

Metropolitan Washington Airports Authority
PROCUREMENT AND CONTRACTS DEPT.
REQUEST FOR QUOTATIONS

Metropolitan Washington Airports Authority Procurement and Contracts Dept., MA-29 1 Aviation Circle, Suite 154 Washington, DC 20001-6000		1. FOR INFORMATION CONTACT NAME: Eric R. Carey TELEPHONE NUMBER: <i>(No Collect Calls)</i> 703-572-0514	
2. REQUEST FOR QUOTATIONS NUMBER 8-13-P027		3. DATE ISSUED August 1, 2013	
4. DESCRIPTION OF GOODS OR SERVICES Metropolitan Washington Airports Authority Request for Quotations (RFQ) for the installation of a PBX phone system for the Dulles Corridor Metrorail Phase II Project Office, in accordance with the Statement of Work and Specifications included at Attachments 01 and 02. All questions concerning this solicitation must be submitted by 3:00 PM August 9, 2013 via the Airports Authority's website at: http://www.mwaa.com/6459.htm			
5. LOCAL DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION REQUIREMENT This Request for Quotations has a 0% LDBE participation requirement.			
6. DEADLINE FOR QUOTATION SUBMISSION Sealed quotations in original and 2 copies are due at the place specified at the top of this form by 2:00 P.M. local time, August 22, 2013 . Sealed envelopes containing quotations shall be marked to show the quoter's name and address, the RFQ number, and the date and time quotations are due. The Authority reserves the right to make an award based on this solicitation. NOTE: Quoters are responsible for verifying number and dates of amendments prior to submitting a quotation. Failure to acknowledge an amendment may result in quotation being determined non-responsive.			
7. NAME AND ADDRESS OF QUOTER <i>(Include Zip Code)</i>		9. REMITTANCE ADDRESS <i>(If different than Item 7)</i>	
8A. TELEPHONE NUMBER		10A. E-MAIL ADDRESS	
8B. FAX NUMBER		10B. COMPANY INTERNET WEBSITE	
NOTICE: Quotation shall be valid for 60 days			
11. ACKNOWLEDGMENT OF AMENDMENTS <i>(This quoter acknowledges receipt of amendments to this Request for Quotations - give number and date of each)</i>		12A. NAME & TITLE OF PERSON AUTHORIZED TO SIGN	
AMENDMENT NO.			
DATE			
12B. SIGNATURE		12C. DATE	

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Metropolitan Washington Airports Authority
PRICE SCHEDULE

NAME OF OFFEROR OR CONTRACTOR	SOLICITATION OR CONTRACT NUMBER 8-13-P027	PAGE III-1 of 1
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ITEM NO.	SUPPLIES/SERVICES	QTY	UNIT	UNIT PRICE	AMOUNT
SCOPE OF WORK: The Contractor shall furnish all necessary labor, materials, tools, equipment and supervision for the installation of a PBX phone system in the Dulles Corridor Metrorail Phase II Project Office, in accordance with the Statement of Work and Specifications included at Attachments 01 and 02.					
01	Installation of a PBX phone system in the Dulles Corridor Metrorail Phase II Project Office	1	LS	\$ _____	\$ _____
	Total Base Price - Item 01				\$ _____

BASIS OF AWARD: Award will be made to the lowest, responsible Offeror whose quotation is in conformance with the solicitation.

SECTION IV - REPRESENTATIONS AND CERTIFICATIONS

01 PARENT COMPANY AND IDENTIFYING DATA

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

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

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

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

Parent Company's Employer's
Identification Number

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

_____.

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

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

_____.

02 TYPE OF BUSINESS ORGANIZATION

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

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

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

03 AUTHORIZED NEGOTIATORS

The quoter represents that the following persons are authorized to negotiate on its behalf with the Authority in connection with this request for quotations:

04 DISADVANTAGED BUSINESS ENTERPRISE REPRESENTATION

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

B. Definition A Disadvantaged Business Is:

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

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

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

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

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

05 MINORITY BUSINESS ENTERPRISE REPRESENTATION

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

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

06 WOMEN BUSINESS ENTERPRISE REPRESENTATION

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

07 CONTRACTOR IDENTIFICATION

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

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

08 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION

- A. The offeror certifies that --

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

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

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

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

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

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

09 SUBCONTRACTORS

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

NAME OF SUBCONTRACTOR

SUBCONTRACTOR ADDRESS

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

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

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

11 CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

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

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

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

SECTION V - SOLICITATION PROVISIONS**01 AWARD OF PURCHASE ORDER**

- A. The Authority anticipates award of a Purchase Order resulting from this Request for Quotations (RFQ) to the responsible quoter, whose quotation conforming to the RFQ, will be most advantageous to the Authority, cost or price and other factors, specified elsewhere in this RFQ, considered.
- B. The Authority may (1) request "best and final quotes," (2) reject any or all quotations if such action is in its best interest, (3) cancel or accept any single line item quote, (4) adjust line item quantity(s), (5) accept other than the lowest quotation, and (6) waive informalities and minor irregularities in quotation received.
- C. The Authority may award a Purchase Order on the basis of initial quotations received, without discussions. Therefore, each initial quotation should contain the quoter's best terms from a cost or price and technical standpoint.
- D. In evaluation and consideration of the RFQ, the Authority, when deemed in its best interest, reserves the right to make multiple and/or split awards, adjust the quantity required per line item or cancel any line item or quantity thereto.
- E. Delivery (or otherwise performance) by the successful quoter shall result in a binding Purchase Order without further action by either party. Before any specified expiration date, the Authority may make award on a quotation whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of a quotation do not constitute a rejection or counter offer by the Authority.
- F. This RFQ and related responses of the successful quoter will by reference become part of any formal agreement between the successful quoter and the Authority.
- G. Quoters, their authorized representatives, and their agents are responsible for obtaining, and will be deemed to have, full knowledge of the conditions, requirements, and specifications stated in this RFQ at the time a quotation is submitted to the Authority.

02 TAXES

The Authority is exempt from Virginia state and local sales and use taxes and from many Federal taxes. In addition, as a political subdivision of the Commonwealth of Virginia, the Authority may also be exempt from other state and local sales and use taxes.

The Authority shall furnish additional evidence to establish Exemption from any Federal, state, or local tax on the quoter's request of such evidence and a reasonable basis exists to sustain such exemption.

The quoter remains solely responsible for payment of all other applicable Federal, state, and local taxes, whether now in force or hereafter enacted prior to Final Acceptance.

03 PROMPT PAYMENT DISCOUNTS

Prompt payment discounts may be quoted, however, the Authority will evaluate the price of the quotation without the quoter's prompt payment discount.

04 ACKNOWLEDGMENT OF AMENDMENTS

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

05 SUBMISSION OF QUOTATIONS

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

Metropolitan Washington Airports Authority
Procurement and Contracts Department, MA-29
Ronald Reagan Washington National Airport
1 Aviation Circle, Suite 154
Washington, DC 20001-6000

- B. Quotations which are submitted via facsimile or any other form of electronic transmission will not be considered unless authorized by this RFQ. Quotations may, however, be modified by written or facsimile notice, if that notice is received by the time specified for receipt of quotation.
- C. Quotations, modifications thereof, and all documentation submitted in support of the offer, including but not limited to, written narrative, enclosures, submittal, examples of past work, financial statements, and videos will become the property of the Authority and will not be returned.

06 PLACE OF PERFORMANCE

All work will be performed at:

Dulles Corridor Metrorail Phase II Project Office
198 Van Buren St.
Herndon, VA 20170

07 BRAND NAME OR APPROVED EQUAL

Unless otherwise provided in the solicitation, or unless the name is followed by words indicating that no substitution is permitted, the reference to a certain brand name, make, model number, or manufacturer does not restrict the quotation to the specific brand, make, model number or manufacturer identified. The specific references to a brand is not intended to exclude other products but to convey the salient characteristics of function, performance, design requirements and quality of the item described. Comparable products of other manufacturers will be considered if proof of comparability is contained in or accompanies the quotation. Any item which the Authority, at its sole discretion, determines to be equal to that which is specified, considering quality, workmanship, economy of operation, and suitability for the process intended, will be accepted. **The award will be made to the lowest acceptable quotation, on an item that the Authority considers to be equal to the brand described within the specifications.**

08 AUTHORITY APPROVED EQUAL

Quoters are advised that these specifications, although generally reflecting the characteristics, attributes, and construction features required, are set forth for illustrative purposes only. Quotations are invited for

vehicles/equipment having generally the same characteristics of those specified. In submitting quotations, quoters **must furnish specifications, brochures, and other relevant data** as required in the attached specifications so that the Authority may fairly determine what is in its best interest. The Authority, in its analysis, will consider relative costs, equivalency of features, serviceability, the design of the vehicle/item quoted, and other pertinent data.

09 EXCEPTIONS TO SPECIFICATIONS

All elements of the specifications identified by asterisk (*) are considered critical and exceptions to these specifications are not allowed. Quotations having exceptions to such critical elements shall be deemed non-conforming to the RFQ. Any and all exceptions to Specifications shall be listed on the **"Exceptions To Specifications" Form** included herein at Section X, Attachment 03. Use plain white paper if additional space is required.

10 ITEMIZED LIST

Quoter's response to this RFQ shall include an itemized list clearly detailing all features and options included on the unit quoted in your response to this RFQ. This list shall include all items required by this RFQ to ensure that the Authority can clearly determine conformance of the quotation to requirements. **Failure to complete and include this list shall result in your quotation being ruled non-conforming with the RFQ.**

11 DOCUMENTS REQUIRED IN RESPONSE TO THIS REQUEST FOR QUOTATIONS

- A. Request for Quotations form
- B. Price Schedule (Section III)
- C. Representations and Certifications (Section IV)
- D. Exceptions to Specifications Form (Section X, Attachment 03).
- E. Detailed itemized list identifying all equipment items, features, and options actually included as part of the specific unit being quoted to the Authority.
- F. Other applicable documents addressing areas not listed above, but are required by the request for quotations and/or Specifications.

12 WORKING HOURS

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

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

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

SECTION VI - RESERVED

SECTION VII - PURCHASE ORDER GENERAL TERMS AND CONDITIONS

NOTICE: The following General Terms and Conditions apply to any Purchase Order(s) resulting from this Request for Quotations.

01 DEFINITIONS

“Buyers” means the Metropolitan Washington Airport Authority and includes its designated representatives, successors and assignees. “Seller” means the person, firm, corporation or other business entity indicated on the face of this Order.

02 CONTRACT

This Purchase Order and all its Terms and Conditions will become a binding Contact between Seller and Buyer if Seller within 30 days, either signs and returns an acceptance copy of this Purchase Order or delivers to the Buyer the goods or services requested by the Purchase Order.

03 ACCEPTANCE

Seller’s acceptance of this Order is limited to the Terms and Conditions herein and on the face of this Order. The Buyer’s acceptance of contract terms conflicting with or addition to these terms herein is expressly conditioned upon the Buyer’s written assent.

04 INCONSISTENT TERMS

If there is any inconsistency between the Seller’s terms and conditions and (i) the face of this Order, (ii) any supplemental documents, or (iii) Buyer’s general conditions for purchases of goods or services, (i) takes precedence over (ii), and (i) and (ii) take precedence over (iii).

05 CHANGES

Buyer may make changes within the general scope of this Order, but no additional cost not authorized in writing by Buyer will be allowed. Seller shall notify Buyer within five days after receipt of a notice of change if the change will affect the delivery schedule or price.

06 EXTRAS

No additional charges or extras not set out in this Purchase Order will be allowed or paid. This includes, without limitation, freight, packing, marking, handling, expediting, insurance and storage.

07 PRICE

All prices are for goods delivered F.O.B. Buyer’s delivery point unless otherwise designated on the face of this Order, freight prepaid and represent the entire cost to Buyer, unless specifically stated otherwise. This means that they include, without limitation all charges for engineering, labor, overhead, and similar items.

08 PAYMENT

Invoices shall contain the following information: Purchase Order number, item number, description of goods or services, quantities, unit prices, and extended totals. If invoices are returned to Seller because of errors or omissions, discount terms will then date from the date of receipt by Buyer of corrected invoices. Payment under this Order shall not constitute acceptance of defective items. Payment of any sum to Seller or Buyer

with knowledge of any breach shall not be deemed to be a waiver of such breach or any other breach. The obligation of Seller in this Purchase Order shall survive acceptance of goods and payment therefor by Buyer.

09 TIME OF THE ESSENCE; DELAY

Time is of the essence. All goods shall be furnished and services rendered by the time or times specified in this Order, *provided* that Seller shall not be in breach if any delay is authorized in writing by Buyer or due to an act of omission of Buyer, fire, unusual transportation delay, strikes or other labor troubles beyond Seller's control, or other causes beyond Seller's control. Seller shall give Buyer immediate notice to be confirmed in writing within five days of any such delay.

10 WARRANTY AND GUARANTEE

- A. Seller expressly represents and warrants that all goods and services purchased pursuant to this Order shall conform to Buyer's specifications as set forth in this Order and to the drawings, samples, or other descriptions furnished or adopted by Buyer. Seller represents and guarantees all material and equipment furnished by Seller will be of first quality and made of new materials and components unless otherwise specified, and that Seller's work will be performed in a skillful and workmanlike manner. Seller further warrants that all goods delivered shall be free of liens, encumbrances or other title defects.
- B. Except as explicitly changed on the face of the Order, Seller guarantees all materials and workmanship for a period of one (1) year from date on first operations or first use, but not to exceed eighteen (18) months from date of receipt; normal wear and tear and corrosion excepted. Seller will extend to Buyer, or its designee, all applicable warranties extended to Seller by its suppliers.
- C. Based on written notification from Buyer, Seller agrees to repair, replace or reperform all defective or nonconforming items or work and such repair, replacement, or reperformance will be made free of charge. Replacement goods shall be sent F.O.B. Buyer's delivery point as designated on the face of this Order. Obligations and liabilities of Seller hereunder shall inure to the benefit of Buyer.
- D. Seller is responsible for conformance to specifications, performance, and guarantees of auxiliary apparatus, equipment, and components furnished by Seller through subvendors as part of this Order.

11 INDEPENDENT CONTRACTOR RELATIONSHIP

Seller shall act as and be deemed to be an independent contractor for purposes of this Order and shall not act as or be deemed to be an agent or employee of the Buyer. This Order is not intended to be one of hiring under the provisions of any workers' compensation or other law and shall not be so construed.

12 PERMITS

Seller will procure, at its own expense, all permits and licenses necessary for performance of this Order.

13 TRADEMARKS, COPYRIGHTS, PATENTS

Seller shall respect all trademark, copyright and patent rights of Buyer and shall not make, use or sell material reflecting such rights for any purpose other than fulfillment of this Order without the express permission of Buyer. Seller shall not sell or distribute or cause to be sold or distributed to anyone other than Buyer, either directly or indirectly, any goods ordered hereby which display or incorporate any of Buyer's trademarks, copyrighted material or patents.

14 INSPECTION AND ACCEPTANCE

Inspection and acceptance will be at destination, unless otherwise provided. Inspection and acceptance or rejection will occur within thirty days after delivery at destination. Until delivery and acceptance, or after rejection, risk of loss will be the responsibility of the Seller unless loss results from negligence of Buyer. Payment before inspection of goods or services shall not constitute acceptance. Buyer may, but need not, inspect the goods or services covered by this Order at all reasonable times and places during their manufacture and before and after delivery. Notwithstanding the requirements for any Buyer inspection and test contained in specifications applicable to this Order, the Seller shall perform or have performed the inspections and tests required to substantiate that the supplies and services provided under the Order conform to the drawings, specifications, and Order requirements listed herein, including, if applicable, the technical requirements for manufacturers' part numbers specified herein. Anything not in accordance with specifications may, at Buyer's option, either be returned or held for Seller's instructions. Inspection, reshipment and return costs incurred with respect to nonconforming or defective goods will be borne by Seller. Unless Buyer directs, Seller shall not replace returned goods.

15 SHIPMENT

Seller will deliver the material and equipment described herein in a condition acceptable to the Buyer, properly packaged for protection of shipment at the F.O.B. point (according to normal business practices) as designated on the face of this Order. Shipment to be at no additional cost to Buyer, unless otherwise specified herein. All Orders shall be shipped complete, as ordered. If only a portion of the Order is available for shipment to meet the required shipment date, Seller shall advise Buyer of the partial availability and ship the available equipment unless directed by the Buyer to reschedule the entire shipment.

16 PACKING

Seller shall package all shipments hereunder in accordance with the requirements specified in the Order or, if such are not specified, in accordance with standard commercial practices. Each shipment must contain a packing list indicating Purchase Order number, item numbers and other identifying information corresponding to that set out on the face of this Order.

17 MARKING

Prior to shipment, each package shall be clearly marked with Buyer's Purchase Order number, shipping symbols, serial numbers, weights, measurements, and other identification as may be directed by Buyer or reasonably necessary to facilitate prompt delivery.

18 VARIATION IN QUANTITY

No variation in the quantity of any item called for by this Order will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing process, and then only if the variation does not exceed five percent. Payment shall be adjusted accordingly.

19 TITLE

- A. Title to all material purchased or otherwise acquired hereunder by the Seller to effect performance under this Order will vest in the Buyer upon acceptance of such materials by Buyer.
- B. All drawings, data, designs, specifications or other work developed under this Order and other information furnished to or generated by the Seller, will remain or become the property of Buyer and will be delivered to Buyer during performance of the work if requested by Buyer or upon completion or

termination of this Order. Seller shall use its best efforts to prevent disclosure of such data to third parties without the knowledge and consent of Buyer.

20 COMPLIANCE WITH LAWS, REGULATIONS, AND CODES

Seller warrants that all goods furnished hereunder will comply with, and be manufactured, priced, sold and labeled in compliance with applicable federal, state and local laws, codes, rules, regulations, orders and ordinances, including without limitation, environmental protection, energy and labor laws and regulations and applicable industry codes and standards.

21 TERMINATION FOR DEFAULT

The Buyer, by written notice, may terminate this Order in whole or in part, for failure of the Seller to perform any of the provisions hereof. Termination shall be effective upon Seller's receipt of notice from Buyer. In such event, the Seller shall be liable for damages suffered by the Buyer due to the Seller's fault or negligence. Buyer shall have no further liability hereunder, except for conforming deliveries previously made.

22 TERMINATION FOR CONVENIENCE

The Buyer, by written notice, may terminate this Order, in whole or in part, when it is in the best interest of the Buyer. The Seller shall be compensated in accordance with the payment provisions of this Order for (i) services rendered or goods delivered prior to the effective date of termination; (ii) all actual costs incurred by Seller in connection with goods not completed or delivered to Buyer (except that there shall be no allowance for such goods that are Seller's standard stock); and (iii) a reasonable termination fee intended to compensate Seller for unrecoverable costs incurred, *provided* that the total of such amounts shall not exceed the total price stated in this Order.

23 BANKRUPTCY

Subject to applicable bankruptcy laws, in the event of any proceeding by or against Seller in bankruptcy, reorganization or insolvency or for the appointment of a receiver or any assignment for the benefit of creditors, Buyer may terminate this Order without further liability except for conforming deliveries previously made.

24 REMEDIES

The remedies of Buyer set forth herein are cumulative and in addition to any other remedies provided at law or in equity.

25 ASSIGNMENT

This Order may not be assigned or subcontracted, in whole or in part, nor may any assignment of any money due or to become due hereunder be made by Seller without, in each case, the prior written consent of Buyer.

26 WAIVER OF BREACH AND SEVERABILITY

Any waiver by Buyer of a breach of any term or condition of this Order shall not constitute a waiver of any subsequent breach of the same, or any other term or condition hereof. No waiver shall be binding upon Buyer unless in writing and signed by the Buyer and any such waiver shall be limited to the particular instance referred to. The invalidity in whole or in part of any term or condition of this Order shall not affect the validity of any other term or condition herein or the valid portion of that term or condition.

27 DISPUTES AND GOVERNING LAW

This Order shall be interpreted and enforced in accordance with laws of the Commonwealth of Virginia. Disputes which cannot be resolved by mutual agreement shall be resolved by a court of competent jurisdiction in the Commonwealth.

28 INDEMNITY

To the extent permitted by law, Seller shall indemnify Buyer and Buyer's agents, employees and contractors against all claims, liabilities, damages and expenses, including attorney's fees and disbursements, (i) for bodily injury, death or property damage arising out of any act of omission of Seller or its agents, employees or contractors relating to Seller's obligations hereunder; (ii) for trademark, copyright, or patent infringement relating to the goods or services furnished hereunder; or (iii) otherwise occurring as a result of Seller's obligations hereunder.

29 INSURANCE

Seller shall maintain adequate liability, employer's liability and workers' compensation insurance to protect Buyer and Buyer's agents, employees and contractors with respect to the indemnity contained in Paragraph 28 and any claims under workers' compensation, safety and health and similar laws and regulations relating to the goods or services furnished hereunder. If requested, Seller shall furnish evidence of such insurance in form and substance satisfactory to Buyer.

30 FEDERAL, STATE, AND LOCAL TAXES

Since this purchase is being made by the Metropolitan Washington Airports Authority, the purchase is exempt from sales and use taxation, both state and municipal. The Seller therefore certifies that there are no such taxes included in the prices shown herein.

31 ENTIRE AGREEMENT

This Order, together with all documents incorporated herein by reference, constitutes the entire agreement between Buyer and Seller, and there are no terms, conditions, or provisions either oral or written, between the parties hereto, other than those herein contained. This Order supersedes any and all oral or written understandings between the parties hereto relating to the items purchased hereunder.

32 BILLING INSTRUCTIONS

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

**Metropolitan Washington Airports Authority
Accounting Department, MA-22B
1 Aviation Circle, Suite 230
Washington, DC 20001-6000**

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

Invoices shall be properly identified with the Seller's name, address and applicable Purchase Order number. Invoices without proper identification will be returned to the sender. Invoices in excess of one (1) per month will be returned to the Seller.

The Buyer shall make payments within 30 calendar days after receipt of an acceptable invoice in the office designated to receive the invoice.

33 ELECTRONIC TRANSFER OF FUNDS

The Authority strongly recommends that contractors participate in a program whereby payments under this contract are made via electronic funds transfer into the contractor's bank. Seller requests to initiate such service shall include the bank name, address, account number, contact person, telephone number, and American Bankers Association (ABA) 9-digit identifying number. The initial request and any subsequent changes must be signed by the contractor's signatory of the contract and shall be submitted directly to the Authority's Finance Office (MA-22B).

34 CONTRACTOR SUBMISSION OF W-9 REQUIRED PRIOR TO CONTRACT AWARD

As a prerequisite for award, the Seller shall complete all parts of the Internal Revenue Service ("IRS") Form W-9 (Request for Taxpayer Identification Number and Certification). Purchase Order award will not be made until the completed W-9 has been received by the Authority. The W-9 form and instructions are available to contractors by accessing the IRS website at www.irs.gov and inserting the form number "W-9".

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

35 F.O.B. DESTINATION

A. The term "f.o.b. destination," as used in the provision, means--

1. Free of expense to the Buyer 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 wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the Seller. The Buyer 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 the Buyer acting in its contractual capacity. If rail carrier is used, supplies shall be delivered to the specified unloading platform of the consignee. If motor carrier (including "piggyback") is used, supplies shall be delivered to truck tailgate at the unloading platform of the consignee. If the Seller uses rail carrier or freight forwarder for less than carload shipments, the Seller shall assure that the carrier will furnish tailgate delivery if transfer to truck is required to complete delivery to consignee.

B. The Seller shall--

1.
 - a. Pack and mark the shipment to comply with Order specifications; or
 - b. In the absence of specifications, prepare the shipment in conformance with carrier requirements;

2. Prepare and distribute commercial bills of lading;
3. Deliver the shipment in good order and condition to the point of delivery specified in the Order;
4. 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 Order;
5. Furnish a delivery schedule and designate the mode of delivering carrier; and
6. Pay and bear all charges to the specified point of delivery.

36 CORRESPONDENCE PROCEDURES

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

Metropolitan Washington Airports Authority
Procurement and Contracts Department, MA-29
1 Aviation Circle, Suite 154
Washington, DC 20001-6000
Attn.: Eric R. Carey

SECTION VIII - RESERVED

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

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

01 OBLIGATIONS

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

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

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

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

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

The contractor is required to identify on the Invoice Attachment Form (Exhibit J) any expenditures to all first tier subcontractors including those who are D/M/WBE.

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

03 ELIGIBILITY

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

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

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

04 D/M/WBE PARTICIPATION

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

B. Offeror Conformance with D/M/WBE Requirements

1. Documents to be Submitted With Offer

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

2. Documents to Be Submitted After Offer Submission

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

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

3. Failure to Submit Documents and Information

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

C. The Authority's Equal Opportunity Programs office will assist offerors by identifying Authority certified DBE firms and MBE/WBE firms. Upon request, a directory of Local Disadvantaged, Disadvantaged, Minority Owned, Women Owned firms will be provided for information only. The Authority does not warrant or guarantee the performance capability of any firms listed therein. The Authority's Equal Opportunity Programs Office may be contacted at (703) 417-8625, or at the following address: Metropolitan Washington Airports Authority, Equal Opportunity Programs, 1 Aviation Circle, Washington, DC 20001-6000.

05 POST-AWARD COMPLIANCE

A. Compliance Reviews

1. The Authority may conduct post-award compliance reviews to ensure that the named D/M/WBEs on the original or, as a result of contract modification, amended Contract

Participation Form (Exhibit D), submitted to and accepted by the Authority, perform the work as assigned, and at least at the agreed price that was identified on Exhibit D. The Authority may use the Invoice Attachment Form (Exhibit J), or other appropriate information, to verify the participation of each D/M/WBE subcontractor identified on Exhibit D, as submitted by the prime contractor. Delineated on these forms will be the activities of all first tier subcontractors, including D/M/WBEs, for the purpose of monitoring the progress of all phases of the contract. The invoice attachment form will be submitted by the prime contractor with every invoice submitted.

2. The Authority is committed to equitable treatment, meaningful utilization of, and timely payment and return of retainage to, subcontractors, including D/M/WBE subcontractors. All offerors are advised that the contract resulting from this solicitation will include the following subcontractor payments and return of retainage clause:

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

This provision must be incorporated into all subcontracts.

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

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

06 DEFINITIONS

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

owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

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

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

1. any individual that the Authority finds to be a socially and economically disadvantaged individual on a case-by-case basis. Each such individual must submit the Personal Net Worth Statement showing that his or her personal net worth does not exceed \$1.32 million.
 2. any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged, provided that the individual also submits the Certification of Social and Economic Disadvantage Eligibility and the Personal Net Worth Statement showing that his or her personal net worth does not exceed \$1.32 million.
 - a. “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;
 - b. “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - c. “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - d. “Asian-Pacific American,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - e. “Subcontinent Asian-Indian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh; Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - f. Women;
 - g. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- B. The term “subcontractor” for purposes of Section VIII, shall mean an individual or firm with which the offeror or subcontractor, proposes to enter into an agreement for the performance of work on the site or for the manufacture, fabrication, or supply of equipment or materials or services used in the construction of the project. The term “subcontractor” shall further refer only to first tier subcontractors unless the contract also permits second tier contracting.
- C. The term “Joint Venture” shall mean an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills, and/or knowledge.
- D. “Affiliates” Business concerns are affiliates of each other when either directly or indirectly, (1) one business concern controls or has the power to control the other, or (2) a third party or parties controls or has the power to control both. In determining whether business concerns are affiliated, consideration shall be given to all appropriate factors, including common ownership, common management, and

contractual relationships. The provisions of 13 CFR Part 121 will be used to guide the Authority in determining whether firms are affiliated.

- E. “Minority Business Enterprises” (MBE) To be considered a minority-owned business enterprise, the business concern must be at least 51 percent owned and controlled by one or more minority (African American, Hispanic American, Native American, Asian-Indian American, Asian Pacific American) individuals. The firm's management and daily business operations must be controlled by one or more of the qualifying individuals who own it.
- F. “Women Business Enterprises” (WBE). To be considered a women-owned business enterprise, the business concern must be at least 51 percent owned and controlled by one or more female individuals. The firm's management and daily business operations must be controlled by one or more of the qualifying individuals who own it.
- G. “Commercially Useful Function” A D/M/WBE is considered to perform a commercially useful function when it:
 - a. is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved;
 - b. is responsible, with respect to materials and supplies used on the contract, for negotiating price, ordering materials, and installing (where applicable) and paying for the material itself; and
 - c. when the amount of work performed, when compared to industry practices, is commensurate with the amount the D/M/WBE is to be paid under the contract and the D/M/WBE credit claimed for its performance of the work. If a D/M/WBE does not perform or exercise responsibility for at least thirty percent (30%) of the total value of its contract with its own work force, or the D/M/WBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it may be presumed that the D/M/WBE is not performing a commercially useful function.
- H. “Virginia Unified Certification Program (VUCP)” The certifying entity that is responsible for the certification of DBEs under 49 CFR Part 26 for the Commonwealth of Virginia. The two organizations that comprise the VUCP are the Metropolitan Washington Airports Authority and the Virginia Department of Minority Business Enterprise.

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

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

Name of Offeror: _____ Project Name: _____

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

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

EX	LIST THE PRIME AND <u>ALL</u> FIRST TIER FIRMS PARTICIPATING IN THIS CONTRACT <small>Identify whether firms are *P, S, JV, SP, B, H, MFG, in next column.</small>	TYPE OF FIRM <small>(see below)</small>	FEDERAL TAX ID <small>(also known as Employer Identification Number) nine digit number.</small>	Enter "X" for all that apply				ADDRESS <small>(Number, Street, City, State, ZIP)</small>	DESCRIBE TYPE OF WORK <small>(Electrical, Paving, etc. with notation e.g. "Labor Only", "Material Only", "Complete") Item Number if Applicable, Quantity, Unit Price</small>	AGREED PRICE
				DBE	MBE **	WBE ***	OTHER			
1	SAMPLE	S	55-5555555	X	X			12345 Main Street, Washington, DC 20001	Furnish and install Structural Steel	\$986,000.00
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
12										
13										
14										
15										
16										
17										
TOTAL AGREED PRICE MUST EQUAL TOTAL OFFERED PRICE:										

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

Signature: _____ Date: _____

TYPE OF FIRM

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

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

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

**METROPOLITAN WASHINGTON AIRPORTS AUTHORITY
LETTER OF INTENT**

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

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

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

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

Please Attach Additional Sheets if Necessary

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

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

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

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

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

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

FOR MWAA USE ONLY

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

MWAA/EOP 02/2005

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

(Name of Prime Contractor) Contract Number _____

(Name of 1st Tier Subcontractor (If Applicable)) Location _____

 Contract Name _____

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

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

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

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

Please Attach Additional Sheets if Necessary

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

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

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

(Print or Type Name of Prime Contractor)

By _____

(Print or Type Name and Title) _____

(Print or Type Name and Title)

(Signature) _____

(Date) _____

(Date)

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

FOR MWA USE ONLY

MWA EOP Specialist's Approval \$ _____

 (Enter The Amount of Contract Approved for DBE Participation) (Signature) _____

 (Date)

EXHIBIT F

DBE CERTIFICATION APPLICATION

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

<http://www.mwaa.com/362.htm>

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY
APPLICATION FOR JOINT VENTURE ELIGIBILITY

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

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

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

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

b. NATURE OF JOINT VENTURE'S BUSINESS: _____

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

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

YES NO IF YES, WHICH ONE? _____

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

AFFIDAVIT

“The undersigned swear that the foregoing statements are true and correct and include all material information necessary to identify and explain the terms and operation of the joint venture and the intended participation by each joint venturer in the undertaking. Further, the undersigned covenant and agree to provide the Metropolitan Washington Airports Authority (the Authority) current, complete, and accurate information regarding actual joint venture work and the payment therefor and any proposed changes in any of the joint venture arrangements and to permit the audit and examination of the books, records, and files of the joint venture, by authorized representatives of the Authority or the Federal funding agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements.”

Name of Joint Venture (if any) _____

Names of companies forming Joint Venture _____

Signature(s) _____

Name(s) _____

Title(s) _____

Date _____

State of _____

County of _____

On this _____ day of _____, 20____, before me appeared (name) _____, to me personally known, who being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (name of firm) _____ to execute the affidavit and did so as his or her free act and deed.

Notary Public _____

Commission Expires _____

[Seal]

On this _____ day of _____, 20____, before me appeared (name) _____, to me personally known, who being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (name of firm) _____ to execute the affidavit and did so as his or her free act and deed.

Notary Public _____

Commission Expires _____

[Seal]

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY INVOICE ATTACHMENT FORM

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

Payments Received \$ _____
 Retainage Withheld \$ _____
 Date Submitted _____

Percent Original Contracted Participation _____ %

#	NAME OF SUBCONTRACTOR	DESCRIPTION OF WORK	* D B E	M B E	W B E	O T H E R	MONTHLY CONTRACT INFORMATION				% C O M P L E T E	% D B E
							ORIGINAL SUBCONTRACT AMOUNT	CURRENT SUBCONTRACT AMOUNT	TOTAL PAYMENTS TO DATE	AMOUNT THIS INVOICE		
1												
2												
3												
4												
5												
6												
7												
8												
9												
10												
11												
12												
13												
14												
15												
16												
17												
18												
TOTALS												

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

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

Signed: _____ Title _____ Date _____

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

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

I. USE AUTHORIZED FORMS

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

II. REPORT ALL DBEs EVERY MONTH

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

III. LEDGER PORTION

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

B. Classification of Subcontractor(s)

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

Assign classifications as follows:

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

Metropolitan Washington Airports Authority
Instructions for Completing the Invoice Attachment Form

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

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

C. Original Subcontract Amount

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

D. Current Subcontract Amount

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

E. Total Payments to Date

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

F. Amount of This Invoice

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

G. Percentage Amount Complete

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

H. Percent DBE

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

Metropolitan Washington Airports Authority
Instructions for Completing the Invoice Attachment Form

IV. TOP PORTION OF INVOICE ATTACHMENT FORM

A. Original Contract Amount

Enter the original amount of the Prime's Contract.

B. Payments Received

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

C. Current Contract Amount

Enter the current amount of the Prime's Contract.

D. Retainage Withheld

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

E. Invoice Period

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

F. Date Submitted

Enter the date the report is submitted to the Authority.

G. Actual DBE Participation to Date \$

Enter the sum of Total Payments to DBEs.

H. Current Scheduled DBE Participation \$

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

I. Total Original Contracted DBE Participation \$

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

J. Percentage Original Contracted Participation

Enter the percentage of required DBE participation for this contract.

SECTION X - ATTACHMENTS

ATTACHMENT 01
STATEMENT OF WORK

**METROPOLITAN WASHINGTON AIRPORTS AUTHORITY (THE AUTHORITY)
STATEMENT OF WORK**

**RAIL PHASE II OFFICE – TELECOMMUNICATIONS DULLES METRO PHONE SYSTEM EXPANSION
PBX EQUIPMENT**

1. Install, program and maintain new AVAYA CS1000E PBX phone system to work in tandem with the existing Tyson's Dulles Metro Rail AVAYA phone system. The contractor shall furnish, install and test all of the items listed in this SoW (See Specifications Sheet included with this solicitation).
 - 1.1. Contractor shall be responsible for the gathering, transporting and placing of all telephones and associated communications equipment from the current Tyson's Dulles Metro (DMR) office to the new Herndon DMR office.
 - 1.2. Contractor will utilize all existing cable inside the Equipment Room and shall be responsible for all toning, testing and labeling of the frame in conjunction with the new TDM system (station cable will be tested and certified by others).
 - 1.3. Contractor shall ensure equipment is on site, ready to commence installation, two (2) weeks after receiving order.

ATTACHMENT 02

SPECIFICATIONS

SPECIFICATIONS**RAIL PHASE II OFFICE – TELECOMMUNICATIONS DULLES METRO PHONE SYSTEM EXPANSION
PBX EQUIPMENT****01 BACKGROUND**

The Rail Office Telecommunications network infrastructure is managed as an extension of the Authority's Airport Communications System (ACS) network which has standardized with Avaya CS1000E branded equipment. This standardization affords the ability to leverage existing support staff, telephones and spare pools for routine and emergency maintenance without additional cost. Offerors may propose only manufacturer certified branded equipment as identified in this specification or "B" stock products that are deemed to be a 100% equivalent in form, function and technical capability. These products must be reviewed and approved by the Authority.

02 BRAND NAME OR APPROVED EQUAL

Unless otherwise provided in the solicitation, or unless the name is followed by words indicating that no substitution is permitted, the reference to a certain brand name, make, model number or manufacturer does not restrict the proposal to the specific brand, make, model number or manufacturer identified. The specific references to a brand is not intended to exclude other products but to convey the salient characteristics of function, performance, design requirements and quality of the item described. Comparable products of other manufacturers will be considered if proof of comparability is contained in or accompanies the proposal. Any item which the Authority, in its sole discretion, determines to be equal to that which is specified, considering quality, workmanship, economy of operation, and suitability for the process intended, will be accepted.

03 AUTHORITY APPROVED EQUAL

Offerors are advised that these specifications, although generally reflecting the characteristics, attributes, and construction features required, are set forth for illustrative purposes only. Proposals are invited for items having generally the same characteristics of those specified. In submitting proposals, Offerors must furnish specifications, brochures, and other relevant data as required in the attached specifications so that the Authority may fairly determine what is in its best interest; failure to provide such evidence for comparable products shall be deemed non-conforming to the solicitation. The Authority, in its analysis, will consider relative costs, equivalency of features, serviceability, the design of the item proposed, and other pertinent data.

04 EXCEPTIONS TO SPECIFICATIONS

All elements of the specifications indentified by asterisk (*) are considered critical and exceptions to these specifications are not allowed. Proposals having exceptions to such critical elements shall be deemed non-conforming to the solicitation. Any and all exceptions to Specifications shall be listed on the "Exceptions to Specifications" Form included herein as Attachment 03. Use plain white paper if additional space is required.

INSTRUCTIONS: Complete this form and submit with quotation. Circle YES if quoting on the specified product or NO if quoting on an equivalent product. If NO, use Attachment 2, Exceptions to Specifications, to provide a complete description of the item quoted, to include detailed specifications and adequate information to prove equivalence to the specified item.

All elements of the specifications denoted in bold italic type are considered critical. Exceptions to these specifications are not allowed. Quotations having exceptions to such critical elements shall be deemed non-conforming.

ITEM	PRODUCT	SPECIFICATION	FUNCTION	QTY	YES	NO
A	AVAYA CS 1000E	CPMG128 CoRes SW R7.6	System software, dongle kit & hard drive that runs the PBX	1	YES	NO
B		ERS-4548GT-PWR NA PC	POE data switch; provides Ethernet connectivity for data devices	1	YES	NO
C		MG1000 Chassis and Cabinet T1	PRI Interface cards for trunks	5	YES	NO
D		Ground Bar Assembly Opt 1	Provides electrical ground to PBX	1	YES	NO
E		MG1010 Power Supply	Power source for cabinet	2	YES	NO
F		Cable Ethernet RJ45 M-M 25cm	Cable connectivity between media gateways	2	YES	NO
G		Media gateway MG1010 Chassis	Housing for system cards	1	YES	NO
H		UDT Clock Controller D/B	Provides digital synchronization for PRI trunks	2	YES	NO
I		UDT E1/T1 Pack	Trunk interface card	3	YES	NO
J		1 Premier Service Pkg TDM User License	Software license for digital telephone sets	220	YES	NO
K		CS1000E CPMG OL/T SA MG 1010	1010 system cabinet, includes server and additional power supply- system package	1	YES	NO
L		PWR Cord 9.9ft 11CM 125VA	Provides connectivity from system to A/C outlet	4	YES	NO
M		SW Pkg 57-BARS-BASIC Alternate	Software package for routing between telephone systems (PBX)	1	YES	NO
N		UDT E1/T1 Pack (B8)	Trunk interface card to secondary PBX	2	YES	NO
O		APC 3000XLSmart UPS Battery Backup	Provides battery backup for AC circuit failure	1	YES	NO
P		Digital Line Card ("B" stock)	Refurbished digital line cards (16 ports per card) for digital telephones	13	YES	NO
Q		Analog Message Waiting Line Card ("B" Stock)	Refurbished line cards (16 ports per card) for fax machines and single line telephones	2	YES	NO
R		Universal Trunk Card	Provides 8 port interface card for analog trunks	1	YES	NO
S		PASS for CS1000E and Ethernet routing switches	Manufacturer support for system hardware and software	1	YES	NO

ATTACHMENT 03

EXCEPTIONS TO SPECIFICATIONS
(MUST BE RETURNED WITH QUOTATION)

This undersigned quoter hereby certifies that its quotation against the above RFQ is fully compliant with the specifications except for the following: (Exceptions MUST be stated on this form in addition to providing reference literature and other relevant data).

RFQ SPECIFICATION	DETAILED EXCEPTION

(USE ADDITIONAL PAGES AS NEEDED)

Except as noted above, the undersigned certifies full compliance with the specifications stated in the RFQ. It is understood and agreed that in the event the items delivered upon award are not compliant, the supplier will be required to take whatever steps necessary to insure full compliance at no additional cost to the Metropolitan Washington Airports Authority.

**FAILURE TO EXECUTE AND RETURN THIS FORM MAY RESULT IN
DISQUALIFICATION OF YOUR QUOTATION**

Signature of Authorized Representative

Name of Authorized Representative Title Date

ATTACHMENT 04
FEDERAL REQUIREMENTS

FEDERAL REQUIREMENTS ADDENDUM**JANUARY 13, 2012**

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

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

For purposes of this Addendum, the following definitions apply:

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

1. Fly America

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

requirements. Contractor shall flow-down the requirements of this section to all Subcontracts that may involve international air transportation.

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

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

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

3. Buy America

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Seismic Safety Requirements

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

5. Energy Conservation Requirements

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

6. Clean Water Requirements

(a) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251 et seq. Contractor agrees to report

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

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

7. Lobbying

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

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

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

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or intending to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including Subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

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

8. Access to and Retention of Records

- (a) Contractor agrees to permit Owner, the U.S. Secretary of Transportation, the FTA Administrator, the Comptroller General of the United States, or their duly authorized representatives, to inspect all any books, documents, papers, records, accounts and reports of Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives, including any PMO Contractor, access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
- (b) Where Owner enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, Contractor shall make available records related to the Contract to Owner, the U.S. Secretary of Transportation, the FTA Administrator, the Comptroller General of the United States, or their duly authorized representatives for the purposes of conducting an audit and inspection.
- (c) Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (d) Contractor agrees to maintain all books, documents, papers, records, accounts and reports required under this Contract, consistent with 49 CFR §18.39(i)(11), for a period of not less than three (3) years after the date of final payment under the Contract or termination or expiration of the Contract, except in the event of litigation or settlement of claims arising from the performance of the Contract, in which case Contractor agrees to maintain same until the U.S. Secretary of Transportation, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.
- (e) Contractor agrees to include this Section 8 in each Subcontract at each tier. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

9. FTA Requirements

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

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

10. Clean Air

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

11. Recycled Products and Recovered Materials

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

12. Davis-Bacon and Copeland Anti-Kickback Acts

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

(1) Minimum wages –

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

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

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

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

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

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

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

(4) **Apprentices and trainees –**

- (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed

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

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

(11) **Certification of eligibility –**

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

13. Contract Work Hours and Safety Standards

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

- (a) **Overtime requirements** - No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (b) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (b)(1) of this section Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- (c) **Withholding for unpaid wages and liquidated damages** - Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or Subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- (d) **Subcontracts**. Contractor or Subcontractor shall insert in any Subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier Subcontracts. Contractor shall be responsible for compliance by any

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

14. Employee Protections

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

15. No Government Obligation to Third Parties

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

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

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

17. Debarment and Suspension

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

18. Privacy Act

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

- (a) Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, Contractor agrees to obtain the express consent of the Federal Government before Contractor or its employees operate a system of records on behalf of the Federal Government. Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- (b) Contractor also agrees to include these requirements in each Subcontract to administer any system of records on behalf of the federal government financed in whole or in part with federal assistance provided by FTA.

19. Civil Rights Requirements

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

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

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

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

20. Rights In Data and Patent Rights

(a) Rights in Data

- (1) The term "subject data" used in this Section 20 means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog

item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

- (2) The following restrictions apply to all subject data first produced in the performance of the Contract to which this Exhibit has been added:
- (a) Except for its own internal use, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
 - (b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)(1) and (2)(b)(2) of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 - 1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
 - 2. Any rights of copyright purchased by Contractor using Federal assistance in whole or in part provided by FTA.
 - (c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, if Contractor performs experimental, developmental, or research work required by the Contract, it agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.
 - (d) Unless prohibited by state law, upon request by the Federal Government, Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Contractor shall not be required to indemnify the Federal

Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

- (e) Nothing contained in this Clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
 - (f) Data developed by Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that Contractor identifies that data in writing at the time of delivery of the contract work.
 - (g) Unless FTA determines otherwise, Contractor agrees to include these requirements in each Subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- (3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Contractor agrees to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
- (4) Contractor also agrees to include these requirements in each Subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- (b) Patent Rights. The following requirements apply to each contract involving experimental, developmental, or research work:
- (1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
 - (2) Unless the Federal Government later makes a contrary determination in writing, irrespective of Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), Contractor agrees to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
 - (3) Contractor also agrees to include the requirements of this clause in each Subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

21. Transit Employee Protective Provisions

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

22. Environmental Requirements

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

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

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

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

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

23. Disadvantaged Business Enterprises

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

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

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

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

24. Seat Belt Use

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

25. Substance Abuse

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

26. Protection of Sensitive Security Information.

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

27. Access for Individuals with Disabilities

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