority. In addition, [the Contractor may not hold retainage from its Subcontractors.] [is required to return any retainage payments to those Subcontractors within 30 days after the Subcontractor’s work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those Subcontractors within 30 days after incremental acceptance of the Subcontractor’s work by the Airports Authority and contractor’s receipt of the partial retainage payment related to the Subcontractor’s work.]”

This provision must be incorporated into all subcontracts.

B. By accepting this contract, the Contractor agrees to the following requirements:

1. The Contractor shall submit a completed Invoice Attachment Form (Exhibit J) with each monthly invoice. Delineated on each Exhibit J will be the activities of all first tier (including second tier, if allowable in the contract) subcontractors, including D/M/WBEs, if any, for the purpose of monitoring the progress of all phases of the contract. The Contractor is responsible for the accuracy of all information reported. Lack of inclusion of a completed Exhibit J with each monthly invoice may result in delay in payment.
2. The Contractor shall allow the Authority access to records relating to the contract, including but not limited to, subcontracts, payroll records, tax information and accounting records, for the purpose of ascertaining whether the D/M/WBEs, if any, are performing the scheduled subcontract work.
3. The Contractor shall maintain D/M/WBE subcontractor records for all D/M/WBE subcontracting activities. These records shall include current D/M/WBE subcontractor logs, the Authority’s Invoice Attachment Form (Exhibit J) and evidence of payments to D/M/WBE subcontractors, including but not limited to, copies of canceled checks and paid invoices. Copies of these records will be available to the Contracting Officer or the Supplier Diversity Specialist to review upon request. The Contractor shall also document any changes in the DBE contract.

06 DEFINITIONS

- A. “Disadvantaged Business Enterprise” (DBE) is defined as a for-profit small business concern that is (1) at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or, in the case of a corporation in which at least 51 percent of the stock of which is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

“Small business concern” means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

“Socially and economically disadvantaged individual” means any individual who is a citizen (or lawfully admitted permanent resident) of the United States, and who is—

1. any individual that the Authority finds to be a socially and economically disadvantaged individual on a case-by-case basis. Each such individual must submit the Personal Net Worth Statement showing that his or her personal net worth does not exceed \$1.32 million.
 2. any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged, provided that the individual also submits the Certification of Social and Economic Disadvantage Eligibility and the Personal Net Worth Statement showing that his or her personal net worth does not exceed \$1.32 million.
 - a. “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;
 - b. “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;
 - c. “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - d. “Asian-Pacific American,” 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 Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - e. “Subcontinent Asian-Indian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh; Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - f. Women;
 - g. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- B. The term “subcontractor” for purposes of Section VIII, shall mean an individual or firm with which the offeror or subcontractor, proposes to enter into an agreement for the performance of work on the site or for the manufacture, fabrication, or supply of equipment or materials or services used in the construction of the project. The term “subcontractor” shall further refer only to first tier subcontractors unless the contract also permits second tier contracting.
- C. The term “Joint Venture” shall mean an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills, and/or knowledge.

- D. "Affiliates" Business concerns are affiliates of each other when either directly or indirectly, (1) one business concern controls or has the power to control the other, or (2) a third party or parties controls or has the power to control both. In determining whether business concerns are affiliated, consideration shall be given to all appropriate factors, including common ownership, common management, and contractual relationships. The provisions of 13 CFR Part 121 will be used to guide the Authority in determining whether firms are affiliated.
- E. "Minority Business Enterprises" (MBE) To be considered a minority-owned business enterprise, the business concern must be at least 51 percent owned and controlled by one or more minority (African American, Hispanic American, Native American, Asian-Indian American, Asian Pacific American) individuals. The firm's management and daily business operations must be controlled by one or more of the qualifying individuals who own it.
- F. "Women Business Enterprises" (WBE). To be considered a women-owned business enterprise, the business concern must be at least 51 percent owned and controlled by one or more female individuals. The firm's management and daily business operations must be controlled by one or more of the qualifying individuals who own it.
- G. "Commercially Useful Function" A D/M/WBE is considered to perform a commercially useful function when it:
- a. 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;
 - b. is responsible, with respect to materials and supplies used on the contract, for negotiating price, ordering materials, and installing (where applicable) and paying for the material itself; and
 - c. when the amount of work performed, when compared to industry practices, is commensurate with the amount the D/M/WBE is to be paid under the contract and the D/M/WBE credit claimed for its performance of the work. If a D/M/WBE does not perform or exercise responsibility for at least thirty percent (30%) of the total value of its contract with its own work force, or the D/M/WBE 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 involved, it may be presumed that the D/M/WBE is not performing a commercially useful function.
- H. "Virginia Unified Certification Program (VUCP)" The certifying entity that is responsible for the certification of DBEs under 49 CFR Part 26 for the Commonwealth of Virginia. The two organizations that comprise the VUCP are the Metropolitan Washington Airports Authority and the Virginia Department of Minority Business Enterprise.

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY DBE/MBE/WBE CONTRACT PARTICIPATION FORM

Check One: Original Revised Date: _____ Contract No.: _____

Name of Offeror: _____ Project Name: _____

Original Contracted DBE Participation: \$ _____ Original Percent Contracted DBE Participation: _____ %

The Offeror shall submit the Contract Participation Form to the Contracting Officer with the offer. Please attach additional sheets if needed.

| EX | LIST THE PRIME AND <u>ALL</u> FIRST TIER FIRMS PARTICIPATING IN THIS CONTRACT <small>Identify whether firms are *P, S, JV, SP, B, H, MFG, in next column.</small> | TYPE OF FIRM <small>(see below)</small> | FEDERAL TAX ID <small>(also known as Employer Identification Number) nine digit number.</small> | Enter "X" for all that apply | | | | ADDRESS <small>(Number, Street, City, State, ZIP)</small> | DESCRIBE TYPE OF WORK <small>(Electrical, Paving, etc. with notation e.g. "Labor Only", "Material Only", "Complete") Item Number if Applicable, Quantity, Unit Price</small> | AGREED PRICE |
|---|--|--|--|------------------------------|--------|---------|-------|--|---|--------------|
| | | | | DBE | MBE ** | WBE *** | OTHER | | | |
| 1 | SAMPLE | S | 55-5555555 | X | X | | | 12345 Main Street, Washington, DC 20001 | Furnish and install Structural Steel | \$986,000.00 |
| 2 | | | | | | | | | | |
| 3 | | | | | | | | | | |
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| 17 | | | | | | | | | | |
| TOTAL AGREED PRICE MUST EQUAL TOTAL OFFERED PRICE: | | | | | | | | | | |

I, _____, a duly authorized representative of _____, certify that the above information is true and correct.
(type or print name) (name of firm)

Signature: _____ Date: _____

TYPE OF FIRM

*P = Prime Contractor
S = Subcontractor
JV = Joint Venture

SP = Stocking Supplier/Distributor
B = Broker, Agent, Packager
H = Hauler
MFG = Manufacturer

** MBE = A certified Minority Business Enterprise (Attach current certification letter)
*** WBE = A certified Women Business Enterprise (Attach current certification letter)
(Information regarding MBE/WBE participation will be used for generalized statistical purposes and program analysis.)

**METROPOLITAN WASHINGTON AIRPORTS AUTHORITY
LETTER OF INTENT**

_____ Contract Number _____
 (Name of Prime Contractor) Location _____
 _____ Contract Name _____
 (Name of 1st Tier Subcontractor (If Applicable))

- A. The undersigned DBE intends to perform the work associated with this contract as (Check one):
 Individual Partnership Corporation Joint Venture
- B. The undersigned DBE will perform the work associated with this contract as a (Check all that apply):
 Construction Contractor Stocking Supplier Manufacturer Stocking Distributor
 Broker, Agent, Packager Hauler Service Provider (for non-construction contracts)
- C. The undersigned DBE will: Perform the following services Supply the following materials, equipment, supplies:

IF AVAILABLE, PLEASE ATTACH A COPY OF THE PROPOSED SCOPE OF WORK FOR THIS SUBCONTRACTOR.

| Item Number | Detailed Description Of Scope of Work | Scope of Services (Check One) | Quantity | Unit Price |
|-------------|---------------------------------------|--|----------|------------|
| 01 | _____ | <input type="checkbox"/> Labor Only <input type="checkbox"/> Matl Only <input type="checkbox"/> Complete | _____ | _____ |
| 02 | _____ | <input type="checkbox"/> Labor Only <input type="checkbox"/> Matl Only <input type="checkbox"/> Complete | _____ | _____ |
| 03 | _____ | <input type="checkbox"/> Labor Only <input type="checkbox"/> Matl Only <input type="checkbox"/> Complete | _____ | _____ |
| 04 | _____ | <input type="checkbox"/> Labor Only <input type="checkbox"/> Matl Only <input type="checkbox"/> Complete | _____ | _____ |

Please Attach Additional Sheets if Necessary

- D. Work described above will be performed at the following total price: \$ _____.
- E. Total Contract Amount: \$ _____
- F. Term of Contract Commencement Date: _____ Completion Date: _____
- G. _____% of the dollar value of the subcontract will be performed by (check if applicable):
 Non-DBE contractors Non-DBE suppliers.

The undersigned will enter into a subcontract consistent with the above upon execution of a contract between the Prime Contractor and the Authority: **(NOTE: SIGNATURES MUST BE DATED)**

_____ Agreed To _____
 (Print or Type Name of DBE Firm) (Print or Type Name of Prime Contractor)

By _____
 (Print or Type Name and Title) (Print or Type Name and Title)

 (Signature) (Date) (Signature) (Date)

 (Print or Type DBE's Certification Number and Expiration Date)

FOR MWAA USE ONLY

MWAA EOP Specialist's Approval \$ _____
 (Enter The Amount of Contract Approved for DBE Participation) (Signature) (Date)

MWAA/EOP 02/2005

**METROPOLITAN WASHINGTON AIRPORTS AUTHORITY
REVISION TO ORIGINAL LETTER OF INTENT**

_____ Contract Number _____
 (Name of Prime Contractor) Location _____
 _____ Contract Name _____
 (Name of 1st Tier Subcontractor (If Applicable))

Revision # _____ MWA Change Notice # _____ MWA Contract Modification # _____
 Describe Change or Modification _____
 This revision represents: Increase in Contract Amount Decrease in Contract Amount
 If Decrease, state reason _____

- A. The undersigned DBE intends to perform the work associated with this contract as (Check one):
 Individual Partnership Corporation Joint Venture
- B. The undersigned DBE will perform the work associated with this contract as a (Check all that apply):
 Construction Contractor Stocking Supplier Manufacturer Stocking Distributor
 Broker, Agent, Packager Hauler Service Provider (for non-construction contracts)
- C. The undersigned DBE will: Perform the following services Supply the following materials, equipment, supplies:

IF AVAILABLE, PLEASE ATTACH A COPY OF THE PROPOSED SCOPE OF WORK FOR THIS SUBCONTRACTOR.

| Item Number | Detailed Description Of Scope of Work | Scope of Services (Check One) | Quantity | Unit Price |
|-------------|---------------------------------------|--|----------|------------|
| 01 | _____ | <input type="checkbox"/> Labor Only <input type="checkbox"/> Matl Only <input type="checkbox"/> Complete | _____ | _____ |
| 02 | _____ | <input type="checkbox"/> Labor Only <input type="checkbox"/> Matl Only <input type="checkbox"/> Complete | _____ | _____ |
| 03 | _____ | <input type="checkbox"/> Labor Only <input type="checkbox"/> Matl Only <input type="checkbox"/> Complete | _____ | _____ |
| 04 | _____ | <input type="checkbox"/> Labor Only <input type="checkbox"/> Matl Only <input type="checkbox"/> Complete | _____ | _____ |

Please Attach Additional Sheets if Necessary

- D. Work described above will be performed at the following total price: \$_____.
- E. Original Total Contract Amount: \$_____ Current Total Contract Amount: \$_____
 Total Amount of This Revision: \$_____ New Total Contract Amount: \$_____
- F. Term of Contract Original Commencement Date: _____ Original Completion Date: _____
 Revised Commencement Date: _____ Revised Completion Date: _____
- G. _____% of the dollar value of the subcontract will be performed by (check if applicable):
 Non-DBE contractors Non-DBE suppliers.

The undersigned will enter into a subcontract consistent with the above upon execution of a contract between the Prime Contractor and the Authority: **(NOTE: SIGNATURES MUST BE DATED)**

_____ Agreed To _____
 (Print or Type Name of DBE Firm) (Print or Type Name of Prime Contractor)

By _____
 (Print or Type Name and Title) (Print or Type Name and Title)

_____ (Signature) _____ (Date) _____ (Signature) _____ (Date)

_____ (Print or Type DBE's Certification Number and Expiration Date)

FOR MWA USE ONLY

MWA EOP Specialist's Approval \$ _____
 (Enter The Amount of Contract Approved for DBE Participation) (Signature) (Date)

EXHIBIT F

DBE CERTIFICATION APPLICATION

The Disadvantaged Business Enterprise (DBE) Program application forms are available for download from the Metropolitan Washington Airports Authority's website by clicking on the "DBE Certification" link at:

<http://www.mwaa.com/contracting>

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

APPLICATION FOR JOINT VENTURE ELIGIBILITY

Note: This form need not be filled in if all joint venture firms are DBE firms.

| | |
|---|--|
| <p>1. JOINT VENTURE NAME AND ADDRESS (Company Name, Address, City State Zip)</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> | <p>2. CONTACT PERSON AND TITLE</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>3. TELEPHONE</p> <p>_____</p> |
|---|--|

4. IDENTIFY THE COMPANIES WHICH COMPRISE THE JOINT VENTURE
(DBE PARTNER(S) MUST COMPLETE DBE APPLICATION):

5a. DESCRIBE ROLE OF DBE FIRM IN THE JOINT VENTURE:

b. NATURE OF JOINT VENTURE'S BUSINESS: _____

c. DESCRIBE VERY BRIEFLY THE EXPERIENCE AND BUSINESS QUALIFICATIONS OF EACH NON-DBE JOINT VENTURER: _____

6. IS THE JOINT VENTURE RESPONDING TO A SPECIFIC AUTHORITY SOLICITATION?

YES NO IF YES, WHICH ONE? _____

7. WHAT IS THE PERCENTAGE OF DBE OWNERSHIP IN THE JOINT VENTURE?

AFFIDAVIT

“The undersigned swear that the foregoing statements are true and correct and include all material information necessary to identify and explain the terms and operation of the joint venture and the intended participation by each joint venturer in the undertaking. Further, the undersigned covenant and agree to provide the Metropolitan Washington Airports Authority (the Authority) current, complete, and accurate information regarding actual joint venture work and the payment therefor 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, by authorized representatives of the Authority 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 or State laws concerning false statements.”

Name of Joint Venture (if any) _____

Names of companies forming Joint Venture _____

Signature(s) _____

Name(s) _____

Title(s) _____

Date _____

State of _____

County of _____

On this _____ day of _____, 20____, 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.

Notary Public _____

Commission Expires _____

[Seal]

On this _____ day of _____, 20____, 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.

Notary Public _____

Commission Expires _____

[Seal]

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY INVOICE ATTACHMENT FORM

Name Of Prime Contractor _____
 Contract Name & Number _____
 Original Contract Amount \$ _____
 Current Contract Amount \$ _____
 Invoice Period From _____ Through _____
 Actual DBE Participation To Date \$ _____
 Current Scheduled DBE Participation \$ _____
 Total Original Contracted DBE Participation \$ _____

Payments Received \$ _____
 Retainage Withheld \$ _____
 Date Submitted _____
 Percent Original Contracted Participation _____ %

| # | NAME OF SUBCONTRACTOR | DESCRIPTION OF WORK | * D B E | M B E | W B E | O T H E R | MONTHLY CONTRACT INFORMATION | | | | % C O M P L E T E | % D B E |
|---------------|-----------------------|---------------------|------------------|-------------|-------------|-----------------------|-----------------------------------|----------------------------------|------------------------------|---------------------------|---|------------------|
| | | | | | | | ORIGINAL SUBCONTRACT AMOUNT | CURRENT SUBCONTRACT AMOUNT | TOTAL PAYMENTS TO DATE | AMOUNT THIS INVOICE | | |
| 1 | | | | | | | | | | | | |
| 2 | | | | | | | | | | | | |
| 3 | | | | | | | | | | | | |
| 4 | | | | | | | | | | | | |
| 5 | | | | | | | | | | | | |
| 6 | | | | | | | | | | | | |
| 7 | | | | | | | | | | | | |
| 8 | | | | | | | | | | | | |
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| 10 | | | | | | | | | | | | |
| 11 | | | | | | | | | | | | |
| 12 | | | | | | | | | | | | |
| 13 | | | | | | | | | | | | |
| 14 | | | | | | | | | | | | |
| 15 | | | | | | | | | | | | |
| 16 | | | | | | | | | | | | |
| 17 | | | | | | | | | | | | |
| 18 | | | | | | | | | | | | |
| TOTALS | | | | | | | | | | | | |

* PUT AN "X" IN THIS COLUMN ONLY IF SUBCONTRACTOR IS AN AUTHORITY CERTIFIED DBE.

I certify that the information furnished above is correct to the best of my knowledge and represents the current status of the firm's (Prime Contractor) subcontract(s) with the listed firms (Subcontractors) for the designated period covered by this report.

Signed: _____ Title _____ Date _____

This form must be attached to all Invoices submitted by the Prime Contractor.

**Metropolitan Washington Airports Authority
INSTRUCTIONS FOR COMPLETING
THE INVOICE ATTACHMENT FORM (EXHIBIT J)**

I. USE AUTHORIZED FORMS

Use only **Authority approved forms** to file monthly Invoice Attachment Form. Do not change or amend the Authority approved form in any manner. Authority approved forms are available on hard copy or diskette from the EOP Specialist assigned to the contract. Note that all subcontractors are to be listed on the Invoice Attachment Form. Also, note that some entries are required that apply only to the sum of DBE contracts. To facilitate accuracy in reporting, it is recommended that DBE subcontractors be listed first and a subtotal appear in each of the four sub-columns that comprise the "Monthly Contract Information" section of the report.

II. REPORT ALL DBEs EVERY MONTH

Every DBE firm whose contract is counted toward achievement of the participation requirement must appear on the Invoice Attachment Form every month. If there is no invoice activity for a DBE in any given month, enter "0" in the column, "Amount this Invoice". Note that all other information must be entered, must be current and correct.

III. LEDGER PORTION

A. Name & Description of Work - Enter the subcontractor's name and description of work. For DBEs, these entries must be the same as comparable information appearing on the Letter of Intent and the Contract Participation Form.

B. Classification of Subcontractor(s)

Only those subcontractors who meet the DBE eligibility requirements may be classified as DBEs on the Invoice Attachment Form.

Assign classifications as follows:

1. **DBE**-Place an "X" in this column only if the subcontractor is an Authority certified DBE.
2. **MBE**-Place an "X" in this column if the subcontractor is also a minority-owned company, regardless of their size. This classification should also be used for subcontractors who have submitted a certification application but have not yet been certified. Once certification has been achieved, such firms should be classified as both MBE and DBE. This column is also used to calculate Voluntary Participation of Minority-owned firms. Thus, a subcontractor can be classified as both DBE and MBE, or, just MBE.
3. **WBE**-Place an "X" in this column if the subcontractor is a woman-owned company regardless of their size. This classification should also be used for

Metropolitan Washington Airports Authority
Instructions for Completing the Invoice Attachment Form

subcontractors who have submitted a certification application but have not yet been certified. Once certification has been achieved, such firms should be classified as both DBE and WBE. This column is also used to calculate Voluntary Participation of woman-owned firms. Thus, a subcontractor can be classified as both DBE and WBE, or just WBE.

4. **Other**-Place an "X" in this column for all subcontractors who cannot be classified as either DBE, MBE or WBE.

C. Original Subcontract Amount

Enter the original subcontract amount. For DBEs, this must be the amount submitted on the DBE's Letter of Intent and approved by the Authority.

D. Current Subcontract Amount

Enter the current subcontract amount. If this amount is the same as the entry in "Original Subcontract Amount", enter it. For DBEs, if this amount is different that the amount entered in "Original Subcontract Amount", a **Revised Letter of Intent** must be on file with and approved by the EOP Specialist. It is recommended that **Revised Letters of Intent** be submitted with the Invoice Attachment Form that initially reports the New Contract amount.

E. Total Payments to Date

Enter the sum of payments that have been made to that subcontractor as of the date of the report. Note that this column should not contain diminishing amounts, i.e., a succeeding month's entry lower than the preceding month's entry. If this occurs, the Authority may request an examination of additional records to verify the correct amount.

F. Amount of This Invoice

Enter the amount of the subcontractor's invoice being submitted with this report.

G. Percentage Amount Complete

Enter the percentage that equals the progress of that subcontractor's work.

H. Percent DBE

This entry depends upon the type of contract and terms stated in the solicitation. The **percentage for non-DBEs is always "0"**. Thus, if the subcontractor does not meet the requirements stated above to be classified as a DBE, the percentage entered in this column **must be "0"**.

Metropolitan Washington Airports Authority
Instructions for Completing the Invoice Attachment Form

IV. TOP PORTION OF INVOICE ATTACHMENT FORM

A. Original Contract Amount

Enter the original amount of the Prime's Contract.

B. Payments Received

Enter the sum total of payments received as of the date of the report.

C. Current Contract Amount

Enter the current amount of the Prime's Contract.

D. Retainage Withheld

Enter the amount of retainage withheld. If none, enter 0.

E. Invoice Period

Enter the month being reported, i.e. January 1 to January 31, 2000.

F. Date Submitted

Enter the date the report is submitted to the Authority.

G. Actual DBE Participation to Date \$

Enter the sum of Total Payments to DBEs.

H. Current Scheduled DBE Participation \$

Enter the sum of **Current Subcontract Amounts** reported for **DBEs only**, i.e, do NOT include current subcontract amounts for non-DBEs even though they appear in the ledger portion of the report.

I. Total Original Contracted DBE Participation \$

Enter the dollar amount of the original DBE participation requirement of this contract.

J. Percentage Original Contracted Participation

Enter the percentage of required DBE participation for this contract.

SECTION IX - RESERVED

SECTION X - ATTACHMENTS

ATTACHMENT 01
STATEMENT OF WORK

STATEMENT OF WORK**LEGAL SERVICES RELATING TO DULLES METRORAIL PROJECT****Background**

The Airports Authority is an independent, interstate agency responsible for the operations of two airports: Ronald Reagan Washington National Airport and Washington Dulles International Airport. The Federal Aviation Administration of the United States Department of Transportation (DOT) previously managed the airports. On June 7, 1987, the federal government leased the airports to the Airports Authority for an initial term of 50 years. In 2003, the lease was modified to extend the term to 80 years.

On December 29, 2006, the Airports Authority signed an agreement with the Virginia Department of Transportation (VDOT) to transfer operating responsibilities for the Dulles Toll Road to the Airports Authority. The agreement also provided for the Dulles Corridor Metrorail Project (Metrorail Project) to be financed and built by the Airports Authority using Dulles Toll Road revenues. The agreement stated that the Authority will:

- Operate and maintain the toll road for 50 years.
- Construct the Dulles Corridor Metrorail Project from the vicinity of West Falls Church to Route 772 in Loudoun County.
- Make other improvements in the Dulles Corridor consistent with VDOT and regional plans.
- Set and collect tolls on the Dulles Toll Road.

The Airports Authority, in cooperation with the Washington Metropolitan Area Transit Authority (WMATA), VDOT, the Virginia Department of Rail and Public Transportation (VDRPT), and Fairfax and Loudoun Counties, is now constructing the Metrorail Project, a 23-mile extension of the Metrorail System. Once constructed, the extension will be operated by the WMATA and extend Metrorail service from East Falls Church to Dulles Airport and west to Ashburn.

The Metrorail Project includes 11 new stations. It is being built in two phases. Phase 1 runs from East Falls Church to Wiehle Avenue, and includes four stations in Tyson's Corner and one at Wiehle Avenue. Phase 1 began revenue service operations in July 2014. Phase 2 will run from Wiehle Avenue to Ashburn in Loudoun County, and will include six stations (Reston Town Center, Herndon, Innovation Center, Dulles Airport, Loudoun Gateway and Ashburn). Construction of Phase 2 began in 2014, and is expected to be completed in 2019.

Scope of Work

The work to be performed under the contract to be awarded consists of professional legal services, to be provided to the Airports Authority with respect to the Metrorail Project, in the areas of real estate and right-of-way acquisitions, real estate conveyances, and general real estate and real estate transactional matters.

Specifically, legal services may include drafting, negotiating, distribution, and finalizing real estate agreements related to the Metrorail Project with numerous entities, including but not limited to Airports Authority, Fairfax County, Virginia, Loudoun County, Virginia, the Town of Herndon, Virginia, the owners of the Dulles Greenway, WMATA and VDOT. Legal services also may include assistance with the acquisition of interests in real estate necessary for the Phase 2 right-of-way, as well as coordination with appraisers, engineers, and title companies, addressing real estate development and condemnation issues, negotiating agreements with adjacent landowners, and ensuring that all acquisitions are in accordance with applicable VDOT and Federal

Transit Administration regulations and policies. Attendance at right-of-way status meetings with Metrorail Project staff and preparation of monthly status reports will be required, along with reviews and written justifications for property settlements and the review of title work and closing packages.

In addition the Phase 2 work under the contract to be awarded may include drafting, negotiating, distribution and finalizing all required easements, deeds and other instruments necessary to transfer property rights required for the Metrorail Project from the current holder of those rights (e.g., the Airports Authority, Fairfax County, VDOT, Dominion Virginia Power, Loudoun County, and the United States Government) to WMATA.

The work may include the drafting, negotiating, distribution and finalizing of maintenance and other agreements and conveyance instruments related to the completion of Phase 2 and the turnover of the completed Phase 2 project to WMATA and other entities responsible for constructed facilities. The maintenance agreements will assign responsibility for maintaining various aspects of the Metrorail Project and its related land and facilities, following its completion, to identified parties. These agreements are anticipated to involve numerous third parties, including but not limited to WMATA, VDOT, the Airports Authority, Fairfax County, Loudoun County, the Town of Herndon, the owners of the Dulles Greenway, and owners of land adjacent to the Metrorail Project right-of-way. The maintenance agreements will define, among other things, maintenance areas, maintenance-related responsibilities, requirements and restrictions, notification requirements to obtain access to track ways, tunnels, roadways and other facilities located within maintenance areas, and emergency procedures and associated notification processes.

Following the completion of all maintenance and conveyance agreements, the selected firm shall be responsible for reproducing and formally transmitting final copies of the executed and recorded agreements to all stakeholders, in both hard copy and electronic copy format.

While the primary focus of the Phase 2 work is related to real estate agreements and conveyances, the work may also occasionally include legal advice related to Phase 2 contracts, real estate transactions and other matters. The selected firm may also be requested to provide legal assistance with obtaining land use approvals, and closeout of land use approvals for issuance of non-residential use permits, through coordination with Metrorail Project staff, and Fairfax County and Loudoun County. Additionally, the selected firm may also be requested to provide assistance of the same nature as described within this scope of work for real estate acquisitions and associated activities related to Phase 1 of the Metrorail Project.

The selected firm will attend meetings in and outside the Airports Authority, and when requested, shall make clear, concise and informative presentations.

All of the selected firm's work, whether arising within Phase 1 or Phase 2, will require the firm's cooperation and coordination with local, state and federal agencies having involvement with the Metrorail Project, and must be carried out in accordance with the Airports Authority's Contracting Manual and all applicable laws and regulations, including those of VDOT and the Federal Transit Administration.

ATTACHMENT 02

EVALUATION CRITERIA AND PROPOSAL SUBMISSION REQUIREMENTS

EVALUATION CRITERIA AND PROPOSAL SUBMISSION REQUIREMENTS**01 EVALUATION CRITERIA**

- A. Information submitted in proposals will be evaluated using only the criteria listed below. The criteria are listed in descending order of importance with the first having the most weight and with each of the following criteria having equal or lesser weight than the one preceding it. Each criterion consists of all elements listed in the paragraph under each criterion. Please note that the elements listed in each of these paragraphs are not considered subcriteria and will be evaluated collectively, not individually. In other words, when evaluating how well a technical proposal meets a particular criterion, the Authority will consider all of the elements of that criterion together as a single criterion, not as separate subcriteria. The Authority will base its evaluation on information provided by the Offeror.
- B. The Authority reserves the right to establish a competitive range of offerors based upon its initial evaluation of the technical proposals (the Technical Evaluation) and at subsequent points during the evaluation process. The Authority also reserves the right to conduct no oral interviews or conduct oral interviews with only the offerors in the competitive range, to include the results of any interviews of these firms in its evaluation and to consider only these firms for contract award. The Authority further reserves the right to request Best and Final Offers (BAFO) if in the best interest of the Authority. If BAFOs are desired, the Contracting Officer will issue a solicitation amendment containing the BAFO request. This amendment will be issued to all offerors still within the competitive range and will state a deadline for receipt of the best and final offers. Offerors are not required to change their technical and price proposals in response to the BAFO request, but must acknowledge the BAFO amendment even if they do not change their proposals. Once the Technical Evaluation is complete, the price proposals of offerors on the final list of offerors within the competitive range will be combined with the technical scores in making the final selection for contract award.

EVALUATION CRITERIA**Criteria 1, 2, and 3 are the only ones considered during the Technical Evaluation****Criterion 1: Qualifications and Experience Lead Attorney**

The evaluation of this criterion will be based on the nature, breadth, depth and quality of the recent (within the past five years) relevant experience in both the provision of the type of services described in the Statement of Work, and in the supervision of other attorneys directly involved in the provision of such services, of the individual whom the proposal identifies as the lead attorney who will direct and supervise the work of other attorneys and who will be ultimately responsible for the quality of the work undertaken in delivering the Statement of Work services. The proposal should document and explain the lead attorney's experience with publically procured design-build projects of a similar size and complexity of the DCMP, as well as knowledge of applicable FTA regulations.

Criterion 2: Qualifications and Experience of Assigned Attorney

The evaluation of this criterion will be based on the nature, breadth, depth and quality of the recent (within the past five years) relevant experience in the provision of the type of services described in the Statement of Work of the individuals whom the proposal identifies as the attorneys who will be assigned to perform the Statement of Work services. The proposal should document and explain the assigned attorneys' experience with publically procured design-build projects of a similar size and complexity of the DCMP, and knowledge of applicable FTA regulations.

Criterion 3: Qualifications, Experience and Resources, and Conflict of Interest, of the Firm

The evaluation of this criterion will be based on (i) the proposing firm's ability to provide the logistical and other resources required to support the attorneys in performing the Statement of Work services, and (ii) the nature and extent of any conflicts of interests that would prevent the proposing firm from delivering any of the Statement of Work services unless waivers were obtained from the Airports Authority and/or other entities or individuals for whom the firm has provided legal services.

02 PROPOSAL SUBMISSION REQUIREMENTS**A. Submission Instructions**

Proposals shall be submitted in three (3) parts, each in a separate sealed envelope labeled with the Offeror's name and address, the solicitation number and the envelope name as follows:

Envelope 1: Representation Package

Submit an **original** and **one (1) copy** of the following documents in the **Representation Package** envelope:

- a. Solicitation Offer and Award Page, Section I
- b. Representations and Certifications, Section IV
- c. Insurance Affidavit, Section X, Attachment 03
- d. Federal Requirements Addendum, Section X, Attachment 04

Envelope 2: Price Proposal

Submit an **original** and **one (1) copy** of the following documents in the **Price Proposal** envelope:

- a. Price Schedule, Section III
- b. Exhibit D, Contract Participation Form

Envelope 3: Technical Proposal

Submit an **original** and **three (3) copies** in the **Technical Proposal** envelope.

- a. Do not include any reference to price.
- b. Submit on typewritten 8 ½ x 11" plain white paper.
- c. Assemble in a three ring binder or staple. No other binding methods are acceptable.
- d. Do not exceed **eight (8), single-spaced, single sided pages**. Exhibits and samples of previous work are not included in the 8-page limit.
- e. Address the evaluation criteria in the order they are presented.

B. Format and Instructions for Technical Proposal Preparation

Each Offeror's technical proposal must demonstrate the Offeror's ability to provide all of the Statement of Work services with a high level of quality, effectiveness and professionalism. The following information is to be provided in the technical proposals and will be used in evaluating the proposals.

The technical proposal will be limited to a total of **eight (8)** pages, not including exhibits, attachments, etc. and will include the following sections in the order listed below.

Cover/Title Sheet

Table of Contents Offerors will include a table of contents that lists section numbers and page numbers. This is not part of the overall page limit.

Section 1 Qualifications and Experience of Lead Attorneys

Identify the attorney who will direct and supervise the attorneys identified in Section 2. The Lead Attorney will be the individual who will most often attend Airports Authority meetings on behalf of the Offeror, and who will ultimately be responsible and accountable for the performance of the services by the Offeror.

The lead attorney shall have no fewer than 20 years of experience as an attorney and be admitted to practice in the Commonwealth of Virginia.

Describe up to three assignments performed by this attorney within the past five years which best demonstrate his or her experience, qualifications and ability to coordinate, supervise and otherwise lead a team of attorneys assigned to work on the contract drafting and administration, including dispute resolution, of a public agency major civil design-build project, including (if any) assignments which required application of FTA procurement and third party contracting regulations and guidance. Please identify, for each assignment, the client for which the services were provided and an individual employed by the client (along with a phone number) who is well acquainted with the lead attorney's work.

Section 2 Qualifications, Experience of Assigned Attorneys

Provide resumes with names, titles, education and general legal experience of the attorneys who will be assigned to perform the services described in the Statement of Work. Attorneys listed in the Section shall have no fewer than 10 years of relevant experience in the practice of law and be admitted to practice law in the Commonwealth of Virginia.

Provide detailed information with experience (in the past five years) of these attorneys in performing the services described in the Statement of Work and, in addition, other information demonstrating their qualifications and abilities to perform these services at a high level of competency.

For each attorney, describe up to three assignments which best demonstrates his or her expertise in advising clients on public agency major civil project design-build contract administration including contract drafting, and claims, and the application of FTA regulations and guidance in the area of procurement and third party contracting. In these instructions, a "major" project means one involving a contract value of more than \$100 million, and "dispute resolution" means all non-litigation aspects of dispute resolution ranging from informal negotiations, through elevated negotiations, and mediation. As to each such assignment, please explain the reasons why you believe the assignment "best demonstrates" the attorney's ability to provide the Statement of Work services. In addition, please identify the client for whom the services were provided, as well as an individual employed by the client (along with a phone number) who is well acquainted with the attorney's work

Section 3 Qualifications, Experience and Resources, and Conflict of Interest, of the Offeror

Provide (1) a description of the Offeror's ability to provide the logistical and other resources required to support the attorneys who will be assigned to perform the Statement of Work services, and (2) a description of Offeror's relationships with experts in the construction industry who may be called upon to render expert opinions on delay and cost issues.

Disclose any representations, activities or relationships involving the Offeror team or law firm as applicable, or individual attorneys, (i) that may constitute a conflict of interests which disqualifies or could disqualify the firm from providing any of the Statement of Work services for the Authority, or (ii) that may reasonably give rise to an appearance of a conflict of interests.

Do not include any Price Proposal information in any of the technical proposal sections.

Proposals that do not include all requested information as required in this RFP, that do not conform to these instructions and that do not acknowledge all amendments to the RFP in accordance with the amendment's instructions, may be deemed nonconforming by the Airports Authority and rejected without evaluation.

ATTACHMENT 03
INSURANCE AFFIDAVIT

INSURANCE AFFIDAVIT

TO BE EXECUTED BY OFFEROR AND AGENT(S) AND SUBMITTED WITH OFFER

Solicitation Number: _____

Name of Offeror: _____

To be completed by the Offeror:

I confirm that, if awarded the Contract, I will comply with all of the insurance requirements listed in the Contract Provisions section of the above referenced solicitation, and said insurance shall be provided without change to the prices offered. I also acknowledge that any questions concerning these requirements, and requests for exceptions, must be submitted by the due date for questions stated in the solicitation.

Name of Offeror

Offeror's Authorized Agent (please print):

Offeror's Authorized Agent's Signature

Date

To be completed by Offeror's insurance provider

(use multiple forms if more than one provider)

I confirm that, if awarded the Contract, the OFFERING Firm (Offeror) stated above either has insurance coverage or can obtain coverage in compliance with the requirements of the above referenced solicitation.

Name of Insurance Agency

Insurance Agent's Name (please print):

Insurance Agent's Signature

Date

ATTACHMENT 04
FEDERAL REQUIREMENTS

FEDERAL REQUIREMENTS ADDENDUM**JANUARY 13, 2012**

Contractor understands that the Project is financed in part with assistance provided by the Federal Transit Administration (“FTA”) and acknowledges that a condition to such assistance is the application of certain federal laws, regulations, policies, procedures, directives and ordinances to the Contract and Contractor (“Federal Requirements”). Contractor will comply with all Federal Requirements in effect as of the effective date of the Contract unless FTA issues a written determination to the contrary.

This Federal Requirements addendum is intended to identify certain specific Federal Requirements, with the understanding that what is identified herein is not to be deemed all-inclusive. Contractor agrees that it shall comply with all federal laws, regulations, policies, procedures, directives and ordinances, whether or not they are specifically mentioned in these Federal Requirements, and, through flow-down provisions in its Subcontracts, require its Subcontractors, as well as each of its lower-tier Subcontractors, to comply with such Federal Requirements to the extent mandated by the applicable Federal Requirement. Unless otherwise stated in a provision below, Contractor shall flow-down, and require all Subcontractors of any tier to flow-down, all provisions of these Federal Requirements to all Subcontractors at each tier.

For purposes of this Addendum, the following definitions apply:

- (a) “Contract” means the written agreement between MWAA and Contractor.
- (b) “Contractor” means a Person that MWAA has entered into a Contract for goods or services associated with the Project.
- (c) “Owner” means the Metropolitan Washington Airports Authority.
- (d) “Person” means any individual, public or private corporation, county, district, authority, municipality, political subdivision or other entity of the State or the United States of America, and any corporation, limited liability company, partnership, association, firm, trust, estate, or any other entity whatsoever.
- (e) “Project” means the project generally known as the Dulles Corridor Metrorail Project Improvements project.
- (f) “Subcontract” means any agreement by Contractor with any contractor, vendor, supplier, consultant, or other Person to perform any part of the Work, including but not limited to the furnishing of equipment and materials, as well as any agreements between a Subcontractor and its lower tier Subcontractor(s).
- (g) “Subcontractor” means any Person of any tier that has entered into a Subcontract to perform any work on the Project.

1. ~~Fly America~~

~~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 air 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. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air 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. Contractor shall flow down the requirements of this section to all Subcontracts that may involve international air transportation.

2. Cargo Preference - Use of United States-Flag Vessels Requirements

Pursuant to 46 U.S.C. §55305 and 46 C.F.R. Part 381, Contractor agrees:

- (a) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, materials or commodities pursuant to the underlying contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- (b) To furnish within 20 working days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a) above to: (i) Owner through Contractor in the case of a Subcontractor's bill-of-lading; and (ii) to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20590 and to Owner in the case of Contractor's bill-of-lading, all as marked with appropriate identification of the Project.
- (c) To include these requirements in all Subcontracts issued pursuant to this Contract when the Subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

3. Buy America

- (a) Contractor agrees to comply with 49 U.S.C. § 5323(j) and FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661, and subsequent amendments to those regulations that may be promulgated. This requires that federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7.
- (b) Appropriate Buy America certifications in the following form shall be provided with the executed Contract and with each Change Request that includes steel, iron, and manufactured products. Owner will not approve such Change Request unless the completed Buy America certification is provided. If a Certificate of Non-Compliance is provided, the Change Request will be accepted only if Owner determines that an exception to the Buy America requirements applies:

**Certification requirement for procurement of steel, iron, or manufactured products.
Certificate of Compliance with 49 U.S.C. 5323(j)(1):**

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

Date: _____
 Signature: _____
 Company Name: _____
 Title: _____

~~Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1):~~

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

~~Date: _____
Signature: _____
Company Name: _____
Title: _____~~

~~Certification requirement for procurement of buses, other rolling stock and associated equipment. Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C):~~

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

~~Date: _____
Signature: _____
Company Name: _____
Title: _____~~

~~Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C):~~

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

~~Date: _____
Signature: _____
Company Name: _____
Title: _____~~

4. Seismic Safety Requirements

~~Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations, 49 CFR Part 41, and will certify to compliance to the extent required by the regulation. Contractor also agrees to ensure that all work performed under this Contract, including work performed by any Subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.~~

5. Energy Conservation Requirements

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

6. Clean Water Requirements

(a) 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. Contractor agrees to report

each violation to Owner and understands and agrees that Owner will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

- (b) Contractor shall flow-down the requirements of this Section 6 to all Subcontracts exceeding \$100,000.

7. Lobbying

- (a) Contractor and all Subcontractors at each tier who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." The language for the certification is set forth in Section 7(b) below. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contracts on its behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are to be forwarded from tier-to-tier up to Owner.

- (b) Certification for Contracts, Grants, Loans and Cooperative Agreements. The certification referenced in Paragraph 7(a) above is as follows:

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (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 any 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 influencing or intending to influence 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 Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including Subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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 by the Lobbying Disclosure Act of 1995). 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.

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

_____ Signature of Contractor's Authorized Official
_____ Name and Title of Contractor's Authorized Official
_____ Date

8. Access to and Retention of Records

- (a) Contractor agrees to permit Owner, the U.S. Secretary of Transportation, the FTA Administrator, the Comptroller General of the United States, or their duly authorized representatives, to inspect all any books, documents, papers, records, accounts and reports of Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 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. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
- (b) Where Owner enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, Contractor shall make available records related to the Contract to Owner, the U.S. Secretary of Transportation, the FTA Administrator, the Comptroller General of the United States, or their duly authorized representatives for the purposes of conducting an audit and inspection.
- (c) Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (d) Contractor agrees to maintain all books, documents, papers, records, accounts and reports required under this Contract, consistent with 49 CFR §18.39(i)(11), for a period of not less than three (3) years after the date of final payment under the Contract or termination or expiration of the Contract, except in the event of litigation or settlement of claims arising from the performance of the Contract, in which case Contractor agrees to maintain same until the U.S. Secretary of Transportation, 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.
- (e) Contractor agrees to include this Section 8 in each Subcontract at each tier. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

9. FTA Requirements

- (a) Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, which may be found on the FTA website, including without limitation those listed directly or by reference in the FTA Master Agreement (Form FTA MA(15)), as they may be amended or promulgated from time-to-time during the term of the Contract. Contractor's failure to so comply shall constitute a material breach of the Contract.
- (b) All contractual provisions required by the United States Department of Transportation, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the Contract. Contractor shall not perform any act, fail to perform any act, or

refuse to comply with any Owner requests which would cause Owner to be in violation of the FTA terms and conditions.

10. Clean Air

- (a) 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. Contractor agrees to report each violation to Owner and understands and agrees that Owner will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (b) Contractor agrees to include these requirements in each Subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

11. Recycled Products and Recovered Materials

~~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.~~

12. Davis-Bacon and Copeland Anti-Kickback Acts

~~Contractor agrees to comply with the Davis-Bacon Act, 40 U.S.C. § 3141 et seq., as supplemented by Department of Labor Regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction") and the Copeland Anti-Kickback Act (18 U.S.C. § 374 and 40 U.S.C. § 3145) as supplemented by Department of Labor Regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States"). The clause at 29 CFR § 5.5(a) is restated and incorporated below, conformed to designate "Owner", "Contractor" and "Subcontractor" in their respective capacity as the owner, contractor and subcontractor for the Project:~~

~~(1) — Minimum wages —~~

- ~~(i) — All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between Contractor or Subcontractor and such laborers and mechanics.~~

~~Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be~~

~~paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by Contractor and its Subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.~~

- ~~(ii) (A) Owner shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. Owner shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:~~
- ~~(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and~~
 - ~~(2) The classification is utilized in the area by the construction industry; and~~
 - ~~(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.~~
- ~~(B) If Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and Owner agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by Owner to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise Owner or will notify Owner within the 30-day period that additional time is necessary.~~
- ~~(C) In the event Contractor, the laborers or mechanics to be employed in the classification or their representatives, and Owner do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), Owner shall refer the questions, including the views of all interested parties and the recommendation of Owner, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise Owner or will notify Owner within the 30-day period that additional time is necessary.~~
- ~~(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.~~

- ~~(iii) — Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.~~
- ~~(iv) — If Contractor does not make payments to a trustee or other third person, Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.~~
- ~~(2) — **Withholding** — Owner 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 Contractor under this contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by Contractor or any Subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, Owner may, after written notice to Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.~~
- ~~(3) — **Payrolls and basic records** —~~
- ~~(i) — Payrolls and basic records relating thereto shall be maintained by Contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.~~

- ~~(ii) (A) Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to Owner for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH 347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. Contractor is responsible for the submission of copies of payrolls by all Subcontractors. Contractor and Subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to Owner for transmission to the Federal Transit Administration, Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for Contractor to require its Subcontractor to provide addresses and social security numbers to Contractor for its own records, without weekly submission to Owner.~~
- ~~(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:~~
- ~~(1) That the payroll for the payroll period contains the information required to be provided under section 5.5(a)(3)(ii) of Regulations, 29 CFR Part 5, the appropriate information is being maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR Part 5, and that such information is correct and complete;~~
 - ~~(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;~~
 - ~~(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.~~
- ~~(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH 347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.~~
- ~~(D) The falsification of any of the above certifications may subject Contractor or Subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.~~

~~(iii) Contractor or Subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If Contractor or Subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR § 5.12.~~

~~(4) Apprentices and trainees~~

~~(i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.~~

~~(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed~~

~~pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.~~

- ~~(iii) **Equal employment opportunity** – The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.~~
- ~~(5) **Compliance with Copeland Act requirements** – Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.~~
- ~~(6) **Subcontracts** – Contractor and Subcontractor shall insert in any Subcontracts the clauses contained in 29 CFR § 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier Subcontracts. Contractor shall be responsible for the compliance by any Subcontractor or lower tier Subcontractor with all the contract clauses in 29 CFR 5.5.~~
- ~~(7) **Contract termination: debarment** – A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.~~
- ~~(8) **Compliance with Davis-Bacon and Related Act requirements** – All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.~~
- ~~(9) **Disputes concerning labor standards** – Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and Owner, the contracting agency, the U.S. Department of Labor, or the employees or their representatives.~~

(11) ~~Certification of eligibility~~

- (i) ~~By entering into this Contract, Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).~~
- (ii) ~~No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).~~
- (iii) ~~The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.~~

13. Contract Work Hours and Safety Standards

~~Contractor shall comply with the Contract Work Hours and Safety Standard Act, 40 U.S.C. § 3701 et seq. The clause at 29 CFR 5.5(b) pertaining to Contract Work Hours and Safety Standard Act is restated and incorporated below, conformed to designate "Owner", "Contractor" and "Subcontractor" in their respective capacity as the owner, contractor and subcontractor for the Project:~~

- (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 the clause set forth in paragraph (b)(1) of this section 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 (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 paragraph (b)(1) 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 paragraph (b)(1) of this section.~~
- (c) ~~**Withholding for unpaid wages and liquidated damages** – Owner 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 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 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 paragraph (b)(2) of this section.~~
- (d) ~~**Subcontracts**. Contractor or Subcontractor shall insert in any Subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier Subcontracts. Contractor shall be responsible for compliance by any~~

~~Subcontractor or lower tier Subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.~~

14. **Employee Protections**

- (a) **Activities Not Involving Construction** - Contractor agrees to comply, and assures the compliance of each Subcontractor at each tier of the Project, with the employee protection requirements for non-construction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, in particular the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.
- (b) **Activities Involving Commerce** - Contractor agrees that the provisions of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, apply to employees performing Project work involving commerce.

15. **No Government Obligation to Third Parties**

- (a) Owner and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to the Contract and shall not be subject to any obligations or liabilities to Owner, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- (b) Contractor agrees to include the above clause in each Subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

16. **Program Fraud and False or Fraudulent Statements and Related Acts**

- (a) 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 the Project. Upon execution of the underlying contract, Contractor certifies or 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, 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 Contractor to the extent the Federal Government deems appropriate.
- (b) 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 Contractor, to the extent the Federal Government deems appropriate.
- (c) Contractor agrees to include the paragraphs (a) and (b) above in each Subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

17. Debarment and Suspension

- (a) Contractor agrees to comply, and assures the compliance of each Subcontractor at each tier, with 49 U.S.C. § 5325(j), Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Government wide Debarment and Suspension (Nonprocurement)," within 2 C.F.R. Part 1200, which adopts the provisions in 2 CFR 180.
- (b) The Contract is a covered transaction for purposes of 2 CFR Part 1200 and 2 CFR 180. As such, Contractor is required to verify that none of the Contractor, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.935 and 180.940. Contractor is required to comply with 2 CFR 1200, Subpart C and 2 CFR 180, Subpart C.
- (c) By entering into the Contract, Contractor certifies that it is in compliance with 2 CFR Part 1200, Subpart C and 2 CFR 180, Subpart C. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to the remedies available to Owner, the Federal Government may pursue available remedies, including, but not limited to, suspension and/or debarment.

18. Privacy Act

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

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

19. Civil Rights Requirements

Contractor agrees to comply with all applicable civil rights laws and implementing regulations including, but not limited to the following requirements:

- (a) Nondiscrimination: In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. §12132, and Federal transit law at 49 U.S.C. §5332, Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Contractor agrees to comply with applicable Federal implementing regulations and any other implementing requirements FTA may issue.
- (b) Equal Employment Opportunity: The following equal employment opportunity requirements apply to the Contract:

- (1) Race, Color, Creed, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, and Federal transit laws at 49 U.S.C. §5332, Contractor agrees to comply with all applicable equal opportunity requirements of U. S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, " 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Contract. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, national origin, sex or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
- (2) Age: In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
- (3) Disabilities: In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, Contractor agrees that it will comply with the requirements of U. S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, Contractor shall comply with the following regulations and any subsequent amendments thereto:
 - (i) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
 - (ii) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
 - (iii) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
 - (iv) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
 - (v) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
 - (vi) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-119;
 - (vii) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

- (viii) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;
 - (ix) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; and
 - (x) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
 - (xi) Any implementing requirements FTA may issue.
- (4) Equal Employment Opportunity Requirements for Construction Activities. With respect to activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," Contractor agrees to comply and assures the compliance of each third party contractor and each subrecipient or Subcontractor at each tier of the Project, all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., which implements Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," at 42 U.S.C. § 2000(e) note, and also with any Federal Laws, Ordinances and Regulations affecting construction undertaken as part of the Project.
- (5) Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. Contractor agrees to comply with the confidentiality and any other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1174 et seq., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4581 et seq., and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd-2, 290dd-3 and 290ee-3, and any subsequent amendments to these acts.
- (6) Access to Services for Persons with Limited English Proficiency. Contractor agrees to comply with Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and U.S. DOT Notice, "DOT Guidance to Contractors on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 Fed. Reg. 6733 et seq., January 22, 2001.
- (7) Other Nondiscrimination Statutes. Contractor agrees to comply with all applicable requirements of any other nondiscrimination statute(s) that may apply to the Project.

20. Rights In Data and Patent Rights

~~(a) Rights in Data~~

- ~~(1) The term "subject data" used in this Section 20 means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the 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 contract administration.

- (2) ~~The following restrictions apply to all subject data first produced in the performance of the Contract to which this Exhibit has been added:~~
- (a) ~~Except for its own internal use, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may 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 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)(1) and (2)(b)(2) of this clause below. 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 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, if Contractor performs experimental, developmental, or research work required by the Contract, it 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 Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the 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, Contractor agrees 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 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. Contractor shall not 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 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 Contractor identifies that data in writing at the time of delivery of the contract work.~~
- ~~(g) — Unless FTA determines otherwise, 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 Contractor agrees 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 C.F.R. Part 401.~~
- ~~(4) — 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, 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 Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), Contractor agrees 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 C.F.R. Part 401.~~
 - ~~(3) — Contractor also agrees to include the requirements of this clause in each Subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.~~~~

21. Transit Employee Protective Provisions

~~To the extent that FTA determines that transit operations are involved, Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. § 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter.~~

22. Environmental Requirements

Contractor recognizes that many federal and state Laws, Regulations and Ordinances imposing environmental and resource conservation requirements may apply to the Project. Some, but not all, of the major federal Laws, Regulations and Ordinances that may affect the Project include: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq.*; the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* and applicable sections of 29 U.S.C.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.*; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 *et seq.*; and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 *et seq.* Contractor also recognizes that U.S. EPA, FHWA and other Federal agencies have issued, and in the future are expected to issue, regulations, guidelines, standards, orders, directives, or other requirements that may affect the Project. Thus, Contractor agrees to comply, and assures the compliance of each of its Subcontractors, with any such Federal requirements as the Federal Government may now or in the future promulgate. Listed below are environmental requirements of particular concern to FTA and Contractor. Contractor agrees that those laws and regulations may not constitute Contractor's entire obligation to meet all Federal environmental and resource conservation requirements.

- (a) Environmental Protection. Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq.*, Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5324(b); U.S. Council on Environmental Quality regulations imposing requirements for compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 *et seq.*; joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.
- (b) Air Quality. Contractor agrees to comply with all applicable regulations, standards, orders, and requirements implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* In addition:
 - (1) Contractor agrees to comply with the applicable requirements of the U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93. To support the requisite air quality conformity finding for the Project, Contractor agrees to implement each air quality mitigation or control measure incorporated in the Project. Contractor further agrees that any Project identified in an applicable State Implementation Plan as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the State Implementation Plan.
 - (2) U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, that may apply to transit operators, particularly operators of large transit bus fleets. Accordingly, Contractor agrees to comply with the following U.S. EPA regulations to the extent they are

applicable to the Project: "Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines," 40 C.F.R. Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures," 40 C.F.R. Part 86; and "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600.

- (3) Contractor agrees to comply with the notification of violating facility requirements of Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.
- (c) Use of Public Lands. Contractor agrees that it will not use in the Project any publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, and will not use in the Project any land from a historic site of national, State, or local significance unless the Federal Government makes the findings required by 49 U.S.C. §303.
- (d) Wild and Scenic Rivers. Contractor agrees to comply with the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. §§1271 *et seq.* relating to protecting components of the national wild and scenic rivers system.
- (e) Coastal Zone Management. Contractor agrees to assure Project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. §§ 1451 *et seq.*
- (f) Wetlands. Contractor agrees to comply with the protections for wetlands in accordance with Executive Order No. 11990, as amended, "Protection of Wetlands," 42 U.S.C. § 4321 note.
- (g) Floodplains. Contractor agrees to comply with the flood hazards protections in floodplains in accordance with Executive Order No. 11988, as amended, "Floodplain Management" 42 U.S.C. § 4321 note.
- (h) Endangered Species. Contractor agrees to comply with the protections for endangered species of the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 *et seq.*
- (i) Historic Preservation. Contractor agrees to foster compliance with the Federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f; Executive Order No. 11593, "Protection and Enhancement of the Cultural Environment," 16 U.S.C. § 470 note; and the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. §§ 469a *et seq.* as follows:
- (1) In accordance with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 C.F.R. Part 800, Contractor agrees to consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and agrees to notify FTA and Owner of any affected properties.
- (2) Contractor agrees to comply with all Federal requirements to avoid or mitigate adverse effects on those historic properties.
- (j) Environmental Justice. Contractor agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note.

- (k) Mitigation of Adverse Environmental Effects. Should the Project cause or result in adverse environmental effects, Contractor agrees to take all reasonable measures to minimize those adverse effects, as required by 49 U.S.C. § 5324(b), and other applicable Federal laws and regulations, including joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622. Contractor agrees to comply with all environmental mitigation measures identified as commitments in applicable environmental documents (*i.e.*, environmental assessments, environmental impact statements, memoranda of agreement, and documents required by 49 U.S.C. § 303) and with any conditions imposed by the Federal Government in a finding of no significant impact or record of decision. Contractor agrees that those mitigation measures are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. Contractor also agrees that any deferred mitigation measures will be incorporated by reference and made part of the Grant Agreement or Cooperative Agreement as soon as agreement with the Federal Government is reached. Contractor understands and agrees that those mitigation measures agreed upon may not be modified or withdrawn without the express written approval of the Federal Government.

23. Disadvantaged Business Enterprises

- (a) The Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Contract and shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this Contract. Contractor agrees to take the following measures to facilitate participation by disadvantaged business enterprises (DBE) in the Project:
- (1) Contractor agrees and assures that it will comply with U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.
 - (2) Contractor agrees and assures that it shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any Subcontract supported with Federal assistance derived from U.S. DOT or FTA or in the administration of its DBE program or the requirements of 49 C.F.R. Part 26. Contractor agrees to take all necessary and reasonable steps set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all Subcontracts supported with Federal assistance derived from U.S. DOT. Each Subcontract Contractor signs with a Subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)). Upon notification by U.S. DOT to Contractor of its failure to implement its approved DBE program, U.S. DOT may impose sanctions as provided for under 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq.*
- (b) Bidders/offerors are required to document sufficient DBE participation to meet the DBE goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 C.F.R. 26.53. Award of the Contract is conditioned on submission of the following prior to award:
- (1) The names and addresses of DBE firms that will participate in the Contract;
 - (2) A description of the work each DBE will perform;
 - (3) The dollar amount of the participation of each DBE firm participating;
 - (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;

- (5) Written confirmation from the DBE that it is participating in the Contract as provided in Contractor's commitment; and
- (6) If the contract goal is not met, evidence of good faith efforts to do so.

Contractor must present the information required above prior to contract award (see 49 C.F.R. 26.53(3)).

- (c) Contractor is required to pay its Subcontractors performing work related to the Contract for satisfactory performance of that work no later than 30 days after Contractor's receipt of payment for that work from Owner. In addition, Contractor is required to return any retainage payments to those Subcontractors within 30 days after the Subcontractor's work related to this contract is satisfactorily completed.
- (d) Contractor must promptly notify Owner, whenever a DBE Subcontractor performing work related to the Contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE Subcontractor to perform at least the same amount of work. Contractor may not terminate any DBE Subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Owner.

24. Seat Belt Use

In accordance with Executive Order No. 13043, "Increasing Seat Belt Use in the United States," 23 U.S.C. § 402 note, Contractor is encouraged to adopt on-the-job seat belt use policies and programs for its employees that operate company-owned, rented, or personally-operated vehicles and include this provision in its Subcontracts.

25. Substance Abuse

- ~~(a) Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Virginia, or Owner, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. Contractor agrees further to certify annually its compliance with Part 655 before March 15 and to submit the Management Information System (MIS) reports before March 15) to Owner. To certify compliance Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.~~
- ~~(b) To the extent applicable, Contractor agrees to comply with the following Federal substance abuse regulations:
 - ~~(1) Drug Free Workplace. U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), 49 C.F.R. Part 32, that implement the Drug-Free Workplace Act of 1988, 41 U.S.C. §§ 701 et seq.~~
 - ~~(2) Alcohol Misuse and Prohibited Drug Use. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 655, that implement 49 U.S.C. § 5331.~~~~

26. Protection of Sensitive Security Information.

To the extent applicable, Contractor agrees to comply with section 101(e) of the Aviation and Transportation Security Act, 49 U.S.C. § 40119(b), with U.S. Transportation Security Administration regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 1520, and with any other implementing regulations, requirements, or guidelines that the Federal Government may issue.

27. Access for Individuals with Disabilities

Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities.