

IFB- /CPR



washington  
metropolitan  
area transit  
authority

## **Contract Specifications**

### **Diesel Fuel (Furnish and Deliver) To Multiple Locations**

**Washington, D.C., Maryland and Virginia**

**Contract No.**





WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SOLICITATION, OFFER AND AWARD

CONTRACT NO.	SOLICITATION NO. IFB <input checked="" type="checkbox"/> ADVERTISED <input type="checkbox"/> NEGOTIATED	DATE ISSUED	ADDRESS OFFER TO DEPT. OF PROCUREMENT The Department of Procurement 600 Fifth Street, NW, Room 3F18 Washington, DC 20001-2651
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In advertised procurement, "offeror" shall be construed to mean "bid" and "bidder."

SOLICITATION

Sealed offer in original and One (1) copies for furnishing the supplies or services in the schedules will be received at Authority until 2:00 P.M. local time                      (Date)

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

CAUTION -- LATE OFFERS: See paragraph 6 of Solicitation Instructions.

All offers are subject to the following:

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

FOR INFORMATION CALL (No collect calls) Cathy Rooths (202) 962-2469 or fax (202) 962-2038.

SCHEDULE					
ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	WMATA is soliciting your Bid for #2 ULSD Fuel in accordance with the attached Bid Schedules  (See continuation of schedule on page 2)				

DUN & BRADSTREET ID NUMBER:

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

AWARD (To be completed by The Authority)

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

ITEM NO.	QUANTITY	UNIT	UNIT PRICE

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

Fred M. Pohlmann. \_\_\_\_\_ WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY \_\_\_\_\_ AWARD DATE \_\_\_\_\_  
 Name of Contracting Officer (Print of Type)

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SOLICITATION, OFFER AND AWARD

CONTINUATION SHEET

REFERENCE NO. OF DOCUMENT BEING CONTINUED: IFB	DATE:	PAGE: 2	OF: 2
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NAME OF OFFEROR OR CONTRACTOR:

SCHEDULE					
ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
			<i>Estimated Qty.</i>		
1.	<b>TO BE DETERMINED</b>		350,000	\$ _____	\$ _____
2.			214,000	\$ _____	\$ _____
3.			34,000	\$ _____	\$ _____
4.			59,000	\$ _____	\$ _____
5.			1,000	\$ _____	\$ _____
6.			18,000	\$ _____	\$ _____
7.			1	\$ _____	\$ _____
8.			1	\$ _____	\$ _____
					\$ _____

*\*First delivery of 10,000 feet shall be within 6 weeks (42 c.d.) After award.*

THE UNDERSIGNED ACKNOWLEDGES RECEIPT OF THE FOLLOWING AMENDMENTS

TO SOLICITATION IFB /CPR, Contract No. \_\_\_\_\_

- |                        |             |
|------------------------|-------------|
| Amendment Number _____ | Dated _____ |

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

## **NOTES TO BIDDERS**

1. This Invitation for Bid (IFB) is issued by the Washington Metropolitan Area Transit authority (WMATA) on behalf of the members of the Metropolitan Washington Council of Governments (COG) Purchasing Group. This IFB is for the purchase of Ultra Low Sulfur Diesel Fuel.
2. ***A Pre-Bid Conference will be held on at Washington Metropolitan Area Transit Authority, Room , 600 5<sup>th</sup> Street, NW, Washington, D.C. 20001. Bidders are urged to attend.***
3. All quantities are estimates. The Offeror is notified that there will be no adjustment of unit prices for variations in quantities between the estimated quantities and the final quantities ordered in this contract.
4. Pre-Award Data is required to be submitted with the bid.
5. Complete and return the Council of Governments (COG) Rider clause.
6. Failure to bid on all items will necessitate rejection of the bid.
7. Any bid which is materially unbalanced as to prices for the various items may be rejected as non-responsive. A materially unbalanced bid is one which is based on prices which are materially overstated for other work.
8. The Total Bid Price will be the sum of all price extension amounts for the listed items.
9. All extensions of the unit prices shown will be subject to verification by the Authority. In case of variation between the unit prices and the extension, the unit price will be considered the bid.
10. Offerors are advised to become familiar with articles for availability of funds, multi-year contracts and cancellation of items. The Contractor is advised not to perform any work or incur any costs for work above the available funding until notified in writing by the Contracting Officer.
11. The Offeror is placed on notice that it may not be paid for the estimated quantities listed on the Price Schedule Sheet. The final amount of the Contract and payment will be based on actual quantities ordered in the Order for Services which may total more or less than the estimated quantity for each of the individual items. The Offeror is further notified that an Order may not include all listed items and some items may not be ordered from this Contract by any Order.
12. Notification of the availability of additional funds shall be made as soon as practical if and when the funds become available, but not later than June 30 of the respective fiscal year unless a later date is agreed to in writing.
13. Invoices for payment shall be arranged to correspond to each Order.

PAGE NOT USED

## Ultra Low Sulfur Diesel Fuel

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**PART I - SCHEDULE and SUPPORTING  
SOLICITATION FORMS**

**NOTICE TO BIDDERS**

1. IN ORDER TO ENSURE THAT YOUR BID COMPLIES WITH WMATA'S PROCUREMENT REGULATIONS AND THAT IT WILL BE RESPONSIVE TO THE AUTHORITY'S INVITATION FOR BID (IFB), THE FOLLOWING FORMS MUST BE COMPLETED & SUBMITTED AS PART OF YOUR BID. FAILURE TO SUBMIT ANY PORTION OF THE WRITTEN REQUIREMENTS MAY CAUSE YOUR BID TO BE NON-RESPONSIVE AND REJECTED.
  - SOLICITATION, OFFER & AWARD FORM (YOU MUST SIGN)
  - BID SCHEDULE
  - REPRESENTATIONS AND CERTIFICATIONS
  - ACKNOWLEDGMENT OF AMENDMENTS (IF ANY)
  - BID ENVELOPES MUST BE MARKED WITH SOLICITATION NUMBER.
  
2. QUESTIONS CONCERNING THIS INVITATION FOR BID MAY BE DIRECTED TO the CONTRACT ADMINISTRATOR, MS. CATHY ROOTHS AT (202), 962-2469, FAX (202) 962-2038, OR BY EMAIL AT [crooths@wmata.com](mailto:crooths@wmata.com).
  
3. A PRE-BID CONFERENCE WILL BE HELD

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**SOLICITATION INSTRUCTIONS**  
**FOR**  
**INVITATION FOR BIDS**

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## SOLICITATION INSTRUCTIONS

***This Invitation for Bids (IFB) is issued by the Washington Metropolitan Area Transit Authority (WMATA) on behalf of the members of the Metropolitan Washington Council of Governments (COG) Purchasing Group.***

**1. Definitions** As used herein: RA(Nov/92)

a. The term "solicitation" means "Invitation for Bids (IFB)" where the procurement is competitive sealed bid, and "Request for Proposal (RFP)" where the procurement is negotiated.

b. The term "offer" means "bid" where the procurement is by competitive sealed bid, and "proposal" where the procurement is negotiated.

**2. Preparation of Offers:** RA(Nov/92)

a. Offerors are expected to examine the drawings, specifications, Schedule, and all instructions. Failure to do so will be at the offeror's risk.

b. Each offeror shall furnish the information required by the solicitation. The offeror shall sign the solicitation and print or type his name on the Schedule and each Continuation Sheet thereof on which he makes any entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent are to be accompanied by evidence of his authority, unless such evidence has been previously furnished to the issuing office.

c. Unit price for each unit offered shall be shown and such price shall include packing unless otherwise specified. A total shall be entered in the Amount column of the Schedule for each item offered. In case of a discrepancy between a unit price and extended price, the unit price will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.

d. Offers for supplies or services other than those specified will not be considered unless authorized by the solicitation.

e. Offeror must state a definite time for delivery of supplies or for performance of services unless otherwise specified in the solicitation.

f. Time, if stated as a number of days, will include Saturdays, Sundays and holidays.

**3. Explanation To Prospective Bidders:** RA(Nov/92)

Any prospective bidder desiring an explanation or interpretation of the solicitation, drawings, specification, etc., must request it in writing soon enough to allow a reply to reach all prospective bidders before the submission of their bids. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective bidder concerning a solicitation will be furnished promptly to all other prospective bidders as an amendment of the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to any other prospective bidders.

**4. Acknowledgment of Amendments:** RA(Nov/92)

Receipt of an amendment to a solicitation by an offeror must be acknowledged (a) by signing and returning the amendment, (b) by identifying the amendment number and date on the Solicitation Offer and Award Form, (c) by letter or telegram, or (d) by facsimile, if facsimile offers are authorized in the solicitation. Such acknowledgment must be received prior to the hour and date specified for receipt of offers. If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

**5. Submission of Offers:** RA(Nov/92)

a. Offers and modifications thereof shall be enclosed in sealed envelopes and addressed to the office specified in the solicitation. The offeror shall show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror on the face of the envelope.

b. Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified or withdrawn by written or telegraphic notice, provided such notice is received prior to the hour and date specified for receipt.

c. Facsimile offers, modifications or withdrawals will not be considered unless authorized by the Authority.

**6. Late Submissions, Modifications, and Withdrawals of Offers:** RA(Nov/92)

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 it--

(1) Was sent by registered or certified U.S. 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 sent by registered mail by the 15th;

(2) Was sent by mail or, if authorized by the solicitation, was sent by telegram

or via facsimile and it is determined by the Authority that the late receipt was due solely to mishandling by the Authority after receipt;

(3) Was sent by U.S. Postal Service Express Mail Next Day Service Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of offers. The term "working days" excludes weekends and U.S. Federal holidays; or

(4) Is the only offer received.

b. Any modification 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 subparagraphs (a)(1), (2), and (3) of this provision.

c. A modification resulting from the Contracting Officer's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Authority.

d. The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by registered or certified mail is the U.S. or Canadian Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or 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 affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

e. The only acceptable evidence to establish the time of receipt by the Authority is the time/date stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the Authority.

f. The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by 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 both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph d. of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors or quoter should request the postal clerk to place a legible hand cancellation bulls eye postmark on both the receipt and the envelope or wrapper.

g. Notwithstanding paragraph "a" above, a late modification of any 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.

h. Bids may be withdrawn by written notice or telegram (including mailgram) received at any time before the exact time set for receipt of Bids. If the solicitation authorizes

facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of Bids, subject to the conditions specified in the provision entitled "Facsimile Offers". Bids may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the bid before the exact time set for receipt of Bids.

**7. Minimum Bid Acceptance Period** RT(APR/95)

- a. "Acceptance period," as used in this provision, means the number of calendar days available to WMATA for awarding a contract from the date specified in this solicitation for receipt of proposals.
- b. This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.
- c. WMATA requires a minimum acceptance period of 120 calendar days.

**8. Contract Award:** RA(APR/95)

If this solicitation is an Invitation for Bids:

- a. The Authority may (1) reject any or all bids, (2) accept other than the lowest bid, and (3) waive informalities and minor irregularities in bids received.
- b. A written award or acceptance of a bid mailed or otherwise furnished to the successful bidder within the time of acceptance specified in the bid shall result in a binding contract without further action by either party.
- c. The Authority may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Authority even though it may be the low evaluated bid, or it is so unbalanced as to be tantamount to allowing an advance payment.

**9. Affirmative Action Plan and Disadvantaged Business Enterprise (DBE) Requirements**  
Not Used OA(Dec/92)

**10. Opportunity for Disadvantaged Business Enterprises** RA(May/95)

The Washington Metropolitan Area Transit Authority hereby notifies all offerors that it will affirmatively ensure that disadvantaged minority business enterprises will be afforded full opportunity to submit offers in response to this solicitation and will not be discriminated

against on the basis of race, color, or national origin in consideration for award. ***Offerors are caution to read and comply with the requirements of the various jurisdictions who are participants in this cooperative purchase.***

**11. Notice of Protest Policy** RA(May/93)

a. WMATA policy and procedure for the administrative resolution of protests is set forth in Chapter 20 of the Authority's Procurement Procedures Manual (PPM). Chapter 20 contains strict rules for filing a timely protest, for responding to a notice that a protest has been filed, and other procedural matters. The Contracting Officer can furnish a copy of Chapter 20 upon request.

b. UMTA (FTA) Circular 4220.1D, Chapter VII, addresses Bid Protests. FTA will only review protests regarding the alleged failure of the grantee to have a written protest procedure or alleged failure to follow such procedures, and only when submitted by an interested party. The term "interested party" is defined in the Authority policy for handling protests.

c. Alleged violation on other grounds must be submitted to the Contracting Officer who will decide the protest.

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

**12. Pre-Award Information:** RT(MAR/95)

a. The Contracting Officer may conduct a pre-award survey to determine if the offeror eligible for award is responsible both financially and technically and has the capability to perform the work of the Contract in accordance with the requirements of the Specifications and within the times specified.

b. Accordingly, in order that a bid be fully considered, the bidder shall furnish the following when requested by the Contracting Officer:

(1) A completed and signed Pre-Award Evaluation Data form (furnished with the solicitation), including, but not limited to, the following: A statement of the offeror's experience record, the type of concerns for which the work was performed, a statement by the financial institutions with which the offeror conducts business and a list of contracts, if any, on which failure to complete within the specified time resulted in the assessment of liquidated damages.

(2) Complete financial statements for the last two years, including Statement of Financial Position (Balance Sheet), Results of Operations (Income Statement), Statement of Changes in Financial Position (Net Change in Resources) and

Statement of Current and Retained Earnings.

(3) As set forth in Attachment 1, a complete and comprehensive Affirmative Action Program in accordance with the General Provisions Article titled EQUAL OPPORTUNITY - REVISED ORDER NO. 4 with CFR 60-2 and with EXECUTIVE ORDER 11246 (with special attention directed to Sections 202 and 203).

(4) Disadvantaged Business Enterprise data as set forth in Appendix B. NOTE: The submittal of certain items and request for waiver(if applicable) with the bid is required if offer is \$100,000 or greater.

c. Doubt as to technical ability, productive capability, "good faith effort - DBE," and financial strength which cannot be resolved affirmatively may require a determination of nonresponsibility by the Contracting Officer.

**13. Preparation of Bids:**

RT(MAR/95)

a. Bids shall be submitted on the Bid Forms furnished, or copies thereof, and must be manually signed. If erasures or other changes appear on the forms, such erasures or changes must be initialed by the person signing the bid.

b. Alternate bids will not be considered.

c. The offeror shall submit the following information:

(1) Three sets of signed solicitation forms, with all representations and certifications executed, and with Bid Schedule Prices/Unit Prices/Totals filled in.

(2) Other information, if requested elsewhere, in this solicitation.

***ANY EXCEPTION TO THE AUTHORITY'S INVITATION FOR BID/SPECIFICATIONS MAY MAKE YOUR BID NON-RESPONSIVE AND REJECTED. EXAMPLES OF EXCEPTIONS ARE INCLUSION OF CONTRACTOR CLAUSES AND MODIFICATION OF WMATA CLAUSES, DELIVERY DATE(S), QUANTITIES, WARRANTIES, AND/OR OTHER CHANGES.***

d. Modifications of bids already submitted will be considered if received at the office designated in this Invitation for Bids by the time set for opening of bids. Telegraphic/facsimile modifications will be considered, but shall not reveal the amount of the original or revised bid.

e. Neither telegraphic nor teletype facilities are located in the Authority's office.

**14. Restriction on Disclosure and Use of Data** RT(DEC/92)

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

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

**15. Award - Single Award for All Items** RT(MAR/95)

The Authority will make a single award for the line items in the Schedule unless specified elsewhere.

**16. Basis for Award:** RT(APR/95)

- a. The Authority will award a contract to the lowest responsive and responsible bidder whose bid (***Base period plus Option periods, if any***) conforming to this Invitation for Bids is determined to be the most advantageous to the Authority, considering only price and price related factors included in the IFB.
- b. The low bid will be evaluated as the lowest value bid differential price (plus or minus) per gallon to the published price in the Oil Price Information Service Publication (OPIS)
- c. If, after receipt of the bids, the Contracting Officer determines that adequate price competition does not exist, the offeror shall provide certified cost or pricing data as requested by the Contracting Officer.

17. **Basis for Award/Evaluation of Bids for Multiple Awards - Not Used:** OT(APR/95)

18. **Type of Contract** RT(NOV/92)

The Authority contemplates award of a **Firm Fixed Price Requirements Type Supply** contract resulting from this solicitation.

19. **Pre-Bid Conference:** OT(NOV/92)

For the purpose of clarifying the terms, conditions, and requirements of this IFB, a pre-bid conference will be held to respond to questions by interested bidders. This pre-bid conference will be held on \_\_\_\_\_ In the Metropolitan Washington Council of governments board room, Suite 300, 777 North Capitol Street, Washington, D.C. 20002-4201. Bidders are urged to attend. Those bidders planning to attend should contact Mr. Carl Kalish at 202-962-3222, or Ms. Cathy rooths (WMATA) at 202-962-2469. It is requested that bidders submit their questions in writing either in advance of the meeting or during the meeting. Questions from the floor, however, are permissible.

20. **Brand Name or Equal:** (Sealed Bidding) Not Used OT(May/95)

**REPRESENTATIONS AND CERTIFICATIONS (JUL/96)**

(In advertised procurement the terms "offer" and "offeror" shall be construed to mean "bid" and "bidder.")

**REPRESENTATIONS (Check or complete all applicable boxes or blocks)**

The offeror represents as part of its offer that:

**1. TYPE OF BUSINESS ORGANIZATION**

It operates as  an individual,  a partnership,  a nonprofit organization, or  a corporation, incorporated under the laws of the State of \_\_\_\_\_.

**2. DISADVANTAGED BUSINESS ENTERPRISE**

It is ,  is not, a disadvantaged business enterprise.

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

"Socially and Economically Disadvantaged Individuals" means any individual who is a citizen (or other lawfully admitted permanent residents) of the United States and who is any individual who the Authority finds to be socially and economically disadvantaged individuals on a case-by-case basis, and any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantages:

Black Americans, which includes persons having origins in any of the Black racial groups of Africa:

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;

Native Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

Asian-Pacific Americans, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Phillipines, Brunei, Somoa, Guam, the U. S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the North Marianas Islands, Macao, Fiji, Tonga, Kiribati, Javalu, Nauru, Federated States of Micronesia, or Hong Kong:

Subcontinent Asian-Indian Americans, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

Women; and

Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such times as the SBA designation becomes effective.

**3. AFFILIATION AND IDENTIFYING DATA**

Each offeror shall complete (a),(b) if applicable, (c) and (d) below:

- a. It [ ] is, [ ] is not owned or controlled by a parent company. For this purpose, a parent company is defined as one which either owns or controls the activities and basic business policies of the proposer. To own another company means the parent company must own at least a majority, i.e., more than 50 percent, of the voting rights in that company.

To control another company, such ownership is not required; if another company is able to formulate, determine or veto basic business policy decisions of the proposer, such other company is considered the parent of the proposer. This control may be exercised through the use of dominant minority voting rights, use of proxy voting, contractual arrangements or otherwise.

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

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

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

\_\_\_\_\_

- c. If the offeror has no parent company, it shall provide in the applicable space below its own Employer's Identification Number (E.I. No.), i.e., Federal Social Security Identification Number used on Federal Tax Returns or, if it has a parent company, the E.I. No. of its parent company.

Offeror's E.I. Number: \_\_\_\_\_ or,

Parent Company's E.I. Number: \_\_\_\_\_

- d. With respect to the Data Universal Numbering Systems (DUNS), the following

applies.

- 1) The offeror shall insert the DUNS number applicable to the offeror's address entered on the Solicitation, Offer & Award Form:

- 
- 2) If a DUNS number has not been established for the address indicated in paragraph (d) 1) of this provision, the Authority will arrange for the assignment of this number after award of a contract and will notify the Contractor accordingly.

**4. REPRESENTATIONS: NONDISCRIMINATION CLAUSE:**

- a. It [ ] has, [ ] has not, participated in a previous contract or subcontract subject to either the Equal Opportunity Clause of this solicitation, or the clause originally contained in Section 310 of Executive Order Number 10925, or the clause contained in Section 201 of Executive Order Number 11114;
- b. It [ ] has, [ ] has not, filed all required compliance reports; and
- c. Representations indicating submittal of required compliance reports signed by proposed subcontractors will be obtained prior to subcontract awards.
- d. The above representation need not be submitted in connection with contracts or subcontracts which are exempt from the clause.

**5. AFFIRMATIVE ACTION COMPLIANCE:**

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

**CERTIFICATIONS (Check or complete all applicable boxes or blocks)**

By signing and dating this offer, each offeror certifies that:

1. **DEBARRED OR INELIGIBLE CONTRACTORS; Certification Regarding Debarment, Suspension, & Other Responsibility Matters Lower Tier Covered Transactions (Third Party Contracts over \$100,000)**

**Instruction for Certification :**

- a. By signing and submitting this bid or proposal, the prospective offeror is providing the signed certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, WMATA may pursue available remedies, including suspension and/or debarment.
- c. The prospective offeror shall provide immediate written notice to WMATA if at any time a prospective subcontractor (at any tier) learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- d. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact the WMATA Contracting Officer for assistance in obtaining a copy of those regulations.
- e. The offeror agrees by submitting this proposal that, should the contract be entered into, it shall not knowingly enter into any subcontract (at any tier) with a firm which is debarred suspended, declared in eligible, or voluntarily excluded, unless authorized in writing by the Contracting Officer.
- f. The offeror further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all subcontracts and solicitations for subcontracts anticipated to exceed \$100,000 in value.
- g. A prime contractor may rely upon a certification of a subcontractor that it is not debarred, suspended, ineligible, or voluntarily excluded for the contracting, unless it knows that the certification is erroneous. A prime contractor may decide the method and frequency by which it determines the eligibility of its principals. Each prime contractor may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
- h. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under Paragraph 5 of these instruction, if a prime

contractor under a WMATA contract knowingly enters into a subcontract (at any tier) with a firm which is suspended, debarred, ineligible, or voluntarily excluded from contracting, in addition to all remedies available to the Federal Government, WMATA may pursue available remedies including suspension and/or debarment.

**“Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction”**

- a. The prospective offeror certifies, by submission of this bid or proposal, that neither it nor its “principals” (as defined at 49 C.F.R. Paragraph 29.105) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
  - b. When the prospective offeror is unable to certify to the statements in this certification, such prospective offeror shall attach an explanation to this proposal.
2. **CLEAN AIR AND WATER** [Applicable if the offer exceeds \$100,000, or the Contracting Officer believes that orders under an indefinite contract in any year will exceed \$100,000 or a facility to be used has been the subject of a conviction under the Clear Air Act (42 U.S.C. 7413(c)(1) or the Water Act (33 U.S.C. 1319(c)) and is listed by the Environmental Protection Agency(EPA) as a violating facility, and the acquisition is not otherwise exempt.]
- a. Any facility to be utilized in the performance of this proposed contract [ ] is, or [ ] is not listed on the EPA list of Violating Facilities;
  - b. It will immediately notify the Contracting Officer, before award, of the receipt of any communications from the Administrator, or a designee of the EPA, indicating that any facility which it proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and
  - c. It will include a certification substantially the same as this certification, including this paragraph (c), in every non-exempt subcontract.
3. **CERTIFICATION OF INDEPENDENT PRICE DETERMINATION:**
- a. It, and in the case of a joint offer, each party thereto, certifies as to its own organization that in connection with this procurement:
    - (1) The prices in this offer have been arrived at independently without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any other competitor;
    - (2) Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the offeror and will not be knowingly disclosed by the offeror prior to the opening of bids in the case of an advertised

procurement or prior to award in the case of a negotiated procurement, directly or indirectly, to any other offeror or to any competitor; and

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

b. Each person signing this offer certifies that:

(1) He or she is the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein and that he/she has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or

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

(b) He/she has not participated, and will not participate in any action contrary to (a)(1) through (a)(3) above.

**4. CERTIFICATION OF NONSEGREGATED FACILITIES:**

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

b. The bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in the contract.

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

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

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

- (2) Retain such certifications in its files; and
- (3) Forward the following notice to such subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to Prospective Subcontractors of Requirements  
for Certifications of Nonsegregated Facilities

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

**5. COVENANT AGAINST GRATUITIES:**

Neither it nor any of its employees, representatives or agents have offered or given gratuities (in the form of entertainment, gifts or otherwise) to any director, officer or employee of the Authority with the view toward securing favorable treatment in the awarding, amending, or the making of any determination with respect to the performing of the contract.

**6. SURFACE TRANSPORTATION ASSISTANCE ACT (BUY AMERICA) CERTIFICATIONS:  
(As a condition of responsiveness to this solicitation (49 CFR Part 661.13), one of the following certificates must be executed by the Offeror.)**

a. If iron, steel or manufactured products (as defined in 49 CFR Parts 661.3 & 661.5) are being procured, the appropriate certificate as set forth below shall be completed and submitted with the offer.

- (1).  Certificate of Compliance with Section 165(a)

The offeror hereby certifies that it will comply with the requirements of Sections 165(a) of the Surface Transportation Assistance Act of 1982 and the applicable regulations in 49 CFR Part 661.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

- (2).  Certificate for Non-Compliance with Section 165(a)

The offeror hereby certifies that it cannot comply with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982, but it may qualify for an exception to the requirement pursuant to Section 165(b)(2) or (b)(4) of the

Surface Transportation Assistance Act and regulations in 49 CFR Part 661.7.

Date \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

- b. If buses or other rolling stock (including train control, communication, and traction power equipment), are being procured, the appropriate certificate as set forth below shall be completed and submitted with the offer.

(1). [ ] Certificate of Compliance with Section 165(b)(3)

The offeror hereby certifies that it will comply with the requirements of Sections 165(b)(3) of the Surface Transportation Assistance Act of 1982 and the applicable regulations in 49 CFR Part 661.11

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

(2). [ ] Certificate for Non-Compliance with Section 165(b)(3)

The offeror hereby certifies that it cannot comply with the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, but it may qualify for an exception to the requirement pursuant to Section 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act and regulations in 49 CFR Part 661.7.

Date \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Whether or not the offeror certifies that it will comply with the applicable requirement, such bidder or offeror is bound by its original certification and is not permitted to change its certification after bid opening. An offeror that certifies that it will comply with the applicable Buy America requirements is not eligible for a waiver of those requirements.

**7. CERTIFICATIONS AND DISCLOSURES REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (NOVEMBER 2000)**

- a. The definitions and prohibitions contained in the clause, at Federal Acquisition Regulation 52.203-12, Limitation on Payments to Influence Certain Federal

Transactions, are hereby incorporated by reference in paragraph (b) of this certification.

- b. The offeror hereby certifies, to the best of his or her knowledge and belief, that:
- (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress or any state legislature, an officer or employee of Congress or any state legislature, or an employee of a member of Congress or state legislature 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 (including profit or fee under a covered Federal transaction) have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress or state legislature, an officer or employee of Congress or state legislature, or an employee of a Member of Congress or state legislature on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form-LLL, "Disclosure of Lobbying Activities," to the Contracting Officer.
  - (3) The undersigned shall require that the language of this certification be included in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- c. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by Section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000, for each such failure.

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
\*Signature

\_\_\_\_\_  
Title

\* Footnote: As the bidder/offeror, the Certification by a prospective Contractor is required ONLY for a contract over \$ 100,000.



OA (Apr 95)

**PRE-AWARD EVALUATION DATA**

PROJECT DESCRIPTION: Ultra Low Diesel Fuel

1. Name of Firm: \_\_\_\_\_

\_\_\_\_\_

2. Address: \_\_\_\_\_

\_\_\_\_\_

3.  Individual  Partnership  Corporation  Joint Venture

4. Date Organized \_\_\_\_\_.

State in which incorporated \_\_\_\_\_.

5. Names of Officers or Partners:

a. \_\_\_\_\_

b. \_\_\_\_\_

c. \_\_\_\_\_

d. \_\_\_\_\_

e. \_\_\_\_\_

f. \_\_\_\_\_

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

\_\_\_\_\_

7. Attach as SCHEDULE ONE a list of similar current contracts which demonstrates your technical proficiency, each with contract amount, name of contracting party, character or type of work and percentage of completion.

8. Attach as SCHEDULE TWO a list of similar contracts, each with contract amount, name of contracting party, and character or type of work for similar contracts completed in the last two years.

9. In the last two years have you ever been denied an award where you were low bidder/offeror? \_\_\_\_\_

If the answer is YES, attach as SCHEDULE THREE the full particulars regarding each occurrence.

10. Have you ever failed to complete, in the last two years, any contract on which you were the low bidder/offeror? \_\_\_\_\_

If the answer is YES, attach as SCHEDULE FOUR, the full particulars regarding each occurrence.

11. Financial resources available as working capital for the Contract:

a. Cash on hand: \$ \_\_\_\_\_

b. Sources of credit: \_\_\_\_\_

12. Attach as SCHEDULE FIVE financial statements and letters from banks regarding credit as required by the Pre-Award Information article.

13. What percentage of work (contract amount) do you intend performing with your own personnel? \_\_\_\_\_%.

14. Attach as SCHEDULE SIX a list of all principal subcontractors and the percentage and character of work (contract amount) which each will perform. Principal items of work shall include, but not be limited to, those items listed in the Pre-Award Information article of the Request for Proposal/Invitation for Bid.

15. If the Contractor or subcontractor is a joint venture, submit PRE-AWARD EVALUATION DATA forms for each member of the joint venture.

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

The undersigned certifies to the accuracy of all information.

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

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

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

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

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

## **PART II - GENERAL/SPECIAL PROVISIONS**

PAGE NOT USED

## SECTION 1 - GENERAL PROVISIONS

### 1. DEFINITIONS

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

- a. The term Authority means The Washington Metropolitan Area Transit Authority created effective February 20, 1967, by Interstate Compact by and between Maryland, Virginia, and the District of Columbia, pursuant to Public Law 89-774, approved November 6, 1966.
- b. The term Contracting Officer means the person executing this Contract on behalf of the Authority, and his or her successor, and the term includes, except as otherwise provided in this Contract, the authorized representative of a Contracting Officer acting within the limits of his authority.
- c. Except as otherwise provided in this Contract, the term subcontracts includes purchase orders under this Contract.
- d. Wherever in the scope of the work the words directed, ordered, designated, prescribed, or words of like import are used, it shall be understood that the direction, requirement, order, designation, or prescription of the Contracting Officer is intended and similarly the words approved, acceptable, satisfactory, or words of like import shall mean approved by, or acceptable to, or satisfactory to the Contracting Officer, unless otherwise expressly stated.

### 2. CHANGES (Revised 09/14/94)

- a. The Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this Contract, in any one or more of the following:
  - (1) Description of services to be performed.
  - (2) Time of performance (i.e., hours of the day, days of the week, etc.).
  - (3) Place of performance of the services.
  - (4) Drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Authority, in accordance with the drawings, designs, or specifications.

- (5) Method of shipment or packing of supplies.
- (6) Place of delivery.
- b. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Contract, whether changed or not changed by the order, the Contracting Officer shall make an equitable adjustment in the Contract price, the delivery schedule, or both, and shall modify the Contract.
- c. The Contractor must assert its right to an adjustment under this article within 30 days from the date of receipt of the written order. However, if 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 article. However, nothing in this article shall excuse the Contractor from proceeding with the contract as changed.

**3. EXTRAS**

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

**4. VARIATION IN QUANTITY**

No variation in the quantity of any item called for by this Contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this Contract.

**5. INSPECTION**

- a. All supplies, which term throughout this article includes without limitation raw materials, components, intermediate assemblies, and end products, shall be subject to inspection and test by the Authority, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance.

- b. In case any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity which the requirements of this Contract, the Authority shall have the right either to reject them (with or without instruction as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by the Contracting Officer, corrected in place by and at the expense of the Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If the Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed or promptly to replace or correct such supplies or lots of supplies, the Authority may either:
- (1) By contract or otherwise replace or correct such supplies and charge to the Contractor the cost occasioned the Authority thereby; or
  - (2) Terminate this Contract for default as provided in the DEFAULT article of this Contract. Unless the Contractor corrects or replaces such supplies within the delivery schedule, the Contracting Officer may require the delivery of such supplies at a reduction in price which is equitable under the circumstances. Failure to agree to such reduction of price shall be a dispute concerning a question of fact within the meaning of the DISPUTES article of this Contract.
- c. If any inspection or test is made by the Authority on the premises of the Contractor or a subcontractor, the Contractor without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the Authority inspectors in the performance of their duties. If Authority inspection or test is made at a point other than the premises of the Contractor or a subcontractor, it shall be at the expense of the Authority except as otherwise provided in this Contract; provided, that in case of rejection, the Authority shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by the Authority shall be performed in such a manner as not to unduly delay this work. The Authority reserves the right to charge to the Contractor any additional cost of Authority inspection and test when supplies are not ready at the time such inspection and test is requested by the Contractor or when reinspection or retest is necessitated by prior rejection. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this Contract; but failure to inspect and accept or reject supplies shall neither relieve the Contractor from responsibility for such supplies as are not in accordance with the Contract requirements nor impose liability on the Authority therefor.
- d. The inspection and test by the Authority of any supplies or lots thereof does not relieve the Contractor from any responsibility regarding defects or other failures to meet the Contract requirements which may be discovered prior to acceptance.

Except as otherwise provided in this Contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

- e. The Contractor shall provide and maintain an inspection system acceptable to the Authority covering the supplies hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Authority during the performance of this Contract and for such longer period as may be specified elsewhere in this Contract.

## **6. RESPONSIBILITY FOR INSPECTION**

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

## **7. TITLE AND RISK OF LOSS**

- a. Unless this Contract specifically provides for earlier passage of title, title to supplies covered by this Contract shall pass to the Authority upon formal acceptance, regardless of when or where the Authority takes physical possession.
- b. (1) Unless this Contract specifically provides otherwise, risk of loss of or damage to supplies covered by this Contract shall remain with the Contractor until, and shall pass to the Authority upon:
  - (a) Delivery of the supplies to a carrier, if transportation is FOB origin;
  - (b) Acceptance by the Authority or delivery of possession of the supplies to the Authority at the destination specified in this Contract, whichever is later, if transportation is FOB destination.
- (2) Notwithstanding b. (1) above, the risk of loss of or damage to supplies which so fail to conform to the Contract as to give a right of rejection shall remain with the Contractor until cure or acceptance, at which time (1) above shall apply.
- c. Notwithstanding b. above, the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Authority acting within the scope of their employment.

**8. PAYMENTS**

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

**9. DELAY OF WORK**

- a. If the performance of all or any part of the work is delayed or interrupted by an act of the Contracting Officer in the administration of this Contract, which act is not expressly or impliedly authorized by this Contract, or by his failure to act within the time specified, an adjustment (excluding profit) shall be made for any increase in the cost of performance of this Contract caused by such delay or interruption and the contract modified in writing accordingly. Adjustment shall be made also in the delivery or performance dates and any other contractual provision affected by such delay or interruption. However, no adjustment shall be made under this article for any delay or interruption
  - (1) to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor; or
  - (2) for which an adjustment is provided or excluded under any other provision of this Contract.
- b. No claim under this clause shall be allowed

- (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved; and
- (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such delay or interruption, but not later than the date of final payment under the Contract.

**10. STOP WORK ORDER**

- a. The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part of the work called for by this Contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a STOP WORK ORDER issued pursuant to this article. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either:
  - (1) Cancel the stop work order, or
  - (2) Terminate the work covered by such order as provided in the TERMINATION FOR CONVENIENCE article of this Contract.
- b. If a stop work order issued under this article is cancelled or the period of the order or any extension thereof expires, the Contractor shall resume work. An equitable adjustment shall be made in the delivery schedule or Contract price, or both, and the Contract modified in writing accordingly, if:
  - (1) The stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract, and
  - (2) The Contractor asserts a claim for such adjustment within 30 days after the end of the period of work stoppage; provided that, if the Contracting Officer decides the facts justify such action, he may receive and act upon any such claim asserted at any time prior to final payment under this Contract.
- c. If a stop work order is not cancelled and the work covered by such order is terminated for the convenience of the Authority, the reasonable costs resulting from the stop work order shall be allowed in arriving at the termination settlement.

**11. DISPUTES (Revised 11/22/00)**

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

**12. DEFAULT**

- a. The Authority may, subject to the provisions of paragraph c. below, by written notice of default to the Contractor, terminate the whole or any part of this Contract in any one of the following circumstances:
  - (1) If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or
  - (2) If the Contractor fails to perform any of the other provisions of this Contract, or so fails to make progress as to endanger performance of this Contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

- b. In the event the Authority terminates this Contract in whole or in part as provided in paragraph a. of this article, the Authority may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Authority for any excess costs for such similar supplies or services; provided, that the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this article.
  
- c. Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in its sovereign capacity or the Authority in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.
  
- d. If this Contract is terminated as provided in paragraph a. of this article, the Authority, in addition to any other rights provided in this article, may require the Contractor to transfer title and deliver to the Authority, in the manner and to the extent directed by the Contracting Officer,
  - (1) any completed supplies, and
  
  - (2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this Contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in the possession of the Contractor in which the Authority has an interest. Payment for completed supplies delivered to and accepted by the Authority shall be at the Contract price. Payment for manufacturing materials delivered to and accepted by the Authority and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the DISPUTES article of this Contract. The Authority may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer

determines to be necessary to protect the Authority against loss because of outstanding liens or claims of former lien holders.

- e. If, after notice of termination of this Contract under the provisions of article, it is determined for any reason that the Contractor was not in default under the provisions of this article, or that the default was excusable under the provisions of this article, the rights and obligations of the parties shall, if the Contract contains an article providing for termination for convenience of the Authority, be the same as if the notice of termination had been issued pursuant to such article. If, after notice of termination of this Contract under the provisions of this article, it is determined for any reason that the Contractor was not in default under the provisions of this article, and if this Contract does not contain an article providing for termination for convenience of the Authority, the Contract shall be equitably adjusted to compensate for such termination and the Contract modified accordingly; failure to agree to such adjustment shall be a dispute concerning a question of fact within the meaning of the DISPUTES article of this Contract.
- f. If the Contractor fails to deliver the supplies or perform the services within the time specified in this Contract, or any extension thereof, the actual damage to the Authority for the delay will be difficult or impossible to determine. Therefore in lieu of actual damages, the Contractor shall pay to the Authority as fixed, agreed and liquidated damages for each calendar day of delay, the amount set forth elsewhere in this Contract. Alternatively, the Authority may terminate this Contract in whole or in part as provided in paragraph a. of this article, and in that event the Contractor shall be liable, in addition to the excess costs provided in paragraph b. above, for such liquidated damages accruing until such time as the Authority may reasonably obtain delivery or performance of similar supplies or services. The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the Contractor, as defined in paragraph c. above, and in such event, subject to the DISPUTES article, the Contracting Officer shall ascertain the facts and extent of the delay and shall extend the time for performance of the contract when in his judgment the findings of fact justify an extension.
- g. The rights and remedies of the Authority provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- h. As used in paragraph c. of this clause, the terms subcontractor and subcontractors mean subcontractor(s) at any tier.

**13. TERMINATION FOR CONVENIENCE OF THE AUTHORITY**

- a. The performance of work under this Contract may be terminated by the Authority in accordance with this article in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Authority. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.
- b. After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:
  - (1) Stop work under the Contract on the date and to the extent specified in the Notice of Termination;
  - (2) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the Contract which is not terminated;
  - (3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.
  - (4) Assign to the Authority, in the manner, at the time, and to the extent directed by the Contracting Officer, all of the rights, title, and interests of the Contractor under the orders and subcontracts so terminated, in which case the Authority shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
  - (5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this article;
  - (6) Transfer title to the Authority and deliver in the manner, at the times, and to the extent, if any, directed by the Contracting Officer:
    - (a) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the work terminated by the Notice of Termination, and
    - (b) the completed or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to the Authority;

- (7) Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the type referred to in paragraph 6. above; provided, however, that the Contractor
    - (a) shall not be required to extend credit to any purchaser, and
    - (b) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer. And, provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Authority to the Contractor under this Contract or shall otherwise be credited to the price or cost of the work covered by the Contractor or paid in such other manner as the Contracting Officer may direct;
  - (8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and
  - (9) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the Authority has or may acquire an interest.
- c. At any time after expiration of the plant clearance period, as defined in Subpart 45.6 of the Federal Acquisition Regulations (48 CFR 45.6), as the definition may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Authority to remove such items or enter into a storage agreement covering them. Not later than 15 days thereafter, the Authority will accept title to such items and remove them or enter into a storage agreement covering the same. Provided, that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items or, if the items are stored, within 45 days from the date of submittal of the list and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.
- d. After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim, in the form and with certification prescribed by the Contracting Officer. Such claims shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such one-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such

action, he may receive and act upon any such termination claim at any time after such one-year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any review required by the contracting agency's procedures in effect as of the date of execution of this Contract, determine, on the basis of information available to him, the amount, if any, due the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

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

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

d. or f. above, except that, if the Contractor has failed to submit his claim within the time provided in paragraph d. above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph d. or f. above, the Authority shall pay to the Contractor the following:

- (1) if there is on right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer; or
- (2) if an appeal has been taken, the amount finally determined on such appeal.

i. In arriving at the amount due the Contractor under this article there shall be deducted

- (1) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this Contract;
- (2) any claim which the Authority may have against the Contractor in connection with this Contract; and
- (3) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this article, and not otherwise recovered by or credited to the Authority.

j. If the termination hereunder be partial, prior to the settlement of the terminated portion of this Contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.

k. The Authority may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this Contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this article, such excess shall be payable by the Contractor to the Authority upon demand, together with interest computed at the rate of six percent per annum for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Authority; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until 10 days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reasons

of the circumstances.

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

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

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

paragraph b. above.

- e. As used in paragraph b. above, the term Contract date means the date set for bid opening, or if this is a negotiated contract, the Contract date. As to additional supplies or services procured by modification to this Contract, the term Contract date means the date of such modification.
- f. Unless there does not exist any reasonable basis to sustain an exemption, the Authority upon the request of the Contractor shall, without further liability, furnish evidence appropriate to establish exemption from any Federal, State or Local tax; provided that evidence appropriate to establish exemption from any Federal excise tax or duty which may give rise to either an increase or decrease in the Contract price will be furnished only at the discretion of the Authority.
- g. The Contractor shall promptly notify the Contracting Officer of matters which will result in either an increase or decrease in the Contract price and shall take action with respect thereto as directed by the Contracting Officer.

**15. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME COMPENSATION**

This Contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

- a. Overtime requirements: No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, apprentices, trainees, watchmen, and guards shall require or permit any laborer, mechanic, apprentice, trainee, watchman, or guard in any workweek in which he is employed on such work to work in excess of 40 hours in such work week on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer, mechanic, apprentice, trainee, watchman, or guard receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of 40 hours in such work week.
- b. Violation: liability for unpaid wages: liquidated damages. In the event of any violation of the provisions of paragraph a., the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the Authority for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, apprentice, trainee, watchman, or guard employed in violation of the provision of paragraph a. in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work

in excess of his standard work week of 40 hours without payment of the overtime wages required by paragraph a.

- c. Withholding for unpaid wages and liquidated damages: The Contracting Officer may withhold from the Authority Contractor, from any monies payable on account of work performed by the Contractor or subcontractor, such sums as may be administratively determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph b.
- d. Subcontracts: The Contractor shall insert paragraphs a. through d. of this article in all subcontracts and shall require their inclusion in all subcontracts of any tier.
- e. Records: The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three years from the completion of this Contract.

**16. WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996)**

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

(a) All stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may be hereafter, be in effect.

(b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped worker may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

**17. EMPLOYMENT RESTRICTION WARRANTY**

- a. The Contractor warrants that it will not offer employment to any officer or employee of the Washington Metropolitan Area Transit Authority (WMATA) who has been involved, directly or indirectly, in any matter of financial interest to the Contractor until at least one year after the officer or employee has ceased involvement in or responsibility for the matter.

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

**18. OFFICIALS NOT TO BENEFIT**

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

**19. COVENANT AGAINST CONTINGENT FEES**

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Authority shall have the

right to annul this Contract without liability or in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

**20. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT**

The provisions of this article shall be applicable only if the amount of this Contract exceeds \$10,000.

- a. The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge.
- b. In the event of any claim or suit against the 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.
- c. This clause shall be included in all subcontracts.

**21. NOTICE TO THE AUTHORITY OF LABOR DISPUTES**

- a. Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.
- b. The Contractor agrees to insert the substance of this clause, including this paragraph b., in any subcontract hereunder as to which a labor dispute may delay the timely performance of this Contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify his next higher tier subcontractor, or the Contractor, as the case may be, of all relevant information with respect to such dispute.

**22. PATENT INDEMNITY**

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

**23. ROYALTY INFORMATION**

- a. When the response to this solicitation contains costs or charges for royalties totaling more than \$250, the following information shall be furnished with the offer, proposal, or quotation on each separate item of royalty or license fee:
- (1) Name and address of licensor;
  - (2) Date of license agreement;
  - (3) Patent numbers, patent application serial numbers or other basis on which the royalty is payable;
  - (4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
  - (5) Percentage or dollar rate of royalty per unit;
  - (6) Unit price or Contract item;

- (7) Number of units; and
- (8) Total dollar amount of royalties.
- b. In addition, if specifically requested by the Contracting Officer prior to execution of the Contract, a copy of the current license agreement and identification of applicable claims of specific patents shall be furnished.

**24. RIGHTS IN TECHNICAL DATA (Revised June 1996)**

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

performance of the work; provided, that the release or disclosure thereof outside the Authority shall be made subject to a prohibition against further use, release or disclosure.

- c. Technical data provided in accordance with the provisions of paragraph b. shall be identified by a legend which suitably recites the aforesaid limitation. Nothing herein shall impair the right of the Authority to use similar or identical data acquired from other sources.
- d. The term technical data as used in this article means technical writing, computer software, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of a technical nature, whether or not copyrighted, which are specified to be delivered pursuant to this Contract. The term does not include financial reports, cost analyses, and other information incidental to Contract administration. Computer software as used in this article means computer programs, computer data bases, and documentation thereof.
- e. Material covered by copyright:
  - (1) The Contractor agrees to and does hereby grant to the Authority, and to its officers, agents and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for Authority purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all technical data now or hereafter covered by copyright.
  - (2) No such copyrighted matter shall be included in technical data furnished hereunder without the written permission of the copyright owner for the Authority to use such copyrighted matter in the manner above described.
  - (3) The Contractor shall report to the Authority (or higher-tier contractor) promptly and in reasonable written detail each notice or claim of copyright infringement received by the Contractor with respect to any technical data delivered hereunder.
- f. Relation to patents: Nothing contained in this article shall imply a license to the Authority under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Authority under any patent.
- g. Any dispute under this article shall be subject to the Disputes article of this contract.
- h. Notwithstanding any other payment provision in this contract, the Contracting Officer may retain from payment up to 10 percent of the contract price until final delivery and acceptance of the technical data defined in this article and as required to be furnished by the bid schedule or the contract specification.

**25. TECHNICAL DATA — WITHHOLDING OF PAYMENT (Deleted June 1996)**

**26. AUDIT RECORDS-NEGOTIATION (Revised 4/20/01)**

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

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

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

## **27. GRATUITIES**

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

authorized representative. A preliminary investigation will be made to determine whether there is probable cause to suspect that a violation of this article has been committed. If such probable cause is found to exist, the Board of Directors, or its duly authorized representative, shall formally notify the suspected donor corporation or individual in writing of the particulars of the event; and provide such donor the opportunity to be heard on the matter. The aims of the investigations and hearing shall be to ensure due process and to preserve the best interests and rights of all parties by the full and fair disclosure of all relevant and material information. Accordingly, the Board of Directors, or its duly authorized representative, shall require production of all pertinent documents and records, and sworn testimony from witnesses. During the pendency of any investigation or hearing treating with a violation of this GRATUITIES article, the Board of Directors, or its duly authorized representative may exercise its power granted by the Washington Metropolitan Area Transit Authority Compact, Public Law 774, 80 Star. 1324, Article V, General Powers, Subparagraph (k), by issuing subpoenas to compel the attendance of necessary witnesses, and to compel production of papers, records, accounts, ledgers and documents. The subpoenas shall be enforceable by order of an appropriate United States District Court. If, after notice and hearing, or notice of the opportunity to be heard, the Board of Directors, or its duly authorized representative, finds that a violation of this GRATUITIES article has been committed, the Authority shall have the right to:

- (1) Require that the individual(s) giving or offering the gratuity be removed from further participation on any Authority projects (be terminated);
  - (2) Deny the Contractor any G & A (general and administrative) mark-ups for all changes and/or modifications found to be tainted by the giving of or offering to give gratuities;
  - (3) Preclude the Contractor from bidding on, receiving or participating as joint venturer, subcontractor or otherwise in any Authority project for a period of five years;
  - (4) Have complete access to all the Contractor's financial books, records and accounts for the purpose of performing a comprehensive audit of the entire project.
  - (5) In the event of repeated violations of this GRATUITIES article or of gross or extreme conduct indicative of a corrupt intent to gain special advantage, by written notice to the Contractor, terminate the right of the Contractor to proceed under the Contract.
- c. The existence of the facts upon which the Board of Directors, or its duly authorized representative, makes findings in connection with investigations and hearings in consonance herewith shall be an issue and may be reviewed in any competent

court.

- d. In the event this Contract is terminated as provided in paragraph b. (5) hereof, the Authority shall be entitled
  - (1) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor, and
  - (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in any amount (as determined by the Board or its duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.
- e. The rights and remedies of the Authority provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

**28. CONVICT LABOR**

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

**29. LIMITATION ON WITHHOLDING PAYMENTS**

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

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

**30. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA — PRICE ADJUSTMENTS**

- a. This article shall become operative only with respect to any modification of this Contract which involves aggregate increases and/or decreases in costs plus applicable profits in excess of \$100,000 unless the modification is priced on the basis of adequate competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The right to price reduction under this article is limited to defects in data relating to such modification.
  
- b. If any price, including profit, or fee, negotiated in connection with any price adjustment under this Contract was increased by any significant sums because:
  - (1) The Contractor furnished cost or pricing data which was not complete, accurate and current as certified in the Contractor's Certificate of Current Cost or Pricing Data;
  - (2) A subcontractor, pursuant to the articles of this Contract entitled SUBCONTRACTOR COST OR PRICING DATA or SUBCONTRACTOR COST OR PRICING DATA--PRICE ADJUSTMENTS or any subcontract clause therein required, furnished cost or pricing data which was not complete, accurate and current as certified in the subcontractor's Certificate of Current Cost or Pricing Data;
  - (3) A subcontractor or prospective subcontractor furnished cost or pricing data which was required to be complete, accurate and current and to be submitted to support a subcontract cost estimate furnished by the Contractor but which was not complete, accurate and current as of the date certified in the Contractor's Certificate of Current Cost or Pricing Data; or
  - (4) The Contractor or a subcontractor or prospective subcontractor furnished any data, not within (1) or (3) above, which was not accurate, as submitted; the price shall be reduced accordingly and the Contract shall be modified in writing as may be necessary to reflect such reduction. However, any reduction in the Contract price due to defective subcontract data of a prospective subcontractor, when the subcontract was not subsequently awarded to such subcontractor, will be limited to the amount (plus applicable overhead and profit markup) by which the actual subcontract, or the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor, provided that the actual subcontract price was not affected by defective cost or pricing data.

NOTE: Since the Contract is subject to reduction under this article by reason of

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

**31. RESERVED (Revised 4/20/01)**

**32. SUBCONTRACTOR COST AND PRICING DATA-PRICE ADJUSTMENTS**

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

**33. NEW MATERIAL**

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

**34. ORDER OF PRECEDENCE**

In the event of an inconsistency in this Contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

- a. The Bid Schedule;
- b. General Provisions;
- c. The other provisions of the Contract, whether incorporated by reference or otherwise;
- d. The Specifications; and
- e. Drawings.

**35. CORRECTION OF DEFICIENCIES**

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

- (1) The rights and remedies of the Authority provided in this article:
    - (a) Shall not be affected in any way by any other provisions under this Contract concerning the conclusiveness of inspection and acceptance; and
    - (b) Are in addition to and do not limit any rights afforded to the Authority by any other article of this Contract.
  - (2) This article shall apply only to those deficiencies discovered by either the Authority or the Contractor within one year after acceptance.
  - (3) The Contractor shall not be responsible under this article for the correction of deficiencies in Authority furnished property, except for deficiencies in installation, unless the Contractor performs or is obligated to perform any modifications or other work on such property. In that event, the Contractor shall be responsible for correction of deficiencies to the extent of such modifications or other work.
  - (4) The Contractor shall not be responsible under this article for the correction of deficiencies caused by the Authority.
- c. Deficiencies in accepted supplies or services:
- (1) Notice to Contractor - Recommendation for Correction: If the Contracting Officer determines that a deficiency exists in any of the supplies or services accepted by the Authority under this Contract, he shall promptly notify the Contractor of the deficiency, in writing, within 30 days. Upon timely notification of the existence of such a deficiency, or if the Contractor independently discovers a deficiency in accepted supplies or services, the Contractor shall promptly submit to the Contracting Officer his recommendation for corrective actions, together with supporting information in sufficient detail for the Contracting Officer to determine what corrective action, if any, shall be undertaken.
  - (2) Direction to Contractor concerning correction of deficiencies: Within 30 days after receipt of the Contractor's recommendations for corrective action and adequate supporting information, the Contracting Officer, at his sole discretion, shall give the Contractor written notice not to correct any deficiency, or to correct or partially correct any deficiency within a reasonable time and at a specified location.
  - (3) Correction of deficiencies by Contractor: The Contractor shall promptly comply with any timely written direction by the Contracting Officer to correct or partially correct a deficiency, at no increase in the Contract price. The

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

- (4) Modification of Contract With respect to uncorrected deficiencies: In the event of timely notice of a decision not to correct or only to partially correct, the Contractor shall promptly submit a technical and cost proposal to amend the Contract to permit acceptance of the affected supplies or services in accordance with the revised requirements, and an equitable reduction in Contract price shall promptly be negotiated by the parties and reflected in a supplemental agreement to this Contract.
- d. Deficiencies in supplies or services not yet accepted: If the Contractor becomes aware at any time before acceptance by the Authority (whether before or after tender to the Authority) that a deficiency exists in any supplies or services, he shall promptly correct the deficiency or, if he elects to invoke the procedures in paragraph c. above, he shall promptly communicate information concerning the deficiency to the Contracting Officer, in writing, together with his detailed recommendation for corrective action.
  - e. No extension in time for performance; no increase in Contract price.
    - (1) In no event shall the Authority be responsible for extension or delays in the schedule deliveries or periods of performance under this Contract as a result of the Contractor's obligations to correct deficiencies, nor shall there be any adjustment of the delivery schedule or period of performance as a result of such correction of deficiencies, except as may be agreed to by the Authority in a supplemental agreement with adequate consideration.
    - (2) It is hereby specifically recognized and agreed by the parties hereto that this article shall not be construed as obligating the Authority to increase the Contract price of this Contract.
  - f. Transportation charges:
    - (1) When the Authority returns supplies to the Contractor for correction or replacement pursuant to this article, the Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the designated destination point under this Contract to the Contractor's plant, in addition to any charges provided for by (2) below. The Contractor shall also bear the responsibility for the supplies while in transit.
    - (2) When compliance with the terms of this article by the Contractor involves

shipment of corrected or replacement supplies from the Contractor to the Authority, the Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the Contractor's plant to the designated destination point under this Contract, in addition to any charges provided for by (1) above. The Contractor shall also bear the responsibility for the supplies while in transit.

- g. Failure to correct: If the Contractor fails or refuses to
- (1) present a detailed recommendation for corrective action in accordance with c. above,
  - (2) correct deficiencies in accordance with c. (3) above, or
  - (3) prepare and furnish data and reports in accordance with paragraph c. (3) above,

the Contracting Officer shall give the Contractor written notice specifying the failure or refusal and setting a period after receipt of the notice within which it must be cured. If the failure or refusal is not cured within the specified period, the Contracting Officer may, by contract or otherwise, as required:

- (1) Obtain detailed recommendations for corrective action;
  - (2)
    - (a) Correct the supplies or services, or
    - (b) Replace the supplies or services; and if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of nonconforming supplies for the Contractor's account in a reasonable manner, in which case the Authority is entitled to reimbursement from the Contractor or from the proceeds for the reasonable expenses of care and disposition, as well as for excess costs incurred or to be incurred; and
  - (3) Obtain applicable data and reports and charge to the Contractor the cost occasioned to the Authority thereby.
- h. Correction of deficient replacements and re-performances: Any supplies or parts thereof corrected or furnished in replacement and any services re-performed pursuant to this article shall also be subject to all the provisions of the article to the same extent as supplies or services initially accepted.
- i. Disassembly / reassembly expense: The Contractor shall be liable for reasonable cost of disassembly / reassembly of larger items necessary to remove the supplies to be inspected and/or returned for correction or replacement.

**36. ASSIGNMENT (Revised 05/24/94)**

- a. The Contractor shall not transfer the rights and obligations of the Contract to third parties. The Authority may recognize a third party as successor in interest to the Contract where the third party's interest is incidental to the transfer of all the assets of the Contractor, i.e., sales of assets, transfer of assets pursuant to merger or consolation, or incorporation of a proprietorship or partnership. Such recognition of the transfer shall be within the discretion of the Contracting Officer after review of the facts and circumstances surrounding each request but the assignment shall not be approved unless the surety, in writing, agrees to that assignment and accepts the assignee as the Contractor and principal on the payment and/or performance bonds.
- b. If this Contract provides for payments aggregating \$1,000 or more, claims for monies due or to become due the Contractor from the Authority under this Contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any institution. (Notice of such assignment shall be made to the Authority.) Any such assignment or reassignment shall cover all amounts payable under this Contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. It is the Authority's intent to recognize assignments only to bona fide lending institutions, therefore, assignment to any private corporation, business or individual which does not qualify as such is specifically prohibited.
- c. Any attempt to transfer by assignment not authorized by this article shall constitute a breach of the Contract and the Authority may for such cause terminate the right of the Contractor to proceed as provided in the DEFAULT article of these General Provisions, and the Contractor and his sureties shall be liable to the Authority for any excess costs incurred by the Authority.

**37. PRICING OF ADJUSTMENTS**

- a. When costs are a factor in any determination of a Contract price adjustment pursuant to the CHANGES AND CHANGED CONDITIONS article or any other provision of this Contract, such costs shall be in accordance with the Subpart 31.1 of the Federal Acquisition Regulations (48 CFR 31.1).
- b. Notwithstanding any interpretation of the aforementioned contract cost principles and procedures to the contrary, the Authority will not be liable for interest, however represented, on or as a part of any claim, request, proposal or adjustment, including equitable adjustments, whether said claim, request, proposal or adjustment,

including equitable adjustments, arises under the Contract or otherwise.

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

**38. CERTIFICATE OF CURRENT COST OR PRICING DATA (Revised 11/22/00)**

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

**39. ACCOUNTING AND RECORD KEEPING**

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

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

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

- e. When asserting a claim under the various provisions of this Contract, the Contractor shall grant the Authority access to review and ascertain the validity of the accounting records being maintained for segregation of costs, including base cost records, and to audit such costs as are deemed appropriate by the Contracting Officer. No payment shall be made to the Contractor on its claim until such records are made available and access is permitted.
  
- f. Limitation on Pricing Adjustment. In the event the Contractor or any subcontractor fails to originate or to maintain, or to make available any accounts or records as required under this or any other Article of the Contract, any pricing adjustment or portion thereof previously granted by the Contracting Officer for which records are not available shall be rescinded and recomputed, or if a pricing adjustment has not yet been granted shall be computed, in an amount not to exceed the direct costs for the affected work for which accounts or records are not available, plus a single mark-up for indirect expenses not to exceed ten percent of the direct costs so determined by the Contracting Officer. The adjustment will be established by the Contracting Officer based upon, at his or her election, either,
  - (1) an audit of any existing books and records of the Contractor or subcontractor; or
  - (2) an Authority estimate adopted by the Contracting Officer, or
  - (3) a combination of (1) and (2);plus a single mark-up for indirect expenses not to exceed ten percent of the direct costs so determined by the Contracting Officer. The Contractor and subcontractors shall not be allowed any profit for the work for which the Contractor or subcontractor fails to originate, or to maintain, or to make available any accounts or records as required under this Contract.
  
- g. The Contractor shall insert a clause containing all the provisions of this article in all subcontracts issued under this Contract, modified as necessary, for proper identification of the contracting parties and the Contracting Officer under this Contract.

**40. COST OR PRICING DATA (Revised 11/22/00)**

- a. The Contractor shall submit to the Contracting Officer, either actually or by specific identification in writing, cost or pricing data under the conditions described in this paragraph and certify that, to the best of his knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of the date of execution, which date shall be as close as possible to the date of agreement on the negotiated price of the Contract modification. The cost or pricing data shall be

submitted at the time the Contractor submits his proposal for the pricing of any modification to this Contract, whether or not cost or pricing data was required in connection with the initial pricing of the Contract, when the modification involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed \$100,000, or less at the discretion of the Contracting Officer.

- b. The submittal of certified cost or pricing data shall not be required if the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The Contractor agrees that the terms adequate price competition and established catalog or market prices of commercial items sold in substantial quantities to the general public shall be determined by the Contracting Officer in accordance with the guidelines as set forth in Subpart 15.4 of the Federal Acquisition Regulations (48 CFR 15.4).
- c. Cost or pricing data consists of all facts existing up to the time of agreement on price which prudent buyers and sellers would reasonably expect to have a significant effect on the price negotiations for the modification. The definition of cost or pricing data embraces more than historical accounting data; it also includes where applicable, such factors as subcontractor, supplier and vendor quotations, non-recurring costs, changes in construction methods, unit cost trends such as those associated with labor efficiency and any management decisions which could reasonably be expected to have a significant bearing on costs under the proposed modification and the Contract work. Cost or pricing data consists of all facts which can reasonably be expected to contribute to sound estimates of future costs as well as to the validity of costs already incurred. Cost or pricing data, being factual, is that type of information which can be verified. Because the certificate pertains to cost or pricing data, it does not make representations as to the accuracy of the Contractor's judgment on the estimated portion of future costs or projections. The certificate does, however, apply to the data upon which the Contractor's judgment is based.

**41. CARGO PREFERENCE REQUIREMENTS (Revised 4/3/01)**

The 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 this 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 (1) above to WMATA (through the Contractor in the case of a subcontractor's bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20590.

- c. To include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean liner.

**42. RESERVED**

**43. CIVIL RIGHTS (Revised October 20, 2000)**

- 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 American with Disabilities Act of 1990, 42 U.S.C. §12132, and Federal transit law at 49 U.S.C. §5332, the 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, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing regulations that FTA may issue.
- b. Equal Employment Opportunity: The following equal employment opportunity requirements apply to this contract.
  - (1) Race, Color, Creed, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, and Federal transit laws at 49 U.S.C. §5332, the Contractor agrees to comply with all applicable equal opportunity requirements of the U. S. Department of Labor (U.S. DOL) 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. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, national origin, sex or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or

termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(2) Age: In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. §5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) Disabilities: In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, the Contractor agrees that it will comply with the requirements of U. S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

c. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

**44. REVOLVING DOOR (See Article #17)**

**45. CONFLICT OF INTEREST (Revised 02/24/94)**

a. Neither the Contractor nor any person or company affiliated with it shall have, during the term of this contract and any extensions thereof, any contractual or other financial relationship with the Authority, with any Authority prime Contractor, or with any subcontractor or supplier to any Authority prime Contractor other than the contractual relationship established under this Contract, unless an exception is granted as described below.

b. Upon request of the Contractor and upon full disclosure and for good cause the Contracting Officer may in his sole discretion grant an exception to the requirement of a., above, when in his judgment the exception will not create a conflict between the Contractor's duties and obligations under this contract and the duties and obligations imposed on the Contractor under the contractual or other relationship for which an exception is requested.

c. If, during the performance of this contract and any extension thereof, the Contractor becomes aware of any relationship, financial interest, or other activity in which it or

an affiliated person or company is involved which is not in compliance with the provisions of a., above, it shall promptly notify the Contracting Officer in writing and fully disclose all circumstances thereof. Should the Contracting Officer not grant an exception to the requirements of this Article, the Contractor shall, within ten (10) days of written notice from the Contracting Officer to do so, take all action necessary to comply with the terms of a., above.

- d. If the Contractor fails to comply with the terms of this Article, the Contracting Officer, may withhold payments due under the contract until such time as the Contractor is in compliance or, should the non-compliance remain uncorrected at the expiration of ten (10) days from written notice from the Contracting Officer as provided in c., above, terminate the contract for default pursuant to the Default Article of this contract.
- e. The Contractor in performing this Contract shall avoid any conduct which might result in or give the appearance of creating for Directors, Officers or employees of the Authority in their relationship with the Contractor any conflicts of interest or favoritism and/or the appearance thereof and shall avoid any conduct which might result in a Director, Officer or employee failing to adhere to the Standards of Conduct adopted by the Authority's Board of Directors.
- f. Any determination by the Contracting Officer under this Article shall be final and shall be considered a question of fact within the meaning of the Disputes Article of this Contract.

**46. SUBCONTRACT PAYMENTS (January 2000)**

- a. The Contractor shall, under this contract, establish procedures to ensure timely payment of amounts due pursuant to the terms of their subcontracts. The Contractor shall pay each subcontractor for satisfactory performance of its contract, no later than ten (10) days from the date of the Contractor's receipt of payment from the Authority for work by that subcontractor. The Contractor shall also release, within ten (10) days of satisfactory completion of all work required by the subcontractor, any retention withheld from the subcontractor.
- b. The Contractor shall certify on each payment request to the Authority that payment has been or will be made to all subcontractors in accordance with paragraph a above. The Contractor shall notify the contracting officer or other delegated authority representative with each payment request, of any situation in which scheduled subcontractor payments have not been made.
- c. If a subcontractor alleges that the Contractor has failed to comply with this provision, the Contractor agrees to support any Authority investigation, and, if deemed appropriate by the Authority, to consent to remedial measures to ensure

subcontractor payment that is due.

- d. The Contractor agrees that the Authority may provide appropriate information to interested subcontractors who want to determine the status of Authority payments to the Contractor.
- e. Nothing in this provision is intended to create a contractual obligation between the Authority and any subcontractor or to alter or affect traditional concepts of privity of contract between all parties.

**47. RIGHTS IN DATA AND COPYRIGHTS — FTA (June 1996)**

- a. The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists; specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to Project administration.
- b. The following restrictions apply to all subject data first produced in the performance of this contract.
  - (1) Except for its or WMATA's own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of the U.S. Government, until such time as the Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to Agreements with academic institutions.
  - (2) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. 19.36, the Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, the following subject data for Federal Government purposes:
    - (a) Any subject data developed under this contract whether or not a copyright has been obtained; and

- (b) Any rights of copyright to which the contractor purchases ownership with Federal assistance.
- c. When the Federal Transit Administration (FTA) provides financial assistance for a planning, research, development, or a demonstration project, it is FTA's general intention to increase mass transportation knowledge, rather than limit the benefits of the Project to participants in the Project. Therefore, unless FTA determines otherwise, the Contractor agrees that, in addition to the rights set forth in subsection b(2) of this clause, FTA may make available to any FTA recipient, subrecipient, third party contractor, or third party subcontractor, either FTA's license in the copyright to the subject data derived under this contract or a copy of the subject data first produced under this contract. If this contract is not completed for any reason whatsoever, all data developed under this contract shall become subject data as defined in subsection a. of this clause and shall be delivered as the Government may direct.
- d. Unless prohibited by state law, the Contractor agrees to indemnify, save, and hold harmless WMATA and the Government, their officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Contract. The Contractor shall not be required to indemnify WMATA and the Government for any such liability arising out of the wrongful acts of employees or agents of WMATA and the Government.
- e. Nothing contained in this section on rights in data shall imply a license to WMATA or the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to WMATA or the Government under any patent.
- f. The requirements of subsections b. and c., do not apply to material furnished by the Authority to the Contractor and incorporated in the work carried out under the contract provided that the Contractor identifies the incorporated material at the time of delivery of the work.
- g. Any dispute under this article shall be subject to the Disputes article of this contract.
- h. Notwithstanding any other payment provision in this contract, the Contracting Officer may retain from payment up to 10 percent of the contract price until final delivery and acceptance of the subject data defined in this article and as required to be furnished by the bid schedule or the contract specification.

**48. FEDERAL CHANGES (Revised 11/22/00)**

- a. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (7) dated October 1, 2000) between the Authority and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a materiel breach of this contract.
- b. The Contractor agrees to include this clause in each subcontract financed in whole or in part with Federal Assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**49. NO OBLIGATION BY THE FEDERAL GOVERNMENT (Revised 01/04/00)**

- a. The Authority and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this contract, absence the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Authority, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- b. The Contractor agrees to include this 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.

**50. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS (Revised 01/04/00)**

- a. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U. S. C. 3801 et seq and U. S. DOT Regulations, "Program Fraud Civil Remedies," 49 C.F. R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies and affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act

of 1986 on the Contractor to the extent the Federal Government deems appropriate.

- b. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U. S. C. 5307, the Government reserves the right to impose the penalties of 18 U. S. C. 1001 and 49 U. S. C 5307 (n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- c. The Contractor agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**51. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS (Revised 01/04/00)**

- a. The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, dated April 15, 1996, as amended by Change 1 thereto dated August 4, 1998, 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 this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any WMATA requests which would cause WMATA to be in violation of the FTA terms and conditions.
- b. The Contractor agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**52. SEAT BELT USE POLICY (November 2000)**

The contractor agrees to comply with terms of Executive Order No. 13043 "Increasing Seat Belt Use in the United States " and is encouraged to include those requirements in each subcontract awarded for work relating to this contract.

**53 BUY AMERICA (Revised 4/20/01)**

The Contractor agrees to comply with 49 U.S.C. §5323(j) and its implementing regulations at 49 CFR Part 661, any amendments thereto and any implementing guidance issued by FTA. 49 CFR Part 661 provides that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment including software of foreign origin, and small purchases (currently \$100,000 or less) made with Federal funds. In the case of rolling stock, the cost of components and subcomponents produced in the United States must be more than 60 percent of the cost of all components of the rolling stock; and final assembly of the rolling stock must occur in the United States.

**54. FLY AMERICA REQUIREMENTS (April 2001)**

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

**55. ENERGY CONSERVATION (April 2001)**

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

**56. CLEAN WATER (April 2001)**

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

required to assure notification to FTA and the appropriate EPA Regional Office.

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

**57. ACCESS TO RECORDS (April 2001)**

- a. The Contractor agrees to provide the Authority, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 CFR. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U. S. C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U. S. C. 5307, 5309 or 5311.
- b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case the Contractor agrees to maintain same until the Authority, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

**58. CLEAN AIR (April 2001)**

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

**59. RECOVERED MATERIALS (April 2001)**

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

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**PART II**  
**SECTION 2 - SPECIAL PROVISIONS**

**1. SCOPE:**

**1.1**

This is a cooperative Invitation for bid issued by the Washington Metropolitan Area Transit Authority (WMATA) on behalf of Members of the Metropolitan Washington Council of Governments' Purchasing Group for the purchase of their respective estimated annual requirements for Ultra Low Sulfur Diesel Fuel. WMATA is acting as the lead member in soliciting bids for the jurisdictions concerned. WMATA shall not be liable for any costs or damages incurred by any bidder or any other jurisdiction. The member jurisdictions participating in this cooperative IFB are (hereinafter referred to as "jurisdiction"):

Arlington County, Va.  
City of Alexandria, Va.  
City of Bowie, Md.  
City of College Park, Md.  
City of Fairfax, Va.  
County of Fairfax, Va.  
Fairfax County Water Authority  
Washington Suburban Sanitary  
Commission

Montgomery County, Md.  
Montgomery County Public Schools  
Prince William County Svc. Authority  
Fauquier County (includes schools).  
Frederick County  
City of Rockville  
Metropolitan Washington Airport Authority

**NOTICE TO BIDDERS**

This is a requirements contract for the goods and services specified, and effective for the period stated herein. ***The quantities specified in the statement of work are estimates only and are not purchased by this contract or individual jurisdiction contracts/purchase orders.*** Except as this solicitation may otherwise provide, if the jurisdiction requirements do not result in orders in the quantities described as "estimated", the fact shall not constitute the basis for an equitable price adjustment.

**Metropolitan Washington Council of Governments  
 Rider Clause**

USE OF CONTRACT(S) BY MEMBERS COMPRISING THE METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS PURCHASING OFFICERS' COMMITTEE.

- A. If authorized by the bidder(s), resultant contract(s) will be extended to any or all of the listed members as designated by the bidder to purchase at contract prices in accordance with contract terms.
- B. Any member utilizing such contract(s) will place its own order(s) directly with the successful contractor. There shall be no obligation on the part of any participating member to utilize the contract(s).
- C. A negative reply will not adversely affect consideration of your bid/proposal.
- D. It is the awarded vendor's responsibility to notify the members shown below of the availability of the Contract(s).
- E. Each participating jurisdiction has the option of executing a separate contract with the awardee. Contracts entered into with a participating jurisdiction may contain general terms and conditions unique to that jurisdiction including, by way of illustration and not limitation, clauses covering minority participation, non-discrimination, indemnification, naming the jurisdiction as an additional insured under any required Comprehensive General Liability policies, and venue. If, when preparing such a contract, the general terms and conditions of a jurisdiction are unacceptable to the awardee, the awardee may withdraw its extension of the award to that jurisdiction.
- F. The issuing jurisdiction shall not be held liable for any costs or damages incurred by another jurisdiction as a result of any award extended to that jurisdiction by the awardee.

BIDDER'S AUTHORIZATION TO EXTEND CONTRACT:

<u>YES</u>	<u>NO</u>	<u>JURISDICTION</u>	<u>YES</u>	<u>NO</u>	<u>JURISDICTION</u>
_____	_____	Alexandria, Va.	_____	_____	Loudoun Cty. Public Schools
_____	_____	Alexandria Public Schools	_____	_____	Loudoun Cty. Sanitation Authority
_____	_____	Alexandria Sanitation Authority	_____	_____	Manassas, Virginia
_____	_____	Arlington County, Virginia	_____	_____	City of Manassas Park, Virginia
_____	_____	Bowie, Maryland	_____	_____	Maryland-National Capital Park & Planning Comm.
_____	_____	Charles County Public Schools	_____	_____	Metropolitan Washington Airport Authority
_____	_____	College Park, Maryland	_____	_____	Metropolitan Washington Council Governments
_____	_____	Culpeper County, Virginia	_____	_____	Montgomery College
_____	_____	District of Columbia	_____	_____	Montgomery County, Maryland
_____	_____	District of Columbia Public Schools	_____	_____	Montgomery Cty Public Schools
_____	_____	District of Columbia Water & Sewer Authority	_____	_____	Prince George's Cty, Maryland
_____	_____	Fairfax, Virginia	_____	_____	Prince George's Public Schools
_____	_____	Fairfax County, Virginia	_____	_____	Prince William County, Virginia
_____	_____	Fairfax County Water Authority	_____	_____	Prince William County Public Schools
_____	_____	Falls Church, Virginia	_____	_____	Prince William Cty. Service Auth.
_____	_____	Fauquier County Schools & Government, Virginia	_____	_____	
_____	_____	Frederick, Maryland	_____	_____	

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY  
 SUPPLY AND SERVICE CONTRACT IFB /CPR

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BIDDER'S AUTHORIZATION TO EXTEND CONTRACT Con't:

<u>YES</u>	<u>NO</u>	<u>JURISDICTION</u>	<u>YES</u>	<u>NO</u>	<u>JURISDICTION</u>
_____		Frederick County, Maryland	_____		Rockville, Maryland
_____		Gaithersburg, Maryland	_____		Spotsylvania County Schools
_____		Greenbelt, Maryland	_____		Stafford County, Virginia
_____		Herndon, Virginia	_____		Takoma Park, Maryland
_____		Loudoun County	_____		Upper Occoquan Sewage Auth.
_____		Washington Metropolitan Area	_____		Vienna, Virginia
_____		Transit Authority	_____		Washington Suburban Sanitary
_____		Winchester, Virginia	_____		Commission
_____		Winchester Public Schools			

\_\_\_\_\_  
 Vendor Name/Revised 7/7/06

**Note: A negative reply will not adversely affect consideration of your bid.**

BIDDER'S AUTHORIZATION TO EXTEND CONTRACT:

- 1.2 Contracts awarded pursuant to this Invitation for bids shall be construed in accordance with and shall be governed by the laws of the applicable contracting jurisdiction.
  - 1.3 Each jurisdiction will execute its own contract with the awarded contractor(s) in accordance with each jurisdiction's purchasing laws, policy and procedures. Individual contract will contain contractual requirements that are unique to the jurisdiction; including, but not limited to, Non-Discrimination In Employment, Officials Not to Benefit, Registering of Corporations, Bidders Qualifications Statement, etc.
  - 1.4 Bidders are cautioned to fully inform themselves of jurisdictional requirements. For information on specific contractual requirements, contact the Purchasing Agent in each jurisdiction.
  - 1.5 Specific jurisdictions that have incorporated their fuel requirements as part of this solicitation have Minority/Disadvantaged Business Enterprise and or Women Business Enterprise Goals which must be satisfied in order to be eligible for contract award. Attached as part of this solicitation are documents outlining the requirements of these goals by jurisdiction. Jurisdictions who have submitted these requirements as part of this solicitation are the Washington Metropolitan Area Transit Authority, Montgomery County.
2. PERIOD OF PERFORMANCE: RT(MAR/95)  
This contract will cover a one-year base period with four additional one-year options. The term of the contract shall be for a period commencing the date of award by each individual jurisdiction.
  3. OPTION QUANTITIES: OT (MAY/95)
    - 3.1 The Authority and COG jurisdictions have the right to extend the Period of Performance of the contract by unilaterally exercising the option, each year, for an additional four, one-year option periods, subject to all terms and conditions herein.
    - 3.2 Notice of intent to exercise an option year will be given to contractor in writing by WMATA 30 days prior to the expiration date of the current contract. This notice shall not be deemed to commit the participating jurisdictions to a contract renewal.
    - 3.3 It should be noted that an option year contract may be awarded only after funding appropriations and program approval have been granted.

4. PRICING: RT(MAR/95)

4.1 Price quotations for Section I through III of the Bid Schedule Sheets must show the *net differential price per gallon (plus or minus)*, i.e. exclusive of all taxes except for taxes imposed under Internal Revenue Code Section 4611 (SUPER FUND) or successors

(See page SP-16, Para. 20, "Federal/Local/State Taxes" for invoicing of Montgomery County Energy Tax, Maryland State Underground Storage Tank Excise Tax and Virginia Petroleum Storage Tank Fund Fee).

4.2 The price per gallon invoiced will be based on the sum of the bid differential (plus or minus) and the average (branded & unbranded) price for ultra low sulphur No. 2 fuel published in the "Oil Price Information Service" \*(OPIS) weekly publication.

The Adjusted Price (per gallon) shall be calculated using the following algebraic formula:

***THE ADJUSTED PRICE = [Bid Differential (plus or minus)] + (OPIS Current Average Price).***

Definitions for the terms in the above algebraic formula:

1. The ***ADJUSTED PRICE*** is the adjusted price per gallon calculated on the weekly OPIS publication.
2. ***DIFFERENTIAL (PLUS OR MINUS) BID PRICE*** is the offeror's bid price differential (price per gallon) to be added or subtracted from the OPIS current average price for the product listed in Section I through III inclusive of the Bid Schedule sheets. This price differential is to be inclusive of all costs associated in doing business with the jurisdictions, excluding those identified in the tax clause of this solicitation. The differentials (escalator or de-escalator) for Section I through III shall remain firm and fixed during the entire life of the contract.
3. ***CURRENT AVERAGE PRICE*** is that OPIS variable price corresponding to the ***average price\* per gallon (branded & unbranded)*** as determined weekly during the contract performance period using that OPIS weekly report.

***\*Computed and published weekly as the Oil Price Information Service (OPIS) [as listed in the PAD 1 Report (Baltimore average)], 1130 Rockville Pike, Suite 1100, Rockville, Md. 20852-3030.***

4.3 All locations with combined tank capacity of ***6,000 gallons or larger*** for the same product shall be billed at the truck transport pricing schedule regardless of the amount of fuel delivered, e.g.: one 3,000 gallon tank and one 3,500 gallon tank for the same product at the ***same delivery location*** will qualify for truck transport

pricing. Orders for truck transport delivery requirements shall be a minimum of 6,000 gallons. In the event the ordering jurisdiction is unable to accept delivery of the minimum 6,000 gallon order, the differential charged by the carrier to the supplier for transporting product to another delivery point shall be as per the current published tariff rate and such additional charges billed to the jurisdiction by the supplier (if listed below) or the maximum allowable rates listed below, whichever is the least (smaller amount).

- a. Tariff rate for each gallon of undelivered fuel to each alternate location or a maximum of \$1.50 per mile whichever is the smaller (EXCEPTION: When point of diversion or re-consignment is on the most direct highway route between between point of origin and a final destination or return route).
  - b. Surcharge(s) per alternate location or a maximum of \$20.00 per alternate location delivered whichever is the smallest.
  - c. Return charge for fuel returned to terminal or pick-up point or a maximum of \$20.00 whichever is the smallest. This is in addition to the per mile charge and surcharge(s) in a. and b. above.
  - d. Delay charges beyond 30 minutes for admittance to the discharge point will be allowed up to a maximum charge of \$20.00 per each additional 30 minute period (No charge if delivery can be made within 1 hour.)
- 4.4 No charges for any of the above if split deliveries empty the Truck Transport at locations within a 1 mile radius and can be accomplished within the one hour initial delivery period.
- 4.5 Sunday or Holiday delivery charges (for "as-required" deliveries) will be allowed up to \$25.00. No charge if it is a scheduled delivery.
- 4.6 All fuel picked up by any jurisdiction from the Contractor's terminal facilities shall be priced at the Terminal Rack Pickup rate (See bid Schedule, Section I, Bid Schedule Sheet, Page 1), regardless of the amount picked up.
- 4.7 The Bid Differential for each line item on the Bid Schedule Sheets submitted must include all associated costs, including but not limited to, such as travel, mark-ups, overhead, and profit.

5. PAYMENT TERMS:

RT(Dec/92)

- 5.1 Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror.
- 5.2 Partial payments are authorized.

6. BILLING AND PAYMENT: RT(Jan/95)

6.1 Payment will be made after receipt of a properly completed invoice. Mail original and one copy of all invoices to the Contracting Officer's Technical Representative (COTR) for processing.

6.2 Invoices shall be prepared and submitted in quadruplicate (one copy shall be sequentially numbered and contain the following information; date, contract and order number (if any), item numbers, description of supplies or services, sizes, quantities, unit prices, and extended totals. Service contract invoices require the period of performance being invoiced. Final invoices must clearly be marked "FINAL" and cite the amount of the contract, amount previously paid, and the balance due.

6.3 Each jurisdiction will provide the contractor appropriate billing information at time of award.

6.4 Prepayments by jurisdictions will not be authorized.

6.5 Bidders are advised that the county of Fairfax shall be invoiced on a Summary Invoice **TWICE EACH MONTH** with distribution as follows:

a. A copy of each invoice shall be sent to:

County of Fairfax  
Office of Finance  
Drawer A  
4100 chain Bridge Rd.  
Fairfax, Va. 22030

b. A second copy of the invoice, plus copies of all Bills of Lading and signed Delivery Tickets shall be sent to:

County of Fairfax, EMTA  
4620 West Ox Rd.  
Fairfax, Va. 22030

7. TECHNICAL AND CONTRACTUAL POINTS OF CONTACT: RT(Jun/95)

7.1 All inquiries are to be directed to:

**Prior to Award**

Ms. Cathy Rooths or Mr. Carl Kalish  
WMATA (Room 3E-04) Council of Gov'ts (COG)  
Office of Procurement & Mat'ls  
(202) 962-2469 202-962-3222 fax (202) 962-6247  
email crooths@wmata.com

**After Award**

Jurisdiction  
Procurement  
Office

8. F.O.B. DESTINATION: OA(Dec/92)

8.1 The term "f.o.b. destination," as used in this clause, means---

(1) Free of expense to WMATA on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and

(2) Supplies shall be delivered to the destination consignee's warehouse unloading platform, or receiving dock, at the expense of the Contractor. WMATA shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of WMATA acting in its contractual capacity. If the Contractor uses rail carrier or freight forwarder for less than carload shipments, the Contractor shall assure that the carrier will furnish tailgate delivery if transfer to truck is required to complete delivery to consignee.

8.2 The Contractor shall ---

(1) Pack and mark the shipment to comply with contract specification;

(2) In the absence of specifications, prepare the shipment in conformance with carrier requirements;

(3) Prepare and distribute commercial bills of lading;

(4) Deliver the shipment in good order and condition to the point of delivery specified in the contract;

(5) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;

(6) Furnish a delivery schedule and designate the mode of delivering carrier; and

(7) Pay and bear all charges to the specified point of delivery.

9. ORDERING: (52.216-18) OA(Dec/92)

9.1 Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders from the duly authorized Contracting Officer, Ordering Officer or COTR designated in the award document or subsequent letters. Such orders may be oral or by written telecommunication issued anytime during the life of this contract.

9.2 All delivery orders are subject to the terms and conditions of this contract. In the event of a conflict between the delivery order and this contract, the contract shall control.

9.3 If mailed, a delivery order is considered "issued" when WMATA deposits the order in the mail.

9.4 Oral orders will be followed up by a written communication.

9.5 Orders will include the following information:

- (1) Date of the order;
- (2) Contract number and an order number;
- (3) Item number, description, quantity, and unit price;
- (4) Delivery or performance date;
- (5) Place of delivery or performance;
- (6) Packaging, packing, and shipping instructions(if any);
- (7) Accounting and appropriations data; and
- (8) Any other pertinent information.

10 . DELIVERY-ORDER LIMITATIONS: Not Used (52.216-19) OT(Mar/95)

11. REQUIREMENTS (52.216-21) OT(Dec/92)

11.1 This is a requirements Contract for the supplies or services specified, and effective for the period stated, in the schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Authority's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

11.2 Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Delivery-Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Authority all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering Clause. The Authority/Jurisdiction may issue orders requiring delivery to multiple destinations or performance at multiple locations.

11.3 Except as this contract otherwise provides, the Authority/Jurisdiction shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by WMATA or activities specified in the Schedule.

11.4 The Authority/Jurisdiction is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

11.5 If the Authority urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Authority may acquire the urgently required goods or services from another source.

11.6 Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in

the order. The contract shall govern the Contractor's and Authority's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after **August 31, 2007 unless modified by the exercising of the option year** .

12. MILESTONES/SUBMITTALS : OT(May/95)  
(See Special Conditions and Specifications)
13. MOST FAVORED CUSTOMER OA(Dec/92)  
The Contractor shall voluntarily provide the Authority with the benefits of any more favorable terms it has, or negotiates, with any organization or facility whose circumstances and operations are substantially the same as those of the Authority.
14. CONDITIONS AFFECTING THE WORK: OA(Dec/92)  
The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and extent of the work, and the general and local conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve the Contractor from responsibility for successfully performing work without additional expense to the Authority. The Authority assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations are expressly stated in the Contract.
15. WARRANTY: OT(Jul/98)  
Any failure of the work in compliance with the procedures that does not conform to the General Specification, and or defects of fuel products for a period of one (1) year shall be replaced by the Contractor at his expense.  
Damage to equipment or the contents thereof in fulfilling this contract and warranty shall be the responsibility of the Contractor.
16. INDEMNITY: RT(Jun/95)  
The Contractor will save and keep harmless and indemnify WMATA against any and all liability claims, and the cost of whatsoever kind and nature arising or alleged to have arisen for injury, including personal injury to or death of person or persons, and for loss or damage occurring in connection with this Contract, and for any acts in connection with activities to be performed under this Contract resulting in whole or in part from the acts, errors or omissions of the Contractor, any subcontractor employee, DBE, agent or representative of the Contractor or subcontractor.

17. **INSURANCE:**

- (1) **Workers' Compensation:** Policy complying with the requirements of the statutes of the jurisdiction(s) in which the work will be performed, and if there is any exposure to any of the Contractor's subcontractor personnel with the U.S. Longshoremen's and Harbor Workers' Act, Jones Act or Admiralty Laws and the Federal Employers' Liability Act. The coverage under such policy shall have the following:

Worker's Compensation: STATUTORY

Employers' Liability : Each Accident **\$500,000**

Disease Policy

Limit: **\$500,000**

Disease - Each Employee **\$500,000**

- (2) **Commercial General Liability Insurance:** An insurance policy covering the liability of the Contractor for all work or operations under or in connection with this referenced Contract and all obligations assumed by the Contractor under this Contract. Products Liability and Completed Operations coverage should be included. Contractual Liability insurance should also be included.

The coverage under such an insurance policy or policies shall have the following limits:

Bodily Injury and Property Damage Liability \$1,000,000 Combined Single Limit each occurrence

***WMATA shall be included as an additional insured under the coverage for Commercial General Liability insurance with respect to all activities under the Contract.***

- (3) **Automobile Liability Insurance :** An insurance policy covering the use of all owned, non-owned, hired, rented or leased vehicles bearing, or under the circumstances which they are being used, required by the Motor Vehicle Laws of The District of Columbia, Maryland or Virginia, to bear license plates and not covered under the Contractor's Commercial General Liability Insurance aforementioned. The coverage under such policy or policies, shall be a Combined Single Limit for Bodily Injury Liability and Property Damage Liability of \$1,000,000 Per Occurrence.

***The Authority shall be included as an additional insured under the coverage for***

**Automobile Liability Insurance with respect to all work performed under this contract.**

**If hauling hazardous materials or hazardous wastes the Contractor must adhere to Sections 29 and 30 of the Motor Carrier Act of 1980, which shall include coverage Form MCS-90.**

**(4) CONTRACTOR'S POLLUTION LIABILITY INSURANCE:** Contractor shall provide a pollution liability insurance policy covering the liability of the Contractor. The Policy should include coverage for bodily injury, and loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, or gas, waste materials or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental. **"WMATA shall be named as an additional insured"**. The Contractor shall supply limits not less than the following:

\$1,000,000 Per Occurrence

OT(Dec/92)

17. LAWS AND REGULATIONS: RA(Dec/92)

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

18. FEDERAL/LOCAL/STATE SALES TAX: RA(Dec/92)

All jurisdictions to be served under this invitation are exempt from all Federal (except Superfund); State (except Maryland State Underground Storage Tank Excise Tax and the Virginia State Petroleum Tank Fund Fee); and District of Columbia, municipal and local County taxation (except Montgomery County Energy Tax) including, but not limited to, sales and diesel fuel taxes.

**NO TAX (EXCEPT INTERNAL REVENUE CODE, Sec 4611 - SUPERFUND, OR SUCCESSORS) SHALL BE INCLUDED IN THE BID PRICE.** The Montgomery County Energy Tax, and the Maryland State Underground Storage Tank Excise Tax, and the Virginia Petroleum Storage Tank Fee may be added to invoices where appropriate. **NO TAXES (EXCEPT ABOVE) SHALL BE INVOICED TO ANY PARTICIPATING JURISDICTION FOR PAYMENT.** Successor state and local taxes may or may not be

allowable.

19. PRIME CONTRACTOR DBE RESPONSIBILITIES: Not Used OA(Dec/92)

20. CONTRACTING OFFICERS TECHNICAL REPRESENTATIVE (COTR)

The work will be conducted under the general direction of the Contracting Officer's Technical Representative. The COTR is the authorized representative of the Authority to take all actions authorized herein and as may be delegated by separate actions which can lawfully be taken, including the following:

- (1) Inspection of the work for compliance with the Contract.
- (2) Issuance of orders to stop and/or resume work where such orders are authorized by the Contract.
- (3) Negotiation with the Contractor without dollar limitation as to adjustment of Contract Price and/or time and recommendation of acceptance or rejection of negotiation results.
- (4) Coordinate correspondence with the CA if its importance significantly impacts the contractual terms and obligations.
- (5) Preparation of the Authority estimate for Contract modifications.
- (6) Modification of the Contract in accordance with the CHANGES article or other articles of the General Provisions.
- (6) Preparation and signing of payment estimates. In those cases releasing retained percentage or remitting liquidated damages, the COTR will make his recommendations thereon in writing to the Contracting Officer.
- (7) Approval of the Contractor's progress schedule.
- (8) Receive from the Contractor, monthly, if applicable, DBE status reports and forward them to the Office of Procurement and Materials, DBE Section.
- (9) Provide the Contract Administrator with a written notification after all supplies/services have been received with statement that Contractor is not aware of any open issues that would preclude closeout of the contract and that the Contract is ready for closeout. Return all records, correspondence, etc., to the Contract Administrator/ Purchasing Agent for closeout purposes.
- (10) Provide the Contract Administrator with a written request (and requisition) to exercise option(s) [if any] a minimum of 90 days prior to the expiration of the base period of the contract.

There are certain actions which are reserved for only the Contracting Officer's Technical Representative. They are:

- (1) Rendering final decisions under the DISPUTES article of the General

Provisions.

- (2) Issuance of Termination Notices pursuant to the terms of this contract.

The presence or absence of the COTR or his inspectors shall not relieve the contractor from any requirements of the contract.

Upon failure of the Contractor to comply with the requirements of the Contract specifications, or other Contract documents, the COTR may stop any operation of the Contractor affected by such failure until the failure is corrected. Time lost during such work stoppage will be regarded as Contract time for which no extension will be granted, and no increase in cost to the Contractor caused by the stoppage shall be subject to claim against the Authority.

21. HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA OA(Dec/92)

- a. The Contractor agrees to submit a Material Safety Data Sheet (Department of Labor Form OSHA-20), as prescribed in Federal Standard No. 313B, for all chemicals to be used in the operating system. The MSDS' will be reviewed by SAFE, and if approved, they can be brought into the system. If they are rejected, the Contractor must identify a substitute that will meet SAFE's criteria for approval. This obligation applies to all materials delivered under this contract which involve exposure to hazardous materials or items containing these materials.
- b. "Hazardous material," as used in this clause, is as defined in Federal Standard No. 313B, in effect on the date of this contract.
- c. Neither the requirements of this clause nor any act or failure to act by the Authority shall relieve the Contractor of any responsibility or liability for the safety of Authority, Contractor, or subcontractor personnel or property.
- d. Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, state, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- e. The Authority's rights in data furnished under this contract with respect to hazardous material are as follows:
  - (1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to (i) apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous material (ii) obtain medical treatment for those affected by the material; and (iii) have others use, duplicate, and disclose the data for the Authority for these purposes.
  - (2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (e)(1) above, in precedence over any other clause of this contract providing for rights in data.

- (3) That the Authority is not precluded from using similar or identical data acquired from other sources.
- (4) That the data shall not be duplicated, disclosed, or released outside the Authority, in whole or in part for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this clause applies -

This is furnished under Authority Contract No. \_\_\_\_\_ and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of the Authority's Representative. This legend shall be marked on any reproduction of this data."

(End of legend)

- (5) That the Contractor shall not place the legend or any other restrictive legend on any data which (i) the Contractor or any subcontractor previously delivered to the Authority without limitations or (ii) should be delivered without limitations under the conditions specified in the clause Rights in Technical Data.
- f. The Contractor shall insert this clause, including this paragraph with appropriate changes in the designation of the parties, in subcontracts at any tier (including purchase designations or purchase orders) under this contract involving hazardous material.

22. SPECIAL DELIVERY INSTRUCTIONS: OT(May/95)

- 22.1 Deliveries shall be made to the locations listed on Specification Exhibit 2 and 3. Where a jurisdiction selects the option to deliver its own fuel to selected locations, the contractor will be notified of the locations selected prior to initiation of the contract, or subsequently by amendment, or as mutually agreed upon.
- 22.2 Except as provided in Specification Exhibit 3 for delivery to WMATA bus locations, all deliveries will be made between the hours of 8:00 a.m. and 3:00 p.m. (except holidays) Monday through Friday, unless otherwise requested by an authorized representative of the using jurisdiction.

**NOTE: In an attempt to eliminate and/or reduce rush hour hazardous material exposure on the Beltway, the successful bidder(s) will agree to minimize deliveries effecting Beltway routes from 6:00 AM to 10:00 AM and 3:00 PM to 7:00 PM. Further, coordination with each jurisdiction must be made to see which locations may be able to accept deliveries between 3:00 PM and 7:00 AM where Beltway travel is required.**

- 22.3 In the event metered deliveries are made, it will be possible to extend deliveries beyond the above-mentioned hours on written request by the contractor. This written permission varying delivery hours applies only to weekdays, Monday through

Friday.

- 22.4 Unless otherwise specified, deliveries to all sites are to be made on an automatic keep-full basis, to insure that the tanks do not become empty. The jurisdiction shall provide detailed usage history for each site. It shall be the contractor's responsibility to maintain estimated remaining product balances for each of the jurisdiction's tanks to insure that an adequate product level is maintained. The jurisdiction shall not be required to provide periodic tank "stick-readings" to the contractor in order to receive automatic keep-full service.
- 22.5 Individual jurisdictions may require a "will-call" method of delivery. The contractor will be given names of authorized personnel at the time of contract award. Under no condition shall delivery requests be accepted from any other source. The jurisdiction shall not be responsible for deliveries made based upon requests from unauthorized personnel.
- 22.6 If the jurisdiction has determined that deliveries are to be made on a "will-call" basis, deliveries shall be made within 24 hours of the placement of the call. Exceptions for weekends or holidays may be made at the discretion of the jurisdiction.
- 22.7 The term "Truck Transport" is determined by the size of the tank, not the size of the delivery. Therefore, deliveries shall not be postponed until a site can hold an entire load, unless there is no possibility that the site will run out of fuel as a result of postponement. Further, it shall be the responsibility of the contractor to find a destination for remainders of split loads, not the responsibility of the jurisdiction. There shall be no charge for any split loads made by the contractor in order to maintain automatic keep-full delivery schedules as referenced at paragraph 3.2 of the Special Provisions.
- 22.8 The contractor must provide a method of ordering fuel by the jurisdictions including a local telephone number or "toll free" number should the contractor's ordering location be a long distance telephone call from any members of the participating jurisdictions.
- 22.9 During the contract term each participating jurisdiction shall have the right to add to or delete delivery locations, and shall further have the right to change the method (or time) of delivery as determined to be in its own best interest.
- 22.10 All vehicles used in delivering product under this contract shall be in good repair and operated by trained personnel. If a common carrier is to be used to effect delivery, the contractor will so notify the using jurisdiction's Purchasing Agent. The contractor will be responsible for all carrier claims.
- 22.11 All deliveries must be made in a neat and business like manner. The contractor is responsible for clean-up of spills incidental to deliveries at its expense and to the satisfaction of the jurisdiction. In the event of a product spill, the driver of the delivery vehicle must immediately call the local fire department and take action to prevent the product from getting into drains or storm sewer catch basins. This may be accomplished by digging soil and constructing an earth berm to contain the spill.

As soon as practical after action to minimize damage from the spilled product or to preclude its entry into a storm sewer system, the spill must be reported by calling the emergency number for the jurisdiction concerned.

- 22.12 Contractor will be given the names and telephone numbers of personnel to contact for each jurisdiction at time of contract award. The provisions of the Federal Water Pollution Contract Act of 1972, as amended, provides definitions of a spill and pertinent data pertaining thereto.
- 22.13 The contractor's transport driver shall make "stick-readings" of the tank being filled before and after delivery. The "after delivery" reading shall be made no sooner than five minutes after the delivery has finished, in order to allow the product to settle and the foam (if any) created, to dissipate. These "stick-readings" shall be legibly written on the delivery ticket. The driver shall assure that the delivery ticket is signed by someone at the site, unless prior arrangements have been made with the jurisdiction.
- 22.14 Each jurisdiction shall be informed of the exact amount of diesel fuel purchased (in writing) whether delivered by supplier, or picked up in customer-owned conveyances. These quantities shall be quoted and billed in terms of GROSS GALLONS at the temperatures at which the product leaves the loading rack. Each jurisdiction shall further be informed (in writing) of both the temperature (in degrees Fahrenheit) of the product as it leaves the loading rack, and the API specific gravity of the product (in degrees API).
- 22.15 The contractor shall be responsible for ensuring that the fill couplers are compatible with each jurisdiction's existing system.
- 22.16 The contractor shall be responsible for any incorrect deliveries (such as putting diesel fuel into gasoline tanks) made by either the contractor's direct employees or employees of subcontractors. In such an event, not only will the contractor be responsible for emptying, cleaning and refilling the tank, but he will also be responsible for disposing of contaminated product in a manner consistent with all applicable local, state, and federal laws and regulations.
- 22.17 If Contractor's delivery vehicle has been used to haul other than the ordered product and has not been properly decontaminated, Contractor shall be liable for any damages incurred by the user jurisdiction as a result of the delivery of the contaminated product.
23. PURCHASE ORDER: OT(May/95)
- 23.1. A purchase order or other contractual documents for the items listed in this Invitation for Bid will be issued shortly after contract award by each jurisdiction and will become an integral part of the resulting contract. The issuance of such documents by each participating jurisdiction indicates that sufficient funds are available to cover the cost of products ordered and assures distribution of the necessary receiving reports.

23.2. The terms and conditions of this Invitation for Bid will be a part of any purchase order or other contractual document. Performance time and dates are determined solely by the contract and any modification thereto.

24. INSPECTION, TESTING AND ACCEPTANCE: OT(Dec/92)

24.1 The Authority shall conduct a visual inspection of the Diesel Fuel as it is delivered and take random samples of fuel for testing by an independent laboratory. The Contractor will be notified of any irregularities within Ten (10) calendar days from the date of each delivery. The Authority may issue such acceptances or rejections via FACSIMILE.

24.2 See Paragraph 17 above (Delivery), Special Conditions, Specifications and Exhibits 2 & 3 for additional information.

25. AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR: OT(May/95)

Funds are not presently available for performance under this contract beyond **June 30, 2007**. The Authority's obligation for performance of this contract beyond that date is contingent upon the availability of funds from which payment for contract purposes can be made. No legal liability on the part of the Authority for any payment may arise for performance under this contract until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing, by the Contracting Officer. Any option exercised by the Authority which will be performed in whole or in part in a subsequent fiscal year is subject to availability of funds in the subsequent fiscal year and will be governed by the terms of this Article.

26. LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS:  
OA (JAN/95) Not Used

27. ORGANIZATIONAL CONFLICT OF INTEREST: RA(NOV/92)

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

28. COVENANT AGAINST CONTINGENT FEES: OA (SEP 94)

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For violation of this warranty, the effected jurisdiction shall have the right to terminate or

suspend this contract without liability to the jurisdiction or, in its discretion, to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

29. ESTIMATED QUANTITIES: OT(Dec/92)

The quantities specified in Exhibit 2 and Exhibit 3 of this IFB are estimated and are given for the information of bidders and for the purpose of bid evaluation. They do not indicate the actual quantity which will be ordered, since such volume will depend upon requirements which develop during the contract period.

30. RIGHTS IN TECHNICAL DATA - UNLIMITED - Not Used OA(JUN/96)

31. BUY AMERICA ACT RA(JUL/96)

a. SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982

BUY AMERICA

SECTION 165

i. Notwithstanding any other provision of law, the Secretary of Transportation shall not obligate any funds authorized to be appropriated by this Act or by any Act amended by this Act or, after the date of enactment of this Act, any funds authorized to be appropriated to carry out this Act, Title 23, United States Code, the Urban Mass Transportation Act of 1964, or the Surface Transportation Assistance Act of 1978 and administered by the Department of Transportation, unless steel and manufactured products used in such project are produced in the United States.

ii. The provisions of subsection (1) of this section shall not apply where the Secretary finds

(1) that their application would be inconsistent with the public interest;

(2) that such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

(3) in the case of the procurement of bus and other rolling stock (including train control, communication, and traction power equipment) under the Urban Mass Transportation Act of 1964, that

(a) the cost of components and sub-components which are produced in the United States is more than 60 per centum of the cost of all components and sub-components of the vehicle or equipment described in this paragraph, and

(b) final assembly of the vehicle or equipment described in this

paragraph has taken place in the United States;

(4) that inclusion of domestic material will increase the cost of the overall project contract by more than 25 per cent.

iii. For purposes of this section, in calculating components' cost, labor costs involved in final assembly shall not be included in the calculation.

iv. The Secretary of Transportation shall not impose any limitation or condition on assistance provided under this Act, the Urban Mass Transportation Act of 1964, the Surface Transportation Assistance Act of 1978, or Title 23, United States Code, which restricts any State from imposing more stringent requirements than this section on the use of articles, materials, and supplies mined, produced, or manufactured in foreign countries in projects carried out with such assistance or restricts any recipient of such assistance from complying with such State imposed requirements.

v. Section 401 of the Surface Transportation Assistance Act of 1978 is repealed.

b. The regulations implementing the Buy America Act set forth in 49 CFR Part 661 are hereby incorporated by reference into the provisions of this article of the Contract.

32. GARNISHMENT OF PAYMENTS RA(MAY/97)

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

33. MULTI-YEAR CONTRACTS -- Non-Availability of Funds - Not Used: RT(Nov/98)

34. SUBMISSION OF OFFERS - EVIDENCE OF RESPONSIBILITY

An offeror MUST submit evidence, within five days after request by the Contracting Officer that such offeror is currently registered with the Internal Revenue Service (IRS) to make tax free transactions for purchase and sale of diesel fuel. This requirement shall remain in effect during the entire contract period (Base and option years).

Such evidence shall be in the form of an approved Certificate Form 637 or such other evidence within acceptable standards provided by the IRS.

Failure to comply with the provisions of this clause may result in a determination of non-responsibility by the Contracting Officer.

35. EMERGENCY PURCHASES (New language needed for hurricane type emergencies)

Each jurisdiction reserves the right to make emergency purchases from other sources, should the Contractor be unable to furnish the required item in accordance with paragraph 10 above in a timely fashion. The Contractor will be held responsible for any and all additional costs occasioned thereby.

36. CONTRACT AND BONDS

BID GUARANTEE (Bid Bond): (NOT REQUIRED)

36.1 PERFORMANCE BOND: Within 10 days after receipt of notice of award, the Contractor shall enter into written contract(s) with the jurisdictions and furnish a Performance Bond, as attached, in the penal sum **equal to five (5) percent** of the contract price with good and sufficient surety or sureties acceptable to the jurisdiction. Corporations executing the bonds as sureties must be among those appearing on the Treasury Department's list of approved sureties and must be acting with the limitations set forth therein. This bond is to guarantee the Contractor's compliance with all terms and conditions of the contract. The bond shall be good during the contract period. At the termination of the contract period, the bond shall continue in full force and effect for a period of one year, to guarantee the discharge of all obligations by the Contractor under this contract. As an alternate to a Performance Bond, WMATA will accept an irrevocable letter of credit issued by an insured financial institution.

37. STATEMENT OF OWNERSHIP

Prior to award, the recommended Contractor, whether a sole proprietor, partnership, limited partnership, joint stock company, association, corporation, or any other form of business entity, shall provide a statement of the ownership and shall contain:

- (a) A statement by the business entity or its authorized representative listing the name or names as well as the business and residence addresses of all those individuals having a ten percent (10%) financial interest in the business entity.
- (b) A corporation shall file a statement listing the officers of the corporation, their business and residence address, the date of which they assumed their respective offices, a list of the current Board of Directors, their business and residence addresses, as well as the date on which each Director assumed his office and the date of which his term shall expire.
- (c) In addition to the requirements set forth in (a) above, a corporation must file a statement containing the names and residence addresses of those individuals owning at least ten percent (10%) of the shares of any class of

corporate security, including but not limited to, stocks of any type or class and serial maturity bonds of any type or class, provided that a corporation listed on a national stock exchange shall be exempt from the requirement's of this subsection.

- (d) Any statement filed pursuant to this provision shall be valid for a period of one (1) year from the date it is filed, provided that the information contained herein is updated as necessary upon the award of any subsequent contract.
- (e) The proposed contract will not be executed unless there has been compliance with the provisions of this section.

38. SUB-CONTRACTOR

Vendors who subcontract the delivery of diesel fuel shall submit with their bid the subcontractor name, address and telephone number. During the life of the contract the Contractor shall provide name, nature and extent of all subcontractors.

Sub-contractors shall be considered an agent of the Contractor, who shall be held fully accountable for all the sub-contractor services, labor and materials relative to the contract.

39. FUEL PICK-UP FROM CONTRACTOR FACILITY

39.1 The County of Fairfax, Virginia maintains and operates Fuel Tankers for the purpose of hauling diesel fuel when it is determined to be advantageous, cost-effective and/or otherwise beneficial to this jurisdiction. This jurisdiction reserves the right to pick up diesel fuel in its own equipment from the Contractor's terminal.

39.2 The Fairfax fuel tankers are currently equipped to accommodate the pickup of diesel from both the Chevron and Texaco terminals in Fairfax and the Crown terminal in Newington, Virginia. The cost to retrofit equipment to meet other terminal standards/requirements (both current and future) shall be borne by the contractor.

39.3 The Contractor shall make every effort to maintain a tanker turn-around time for each jurisdiction vehicles of thirty (30) minutes in the Contractors terminal. The turn-around time will be computed from the time of arrival of the tanker at the Contractors terminal until departure of the tanker with a full load.

39.4 The Contractor shall accommodate tankers for loading at the terminal between the hours of 6:00 a.m. through 4:00 p.m. on normal workdays. Emergency requirements shall be accommodated within four hours or as may be otherwise agreed upon.

39.5 For those jurisdictions which pick up fuel at the rack, the Contractor shall supply the product from the same terminal at all times. No jurisdiction owned fuel tankers shall be required to go to different terminals. Only terminals at Fairfax, VA (Pickett

Road) or Newington, VA (Backlick Road) shall be acceptable for the County of Fairfax.

**39.6** During the period when Winter Blend is being supplied (Special Conditions, paragraph 14, Page SC-4), both components of the blend (Diesel #1 and Diesel #2) will be provided at the same terminal for those jurisdictions that pick up fuel at the rack. No jurisdiction-owned fuel tankers shall be required to go to two different "tank farm" locations to load the two components of the blend.

39.7 The Contractor shall issue at least three (3) sets of terminal access cards or keys for each terminal that will be used by each jurisdiction that operates its own fuel tankers. The jurisdictions shall be authorized to use these terminal access cards to pick up fuel at any time, including night, weekends, and holidays. No jurisdiction shall be required to advise the contractor at any time prior to picking up fuel. Neither shall a jurisdiction be required to seek any additional loading authorization prior to loading product.

40. MINORITY BUSINESS ENTERPRISES FOR

41. MINORITY BUSINESS ENTERPRISES FOR

42. MINORITY BUSINESS ENTERPRISES FOR

43. MINORITY BUSINESS ENTERPRISES FOR

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## **PART III SPECIFICATIONS / DESCRIPTIONS**

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## **PART IV APPENDICES, EXHIBITS, DRAWINGS**

**NOT USED**

PAGE NOT USED



**APPENDIX A - NOT USED**

PAGE NOT USED

**APPENDIX B**  
**NOT USED**

PAGE NOT USED

## **APPENDIX C - Reserved**

**NOT USED**