METROPOLITAN TRANSIT AUTHORITY

INVITATION FOR BIDS (IFB)

FOR

Cambridge Signals and Ramp Reconstruction

METRO IFB NO. 4020000088

Bidder's signature on Invitation for Bids (Section II – Forms for Bidding/Award) constitutes acceptance of a contract that may result from this solicitation. Contract award/execution may be made by METRO without discussion.

METRO FUNDING 100%

IMPORTANT – Notice to Bidder
All responses to this solicitation must be labeled as indicated below and delivered or mailed to the following address:

Metropolitan Transit Authority
Procurement Division
Plan Room, 2nd Floor
1900 Main Street
Houston, Texas 77002

Upper Left Corner of Envelope Must Indicate:
Bidder/Contractor Name and Address

Lower Left Corner of Envelope Must Indicate:
Solicitation Number
Due Date
Due Time
Solicitation Title
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SECTION I - BIDDING REQUIREMENTS AND INSTRUCTIONS

1 INVITATION FOR BIDS SUMMARY

IFB NO.: 4020000088 IFB ISSUE DATE: February 24, 2020

PROJECT NAME: CAMBRIDGE SIGNALS AND RAMP RECONSTRUCTION

ISSUED BY: Metropolitan Transit Authority of Harris County (METRO)

SUBMIT INQUIRIES BY WRITING OR CALLING:
(No collect calls accepted):

METROPOLITAN TRANSIT AUTHORITY
Procurement Division
1900 Main Street
Houston, Texas 77002

NAME: Juanita W. Jackson
TITLE: Contract Administrator II
TELEPHONE: (713) 739-4069
E-MAIL: jw02@ridemetro.org
FAX: (713) 739-4035

METRO Procurement Web site: https://www.ridemetroapp.org/procurement/

NOTE TO BIDDERS: BIDDERS ARE RESPONSIBLE FOR ALL INFORMATION IN THIS SOLICITATION, HOWEVER, PLEASE PAY Particular ATTENTION TO INFORMATION SHADED IN GRAY.

BID OPENING TIME/LOCATION: Sealed bids in original form for work described herein will be received until 2:00 p.m. local time on Wednesday, April 8, 2020, at the METRO Procurement Office Plan Room, 2nd floor, 1900 Main St., Houston, Texas 77002. Bids will be opened publicly and read aloud at 10:00 a.m. on Thursday, April 9, 2020, in the same location.

A PRE-BID CONFERENCE will be held at 10:00 a.m. on March 12, 2020, in Conference Room #8005, 1900 Main St., Houston, Texas, 77002. (Note: Check-in at the security desk is required, and a Procurement Representative will escort attendees to the meeting room.) A Site Visit is scheduled right after the Pre-Bid Conference. Be prepared to ride the METRO Rail Red Line to the Site.

The purpose of the conference is to explain the solicitation requirements and answer any questions prospective bidders may have regarding the solicitation. All questions pertaining to this solicitation shall be presented in writing to the above METRO representative at or prior to the Pre-Bid Conference. IT IS STRONGLY URGED THAT ALL BIDDERS ATTEND THE PRE-BID CONFERENCE;

Please click on this link to see parking lots available in downtown Houston near the 1900 Main Building. https://www.ridemetroapp.org/procurement/Documents/MetroParkingMap.pdf. Prospective bidders unable to attend the conference in person may participate by telephone using the dial-in information provided below.

Dial-In Telephone No.: (866) 528-2256
Participant Passcode: 7435082

PERFORMANCE PERIOD: The period of performance under this Contract shall be for Two Hundred and Forty (240) calendar days, unless otherwise extended by METRO. (See Contract Article ‘Period of Performance’ in Section III).

BID SECURITY: Not less than five percent (5%) of the total bid price is required if the bid price is over $100,000.00. (See Instructions to Bidders, Paragraph D.)

PERFORMANCE AND PAYMENT BONDS: A performance bond shall be required if the Contract amount is over $100,000.00. A payment bond shall be required if the Contract amount is over $25,000.00. Bonds shall be executed for one hundred percent (100%) of the value of the Contract. (See Contract Articles ‘Performance and Payment Bonds’ and ‘Additional Bond Security’ in Section III).

LIQUIDATED DAMAGES in the amount of $510.00 per calendar day will be assessed for each calendar day of delay beyond the completion date. (See Contract Article ‘Liquidated Damages’ in Section III).

INSURANCE: Each prospective bidder is cautioned to review the Insurance requirements of this solicitation. (See Contract ‘Insurance Articles’ in Section VI.)

LICENSING: When a special license or permit is required by federal, state or local law or ordinance, a bidder must be properly licensed prior to bidding and furnish evidence of such with the bid.

OBLIGATION: This Invitation for Bids does not obligate the Metropolitan Transit Authority to award a contract, or to pay any costs incurred in the preparation or submittal of any bid.
DAVIS BACON'S RATES: Wage rates for this solicitation are those of Federal-General Wage Decision TX200038 for Highway Construction in Harris County, dated January 3, 2020. See Exhibit E.

REGISTRATION ON PROCUREMENT WEBSITE: All bidders/proposers MUST register on METRO's procurement website at https://www.ridemetroapp.org/procurement/ to ensure that they receive the latest solicitations and updates via their registered e-mail address.

REPRODUCTION: All forms contained in this solicitation may be reproduced if more space is needed due to the number of subcontractors or suppliers to be submitted with the bid or for any other reason.

SMALL BUSINESS PARTICIPATION GOAL: METRO has adopted a Small Business Enterprise Program to encourage the participation of Small Business enterprises in contracting activities through race-gender neutral means. METRO sets Small Business Participation goals on its contracts. Small Business Participation goals can be satisfied by METRO-certified Small Businesses (SBE), Texas Unified Certification Program (TUCP)-certified Disadvantaged Business Enterprises (DBE), or a combination of both. All references to Small Businesses in this document include Disadvantaged Business Enterprises. Copies of METRO's Small Business and Disadvantaged Business Enterprise Programs can be obtained upon request.

This solicitation has a 35% Small Business Participation goal.

BIDDERS WHO FAIL TO COMMIT TO THE SMALL BUSINESS CONTRACT GOAL WILL BE DEEMED NONRESPONSIVE AND NO FURTHER CONSIDERATION WILL BE GIVEN TO THEIR BID.

METRO ENCOURAGES SMALL BUSINESS PARTICIPATION EVEN IF NO SMALL BUSINESS CONTRACT GOAL HAS BEEN ESTABLISHED.

METRO encourages Contractors to use financial institutions owned and controlled by socially and economically disadvantaged individuals. A listing of such institutions may be found at https://www.fdic.gov/regulations/resources/minority/mdr.html

TYPE OF AWARD: METRO anticipates the award of a firm fixed price type contract as a result of this solicitation.

2 INSTRUCTIONS TO BIDDERS

A. APPROVAL OF CONTRACT

If required by the METRO Procurement Manual, award of a contract evolving from this solicitation shall be contingent upon the prior receipt of written approval from the METRO Board of Directors. No contractual agreement shall be binding on METRO until this approval has been obtained. It shall be the responsibility of firms responding to this solicitation to monitor Board award decisions. All persons and/or entities responding to this solicitation hereby acknowledge the contract award requirement enumerated in this paragraph. Anticipated Board Items are posted on METRO's web site at https://www.ridemetro.org/Pages/BoardMeetingsAndNotices.aspx

Public Notice of Solicitation Results
The anticipated METRO Board meeting month for approval of a contract resulting from this solicitation will be forthcoming. It is the responsibility of the bidder to check METRO’s website for notices on the specific dates for METRO Board meetings. All bidders of this solicitation and METRO hereby agree that this provision shall serve as the minimum required action by the bidder toward exercising due diligence in obtaining the results of this solicitation. The requirement of approval by the METRO Board of Directors for any particular solicitation is dependent upon several factors. However, all bidders shall be required to check the METRO web site regarding whether or not the solicitation associated with their bid requires approval by the METRO Board of Directors. All persons and/or entities responding to this solicitation hereby acknowledge the public notice of solicitation results enumerated in this paragraph. METRO Board meeting notices are posted on METRO's website at: https://www.ridemetro.org/Pages/BoardMeetingsAndNotices.aspx

B. AWARD OF CONTRACT

1. Award of a contract, if awarded, will be made to the responsive and responsible bidder offering the lowest bid price and whose bid conforms to the solicitation documents. The lowest price bidder is not guaranteed that it will receive the METRO contract award.

2. A written Notice of Award will be issued to the successful bidder upon being selected for award of a contract and execution of any resultant contract.

3. The successful bidder must provide a current Workers' Compensation Insurance Certificate prior to being awarded the contract.

4. METRO reserves the right to reject any and all bids, to waive any informalities in bids received and the right to reject all nonconforming, unbalanced, non-responsive or conditional bids. Discrepancies between words and figures will be resolved in favor of words.
C. BID EVALUATION

1. Bids will be evaluated on the basis of the 240-calendar day bid amount for all items as identified on the Bid/Contract Amount Items and Prices.

2. Bidders must bid on all items to be considered for award. Bids submitted for quantities less than specified for each item will be rejected as non-responsive.

3. A split award will not be made. Bidders must bid on all items and award will be made based on the total aggregate price.

4. Bids containing apparent clerical mistakes such as discrepancy between unit bid price and the price extension or the sum of the extended amounts and the total bid price, or other apparent clerical mistakes, will be resolved by the Contract Administrator in accordance with the ‘Errors in Bids’ procedures contained in METRO’s Procurement Manual in Chapter 4.

5. In the event of tie bids, the successful bidder will be determined by drawing of lots at an open meeting with the tie bidders invited to attend.

D. BID SECURITY

1. Each bid shall be accompanied by bid security, drawn payable to the Metropolitan Transit Authority, in the amount required by the Invitation for Bids. The bid security shall be a cashier’s check, a certified check or a bid bond issued by a surety licensed to do business in Texas, approved for the full amount of bond coverage required on the U.S. Department of the Treasury Circular 570 and by METRO. Failure to furnish the bid security in the proper form and amount by the time set for opening of bids will result in rejection of the bid.

2. Bid security, other than a bid bond, will be returned to:

   (a) Unsuccessful bidders as soon as practicable after the opening of bids, and

   (b) The successful bidder upon execution of such further contractual documents and bonds as may be required by the contract documents.

3. If the successful bidder, upon acceptance of its bid by METRO within the period specified therein for acceptance, fails to execute such further contractual documents and furnish such bonds as may be required by the contract documents within the time specified in the contract, will forfeit any bid security provided.

E. BIDDER QUALIFICATIONS/ELIGIBILITY FOR AWARD

1. In order for a bidder to be eligible to be awarded the contract, the bid must be responsive to the Invitation, show the bidder’s technical competency, and METRO must be able to determine that the bidder is responsible to perform the contract satisfactorily.

2. A responsive bid complies with all material aspects of the solicitation. Bids that do not comply with all the terms and conditions of the solicitation will be rejected as non-responsive.

3. Responsible bidders as a minimum must:

   a) Show evidence of having performed a project of similar size, scope, and complexity.

   b) Have financial resources adequate to perform the contract, or ability to obtain such resources as required during the performance of the contract;

   c) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments;

   d) Have a satisfactory record of current and/or past performance in behalf of METRO and/or other owners, including the areas of scheduling, submittals, record keeping, reporting, qualified supervision, skilled workforce, safety, quality of equipment, materials and workmanship, timely performance, warranties and guarantees;

   e) Have the necessary technical equipment, material and capability, including qualified supervision and skilled workforce, adequate to perform the contract, or the ability to obtain such resources as are required during the course of the contract;

   f) Have a satisfactory record of business integrity and ethics;

   g) If applicable, have a satisfactory record as a Contractor of achieving Small Business Participation goals in past METRO
projects, as well as providing evidence satisfactory to METRO that the bidder will comply with Small Business Program requirements and any Small Business Participation goal contained herein.

h) Certify that it is not on the U.S. General Services Administration’s ‘Lists of Parties Excluded from Federal Procurement or Non-procurement Programs.’ Signing and submitting the bid is so certifying;

i) Be qualified as an established firm regularly engaged in the type of business to provide the items/work required by this solicitation, and

j) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

4. A bidder may be requested to submit written evidence verifying that it meets the minimum criteria necessary to be determined a responsible bidder. Refusal to provide requested information will result in the bidder being declared non-responsive, and the bid will be rejected.

5. Bids deviating or taking exception to the solicitation requirements will not be considered.

F. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTION

1. The bidder certifies, by submission of the bid, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

2. Where the bidder is unable to certify to any of the statements in this certification, the bidder shall attach an explanation to the bid it submits to METRO.

G. CONFLICTS DISCLOSURE

Vendors doing business with METRO or seeking to do business with METRO are required to file a completed questionnaire (FORM CIQ) disclosing the vendor’s affiliations or business relationship with any Board Member, local government officer (or his or her family member). Form CIQ is available on METRO’s website at https://www.ridemetro.org/Pages/ConflictsDisclosure.aspx.

H. CONTRACT BONDS AND INSURANCE

The bidder whose bid is accepted shall, within the time established in the Invitation for Bids, enter into a written contract with METRO and, if required, furnish Certificates of Insurance and Performance and Payment Bonds in the amounts indicated in the contract.

I. COVENANT AGAINST CONTINGENT FEES

By submitting this bid, the bidder certifies that he has not employed any company or person (other than a full-time, bona fide employee working solely for the bidder) to solicit or secure this contract, and has not paid or agreed to pay any company or person (other than a full-time, bona fide employee working solely for the bidder) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of this contract; and agrees to furnish information relating to the above, as requested by the Contracting Officer.

J. DISCOUNTS

1. No discounts will be considered in the evaluation of bids.

2. Discounts for early payment may be offered in the original bid or on individual invoices submitted under the resulting Contract, and discounts offered will be taken by METRO if payment is made within the discount period specified.

3. Discounts that are included in bids become a part of the resulting Contract and are binding on the Contractor. Discounts offered only on individual invoices will be binding on the Contractor only for the particular invoice on which the discount is offered.

K. DISQUALIFICATION

METRO reserves the right to disqualify a bid, before or after the bid opening, upon evidence of collusion with intent to defraud or other illegal practices on the part of a bidder.

L. EXAMINATION OF DOCUMENTS

1. A complete set of bid documents shall be used in preparing a bid. Bids will be accepted only from those bidders listed on METRO’S official Bidder’s List at the designated bid opening time. METRO assumes no responsibility for errors or misinterpretations resulting from the use of incomplete sets of documents.
2. METRO, in making copies of these documents available on the above terms, does so only for the purpose of obtaining bids on the work and does not convey a license or grant for any other use.

3. Each bidder should carefully examine these documents and take such other steps as may be reasonably necessary to ascertain the contract performance requirements. Failure to do so will not relieve bidders from responsibility for estimating properly the difficulty or cost of successfully performing the contract. Extra compensation will not be allowed for conditions which are determinable by examining these documents. METRO will assume no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of the contract, unless included in these documents.

4. Each bidder should visit the work site, carefully examine these documents and take such other steps as may be reasonably necessary to ascertain the nature and location of the work, and the general and local conditions, including visible and existing utilities and structures (i.e. water lines, telephone poles and overhead lines, power lines, meters, railroad tracks, etc.), which can affect the work or the cost thereof. Each bidder/proposer shall make itself aware of local labor availability, means of transportation, local weight restrictions, laws, codes, wage scales, local tax structure, Contractor’s license and permit requirements, availability of required insurance, and other factors that could affect the work. Failure to do so will not relieve bidders from responsibility for estimating properly the difficulty or cost of successfully performing the work. Extra compensation will not be allowed for conditions which are determinable by examining these documents or the work site.

M. EXPLANATIONS/AMENDMENTS ISSUED TO BIDDERS

1. Any explanation desired by a bidder regarding the meaning or interpretation of the IFB or its scope of services must be requested in writing and received by METRO at least ten (10) calendar days before the date set to receive bids. METRO’s response will be in the form of an amendment and will be furnished to all prospective bidders. METRO may also issue amendments when a solicitation is changed.

2. The bidder must acknowledge receipt of every amendment issued by METRO in the space provided on the Amendment form itself and submit a copy of all amendments with the bid, or send a letter of amendment acknowledgement to be received by METRO before the time set for receipt of bids. Oral explanations or instructions given before the award of the contract will not be binding. METRO will assume no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of the contract, unless included in these documents.

N. INDEPENDENT PRICE DETERMINATION

By submitting this bid, the bidder certifies that he has not colluded, conspired, connived, or agreed, directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from bidding; and further, that he has not in any manner, directly or indirectly sought by agreement, collusion, communication or conference, with any person, to fix the bid amount herein or any other bidder, or to fix any overhead, profit, or cost element of said bid amount, or that of any other bidder, or to secure any advantage against METRO or any person interested in the proposed contract.

O. INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting a bid, the bidder is providing the certification set out in Paragraph F above.

2. The certification in this Instruction to Bidders is a material representation of fact upon which reliance will be placed by METRO to enter into a resultant contract. If it is later determined that the bidder/contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, METRO may pursue available remedies, including suspension and/or debarment.

3. The bidder shall provide immediate written notice to METRO if at any time the bidder learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms ‘covered transaction,’ ‘debarred,’ ‘suspended,’ ‘ineligible,’ ‘lower tier covered transaction,’ ‘participant,’ ‘person,’ ‘primary covered transaction,’ ‘principal,’ ‘bid’ and ‘voluntarily excluded,’ as used herein, have the meanings set out in the Definition and Coverage sections of rules implementing Executive Order 12549. The bidder may contact the designated METRO Contracts Administrator for assistance in obtaining a copy of this regulation.

5. The bidder agrees by submitting a bid that, should the resulting contract for the proposed covered transactions entered into, it shall not knowingly enter into any subcontract with a firm who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by METRO.

6. The bidder further agrees by submitting this bid that it will include the instruction titled ‘Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction,’ at Paragraph F, without modification, in all solicitations for lower tier covered transactions, expected to equal or exceed $25,000.00.
P. LATE BIDS, MODIFICATION OR WITHDRAWAL OF BIDS

1. Any bid or modification of bid received at the METRO office designated in the Invitation for Bids after the exact time specified for receipt will not be considered. Late bids received will be retained unopened and filed with unsuccessful bids in the official contract file.

2. A bid may be withdrawn in person by a bidder or authorized representative, provided their identity is made known and they sign a receipt for the bid, but only if the withdrawal is made prior to the exact time set for opening of bids.

3. Modifications of bids already submitted will be considered if received at the office designated in the Invitation for Bids by the time indicated.

Q. METRO-FURNISHED PROPERTY

No material, equipment or facilities will be furnished by METRO unless otherwise stated in the solicitation.

R. POSTPONEMENT OF BID OPENING

Notwithstanding the time for opening of bids established in the Invitation for Bids, the bid opening may be postponed solely at METRO’s discretion.

S. PREPARATION OF BID

1. A bid shall be submitted on the forms furnished, or copies thereof, shall be completed in ink or be typed and shall be manually signed. If erasures or other changes appear on the forms, each erasure or change shall be initialed by the person signing the bid. Electronic, facsimile (fax) or emailed bids are not authorized.

2. The ‘Solicitation, Bid and Award’ form may provide for submittal of a price or prices for one or more items, which may be lump sum bids, alternative prices, scheduled items resulting in a bid on a unit price, lump sum or a combination thereof. Where the Bid form explicitly requires that the bidder bid on all items, failure to do so will disqualify the bid. When submittal of a price on all items is not required, a bidder shall insert the words ‘no bid’ in the space provided for any item on which no price is submitted.

3. If a bid is from an individual, sole proprietorship, or a bidder operating under a trade name, the bid shall be signed by that individual.

4. A bid by a partnership shall be executed in the partnership name and signed by a partner; the official address of the partnership shall be shown where indicated on the ‘Solicitation, Bid and Award’ form.

5. A bid by a corporation shall be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal shall be affixed and attested by the corporate secretary or assistant secretary.

6. A bid submitted by a joint venture shall list the names of all joint venturers and the mailing addresses of each and shall be executed by all joint venturers in the same manner as if they were individually submitting bids. The signature portion of the Bid Form shall be altered as appropriate for execution by the joint venture and all joint venturers.

7. All names shall be typed or printed below the signature.

8. The bid shall contain an acknowledgment of receipt of all amendments to the solicitation. Refer to Paragraph M above.

9. Communications regarding this solicitation are to be directed to the address and to the attention of the person shown in this Invitation for Bids document.

10. Unless called for, alternative bids will not be considered.

11. In an effort to promote greater use of recycled and environmentally preferable products and minimize waste, all bids submitted should comply with the following:

   a) All bids and copies should be printed on recycled paper with a minimum post-consumer content of thirty percent (30%) or on tree-free paper (i.e., paper made from raw materials other than trees, such as kenaf).

   b) Unless absolutely necessary, all bids and copies should minimize or eliminate the use of non-recyclable or non-reusable materials, such as plastic report covers, plastic dividers, vinyl sleeves and bindings.

   c) To further reduce the use of materials not essential to bids, METRO encourages Bidders to forgo the use of three- ringed binders or glued materials when assembling the originals and copies of the bid. Instead, METRO prefers and appreciates the use of paper clips, binder clips, staples, rubber bands, and other materials containing recycled content,
such as folders, paper clips, discs or thumb drives, envelopes, boxes, etc. METRO also appreciates receiving bids assembled in formats that allow for easy removal and recycling of paper and other materials.

d) Unnecessary samples, attachments or documents not specifically asked for should not be submitted with a bid.

T. PROHIBITION ON LOBBYING

No bidder shall, directly or indirectly, engage in any conduct (other than the submission of the bid or other prescribed submissions and/or presentations before the Evaluation or Selection Committees) to influence any employee of METRO or any member of the Metropolitan Transit Authority Board of Directors concerning the award of a contract as a result of this solicitation. Violation of this prohibition may result in disqualification of the bidder from further participation in the solicitation for the services or goods sought herein or from participation in future METRO solicitations or contracts. The communication blackout period shall commence from the issue of a solicitation through contract award. The Contract Administrator is the only METRO representative authorized to communicate with firms or their representatives during the blackout period.

U. PROTESTS

1. Each protest or objection to the solicitation documents shall be submitted for resolution to the Chief Procurement Officer. Each such protest shall be in writing and shall be supported by the information set forth in Chapter 12 of METRO's Procurement Manual to enable the protest to be considered. A protest or objection will not be considered if it is insufficiently supported or it is not received within the time limits specified herein.

2. A protest based upon terms, conditions or form of a proposed procurement action prior to bid opening, shall be submitted so that it is received by the Chief Procurement Officer no later than five (5) calendar days prior to the specified bid opening date.

3. For a protest concerning an award decision, including bid evaluations, the initial protest must be received by the Chief Procurement Officer not later than five (5) calendar days after the interested party knows, or through exercise of reasonable diligence should have known, whichever is earlier, of the grounds for the protest, following bid opening.

4. Each protest will be processed in accordance with METRO's Protest Procedures located in Chapter 12 of METRO's Procurement Manual, and as displayed in the 'Disputes' Article of a resultant Contract. A copy of the procedures will be provided to the protestor upon written request to METRO's Chief Procurement Officer.

5. A written final determination on any protest will be rendered by METRO's President & Chief Executive Officer and will be provided to the protestor as soon as practicable.

6. The protestor must exhaust its administrative remedies by pursuing METRO's protest procedures to completion prior to appealing METRO’s decision to the FTA.

7. Federal Transit Administration (FTA) Circular 4220.1F, Paragraph 7L, addresses bid protests. A copy of this Paragraph will be provided to the protestor upon written request to METRO. Review of a protest by FTA will be limited to a grantee's failure to have or follow its written protest procedures, its failure to review a complaint or protest, or violations of federal law or regulations. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protestor learned or should have learned of an adverse decision by METRO or other basis of appeal to FTA. Violations of a specific federal law or regulation will be handled by the complaint process stated within that law or regulation. Alleged violations on other grounds are under the jurisdiction of the appropriate state or local administrative or judicial authorities.

V. PUBLIC OPENING OF BIDS

Bids will be publicly opened immediately following the time set for opening in the Invitation for Bids. The total bid price(s) will be read aloud for the information of bidders and others interested, who may be present.

W. RECEIPT OF SINGLE BID

If only one bid is received in response to the Invitation for Bids, a detailed cost breakdown will be required from the single bidder. An evaluation will be performed of the cost breakdown in order to determine if the price is fair and reasonable.

X. SOLICITATION ORDER OF PRECEDENCE

Notwithstanding the Article of this solicitation entitled 'Contract Order of Precedence,' in the event of an inconsistency between provisions of this Solicitation prior to award, the inconsistency shall be resolved by giving precedence in the following order:

1. Solicitation Amendments (if any) with the latest having precedence;

2. Bid/Contract Amount, Items and Prices excluding any specifications or drawings;

3. Instructions to Bidders including Invitation for Bids form;
4. Solicitation, Bid and Award form/Attachments;
5. Technical specifications/Scope of services;
6. Contract Articles;
7. Drawings, and
8. Any other full-text provision of this solicitation whether incorporated by reference or otherwise.

Y. SUBMISSION OF BIDS

A bid shall be submitted so as to be received no later than the exact time and at the place indicated in the Invitation for Bids and shall be enclosed in a sealed envelope clearly identified as a bid with the project title, Invitation for Bids number and bid opening date and time. The envelope shall identify the name and address of the bidder and shall contain the bid security, if required, and other required documents. Failure to do so may result in a premature opening of, or a failure to open, such bid.

Z. TAXES

METRO is exempt from payment of Federal Excise and Transportation Tax and the Texas Limited Sales, Excise and Use Tax. The Contractor's invoice(s) shall not contain assessment for any of those taxes.

3 SMALL BUSINESS AND DISADVANTAGED BUSINESS ENTERPRISE PROGRAMS

A. The Metropolitan Transit Authority of Harris County, Texas (METRO) has implemented a Small Business Enterprise Program, hereinafter referred to as the Program, for small businesses attempting to provide goods and/or services as prime Contractors to METRO or as subcontractors to other prime Contractors to METRO. It is the policy of METRO to promote equal opportunity and non-discrimination in all of its procurement matters in accordance with state and federal law. The Program seeks to provide METRO-certified Small Businesses (SBE) and Texas Unified Certification Program (TUCP)-certified Disadvantaged Businesses Enterprises (DBE) a full and fair opportunity to participate in METRO projects through race-gender neutral means. The Small Business Enterprise Program shall not be used to discriminate against any person or company or group of persons or companies because of on the basis of race, color, national origin, religion, sex (including gender identity and sexual orientation), disability, or age. Each bidder, proposer, Contractor and subcontractor shall comply with this non-discrimination requirement.

B. The Small Business Enterprise Program is a separate program from METRO's Disadvantaged Business Enterprise (DBE) Program which is administered by the federal government and applies to federally funded projects. METRO's Small Business and Disadvantaged Business Enterprise Programs can be found at https://www.ridemetro.org/Pages/SB-FormsTemplates.aspx

C. Nothing in the Small Business or Disadvantaged Business Enterprise Programs should be construed to give a bidder or proposer a property interest in a proposal, bid or contract prior to the Board of Directors' award of the contract and compliance with all statutory and legal requirements.

D. METRO has established a Small Business Participation goal for this solicitation. The Small Business Participation goal may be satisfied by utilizing METRO-certified Small Businesses or TUCP-certified Disadvantaged business enterprises or a combination of both. All references to Small Businesses include Disadvantaged Businesses. The Small Business Participation goal is: 35%

E. Small Business Goal Commitment for a Small Business Participation goal listed in above item D

1. If a Small Business Participation goal is established in item D above, bidders/proposers who fail to commit to the Small Business Participation goal will be deemed nonresponsive and no further consideration will be given to their bid/proposal.

2. Non-certified Small Business or TUCP Disadvantaged Business Enterprise primes must subcontract at a minimum the Small Business Participation goal percentage to certified Small Business firms, TUCP Disadvantaged Business Enterprise firms or a combination of both in order to satisfy the Small Business Participation goal requirement.

3. The performance of a METRO-certified Small Business or TUCP Disadvantaged Business Enterprise prime may satisfy the Small Business Participation goal requirement if:

a) The SBE/DBE prime self-performs at a minimum the Small Business Participation goal percentage

   Example: Small Business Participation goal is 35%
   The SBE/DBE prime self-performs 35%
   The prime has satisfied the 35% Small Business Participation goal

b) The SBE/DBE prime combined with a SBE/DBE subcontractor performs at a minimum the Small Business Participation goal
goal percentage

Example: Small Business Participation goal is 40%
The SBE/DBE prime self-performs 35%
SBE/DBE subcontractor performs 5%
The prime has satisfied the 40% Small Business Participation goal

c) The SBE/DBE prime cannot self-perform 100% of the contract. The prime must subcontract to SBE/DBEs and/or non-SBE/DBEs at a minimum the Small Business Participation goal percentage.

Example: Small Business Participation goal is 35%
SBE/DBE prime self-performs 85%
Subcontractors (certified and/or non-certified) perform 35%
The prime has satisfied the 35% Small Business Participation goal

d) Joint venture Contractors with SBE/DBE partners will count towards the Small Business Participation goal only for the percentage of the SBE/DBE partner.

Example: Joint venture
1 - Non-SBE/DBE partner @ 50% of joint venture
1 - SBE/DBE partner @ 50% of joint venture
Joint venture is performing 30% of the contract = 15% Small Business participation

e) Joint venturers and their partners are prohibited from submitting as a prime and as a subcontractor on the same submission.

Example: Joint venturer submits as a prime
Joint venture partners are listed as subcontractors on the same submission
Joint venturers and partners are prohibited from submitting in this way

f) All prime Contractors, whether SBE/DBE or non-SBE/DBE, must always self-perform at a minimum thirty percent (30%) of the contract regardless of the Small Business Participation goal percentage

g) Bidders/proposers are prohibited from multiple submissions of bids or proposals, i.e. submitting as a prime Contractor in one submission and as a subcontractor in another submission for the same project. Such multiple submissions may result in the disqualification of all submissions where the bidder/proposer is listed.

h) Agreements between a bidder/proposer and a Small Business Enterprise or Disadvantaged Business Enterprise in which the SBE or DBE promises not to provide subcontracting quotations to other bidders/proposers shall be prohibited.

i) SBEs and DBEs are limited to submitting as subcontractors on only four (4) bid/proposal submissions for the same project. Failure to adhere to this four (4) bid/proposal limit may result in the disqualification of the offending SBE or DBE from all bids/proposals.

F. Required Small Business Documents

Note: The ‘Contractor’s Utilization Plan,’ ‘Business Assurance Statement,’ ‘Subcontractor/Supplier Letter of Intent,’ and ‘Contractor Utilization Plan Pledge’ forms constitute the Contractor’s commitment to subcontract to certified businesses.

Note: Submission of the forms identified as ‘Contractor Owned’ are a condition to be met by the bidders in order to be deemed responsive and must be met as a condition prior to contract award. Any changes or adjustments to the information on these forms shall be submitted to the Contracting Officer and the Office of Small Business for approval. Once approved, the updated form(s) will be added to the contract file without requiring modification to the contract.

Note: All Small Business forms are to be submitted together under a single tab in bid/proposal submissions. If no Small Business Participation goal has been established, only the Contractor Utilization Plan Form must be submitted.

1. Contractor Utilization Plan ‘Contractor Owned’ See Exhibit I, Form 1

a) IT IS MANDATORY that every bidder or proposer submit a Contractor’s Utilization Plan (the ‘Plan’) when submitting a bid or proposal or request to receive qualifications, whether or not a Small Business Participation goal has been established.

b) The bidder/proposer must use this form to identify all subcontractors with whom the bidder/proposer intends to contract, specifying the agreed price and/or percentage to be paid each subcontractor for such work, and certifying the contract items and parts thereof to be performed by each subcontractor. Only percentages of Contract Work Effort are to be indicated when responding to RFO/RFP submissions, as pricing is determined later in the procurement process.
c) If applicable, the Plan should set forth how the Small Business Participation goal for the proposed project is to be met. The Plan will be used by METRO as a factor in evaluating whether a bidder/proposer has complied with the requirements of the Program to satisfy the Small Business Participation goal.

d) If the Small Business participation submitted by the bidder/proposer does not meet an established Small Business Participation goal, if any, the bidder/proposer will be deemed non-responsive and will not be considered for contract award.

e) Failure to submit a complete Plan for a contract with a Small Business Participation goal will result in bid/proposal being deemed non-responsive and will not be considered for contract award.

f) When a Small Business Participation goal has been established, the Contractor shall adhere to the Plan submitted unless a waiver is received from the Office of Small Business. Any changes in the Plan regarding the proposed use of certified subcontractors in discharging the contract duties must be approved by the Office of Small Business. The approval of the Office of Small Business will not be unreasonably withheld upon a showing of good cause to make the change.

g) When adding a certified subcontractor to the Plan with a Small Business Participation goal, the Contractor must submit a copy of the subcontract agreement to the Office of Small Business within fifteen (15) days of receiving approval from the Office of Small Business.

h) The Contractor Utilization Plan must include the following:

1) A simple, straight-forward statement outlining subcontractor participation regardless of certification, inclusive of scope, responsibilities and percentage of work.

2) Materials and supplies shall be counted towards the small business goal as follows:

   i. 100 percent of the cost of materials or supplies purchased from a small business manufacturer can be applied towards the Small Business Participation goal of a Contract. A manufacturer is defined as a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment of the general character described by the scope and/or specifications of the contract.

   ii. Sixty percent of the cost of materials or supplies purchased from a small business regular dealer can be applied towards the Small Business Participation goal of a Contract. A regular dealer is defined as a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the scope and/or specifications of the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

3) Copies of documents demonstrating that each Small Business team member is acceptably certified as either a METRO-certified Small Business or TUCP-certified Disadvantaged Business Enterprise and verifying that such certification is current as of the date of submission.

i. METRO accepts the following certifications:

   - SBE - Metropolitan Transit Authority of Harris County (METRO)
   - DBE - City of Houston/Texas Unified Certification Program (TUCP)
   - DBE - City of Austin
   - DBE - Corpus Christi Regional Transportation Authority
   - DBE - North Central Texas Regional Certification Agency
   - DBE - South Central Texas Regional Certification Agency
   - Texas Department of Transportation (DOT) approved DBE certification

ii. METRO does not accept the following certifications:

   - State of Texas HUB (Historically Underutilized Business)
   - Minority Business Enterprise only
   - Women Business Enterprise only
   - City of Houston Small Business certification only

iii. If a proposer/bidder submits plans to add a firm as part of its small business participation that is not yet certified as referenced above, that firm must be either METRO Small Business- or TUCP Disadvantaged Business Enterprise-certified prior to the bid/proposal submittal date. Firms certified after the bid/proposal submittal date will not be counted towards the commitment. Additional Small Business certification information and forms may be found at METRO’s website: www.ridemetro.org under Small Business.

4) When requested, a timeline for performance by subcontractors.
5) Signature of the bidder/proposer.

2. Business Assurance Statement (BAS) 'Contractor Owned' See Exhibit I, Form 2
   a) Bidders/proposers are required to submit an executed Business Assurance Statement form with their bid/proposal when a Small Business Participation goal has been established.
   b) Bidders/proposers must enter their Small Business Participation goal commitment. This includes the SBE/DBE prime's participation if applicable.
   c) Bidders/proposers must enter into agreements with the subcontractors listed on the Plan
   d) Bidders/proposers must include the BAS Clauses in their subcontractor agreements

3. Letter of Intent (LOI) 'Contractor Owned' See Exhibit I, Form 3
   a) Bidders/proposers are required to submit a Letter of Intent form for all subcontractors when a Small Business Participation goal has been established.
   b) The Letters of Intent must be executed by the prime and the subcontractor

4. Contractor Utilization Plan Pledge (Pledge) 'Contractor Owned' See Exhibit I, Form 4
   a) Bidders/proposers are required to submit an executed Pledge form with their bid or proposal when a Small Business Participation goal has been established.
   b) Bidders/proposers must pledge prompt payment to ALL subcontractors
   c) Bidders/proposers must affirm adherence to METRO's Non-discrimination Mandate.
   d) When applicable, bidders/proposers must pledge prompt payment of retainage
   e) Bidders/proposers must include the Pledge Clauses in their subcontractor agreements

G. Incentives Utilizing Small Businesses
   1. Fees for Solicitation Documents. Submitters making a valid bid and participating in the Program will receive a refund for up to seven (7) sets of documents purchased from METRO.
   2. Bid Security/Bond. A bid security will no longer be required except for federally funded construction solicitations exceeding $100,000.
   3. METRO's Incentives. METRO may utilize other incentives, as set forth in the bid specifications or request for proposal, as it determines appropriate.

H. METRO encourages Contractors to use financial institutions owned and controlled by socially and economically disadvantaged individuals. A listing of such institutions may be found at https://www. fdic. gov/ regulations/ resources/ minority/ mdi. html

4 BID FORMS SUBMISSION CHECKLIST
Insert requested information and sign and date where indicated.

SUBMIT WITH COMPLETED BID
□ 'Solicitation, Bid and Award' form Section II, Article 1
□ 'Bid/Contract Amount, Items and Prices' form Section II, Article 2
□ 'Bidder's Questionnaire' Section I, Article 5
□ 'Certification of Restrictions on Lobbying' form Section XI, Exhibit F
□ 'Debarment and Suspension Certification' form Section XI, Exhibit G
□ 'Contractor's Utilization Plan' form Section XI, Exhibit I, Form 1

SUBMIT IF A SMALL BUSINESS GOAL IS ESTABLISHED
□ 'Business Assurance Statement' form Section XI, Exhibit I, Form 2
□ 'Subcontractor/Supplier Letter of Intent' form Section XI, Exhibit I, Form 3
□ 'Contractor's Utilization Plan Pledge' form Section XI, Exhibit I, Form 4
□ Acceptable certification documentation

SUBMIT ONLY IF APPLICABLE
□ Evidence of attainment of proper license or permit, if special licensing or permitting is required by federal, state or local law or ordinance.
5 BIDDER'S QUESTIONNAIRE

If the bidder is a joint venture, each joint venturer shall prepare and submit a separate form.

A. NAME OF BIDDER: ____________________________
   PRINCIPAL BUSINESS ADDRESS:
   ____________________________________________
   ____________________________________________

B. Are you an individual ____ , a partnership ____ , a corporation ____ , or a joint venture ____ ? (Check as applicable).
   Incorporated in the State of _____________   Texas Taxpayer Number: ________________
   If a partnership, list names and addresses of partners; if a corporation, list names of officers and directors and state of incorporation; if a joint venture, list names and addresses of venturers and, if any venturer is a corporation, partnership or joint venture, list the same information for each such corporation, partnership and joint venture.
   __________________________________________
   __________________________________________
   __________________________________________

C. How many years has your organization been in business as a Contractor under your present business name? ____ Years

D. How many years of experience has your organization had in construction work similar to that being required in this Invitation to Bid?
   As a general Contractor? ____ Years  As a subcontractor? ____ Years

E. How many people are currently employed by your firm?
   In Texas ________   Outside Texas ________

F. Of the people employed, what are the job classifications involved and how many people are assigned to each classification?

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<thead>
<tr>
<th>JOB CLASSIFICATION</th>
<th>NO. OF EMPLOYEES</th>
<th>JOB CLASSIFICATION</th>
<th>NO. OF EMPLOYEES</th>
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G. List the types, horsepower, or capacity ratings, and quantities of equipment that will be available to perform this work.

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<tr>
<th>EQUIPMENT TYPE</th>
<th>HP OR RATED CAPACITY</th>
<th>NO. OF UNITS OWNED</th>
<th>NO. OF UNITS LEASED</th>
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H. What is the total square footage of your company's facilities?

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<th>In Texas</th>
<th>Out of Texas</th>
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<tr>
<td>Inside Plant Space:</td>
<td>___ sq. ft.</td>
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<td>Office Space:</td>
<td>___ sq. ft.</td>
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<tr>
<td>Outside Plant Yard:</td>
<td>___ sq. ft.</td>
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<tr>
<td>Parking Area:</td>
<td>___ sq. ft.</td>
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I. List the work which you have currently underway.

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<th>CONSTR. PRICE</th>
<th>KIND OF CONST.</th>
<th>PERCENT COMPLETE</th>
<th>COMPLETION DATE</th>
<th>NAME, ADDRESS &amp; TELEPHONE OF REFERENCES</th>
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J. List other projects which your organization has completed, during the last five years, which demonstrate qualifications to perform the work specified herein. For joint venture or partnership work, name the other individuals or companies and indicate the sponsoring partner.

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<tr>
<th>YEAR</th>
<th>CONTRACT PRICE</th>
<th>KIND OF CONST.</th>
<th>LOCATION OF WORK</th>
<th>NAME, ADDRESS &amp; TELEPHONE OF REFERENCES</th>
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xv
K. In addition to items I and J, list other engineers, architects, and owners, including public bodies, for whom you have performed work under a contract.

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<th>NAME</th>
<th>ADDRESS</th>
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</table>

L. Give information about the construction experience of the principal individuals of your present organization including your proposed authorized representative (job superintendent).

<table>
<thead>
<tr>
<th>PERSON’S NAME</th>
<th>YEARS OF EXPERIENCE</th>
<th>IN WHAT CAPACITY</th>
<th>LARGEST CONST. WORK COMPLETED</th>
</tr>
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</tbody>
</table>

M. Have you or your organization, or any officer or partner thereof, failed to complete a contract? Yes ___ No ___ If yes:

Provide details:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

N. Is any litigation pending against your organization? Yes ___ No ___ If yes:

Provide details:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
O. Name your principal financial institution for financial responsibility reference.
   Name of Bank: ________________________________
   Street Address: ________________________________
   City and State: ________________________________
   Telephone: ________________________________
   E-Mail: ________________________________
   Officer Familiar with Bidder's Account: ________________________________

P. Name the primary surety company from which you will obtain performance and payment bonds.
   Name of Surety Company: ________________________________
   Name of Local Agent (if different): ________________________________
   Local Street Address: ________________________________
   City and State: ________________________________
   Telephone: ________________________________
   E-Mail: ________________________________
   Person Familiar with Bidder's Account: ________________________________

Q. State your firm's annual average receipts over the past three (3) fiscal years:

   YEAR                                     AVE. ANNUAL RECEIPTS
   ________________________________         ________________________________
   ________________________________         ________________________________
   ________________________________         ________________________________

R. Provide upon request a certified financial statement for the bidder's most recently closed fiscal reporting year.

S. List your company's Experience Modification Rate (EMR) for the last three (3) years, and the state in which that EMR applies.

   YEAR                                     EMR                                     STATE
   ________________________________         ________________________________         ________________________________
   ________________________________         ________________________________         ________________________________
   ________________________________         ________________________________         ________________________________

T. List your company's OSHA incident rate for the last three (3) years.

   YEAR                                     RATE
   ________________________________         ________________________________
   ________________________________         ________________________________
   ________________________________         ________________________________
U. Please use last year's OSHA No.200 log to fill in the following:

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of lost workday cases</td>
<td></td>
</tr>
<tr>
<td>Number restricted workday cases</td>
<td></td>
</tr>
<tr>
<td>Number of cases with medical attention only</td>
<td></td>
</tr>
<tr>
<td>Number of fatalities</td>
<td></td>
</tr>
</tbody>
</table>

V. Employee hours worked last year ________________

W. Identify your company's type of work: (e.g. plumbing, HVAC, etc.)

X. Do you conduct project safety (housekeeping) inspections? Yes ___ No ___ If yes:

| Who conducts this inspection (title)? |        |

Y. Do you hold toolbox safety meetings for the following personnel?

<table>
<thead>
<tr>
<th>Personnel</th>
<th>YES</th>
<th>NO</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Field Supervision</td>
<td>____</td>
<td>____</td>
<td>____</td>
</tr>
<tr>
<td>Craft Employees</td>
<td>____</td>
<td>____</td>
<td>____</td>
</tr>
<tr>
<td>New Hires</td>
<td>____</td>
<td>____</td>
<td>____</td>
</tr>
</tbody>
</table>

Z. Do you have training and education programs for the supervision and labor? Yes ___ No ___ If yes:

<table>
<thead>
<tr>
<th>List programs:</th>
</tr>
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<tbody>
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</table>

AA. Do you have the following written programs and procedures?

<table>
<thead>
<tr>
<th>Program</th>
<th>YES</th>
<th>NO</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Safety Program</td>
<td></td>
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<tr>
<td>Hazard Communication</td>
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<tr>
<td>OSHA Inspection Procedure</td>
<td></td>
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<tr>
<td>Orientation Program</td>
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<tr>
<td>Discipline Program</td>
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<tr>
<td>Accident Investigation</td>
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<tr>
<td>Drug/Alcohol Program</td>
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</tbody>
</table>

BB. What training do you provide your personnel?

<table>
<thead>
<tr>
<th>Training</th>
<th>YES</th>
<th>NO</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Excavation</td>
<td></td>
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<tr>
<td>Scaffolding</td>
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<tr>
<td>Cranes</td>
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<tr>
<td>Electrical (Lockout/Tag out)</td>
<td></td>
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<tr>
<td>Confined Space</td>
<td></td>
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<tr>
<td>First Aid</td>
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<tr>
<td>Other</td>
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<tr>
<td>Other</td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

xviii
CC. Do you have a specific employee whose sole responsibility is safety (e.g., Safety Director)?

Yes ___ No ___

DD. Has OSHA cited your company for any violations in the last three (3) years?

Yes ___ No ___ If yes:

Explain why:

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

By signing below, the bidder/contractor represents the following: (1) the business/company contracting with METRO is in good standing with the state of Texas; (2) the business/company is authorized to transact business in the state of Texas; and (3) the business/company does not have any outstanding debts (including, but not limited to, tax liens) that affect the bidder’s/contractor’s ability to transact business in the state of Texas. The bidder/contractor shall provide METRO proof to support the above representations.

The undersigned certifies that he/she is legally authorized by the bidder to make the statements and representations contained in this bid, and represents and warrants that the foregoing information is true and accurate to the best of his/her knowledge, and intends that the Metropolitan Transit Authority, Harris County, Texas, can rely thereon in evaluating this bid.

NAME: ________________________________ Please Print

TITLE: ________________________________

SIGNATURE: By: ________________________________ DATE OF SIGNING: ____________________
SECTION II - FORMS FOR BIDDING/AWARD

1 SOLICITATION, BID AND AWARD FORM

METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY TEXAS

INVITATION FOR BIDS

===============================================================================================

Shopping Cart No.: 1120001290  IFB No.: 4020000088  Date of IFB: 02/24/2020  Contract No.: ____________

Description of Project: CAMBRIDGE SIGNALS AND RAMP RECONSTRUCTION

===============================================================================================

In compliance with the above referenced Invitation for Bids, the undersigned hereby proposes to furnish all of the resources necessary to complete the above referenced project for the total price listed in the 'Solicitation/Contract Amount, Items and Prices' Article herein and in accordance with the Contract documents.

Any resulting contract will consist of this form and Sections II through XI of the original solicitation.

The undersigned agrees that this offer will remain valid for a period of one hundred twenty (120) calendar days after the date of receipt of bids.

Upon written acceptance of this offer, executed by METRO and mailed or otherwise furnished within the one hundred twenty (120)-day offer validity period, the Bidder/Contractor will, within fourteen (14) calendar days (unless a longer period is allowed) after receipt of award documents, provide required certification of insurance, bonds and other documentation as may be required.

The resulting Contract sets forth the entire agreement between the parties with respect to the subject matter thereof, and supersedes and replaces all proposals, negotiations, representations, and implied obligations. The obligations, liabilities and remedies set forth herein are exclusive and shall operate as limitations on any action brought in connection with this Contract, including an action in tort. The resulting Contract is binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns, but shall not inure to the benefit of any third party or other person.

CAUTION - Bids shall not be qualified by exceptions to the bidding conditions.

(TO BE COMPLETED BY BIDDER)

BIDDER NAME AND ADDRESS (Full Name of Firm, Corporation, Partnership, Joint Venturer):

FULL NAME OF PARTNERS (Type or Print):

BUSINESS NAME (Type or print)

ADDRESS (Type or print)

PHONE: ( ) FAX NO: ( )

CITY, STATE, ZIP CODE (Type or print)

EMAIL:

BY: (Sign in ink)

NAME (Type or print)

DATE: ____________

===============================================================================================

DIRECTIONS FOR SUBMITTING BIDS:

Envelopes containing bids, guarantee, and other proposal documents shall be sealed, marked and addressed as follows:

METROPOLITAN TRANSIT AUTHORITY
Procurement Division Plan Room
1900 Main St.
Houston, Texas 77002

NOTE: Identify the envelope containing a bid with title, the project Invitation for Bid number, bid due date, and the bidder’s company name and address.
OFFER

(TO BE COMPLETED AND SIGNED BY BIDDER/CONTRACTOR)

SIGNATURE OF BIDDER/CONTRACTOR:

BY: ________________________________

(MUST BE SIGNED BY AUTHORIZED PERSON)

NAME: ________________________________

(Type or Print)

TITLE: ________________________________

DATE: ________________________________

ATTEST:

BY: ________________________________

NAME: ________________________________

(Type or Print)

TITLE: ________________________________

Note: 1) If Joint Venture, each party shall provide the above information and sign the offer.

2) Bidder/Contractor's signature constitutes acceptance of a Contract that may result from this solicitation.

ACCEPTANCE AND AWARD

(TO BE COMPLETED AND SIGNED BY METRO)

Contract No. ____________

METRO and the Contractor have executed this Contract and it shall be effective on the ___ day of ____________, 20___.

METROPOLITAN TRANSIT AUTHORITY
OF HARRIS COUNTY

Executed for and on behalf of the Metropolitan Transit Authority pursuant to Resolution No. _________ of the Board of Directors on the ___ day of ____________, 20___ and on file in the office of the Assistant Secretary of the Authority.

BY: ________________________________

Name: Michael Kyme
Title: Chief Procurement Officer

APPROVED:

Name: Debbie Sechler
Title: Executive Vice President, Administration

Name: Arthur C. Smiley III
Title: Chief Financial Officer

APPROVED AS TO FORM:

Name: Cydonii Fairfax
Title: Executive Vice President & General Counsel

ATTEST:

Title: Assistant Secretary
A detailed itemized bid schedule is filed electronically (Excel) on the METRO Procurement website https://www.ridemetroapp.org/procurement/solicitations.aspx. Click on Solicitation No. 4020000088 to access the file.

The bidder/contractor shall bid on all listed items. The bidder/contractor shall furnish all supervision, labor, materials, tools, supplies, equipment, transportation, bonds, insurance, including taxes, overhead and profit to perform all operations necessary for the Cambridge Signals and Ramp Reconstruction as outlined in the contract issued, in accordance with the specifications, drawings the terms and conditions of the proposed contract for the firm fixed unit prices shown below.

1. The Bidder shall reflect in the bid price for each Item the cost the Bidder anticipates incurring for the performance of that item, together with a proportional share of the Bidder’s anticipated profit, overhead, and costs to perform work for which no Item is provided.

2. The quantities appearing herein are estimated and do not commit nor obligate METRO to order the quantities shown. Quantities for which payment will become due, shall be those consumed during performance of the Work as approved and accepted by METRO’s authorized representative.

3. Item Numbers identified as ‘Additional Bid Items,’ are not included as firm METRO requirements. These items are listed as possible requirements which may or may not evolve, subject to METRO’s approval, during the performance of the contract. METRO is not under any obligation or commitment to the Contractor to produce any of the items listed or quantities shown.

4. Minimum Bid Price Items – Minimum bid pricing shall apply to INSERT DESCRIPTION AS APPLICABLE (Example: Additional Bid Items. A separate section in the pricing table could contain all such items.) – See "Minimum Unit Price. The Contractor may not bid a unit price less than the minimum value; however, the bidder may increase the unit price bid. If no entry is made in the spaces provided, or the amount stated is less than the minimum bid price, the minimum unit price shown shall apply.

5. The pre-established amount for bid items ‘Mobilization’ shall apply to all bidders and shall not be revised.

6. Payment for ‘Payment and Performance Bonds’ shall be reimbursable at actual cost, or bid amount, whichever is less, within fifteen days (15) after METRO’s receipt of the appropriate bonding certificates and a copy of a paid invoice or other supporting documentation.

7. Bidders must bid on all items to be considered for award. Bids submitted for quantities less than specified for each item will be rejected as non-responsive.

8. This solicitation has a 35% Small Business (SB) goal. Form 1 (Contractor Utilization Plan) must be completed identifying all subcontractors and suppliers and their percentage of work. Only METRO CERTIFIED SMALL BUSINESS ENTERPRISE (SBE) firms and CERTIFIED DISADVANTAGED BUSINESS ENTERPRISE (DBE) firms will count toward the 35% Small Business goal. (See Section 3 for acceptable certifications and how to count Suppliers towards the SB goal.) BIDDERS WHO FAIL TO COMMIT TO THE MINIMUM SMALL BUSINESS PARTICIPATION GOAL (35%) WILL BE DEEMED NONRESPONSIVE AND NO FURTHER CONSIDERATION WILL BE GIVEN TO THEIR BID.

STATEMENT OF MATERIALS AND OTHER CHARGES

Materials Incorporated into the Project: $______________

All Other Charges, including bonding, contingency, insurance, labor, and miscellaneous: $______________

Total Amount of All Work: $______________
SECTION III - DELIVERIES OR PERFORMANCE ARTICLES

1 DEFINITIONS

A. 'METRO' shall mean Metropolitan Transit Authority of Harris County, Texas.

B. The term 'President & Chief Executive Officer' means the President & Chief Executive Officer of the Metropolitan Transit Authority and the term 'the duly authorized representative' means any person specifically authorized to act for the President & Chief Executive Officer. These representatives are authorized to receive METRO by executing this Contract, and any modification thereto.

C. The term 'Contracting Officer' means the Contract Administrator who has been designated the responsibility, by the METRO Chief Procurement Officer, for overall administration of the contract, excluding the execution of contract modifications.

D. The term 'METRO Project Manager' means the technical representative who has been designated to act on behalf of METRO in monitoring and assessing the Contractor's services and/or technical performance and progress; inspecting and periodically reporting on such performance and progress during the stated period of performance, and finally certifying as to the acceptability of the contract Work in its entirety or any portion thereof, as required by the contract documents.

E. The term 'Contract Disputes Appeals Committee' means the METRO administrative body designated by the President & Chief Executive Officer to hear a Contractor's appeal submitted under the 'Disputes' Article of this Contract.

F. The term 'Work' means all construction, labor, materials, equipment, and contractual requirements as specified, or indicated in the Contract documents, including all alterations, amendments, or extensions thereto made by authorized changes.

G. The term 'Contractor' shall mean the individual, partnership, corporation, organization, or association contracting with METRO to furnish all materials, goods and work defined herein. As may be used herein, the terms 'Contractor' and 'Consultant' are synonymous.

H. The term 'subcontract' means any agreement including purchase orders (other than one involving an employer-employee relationship) entered into between the Contractor and a subcontractor calling for services, labor, equipment, and/or materials required for Contract performance, including any modifications thereto.

I. The terms 'subcontractor' and 'subcontractor and supplier' mean any individual, partnership, firm, corporation or joint venture that contracts with the Contractor to furnish services, labor, equipment and/or materials under this Contract. As used herein, the terms 'subcontractor' and 'subcontractor and supplier' are synonymous.

2 LIQUIDATED DAMAGES

If the Contractor fails to complete the work within the time specified in this Contract, or any extension thereof, the Contractor shall pay to METRO, as liquidated damages, the sum of Five hundred Ten dollars ($510.00) for each calendar day of delay until the work is completed and accepted.

The Contractor acknowledges that actual damages likely to result from breach of this section are difficult to estimate on date of this contract and difficult to prove. The parties intend that payment of liquidated damages amount would serve to compensate METRO for any breach by the Contractor of its obligations under this Section and they do not intend for such liquidated damages to serve as punishment for any such breach by the Contractor.

3 PERFORMANCE AND PAYMENT BONDS

A. If the Contract amount, as indicated in the 'Compensation' Article exceeds $100,000.00, the Contractor shall furnish a Performance Bond in an amount equal to one hundred percent (100%) of the Contract amount and if the Contract amount, as indicated in the 'Compensation' Article exceeds $25,000.00, the Contractor shall furnish a Payment Bond in an amount equal to one hundred percent (100%) of the Contract amount.

B. The surety company providing the bonds must be licensed to do business in the state of Texas. If the amount of the bond, as determined by Paragraph A above, is in excess of 10 percent of the surety company's capital and surplus, as of the date of the last annual statutory financial statement filed with the Texas Board of Insurance, written certification that the surety company has reinsured that portion of the bond amount in excess of 10 percent with one or more reinsurers authorized, accredited or trusted to do business in the state of Texas must be submitted. The Performance and Payment Bonds must be submitted to the Contracting Officer within fourteen (14) calendar days after receipt of a copy of the executed Contract or a Notice of Award. The Notice to Proceed will not be issued until properly executed bonds are received and accepted by the Contracting Officer.

4 ADDITIONAL BOND SECURITY

The Contractor shall promptly furnish additional security required to protect METRO and persons supplying labor or materials under this Contract if:
1. Any surety on any bond furnished with this Contract becomes unacceptable to METRO;

2. Any surety fails to furnish reports on its financial condition when required by METRO, or

3. The Contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer.

5 PERIOD OF PERFORMANCE

METRO will issue a written Notice to Proceed (NTP) to the Contractor within thirty (30) calendar days after the Contract has been executed and the Contractor has delivered the required certificates, bonds, and forms. Any preliminary work started or materials ordered or purchased before written NTP shall be at the risk and expense of the Contractor. The first day of performance under the Contract shall be the effective date specified in the NTP. The Contractor shall diligently prosecute the Work to completion within Two Hundred Forty (240) calendar days calendar days from the effective date noted in the NTP. This Period of Performance includes allowance for mobilization, holidays, weekend days, inclement weather, and clean-up, therefore, claims for delay based on these elements will not be allowed. The allowance for inclement weather days for this Contract is Thirty-five (35) calendar days.

6 SCHEDULES

A. The Contractor shall prepare and submit to the Contracting Officer copies of the schedule for the Work of this Contract in accordance with the specification requirements. If the Contractor fails to submit a schedule within the time prescribed or if the schedule fails to comply with the specified requirements, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

B. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to METRO. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

C. Failure of the Contractor to comply with the requirements of the Contracting Officer under this Article shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the Work, or any separable part of it, in accordance with the default terms of this Contract.

7 TEXAS ETHICS COMMISSION (TEC) ELECTRONIC FILING

In the event this Contract requires the approval of METRO's Board of Directors, the Contractor shall submit to METRO, after notification that METRO's Board has authorized the Contract and prior to final execution of the Contract, a completed, signed and notarized Form 1295 generated by the Texas Ethics Commission's (the TEC) electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (Form 1295). The Contractor hereby confirms and agrees to submit such forms with the TEC through its electronic filing application at: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

8 WORK TO BE PERFORMED

Except as may be specified elsewhere in this Contract, the Contractor shall furnish all necessary labor, materials, tools, supplies, equipment, transportation, supervision, management, and shall perform all operations necessary and required for Cambridge Signals and Ramp Reconstruction. The Work shall be performed in accordance with Exhibit A, 'Scope of Services', Technical Specifications and Drawings, made a part hereof.
SECTION IV - INSPECTION AND ACCEPTANCE ARTICLES

1   INSPECTION OF CONSTRUCTION

   A. The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the Work called for by this Contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to METRO. All work shall be conducted under the general direction of the Contracting Officer and is subject to METRO inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Contract.

   B. METRO inspections and tests are for the sole benefit of METRO and do not:

   1. Relieve the Contractor of responsibility for providing adequate quality control measures;

   2. Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;

   3. Constitute or imply acceptance; or

   4. Affect the continuing rights of METRO after acceptance of the complete work under Paragraph H below.

   C. The presence or absence of a METRO inspector does not relieve the Contractor from any Contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.

   D. The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. METRO may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes re-inspection or retest necessary. METRO shall perform all inspections and tests in a manner that will not unnecessarily delay the Work. Special, full size, and performance tests shall be performed as described in the Contract.

   E. The Contractor shall, without charge, replace or correct work found by METRO not to conform to Contract requirements, unless in the public interest METRO consents to accept the Work with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

   F. If the Contractor does not promptly replace or correct rejected Work, METRO may:

   1. By Contract or otherwise, replace or correct the Work and charge the cost to the Contractor; or

   2. Terminate for default the Contractor's right to proceed.

   G. If, before acceptance of the entire Work, METRO decides to examine already completed Work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the Work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the Work is found to meet Contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the Work was thereby delayed, an extension of the period of performance time.

   H. When the Contractor considers the Work complete and ready for its intended use, the Contractor shall request the METRO Project Manager to inspect the Work to determine the status of completion. When the METRO Project Manager or Resident Engineer determines the Work to be substantially complete, the METRO Project Manager will issue a Certificate of Substantial Completion with a list of items to be completed or corrected prior to final payment. The Contractor shall process promptly to complete and correct items on the list.

   I. Unless otherwise specified in the Contract, METRO shall accept, as promptly as practicable after completion and inspection, all Work required by the Contractor that portion of the Work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or METRO's rights under any warranty or guarantee.
SECTION V - CONTRACT ADMINISTRATION DATA ARTICLES

1 COMPENSATION

A. The Contractor shall be compensated for the actual quantities of Work performed, at the firm fixed unit prices as provided in Bid/Award Form 'Bid/Contract Amount, Items & Prices.'

B. METRO’s total obligation for the satisfactory performance of this Contract shall not exceed ______________________ and ___/100 Dollars ($_______,______), less any prompt payment discount earned or set forth in Paragraph C.

C. Prompt payment discount(s): ___ %. In connection with any discount offered for prompt payment, time shall be computed from the date of receipt of a properly prepared invoice by METRO or acceptance of all materials and goods furnished and work performed, whichever is later. For the purposes of computing the discount earned, payment shall be considered to have been made on the date that the payment is mailed or the date which an electronic funds transfer was made.

2 INVOICING AND PAYMENT

A. On a monthly basis or based on a METRO approved payment milestone schedule, METRO shall make progress payments in percentages for the Work that has been completed, or at more frequent intervals as determined by the Contracting Officer, on estimates agreed to by METRO’s Project Manager and the Contracting Officer. The Contractor’s Authorized Representative shall secure the Project Manager’s certification that the services for which payment is requested have been performed. This shall be in the form of the Project Manager’s signature and date on the invoice. The Contractor shall furnish a breakdown of the total contract price showing the amount of the Work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates of Work accomplished, METRO may authorize payment for material delivered on the site and preparatory work done if the Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this Contract.

B. In making these progress payments, METRO will retain five percent (5%) for each progress payment amount until final completion and acceptance of the contract Work from the Contractor. METRO shall retain the five percent (5%) progress payment based on incremental acceptances of portions of the Work. For purposes of this section, contract Work is satisfactorily completed when all the tasks called for in the Contract have been accomplished and documented by METRO. Upon METRO’s review and acceptance of the Contract Work, METRO shall pay the retainage payments to the Contractor. The Contractor remains responsible for the project until final acceptance by METRO. Upon identification, and acceptance of satisfactorily completed Contract Work, METRO shall issue prompt payment of the retainage associated with the Contract Work to the Contractor. The Contractor is required to pay all retainage owed to the subcontractors for satisfactory completion of the contract Work within five (5) business days after receipt of retainage payments from METRO. The Contractor will also include in all subcontractors, language obligating the Contractor to make retainage payments to subcontractors within five (5) business days after receipt of payment from METRO.

If the Contractor has previously been paid for items or services that have later been found deficient, defective or otherwise unacceptable, subsequent invoices may be adjusted accordingly. In such instances, METRO shall provide the Contractor written explanation for such adjustments.

When the Work is substantially complete, the Contracting Officer may release to the Contractor all or a portion of any retainage amount Contracting Officer considers adequate protection of METRO. The Contractor will be paid in full upon final acceptance of the Work.

C. METRO shall pay the amount due the Contractor under this Contract after:

1. Completion and acceptance of all Work;
2. Presentation of a properly prepared invoice;
3. For each invoice with a Small Business Participation goal, update METRO’s Online Contract Audit screen demonstrating payments to subcontractors and confirmation of receipt of payment by subcontractors;
4. Presentation of a completed ‘Contractor’s Release’ form, Exhibit C, with every invoice, thereby releasing all claims against METRO arising by virtue of this Contract, other than claims, in stated amounts that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor’s claim to amounts payable under this Contract has been assigned. The Contractor shall complete a ‘Contractor’s Release’ form, Exhibit C, or other Contractor’s release form acceptable to METRO and submit with every invoice; and
5. For each invoice with a Small Business Participation goal, update METRO’s online Subcontractor Invoice Report demonstrating subcontractor’s invoices for the billing period and upload a copy of the subcontractor’s invoice. The Contractor’s invoice to METRO should include subcontractors’ invoices for the same period of performance.
The Contractor shall submit invoices to the following address:

Sr. Director of Accounting/Controller  
METROPOLITAN TRANSIT AUTHORITY  
1900 Main St., 5th Floor (77002)  
P.O. Box 61429  
Houston, Texas 77208-1429

E. Subcontractor and Supplier Payments:

1. The Contractor shall provide payment to each subcontractor and supplier within five (5) business days after receiving payment from METRO for amounts previously invoiced for work performed or materials furnished under the Contract with a Small Business Participation goal. Subcontract payment provisions shall require payments to subcontractors within five (5) business days after the Contractor received payment from METRO. Interest on late payments is subject to the provisions of Texas Government Code, Title 10, Chapter 2251, regarding payments to subcontractors.

2. In the event of disputed amounts, the Contractor shall provide a written response to a subcontractor or supplier, with a copy to the Contracting Officer, specifically addressing any disputed amounts on invoices. The Contractor should resolve all disputed invoices at the earliest time to avoid a delay in the submission of print out of METRO’s Online Contract Audit screen with subcontractor payment verification which could delay payment to the Contractor. In the event that the Contractor cannot resolve a subcontractor or supplier disputed invoice, the Contractor shall bring the matter to the attention of the Contracting Officer at the time of submitting the Contractor’s invoice for payment. The Contracting Officer will investigate the situation and make a determination whether the Contractor’s invoice should be processed for payment without the required contract Audit verification. The Contracting Officer will not mediate the dispute between the Contractor and any subcontractor or supplier in the resolution of disputed invoices.

3. Each time METRO releases a payment of retainage to the Contractor, the Contractor is then required to report the date and amount of retainage released to its subcontractors, with the next invoice submitted to METRO. If a subcontractor’s work has been completed, and no retainage is released to that subcontractor, the Contractor must explain in writing, its reasons for not releasing retainage.

The Contractor’s obligation to make prompt payment to its subcontractors, as reflected in Section V, Invoicing and Payment of this Contract applies to the Contractor’s release of retainage to its Subcontractors after METRO’s release of retainage to the Contractor. Any delay in the Contractor’s payment of retainage to a subcontractor must take place for good cause only, and the Contractor must obtain the subcontractor’s written consent for the delay. The Contractor must also obtain METRO’s prior approval in those circumstances where a subcontractor has completed work but will not be paid any retainage. In addition, a Contractor’s unexplained failure to pay retainage to its subcontractors as required in this Section will permit METRO to withhold reimbursement for that subcontractor’s work until the Contractor ensures that the subcontractors are promptly paid for the Work they have performed.

F. METRO’s Online Contract Audit on Contracts with Small Business Participation Goals:

1. Contractors are required to update METRO’s Online Contract Audit screen and Subcontractor Invoice Report, and to upload subcontractor invoices.

2. Failure of the Contractor to update METRO’s Online Contract Audit screen, Subcontractor Invoice Report and/or subcontractor’s invoices will be cause for the return of the invoice to the Contractor as an improperly prepared invoice.

3. In the event that no invoice is due for the past month, METRO’s Online Contract Audit screen shall nevertheless be updated, showing payment/nonpayment confirmation by the subcontractor/supplier.

G. METRO is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales, Excise and Use Tax. METRO’s Federal Excise Tax Number is 76-79-0020K and METRO’s State Tax Exempt Number is 1-74-1998278-4. The Contractor’s invoices shall not contain assessment of any of these taxes on materials incorporated into the project.

H. For each invoice with a Small Business Participation goal, payments will be made within fifteen (15) business days after receipt of a properly prepared invoice, which includes METRO’s on-line Contract Audit screen and Subcontractor Invoice Report updates and upload of subcontractor invoices. Invoices with no Small Business Participation goal will be made within thirty (30) business days after receipt of a properly prepared invoice. Payments shall be considered made when METRO deposits the Contractor’s payment in the mail or the date on which an electronic transfer of funds was made. Interest on payments under this Contract shall accrue and be paid only in accordance with Texas Government Code, Title 10, Chapter 2251, which shall be the Contractor’s sole remedy under this Article.

I. All material and work covered by payments made shall, at the time of payment, become the sole property of METRO, but this provision shall not be construed as:

1. Relieving the Contractor from the sole responsibility for all material, goods and work upon which payments have been made or the restoration of any damaged Work; or as
2. Waiving the right of METRO to require the fulfillment of all of the terms of the Contract.

3 ADMINISTRATIVE CONTROL OF CORRESPONDENCE

Contract-related correspondence, transmittal letters, etc., issued by each party to this Contract will refer to the Contract number shown on the cover page of this Contract. The correspondence shall be addressed to the appropriate METRO representative set forth elsewhere in this Contract. Should it be addressed to other than the Contracting Officer, a copy shall be provided to the Contracting Officer.

4 CONTRACTOR REPRESENTATIVE

A. Prior to the start of performance, the Contractor shall advise METRO in writing of the primary and alternate representative (including phone number) who will have management responsibility for the total Contract, with the authority to transmit instructions, receive information, receive and act on technical matters and resolve problems of a contractual nature, and represent the Contractor in all matters with regard to the Project. These representatives may be changed by the Contractor from time to time, with the written approval of METRO.

B. Contractor personnel who will require access to any METRO property on a frequent basis (greater than 20 hours a week), will require a Contractor badge. METRO's Project Manager is responsible for coordinating these badges with METRO's Facilities Maintenance Department. Badges will carry an expiration date of 90 days; if further access is required, METRO's Project Manager must resubmit a Contractor badge request on the Contractor's behalf to the Facilities Maintenance Department with the appropriate levels of approval.

C. At the termination of this Contract, the Contractor shall return to METRO's Project Manager all METRO issued identification badges and METRO Q Cards for deactivation by METRO's Human Resources Department. The Contractor shall also immediately notify METRO's Project Manager and return such identification badges and METRO Q Cards for those Contractor employees whose services are no longer needed during the course of this Contract. The Contractor will be assessed a $10.00 fee for each identification badge or METRO Q Card that is lost or not returned to METRO.

5 MINUTES OF MEETINGS

The Contractor shall provide a record of all conferences, meetings, discussions, verbal directions, telephone conversations, etc., participated in by the Contractor, on matters relative to the Contract and Services thereunder. Each record shall be entitled 'Confirmation Record' and shall fully identify participating personnel, subjects discussed, and any conclusions reached. The Contractor shall, within five (5) calendar days after each activity requiring a 'Confirmation Record,' forward two (2) copies to METRO's Project Manager.

6 NOTICES

All notices to either party by the other shall be delivered personally or sent by U.S. registered or certified mail, postage prepaid, addressed to such party at the following respective addresses for each:

Authority: Juanita W. Jackson
Contracting Officer
METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TEXAS
1900 Main St., 8th Floor
Houston, Texas  77002

Contractor:         

and shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change of address to the other in the manner provided for above.
SECTION VI - INSURANCE ARTICLES

1. CONTRACTOR'S INSURANCE

A. The Contractor shall purchase and maintain in effect during the entire period of this contract, including any maintenance period thereof, insurance of the types and with minimum limits of liability as stated below. Such insurance shall protect Contractor from claims which may arise out of or result from Contractor's operations whether such operations are performed by Contractor or by any subcontractor or by anyone for whose acts any of them may be liable.

WORKERS' COMPENSATION INSURANCE providing Statutory Benefits in accordance with the Workers' Compensation Act of the State of Texas and/or any other State or Federal law as may be applicable to the work being performed under this contract. EMPLOYER'S LIABILITY with limits of liability not less than:

- $1,000,000 Each Accident
- $1,000,000 Each Employee for Disease
- $1,000,000 Policy Limit for Disease

- Policy shall be endorsed with a waiver of subrogation recognizing the waiver of all rights of subrogation or recovery against METRO and City of Houston as stated in paragraph B. below.

COMMERCIAL GENERAL LIABILITY utilizing Insurance Services Office Form CG 00 01 or its substantial equivalent providing coverage on an “occurrence” basis, including bodily injury, property damage, and products and completed operations with limits no less than:

- $1,000,000 Each Occurrence
- $2,000,000 General Aggregate
- $2,000,000 Products and Completed Operations Liability Aggregate

- Policy shall be endorsed to name METRO and City of Houston as Additional Insureds as respects Contractor's ongoing and completed operations in performance of this contract.
- Policy shall be endorsed with a waiver of subrogation recognizing the waiver of all rights of subrogation or recovery against METRO and City of Houston as stated in paragraph B. below.
- Such insurance shall be primary and non-contributing with any other valid and collectible insurance or self-insurance available to METRO and City of Houston.

BUSINESS AUTOMOBILE LIABILITY utilizing Insurance Services Office Form CA 00 01 or its substantial equivalent including liability coverage for all autos owned, rented, hired or borrowed by the Contractor, as well as liability coverage for mobile equipment subject to compulsory insurance or financial responsibility laws or other motor vehicle insurance laws with the following minimum limit:

- $1,000,000 Any One Accident- Combined Single Limit

- Policy shall be endorsed to name METRO and City of Houston as Additional Insureds as respects Contractor's operations in performance of this contract.
- Policy shall be endorsed with a waiver of subrogation recognizing the waiver of all rights of subrogation or recovery against METRO and City of Houston as stated in paragraph B. below.
- Such insurance shall be primary and non-contributing with any other valid and collectible insurance or self-insurance available to METRO and City of Houston.

POLLUTION LIABILITY providing coverage for bodily injury, property damage (including the loss of use thereof) and environmental damage resulting from pollution and related clean-up costs incurred arising from the work or services to be performed. Coverage shall be provided for both work performed on site as well as during transport and disposal of hazardous materials.

- $1,000,000 Each Occurrence
- $2,000,000 Aggregate

- Policy shall be endorsed to name METRO and City of Houston as Additional Insureds as respects Contractor's operations in performance of this contract.
- Policy shall be endorsed with a waiver of subrogation recognizing the waiver of all rights of subrogation or recovery against METRO and City of Houston as stated in paragraph B. below.
- Such insurance shall be primary and non-contributing with any other valid and collectible insurance or self-insurance available to METRO and City of Houston.

UMBRELLA LIABILITY provided in excess of the underlying Commercial General Liability, Business Automobile Liability, Employers' Liability, and Pollution Liability insurance above, with the following minimum limits:
$5,000,000 Each Occurrence
$5,000,000 Aggregate

Such Umbrella Liability policy shall follow form all coverage and endorsements included the underlying Commercial General Liability, Business Automobile Liability, Employers’ Liability, and Pollution Liability insurance and shall expressly provide that the umbrella or excess policy will drop down over a reduced or exhausted aggregate limit of the underlying insurance.

CONTRACTOR’S EQUIPMENT: Contractors/subcontractors are responsible for their construction tools and equipment, including construction trailers and their contents, temporary scaffolding, whether owned, leased, rented, borrowed or used at the Project Site; and the contractors/subcontractors agree that METRO and City of Houston will not be responsible for any loss or damage to its tools and equipment. If insured, the contractors/subcontractors’ insurance policy covering tools and equipment will include a waiver of subrogation in favor of METRO. If uninsured, the contractors/subcontractors will hold harmless METRO and City of Houston, designer and engineer for loss or damage to their tools and equipment.

The following provisions apply with respect to all insurance coverages required above.

The insurance coverages required in this section shall not limit the Contractor’s liability, or limit the indemnification provisions set forth herein.

If the Contractor maintains higher limit than the minimums shown above, METRO requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specific minimum limits of insurance and coverage shall be available to METRO.

The limits of liability as required above may be provided by a single policy of insurance or by a combination of primary, excess or umbrella policies. But in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required above.

All policies of insurance presented as proof of compliance with the above requirements shall be on forms and with insurance companies approved by METRO. All such insurance policies shall be provided by insurance companies having Best’s ratings of A- or greater and VI or greater (A-VI) as shown in the most current issue of Best’s Key Rating Guide. Policies of insurance issued by insurance companies not rated by Best’s or having Best’s ratings lower than A-VI will not be accepted as complying with the insurance requirements of the contract unless such insurance companies were approved in writing prior to award of contract.

B. Contractor agrees to waive all rights of subrogation or recovery against METRO and City of Houston arising out of any claims for injury(ies) or damages resulting from the work performed by or on behalf of Contractor under this agreement and/or the use of any METRO and City of Houston premises or equipment in the performance of this agreement.

C. Proof of compliance with these insurance requirements shall be furnished to METRO in the form of an original certificate of insurance including the endorsements mentioned in section A. above, or copies of the applicable policy language effecting required coverage signed by an authorized representative or agent of the insurance company(ies), within fourteen (14) days of notice of award of contract and before any work under this contract will be allowed to commence. Certificates will be unacceptable unless they clearly show that all of the above stipulated requirements have been met. Renewal or replacement certificates shall be furnished METRO not less than seven (7) days prior to the expiration or termination date of the applicable policy(ies). Otherwise, METRO may halt all work under this contract upon expiration or other termination of any required coverage, and work will not be allowed to resume until a satisfactory renewal certificate is received.

D. The Certificate Holder shall read as follows on the Certificate of Insurance:

Metropolitan Transit Authority of Harris County, TX (METRO)
1900 Main St
Houston, TX 77002

E. Contractor shall require any and all subcontractors performing work under this contract to obtain and maintain the insurance coverage specified in this section, where applicable. Such insurance shall be endorsed to name METRO and its directors, officers and employees as Additional Insured as respects to subcontractor’s operations in performance of this contract. In addition, subcontractor and their respective insurers providing the required insurance coverage will waive all rights of subrogation or recovery against METRO and City of Houston providing such coverage shall be endorsed to recognize this required waiver of subrogation. The insurance limits may be provided through a combination of primary and excess policies, including the umbrella form of policy. In the event a subcontractor is unable to furnish insurance in the limits required under this contract, the Contractor shall endorse the subcontractor as an Additional Insured on its General Liability and Automobile Liability policies and provide METRO a certificate of insurance showing such coverage.

Such insurance will be primary and non-contributing with any other insurance and be in a form and from insurance companies reasonably acceptable to METRO.
Any request to deviate from the stipulated insurance limits required of subcontractor must be approved by METRO and will be based solely on the scope of work to be performed by the subcontractor. Contractor shall obtain and make available for inspection by METRO upon request current certificates of insurance evidencing insurance coverages carried by subcontractor.

2 INDEMNIFICATION AGREEMENT

A. THE CONTRACTOR AGREES TO AND SHALL INDEMNIFY AND HOLD HARMLESS METRO, ITS DIRECTORS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEY’S FEES, FOR BODILY INJURY, SICKNESS, DISEASE OR DEATH OF ANY PERSON, OR FOR DAMAGES TO ANY PROPERTY, INCLUDING CONSEQUENTIAL DAMAGES OR LOSS OF USE THEREOF, BROUGHT OR RECOVERABLE BY THIRD PARTIES AGAINST METRO, ITS DIRECTORS AND/OR EMPLOYEES AND ARISING OUT OF OR RESULTING FROM ANY NEGLIGENT ACT OR OMISSION BY THE CONTRACTOR IN THE PERFORMANCE OF THIS CONTRACT. THE CONTRACTOR AGREES TO PROVIDE ACKNOWLEDGEMENT OF INDEMNIFICATION WITHIN TEN DAYS FROM RECEIPT OF DEMAND FOR INDEMNIFICATION FROM METRO.

B. THE INDEMNITY PROVIDED FOR IN THIS ARTICLE SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS OR DAMAGE, CAUSE OF ACTION, SUIT OR LIABILITY BROUGHT OR RECOVERABLE AGAINST METRO, ITS DIRECTORS AND/OR EMPLOYEES TO THE EXTENT THE INJURY, DEATH OR DAMAGE RESULTS SOLELY FROM A GROSS NEGLIGENT ACT OR WILFUL BEHAVIOR BY METRO.
SECTION VII - SMALL BUSINESS PROGRAM ARTICLES FOR CONTRACTS WITH SMALL BUSINESS GOALS

A. The Contractor hereby agrees to attain Small Business participation in the amount of __% of the total Contract amount.

B. The Contractor shall enter into agreements for the Work identified in the ‘Contractor Utilization Plan Form’ (Plan) and submit copies of the agreements to the Contracting Officer within 15 days of contract award. The agreements will include:
   1. Prompt payment clause;
   2. Non-discrimination clause;
   3. Release of retainage clause, where applicable;
   4. Business Assurance clauses;
   5. Federal clauses, where applicable; and

C. The Contractor shall adhere to the Plan submitted, including self-performing a minimum thirty percent (30%) of the Contract unless a waiver is received from the Office of Small Business. Any changes in the Plan regarding the proposed use of certified subcontractors in discharging the Contract duties must be approved by the Office of Small Business. The approval of the Office of Small Business will not be unreasonably withheld upon a showing of good cause to make the change. When adding a certified subcontractor to the Plan, the Contractor must submit a copy of the subcontract agreement to the Contracting Officer within 15 days of receiving approval from the Office of Small Business.

D. The Contractor's failure to comply with the aforementioned Small Business participation provisions and the Contractor Utilization Plan Pledge provisions may result in the:
   1. Withholding of payment until such compliance is achieved or a waiver of the provisions is provided by METRO;
   2. Revocation of the benefits and incentives provided under the Program; or
   3. Cancellation, termination or suspension of the Contract, in whole or in part.

E. Where applicable, the Contractor's Small Business Participation goal achievement and compliance with the Small Business Program will be considered during evaluation for future METRO contracts.

F. The Contractor and Subcontractors shall permit access to their books, records, and accounts by the Contracting Officer, Office of Small Business representative or a designated representative for the purpose of investigation to ascertain compliance with these specified requirements. Such records shall be maintained by the Contractor in a fashion which is readily accessible to METRO for a minimum of three (3) years following completion of this Contract. The Contractor will include this provision in the subcontractor agreements.

G. To ensure that all obligations under this Contract are met, METRO will conduct periodic reviews of the Contractor's Small Business efforts during Contract performance. The Contractor shall bring to the attention of METRO's Contracting Officer and Office of Small Business any situation in which regularly scheduled progress payments are not made to Small Business subcontractors. Failure to make prompt payment or to notify METRO could result in the action outlined in item D above.

H. The Contractor may review documents at METRO which specify:
   1. Guidance for making determinations of Small Business participation in the Program;
   2. The procedure used to determine whether a company is in fact a Small Business; and
   3. Appeals procedure for denial of certification as a Small Business.
SECTION VIII - SPECIAL TERMS AND CONDITIONS ARTICLES

1 CONFIDENTIALITY AND NONDISCLOSURE

A. The Contractor acknowledges that in rendering these services, METRO Confidential Information [will or may] be revealed to the Contractor. 'Confidential Information' means non-public, sensitive or proprietary information disclosed before, on or after the effective date, by METRO to the Contractor or its employees, agents, officers, directors, or affiliates. Except as required by applicable federal, state or local law or regulation, Confidential Information does not include information that at the time of disclosure is, or thereafter becomes, generally available to and known by the public other than as a result of this Contract, information from a lawful third-party source, and information that was already in the possession of the Contractor. The Contractor shall not use any such Confidential Information without METRO's written permission. The Contractor shall not disclose METRO Confidential Information to any person or entity other than its representatives involved in this Contract.

B. If the Contractor knows or suspects any misuse or disclosure of METRO Confidential Information, the Contractor will immediately notify METRO and restrict the use and disclosure of such Confidential Information.

C. On METRO's request, the Contractor shall promptly return or destroy all Confidential Information in its possession.

D. At any time during the term of this and for a period of three (3) years from the date of expiration of this Contract, at METRO's request, the Contractor shall provide to METRO or its designated agents full access to the Contractor's premises to inspect and audit the relevant books, records, physical and electronic controls to verify the Contractor's compliance with the terms of this clause. Notwithstanding the above, any valid order of disclosure under the Texas Public Information Act shall be lawful if prompt written notice is given to METRO before disclosure. The Contractor understands that disclosure can lead to irreparable harm which injunctive relief alone may not be an adequate remedy. METRO reserves its right to all other remedies available at law.

2 CONTRACTOR'S EMPLOYEES

A. The Contractor shall screen all employees and require satisfactory personal references in order to determine the character of prospective employees before hiring.

B. Access to METRO facilities is limited to Contractor and subcontractor personnel performing the Work and to suppliers making deliveries related to the Work. The Contractor, subcontractor(s) and supplier(s) shall comply with all facility access requirements as designated by the Contracting Officer. All Contractor, subcontractor and supplier personnel shall comply with METRO's increased security requirements during heightened security levels. No claim shall be allowed for delays in access to METRO facilities.

C. All Contractor, subcontractor and supplier personnel shall submit to vehicle searches by METRO's security personnel and shall comply with METRO's regulations on the possession of firearms and weapons.

D. All Contractor, subcontractor and supplier personnel shall, while on duty at a METRO facility, wear in plain view on the upper portion of the outer garment, a metal or plastic identification badge to be furnished by the Contractor, containing the company name, employee's name or company identification number of employee, if any. All prescribed identification shall immediately be delivered to the Contractor for cancellation upon release of any employee.

E. All Contractor and Subcontractor employees shall be neatly attired at all times in a manner that will reflect credit both upon Contractor and the facility in which they are working.

F. All Contractor and subcontractor employees shall be U.S. citizens or possess written documentation verifying legal authorization to work in the United States.

G. When working in METRO facilities, the Contractor shall prohibit the disruption of papers on desks, opening of desk drawers or cabinets, or the use of telephone or office equipment provided for official METRO use.

H. At the request of the Contracting Officer, the Contractor shall remove an employee from its work force who is found unacceptable or unsatisfactory by the Contracting Officer. It shall be the Contractor's responsibility to find a suitable replacement for the removed employee. No claim associated with such an action will be authorized.

I. The Contractor's personnel shall comply with all written rules and regulations supplied to the Contractor regarding personal and professional conduct, safety, security and other matters that are generally applicable to METRO's employees at the site of METRO's Work, such as the Electronic Communications Guideline; and otherwise conduct themselves in a businesslike manner.

J. The Contractor shall have the responsibility to see that its employees and employees of its subcontractors shall at all times be fit to work and that their performance not be impaired by alcohol or drugs. The Contractor shall not permit the introduction to the Work or use by its employees and Subcontractors' employees of any intoxicant, including but not limited to alcohol, unlawful drugs, prescription drugs not prescribed for current personal treatment of the user by an accredited physician, or any other unauthorized substance.

K. METRO shall have the right to require the Contractor to immediately remove from the Work any employee of the Contractor or
its subcontractor whom METRO knowingly believes has violated any of the above conditions and such person shall not again be employed on the Work without the consent of METRO.

L. The Contractor shall replace the removed worker, at the Contractor’s expense, with a suitable replacement within twenty four (24) hours after immediately removing the violating employee.

3 GOVERNMENT CODE 2258, PREVAILING WAGE RATES

For non-federally funded projects, the Contractor shall comply with Government Code, Title 10, General Government, Subtitle F, State and Local Contracts and Fund Management, Chapter 2258, Prevailing Wage Rates.

4 NO DAMAGES FOR DELAYS

No claims for increased costs, charges, expenses, or damages of any kind shall be made by the Contractor against METRO for any delays or hindrances from any cause whatsoever; provided that METRO, in METRO’s discretion, may extend the time for completion of the Contract for METRO caused delays, as necessary.

5 USE OF LOW SULFUR DIESEL

The Contractor shall use low-sulfur (500 ppm or less) diesel fuel in all diesel operating vehicles and motorized equipment used by the Contractor and its Subcontractors in the performance of this Work. No diesel operating vehicle or motorized equipment used in the performance of this Work shall utilize a high-sulfur diesel fuel in excess of the required 500 ppm sulfur content. If the Contractor or its Subcontractors are found to be using high-sulfur diesel fuel during the performance of this Work, METRO may, at its discretion, order the Contractor to cease operation of all such vehicles and motorized equipment until this requirement has been complied with. The Contractor shall not be entitled to any claims for compensation therefore. Either off-road low-sulfur ‘reddy’ diesel fuel or on-road low-sulfur diesel containing 500 ppm or less sulfur content may be used to comply with this requirement. Contractors and subcontractors using this type of fuel must have invoices/receipts available upon demand by METRO’s Contracting Officer to ensure compliance with this low-sulfur fuel use requirement.
SECTION IX - GENERAL TERMS AND CONDITIONS ARTICLES

1 ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

The Contractor agrees to comply with, and assures that any subcontractor or any other third-party Contractor under this Contract complies with, all applicable requirements regarding Access for Individuals with Disabilities contained in the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; 49 U.S.C. § 5301(d); and any other applicable federal regulations, including any amendments thereto.

2 ASSIGNMENT

The performance of the services under the Contract shall not be assigned by the Contractor except upon written consent of METRO. The Contractor may assign monies due or to become due to him under the Contract and such assignment will be recognized by METRO, if given proper notice thereof, to the extent permitted by law. Assignment of monies will be subjected to proper offsets in favor of METRO and to deductions provided for in this Contract. Money witheld, whether assigned or not, will be subject to being used by METRO for the completion of the Work in the event that the Contractor defaults under the contract. The validity of the assignment and the rights of the assignee against METRO shall be governed by the laws of the state of Texas. METRO reserves the right to assign all or portion of the services awarded under this Contract including options. METRO’s right of assignment will remain in force over the period of the Contract until completion of the Contract to include options, whichever occurs first.

3 CHANGES

A. The President & Chief Executive Officer or the duly authorized representative may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the Work within the general scope of the contract, including any one or more of the following:

1. The specifications, drawings, and designs;

2. In the method or manner of performance of the Work;

3. In METRO-furnished facilities, equipment, materials, services, or site; or


B. Any other written order or an oral order (which, as used in this paragraph, includes direction, instruction, interpretation, or determination) from the President & Chief Executive Officer or the duly authorized representative that causes a change shall be treated as a change order under this Article; provided, that the Contractor gives the Contracting Officer written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a change order.

C. Except as provided in this Article, no order, statement, or conduct of the President & Chief Executive Officer or the duly authorized representative shall be treated as a change under this Article or entitle the Contractor to an equitable adjustment hereunder.

D. If any change under this Article causes an increase or decrease in the Contractor’s cost of, or the time required for, the performance of any part of the Work under this Contract, whether or not changed by any such order, the President & Chief Executive Officer or the duly authorized representative shall make an equitable adjustment and modify the Contract in writing. However, except for a ‘proposal for adjustment’ (hereafter referred to as ‘proposal’) based on defective specifications, no proposal for any change under Paragraph B above shall be allowed for any costs incurred more than twenty calendar (20) days before the Contractor gives written notice as required.

E. The parties agree that the terms and conditions of this Contract may only be modified and/or amended by mutual agreement between the parties. Said mutual agreement upon amendment and/or modification shall be written and executed by both parties prior to becoming effective.

F. The Contractor must submit any proposal under this Article within thirty calendar (30) days after:

1. Receipt of a written change order under Paragraph A above, or

2. The furnishing of a written notice under Paragraph B above by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by METRO. The statement of proposal for adjustment may be included in the notice under Paragraph B above.

G. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this Contract.
4 CLEANING UP

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the Work, the Contractor shall remove from the Work area and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of METRO. Upon completing the Work, the Contractor shall leave the work area in a clean and orderly condition satisfactory to the METRO Project Manager. Final cleanup of the premises shall be included in the Period of Performance of this Contract.

5 COMPOSITION OF CONTRACTOR

If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

6 CONTRACT ORDER OF PRECEDENCE

In the event of an inconsistency between provisions of this Contract, the inconsistency shall be resolved by giving precedence in the following order:

1. Contract Modifications, if any
2. Contract Articles;
3. Scope of Services;
4. Technical Specifications; and
5. Drawings.

7 COVENANT AGAINST CONTINGENT FEES

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

8 DIFFERING SITE CONDITIONS

A. The Contractor shall promptly, and before the conditions are disturbed, give written notice to the METRO Project Manager of:

1. Subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or
2. Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

B. The METRO Project Manager shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work under this Contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made and the Contract modified in writing accordingly.

C. No request by the Contractor for an equitable adjustment to the contract under this Article shall be allowed, unless the Contractor has given the written notice required.

D. No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this Contract.

9 DISPUTES

Any dispute concerning a question of fact arising under this Contract that is not disposed of by agreement will be decided by the Contracting Officer, who will reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer will be final unless, within ten (10) calendar days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the METRO Contract Disputes Appeals Committee. The Contract Disputes Appeals Committee will be designated by the President & Chief Executive Officer and will hear the Contractor's appeal and make a recommendation to the President & Chief Executive Officer for the final decision. In connection with any appeal proceeding under this Article, the Contractor will be afforded an opportunity to be heard and to offer evidence in support of his appeal. The decision of the President & Chief Executive Officer will be final and conclusive with respect to the Contractor's administrative remedies under this 'Disputes' Article. Pending final decision of a dispute
hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Contracting Officer's decision. This 'Disputes' Article does not preclude consideration of questions of law in connection with decisions provided for above. Nothing in this Contract, however, shall be construed as making final the decision of any administrative official, representative, or committee on a question of law.

10 DISSEMINATION OF CONTRACT INFORMATION

The Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the performance of this Contract, without prior written consent of METRO's President & Chief Executive Officer. Two (2) copies of any material proposed to be published or distributed shall be submitted to the METRO President & Chief Executive Officer through the Contracting Officer.

11 EQUAL OPPORTUNITY FOR VEVRAA PROTECTED VETERANS

3The definitions set forth in 41 C.F.R. § 60-300.2 apply to the terms used throughout this Clause, and they are incorporated herein by reference.

A. The Contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, or Armed Forces service medal veteran (hereinafter collectively referred to as 'protected veteran[s]') in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals without discrimination based on their status as a protected veteran in all employment practices, including the following:

1. Recruitment, advertising, and job application procedures;
2. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
3. Rates of pay or any other form of compensation and changes in compensation;
4. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
5. Leaves of absence, sick leave, or any other leave;
6. Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
7. Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
8. Activities sponsored by the Contractor including social or recreational programs; or
9. Any other term, condition, or privilege of employment.

B. The Contractor agrees to immediately list all employment openings which exist at the time of the execution of this Contract and those which occur during the performance of this Contract, including those not generated by this Contract and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, with the appropriate employment service delivery system where the opening occurs. Listing employment openings with the state workforce agency job bank or with the local employment service delivery system where the opening occurs will satisfy the requirement to list jobs with the appropriate employment service delivery system. In order to satisfy the listing requirement described herein, Contractors must provide information about the job vacancy in any manner and format permitted by the appropriate employment service delivery system which will allow that system to provide priority referral of veterans protected by VEVRAA for that job vacancy. Providing information on employment openings to a privately run job service or exchange will satisfy the Contractor's listing obligation if the privately run job service or exchange provides the information to the appropriate employment service delivery system in any manner and format that the employment service delivery system permits which will allow that system to provide priority referral of protected veterans.

C. Listing of employment openings with the appropriate employment service delivery system pursuant to this Clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicants or from any particular group of job applicants, and nothing herein is intended to relieve the Contractor from any requirements in executive orders or regulations regarding nondiscrimination in employment.

D. Whenever a Contractor, other than a state or local governmental Contractor, becomes contractually bound to the listing provisions in paragraphs 2 and 3 of this Clause, it shall advise the employment service delivery system in each state where it has establishments that: (a) it is a federal Contractor, so that the employment service delivery systems are able to identify them as such; and (b) it desires priority referrals from the state of protected veterans for job openings at all locations within the state. The Contractor shall also provide to the employment service delivery system the name and location of each hiring location within
the state and the contact information for the Contractor official responsible for hiring at each location. The 'Contractor Official' may be a chief hiring official, a Human Resources contact, a senior management contact, or any other manager for the Contractor who can verify the information set forth in the job listing and receive priority referrals from employment service delivery systems. In the event that the Contractor uses any external job search organizations to assist in its hiring, the Contractor shall also provide to the employment service delivery system the contact information for the job search organization(s). The disclosures required by this Paragraph shall be made simultaneously with the Contractor's first job listing at each employment service delivery system location after the effective date of this final rule. Should any of the information in the disclosures change since it was last reported to the employment service delivery system location, the Contractor shall provide updated information simultaneously with its next job listing. As long as the Contractor is contractually bound to these provisions and has so advised the employment service delivery system, there is no need to advise the employment service delivery system of subsequent contracts. The Contractor may advise the employment service delivery system when it is no longer bound by this Contract clause.

E. The provisions of Paragraphs B and C of this Clause do not apply to the listing of employment openings which occur and are filled outside of the 50 states, the District of Columbia, the commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the commonwealth of the Northern Mariana Islands, Wake Island, and the Trust Territories of the Pacific Islands.

F. As used in this Clause:

i. All employment openings includes all positions except executive and senior management, those positions that will be filled from within the Contractor's organization, and positions lasting three days or less. This term includes full-time employment, temporary employment of more than three days' duration, and part-time employment.

ii. Executive and senior management means: (1) Any employee (a) compensated on a salary basis at a rate of not less than $455 per week (or $380 per week, if employed in American Samoa by employers other than the federal government), exclusive of board, lodging or other facilities; (b) whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; (c) who customarily and regularly directs the work of two or more other employees; and (d) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight; or (2) any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.

iii. Positions that will be filled from within the Contractor's organization means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings which the Contractor proposes to fill from regularly established 'recall' lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of his or her own organization.

G. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

H. In the event of the Contractor's noncompliance with the requirements of this Clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

I. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the Contracting Office. Such notices shall state the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are protected veterans. The Contractor must ensure that applicants or employees who are disabled veterans are provided the notice in a form that is accessible and understandable to the disabled veteran (e.g., providing Braille or large print versions of the notice, posting the notice for visual accessibility to persons in wheelchairs, providing the notice electronically or on computer disc, or other versions). With respect to employees who do not work at a physical location of the Contractor, a Contractor will satisfy its posting obligations by posting such notices in an electronic format, provided that the Contractor provides computers that can access the electronic posting to such employees, or the Contractor has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the Contractor to notify job applicants of their rights if the Contractor utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.

J. The Contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding that the Contractor is bound by the terms of VEVRAA, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, protected veterans.

K. The Contractor will include the provisions of this Clause in every subcontractor purchase order of $100,000 or more, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to VEVRAA so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontractor purchase order as the Director, Office of Federal Contract Compliance Programs, may direct to enforce such provisions, including action for noncompliance.
L. The Contractor must, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to their protected veteran status.

12 ETHICAL CONDUCT

A. The METRO Board of Directors has adopted a Code of Ethics governing the conduct of its officers and employees. The Contractor agrees it will familiarize itself with this Code of Ethics and that it will not offer, confer or agree to confer any prohibited benefit as consideration for a METRO Board Member's or employee's decision, opinion, recommendation, vote or other exercise of discretion as a public servant or in exchange for the Board Member's or employee's having exercised his official powers or performed his official duties nor will the Contractor participate in any other violation of this Code.

B. The Contractor is required to maintain those records necessary to prove beyond a reasonable doubt the Contractor's compliance with the METRO Code of Ethics Policy. METRO shall have the right to review for the purpose of determining compliance with the Code of Ethics Policy all disbursement records and supporting documents including invoices, payment vouchers, employee expense reports and petty cash records.

C. Breach of this Article by the Contractor may result in termination of the Contract and exclusion of the Contractor from future contracts with METRO for a period of time determined by the METRO Board of Directors.

13 EXTRAS

Except as otherwise provided in this Contract, no payment for extra Work shall be made unless such extra Work and the price therefore have been authorized by advanced written order of METRO pursuant to the 'Changes' Article of this Contract.

14 FORCE MAJEURE

A. To the extent that the Contractor shall be wholly or partially prevented from its performance within the terms specified of any obligation or duty placed on the Contractor by reason of or through riot, acts of war, acts of terrorism, insurrection, by order of court, legislative action, act of God, or specific cause reasonably beyond parties' control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty may be suspended until such disability to perform is removed. Determination of force majeure shall rest solely with METRO.

B. In the event the Contractor seeks to characterize an event as a 'Force Majeure Event,' the Contractor shall have the obligation to immediately notify METRO at the time the Contractor becomes aware of said Force Majeure event. Further, the Contractor shall have the obligation to provide METRO with written notice upon the cessation of said Force Majeure event.

15 INDEPENDENT CONTRACTOR

It is understood and agreed that the Contractor shall be deemed to be an Independent Contractor in all its operations and activities hereunder; that the employees furnished by the Contractor to perform Work hereunder shall be deemed to be the Contractor’s employees or independent subcontractors; that the Contractor’s employees shall be responsible for all obligations and reports covering social security, unemployment insurance, income tax, and other reports and deductions required by state or federal law.

16 INTERPRETATION, JURISDICTION AND VENUE

This Contract shall be construed and interpreted solely in accordance with the laws of the state of Texas. Venue of any suit, right or cause of action arising under or in connection with this Contract shall lie exclusively in Harris County, Texas.

17 LAYOUT OF WORK

The Contractor shall lay out his work in accordance with the Contract plans and specifications and shall be responsible for all measurements in connection with the layout of the Work. The Contractor shall furnish, at his own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the Work. The Contractor shall be responsible for executing the Work to the lines and grades that may be established or indicated by the METRO Project Manager. The Contractor shall also be responsible for maintaining and preserving all control points established by the METRO Project Manager. If such control points are destroyed or removed by the Contractor before their removal is authorized, the METRO Project Manager may have them replaced and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

18 MATERIAL AND WORKMANSHIP

A. All equipment, material, and articles incorporated in the Work covered by this Contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this Contract. References in the specifications to equipment, material, article, or patented process by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the METRO Project Manager, is equal to that named in the specifications,
unless otherwise specifically provided in this Contract.

B. The Contractor shall obtain the METRO Project Manager’s approval of the machinery and mechanical and other equipment to be incorporated into the Work. When requesting approval, the Contractor shall furnish to the METRO Project Manager the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by the METRO Project Manager, the Contractor shall also obtain the METRO Project Manager’s approval of the material or articles that the Contractor contemplates incorporating into the Work. When requesting approval, the Contractor shall provide full information concerning the material or articles. All materials submitted for review and approval by METRO shall be accompanied by the METRO ‘Construction Submittal’ form (see Exhibit D). When directed to do so, the Contractor shall submit samples for approval at the Contractor’s expense, with all shipping charges prepaid. Machinery, equipment, material and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

C. All work under this Contract shall be performed in a skillful and workmanlike manner.

19 METRO-FURNISHED DOCUMENTS

The following quantities of the Contract documents will be provided to the Contractor at no additional expense after execution of the Contract:

<table>
<thead>
<tr>
<th>Document</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract</td>
<td>3 copies</td>
</tr>
<tr>
<td>Contract Drawings, 11 X 17 format</td>
<td>5 copies</td>
</tr>
</tbody>
</table>

20 METRO-FURNISHED PROPERTY

A. METRO shall provide to the Contractor, at the times and locations stated in this Contract, the METRO-furnished property described in this Contract.

B. Title to METRO-furnished property shall remain with METRO. The Contractor shall use the METRO-furnished property only in connection with this Contract. The Contractor shall maintain adequate property control records of METRO-furnished property in accordance with sound industrial practice and shall make such records available for METRO’s inspection at all reasonable times.

C. The Contractor shall inspect the METRO-furnished property prior to acceptance. Upon acceptance of METRO-furnished property, the Contractor assumes the risk and responsibility for its loss or damage, except:

1. For reasonable wear and tear;
2. To the extent the property is consumed in performing this Contract; or
3. As otherwise provided for by the provisions of this Contract.

D. The Contract performance period is based upon the expectation that METRO-furnished property, suitable for use, will be available to the Contractor at the times stated in the Schedule or if not stated, in sufficient time to enable the Contractor to meet the performance dates.

E. If the METRO-furnished property is not available to the Contractor by the required time, or is unsuitable for use as determined by the METRO Project Manager, the Contracting Officer shall, upon the Contractor’s timely written request, make a determination of delay, if any, caused the Contractor, and shall make an adjustment in the Contract performance period. The right to adjustment in the performance period shall be the Contractor’s exclusive remedy. METRO shall not be liable for suit for breach of contract for:

1. Any delay in availability of METRO-furnished property;
2. Availability of METRO-furnished property in a condition not suitable for its intended use;
3. A decrease in, or substitution of, METRO-furnished property; or
4. Failure to replace METRO-furnished property for which METRO is responsible.

F. Upon completing this Contract, the Contractor shall follow the instructions of METRO regarding the disposition of all METRO-furnished property not consumed in the performance of this Contract.

21 OPERATIONS AND STORAGE AREAS

A. The Contractor shall confine all operations (including storage of materials) on METRO premises to areas authorized or approved
by the METRO Project Manager.

B. Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the METRO Project Manager and shall be built with labor and materials furnished by the Contractor without expense to METRO. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon the completion of the Work. With the written consent of the METRO Project Manager, the buildings and utilities may be abandoned and need not be removed.

C. The Contractor shall use only established roadways or may construct and use temporary roadways when and if such temporary roadways are authorized by the METRO Project Manager. The Contractor shall comply with all Federal, state, and local laws and regulations when transporting materials. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

22 OTHER CONTRACTS

METRO may undertake or award other contracts for additional work at or near the site of the Work under this Contract. The Contractor shall fully cooperate with the other Contractors and with METRO employees and shall carefully adapt scheduling and performing the Work under this Contract to accommodate the additional Work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of Work by any other Contractor or by METRO employees.

23 PATENT INDEMNITY

Except as otherwise provided, the Contractor agrees to indemnify METRO and other government agencies, if this is a joint government project, and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any United States patent arising out of the performance of this Contract or out of the use or disposal by or for the account of METRO and any other government agency of supplies furnished or construction work performed hereunder.

24 PERFORMANCE OF WORK BY THE CONTRACTOR

The Contractor shall perform on the site, and with its own organization, work equivalent to at least thirty percent (30%) of the total amount of Work to be performed under the Contract. This percentage may be reduced by agreement of the parties if, during performance of the Work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of METRO.

25 PERMITS AND RESPONSIBILITIES

The Contractor shall, without additional expense to METRO, be responsible for obtaining any necessary licenses and permits, and for complying with any federal, state and municipal laws, codes, and regulations applicable to the performance of the Work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor’s fault or negligence, and shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire Work, except for any completed unit of work which may have been accepted under the Contract.

26 PRICING ADJUSTMENTS

A. The Contractor, in connection with any proposal he makes for a Contract modification shall furnish a price breakdown itemized as required by the Contracting Officer. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract, and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such Work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. All costs claimed are subject to negotiation, however, markup (including administrative overhead, extended overhead, profit and bonds) shall not exceed:

1. Fifteen percent (15%) total on work performed by the prime Contractor, nor

2. Twenty percent (20%) total - fifteen percent (15%) for the subcontractor + five percent (5%) for the prime Contractor when work is to be performed by subcontractors.

B. Justification shall be furnished for any proposed extension in the period of performance. The proposal, together with the price breakdown and period of performance extension justification, shall be furnished by the date specified by the Contracting Officer.
PROTECTION OF EXISTING VEGETATION, STRUCTURES, UTILITIES AND IMPROVEMENTS

A. The Contractor shall preserve and protect all structures, equipment and vegetation (such as trees, shrubs, and grass) on or adjacent to the Work site, which are not to be removed and which do not unreasonably interfere with the Work required under this Contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during the Contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree pruning compound as directed by the METRO Project Manager.

B. The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this Contract for failure to exercise reasonable care in performing the Work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary Work performed and charge the cost to the Contractor.

SAFETY

A. The Contractor shall be responsible for compliance with all safety rules and regulations of the Federal Occupational Safety and Health Act of 1970 and those of METRO and all applicable state and local laws, ordinances, and regulations during the performance of this Work.

B. The Contractor shall indemnify METRO for fines, penalties, and corrective measures that result from the acts of commission or omission of the Contractor, its Subcontractors (if any), agents, employees, and assigns and their failure to comply with such safety rules and regulations.

C. The Contractor shall furnish and enforce the use of individual protective equipment as needed to complete the Work, including hard hats, rain gear, protective foot wear, protective clothing and gloves, eye protection, ear protection, respirators, safety belts, safety harnesses, safety lifelines and lanyards, and high visibility reflective safety vests. Refer to Exhibit J, 'Personal Protective Equipment,' in Section XI.

D. The Contractor shall provide its employees safety training to include special training prior to working with hazardous materials or operations. The Contractor shall also provide such training to its subcontractors' employees, or assure itself that these subcontractors have similar, adequate safety training programs.

E. The Contractor shall provide warning signs, barricades and verbal warnings as required.

F. The Contractor shall inform its employees of emergency procedures to be adhered to in case of a fire, medical emergency, or any other life-threatening catastrophes.

G. None of the Contractor's workmen will work alone. The Contractor must employ the Buddy System at all times while work is being performed at the job site.

H. The Contractor shall promptly notify the METRO Project Manager of any accident involving personnel or damage to material and equipment. The Contractor shall provide a copy of the required accident investigation report to the METRO Project Manager. In no case shall notification be later than twenty-four (24) hours after the occurrence of the accident.

I. The Contractor shall hold weekly safety meetings for all foremen, craft supervisors and workmen and maintain a written report of all such meetings. Copies of these written reports shall be made available to METRO when requested.

J. The Contractor shall perform weekly job site safety inspections. A report of the Contractor's findings and observations, as well as corrective measures taken, where required, shall be prepared and made available to METRO when requested.

K. The Contractor shall maintain a set of OSHA Articles at the job site as they apply to the work being performed. Copies shall be provided to METRO when requested.

L. The Contractor shall submit to METRO a copy of its standard safety policies and program procedures that establish the safety rules and regulations as they are to be applied to the performance of the Work. These documents shall be submitted by the Contractor within 14 calendar days after award of the Contract.

M. The Contractor shall assign, during performance of the work, a designated safety representative (in writing) to develop and monitor the project safety program. The name, company address, and telephone number of the assigned individual shall be submitted to METRO by the Contractor along with its safety policies and program procedures.

N. The Contractor shall provide and maintain on the job site, at all times, a completely stocked first aid kit which contain all emergency medical supplies as currently recommended by the American Red Cross.

O. The Contractor shall make available for its employees and those of its Subcontractors, while they are performing work on the
job site, emergency medical treatment either at the job site or at a nearby medical facility.

P. METRO reserves the right to approve, prior to commencing work, and monitor the Contractor’s safety policies and program procedures as applied during performance of the work. Failure to comply with safety policies and program procedures, once approved by METRO, shall be just cause for the complete termination of the Contract in accordance with the 'Default' Article in this Contract.

Q. The Contractor shall comply with all requirements of Texas revised Civil Statute Annotated, Article 2368a (1989) and the Occupational Safety and Health Administration Standard 29 C.F.R., Part 1926, Subpart P - Excavations, dated October 31, 1989, and shall provide a copy of tables, charts, diagrams, drawings or tabulated data applicable to the manufacturer's equipment to the METRO Project Manager prior to the commencement of any trenching operations that will be more than five (5) feet in depth.

29 SEVERABILITY

If any provision of this Contract the application thereof to any person or circumstance, is rendered or declared illegal for any reason and shall be invalid or unenforceable, the remainder of this Contract and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by applicable law.

30 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

A. The Contractor acknowledges that it has taken all steps necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work, its cost, or performance time, including but not limited to:

1. Conditions bearing upon transportation, disposal, handling, and storage of materials;
2. The availability of labor, water, electric power, and roads;
3. Uncertainties of weather, river stages, tides, or similar physical conditions at the site;
4. The conformation and conditions of the ground;
5. The character of equipment and facilities needed preliminary to and during work performance;
6. The location and/or relocation of existing utility lines, poles, and meters including the necessity for timely coordination with all involved utility owners; and
7. The requirements for obtaining city, county, state, or federal permits and licenses necessitated by project right-of-way alignments and boundaries.

B. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by METRO, as well as from the drawings and specifications made a part of this Contract.

31 SPECIFICATIONS AND DRAWINGS

A. The Contractor shall keep on the work site a copy of the scope of services, specifications and drawings and shall at all times give the METRO Project Manager access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy either in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the METRO Project Manager, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at his own risk and expense. The METRO Project Manager shall furnish from time to time such detail drawings and other information as considered necessary.

B. Wherever in the scope of services, specifications or upon the drawings the words 'directed,' 'required,' 'ordered,' 'designated,' 'prescribed,' or words of like import are used, it shall be understood that the 'direction,' 'requirement,' 'order,' 'designation,' or 'prescription,' of the METRO Project Manager is intended and similarly the words 'approved,' 'acceptable,' 'satisfactory,' or words of like import shall mean 'approved by,' or 'acceptable to,' or 'satisfactory to' the METRO Project Manager, unless otherwise expressly stated.

C. Where 'as shown,' 'as indicated,' 'as detailed,' or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this Contract unless stated otherwise. The word 'provided' as used herein shall be understood to mean 'provide complete in place,' that is 'furnished and installed.'

D. Shop drawings means drawings submitted to METRO by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail:
1. The proposed fabrication and assembly of structural elements; and

2. The installation (i.e., form, fit and attachment details) of materials or equipment.

Includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the Contract. METRO may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this Contract.

E. The Contractor shall coordinate all shop drawings, and review them for accuracy, completeness, and compliance with Contract requirements and shall indicate his approval thereon as evidence of such coordination and review. Shop drawings submitted to the METRO Project Manager without evidence of the Contractor's approval may be returned for resubmission. The METRO Project Manager will indicate his approval or disapproval of the shop drawings and if not approved as submitted shall indicate METRO's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the METRO Project Manager shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this Contract, except with respect to variations described and approved in accordance with Paragraph F below.

F. If shop drawings show variations from the Contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.

G. The Contractor shall submit to the METRO Project Manager for approval one (1) set of sepias and four (4) sets of blue line prints (unless otherwise indicated herein) of all shop drawings as called for under the various headings of these specifications. One (1) blue line set will be returned to the Contractor.

H. Omissions from the drawings or specifications or the mis-description of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or mis-described details of the work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

I. The Contractor shall check all drawings furnished him immediately upon their receipt and shall promptly notify the METRO Project Manager of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large scale drawings shall in general govern small scale drawings. The Contractor shall compare all drawings and verify the figures before laying out the work and will be responsible for any errors which might have been avoided thereby.

J. This Article shall be included in all subcontracts at any tier.

32 SUBCONTRACTORS

A. Prior to entering into a subcontract for work to be performed, the Contractor shall secure the consent of METRO. Information submittal requirements for prospective subcontractors shall be the same as presented by the Contractor in its bid except as may have been otherwise consented to by METRO. METRO may, at its discretion, waive or reduce subcontractor information submittal requirements. METRO reserves the right to obtain copies off any or all Subcontracts from the Contractor during the term of this Contract.

B. The Contractor shall not, without the written consent of METRO, either replace a subcontractor previously listed (See Bid/Award Form 'Contractor Utilization Plan Form'), or permit such Subcontract to be assigned or transferred, or allow that portion of the Work to be performed by anyone other than the listed Subcontractor, except the Contractor may perform a previously subcontracted portion of the Work itself with qualified personnel upon written notice to METRO.

C. Nothing contained in the Contract shall be construed as creating any contractual relationship between any subcontractor and METRO. The Contractor shall be responsible to METRO for acts and omissions of its own employees, and of subcontractors and their employees. The Contractor shall also be responsible for the coordination of the work of the trades, subcontractors and material men. The Contractor shall, without additional expense to METRO, employ specialty subcontractors where required. Neither METRO nor its representatives will undertake to settle any differences between the Contractor and its Subcontractors, or between subcontractors.

33 SUPERINTENDENCE BY CONTRACTOR

At all times during performance and until the Work is completed and accepted, the Contractor shall directly superintend the Work of this Contract and have on the work site a competent Superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.
34 SUSPENSION OF WORK

A. The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the Work of this Contract for the period of time that the Contracting Officer determines appropriate for the convenience of METRO.

B. If the performance of all or any part of the Work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Contracting Officer in the administration of this Contract, or by the Contracting Officer's failure to act within the time specified in this Contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the Contract modified in writing accordingly. However, no adjustment shall be made under this Article for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Contract.

C. A claim under this Article shall not be allowed for any costs incurred more than twenty calendar (20) days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the Contract.

35 TERMINATION FOR CONVENIENCE OF METRO

A. METRO may terminate performance of the work under this Contract in whole or, from time to time in part, if the Contracting Officer determines that a termination is in METRO's best interest. The Contracting Officer shall effect such a termination by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

B. After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Article:

1. Stop Work as specified in the notice;

2. Place no further Subcontracts or orders (referred to as Subcontracts in this Article) for materials, services or facilities, except as necessary to complete the continued portion of this Contract;

3. Terminate all Subcontracts to the extent they relate to the Work terminated;

4. Assign to METRO, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the Subcontracts terminated, in which case METRO shall have the right to settle or to pay any termination settlement proposal arising out of those terminations;

5. With approval or ratification, to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the approval or ratification of which will be final for purposes of this Article;

6. As directed by the Contracting Officer, transfer title and deliver to METRO:

   a. The fabricated or unfinished parts, Work in process, completed Work, supplies, and other material produced or acquired for the Work terminated; and

   b. The completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to METRO;

7. Complete performance of the Work not terminated;

8. Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which METRO has or may acquire an interest; or

9. Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in Subparagraph B.6 above; provided, however, that the Contractor is not required to extend credit to any purchaser and may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer of disposition will be applied to reduce any payments to be made by METRO under this Contract, credited to the price or cost of the Work, or paid in any other manner directed by the Contracting Officer.

C. The Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request METRO to remove those items or enter into an agreement for their storage. Within fifteen (15) calendar days, METRO will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within forty-five (45) calendar days from submission of the list, and shall correct the list, as necessary,
before final settlement.

D. After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than one (1) year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request by the Contracting Officer within this one-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after one year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

E. The Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this Paragraph or Paragraph F. below, exclusive of costs shown in Subparagraph F.2 below, may not exceed the total Contract price as reduced by the amount of payments previously made and the contract price of Work not terminated. The Contract shall be amended, and the Contractor paid the agreed amount. Paragraph F. below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

F. If the Contractor and Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of Work, the Contracting Officer shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under Paragraph E, above:

1. For Contract Work performed before the effective date of termination, the total (without duplication of any items) of:
   a. The cost of this Work;
   b. The cost of settling and paying termination settlement proposals under terminated Subcontracts that are properly chargeable to the terminated portion of the Contract if not included in Subdivision a. above; and
   c. A sum, as profit on a. above, determined by the Contracting Officer to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, the Contracting Officer shall allow no profit under this subdivision and shall reduce the settlement to reflect the indicated rate of loss.

2. The reasonable costs of settlement of the Work terminated, including:
   a. Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
   b. The termination and settlement of Subcontracts (excluding the amounts of such settlements); and
   c. Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

G. Except for normal spoilage, and except to the extent that METRO expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under Paragraph F, above, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to METRO or to a buyer.

H. The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this Contract, shall govern all costs claimed agreed to, or determined under this Article.

I. In arriving at the amount due the Contractor under this Article, there shall be deducted:

1. All unliquidated advance or other payments to the Contractor under the terminated portion of this Contract;
2. Any claim which METRO has against the Contractor under this Contract; and
3. The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this Article and not recovered by or credited to METRO.

J. If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. Any proposal by the Contractor for an equitable adjustment under this Article shall be requested within ninety (90) calendar days from the effective date of termination unless extended in writing by the Contracting Officer. METRO may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

K. If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to METRO upon demand, together with interest computed at the legal rate applicable established by the Revised Civil Statutes of the state of
Texas under Article 5069-1.03. Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until ten (10) calendar days after the date of the retention of disposition, or a later date determined by the Contracting Officer because of the circumstances.

L. Unless otherwise provided in this Contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this Contract for three (3) years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to METRO, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

M. The Contractor shall have the right of appeal, under the 'Disputes' Article, from any determination made by the Contracting Officer under Paragraph D, F, or K, except that if the Contractor failed to submit the termination settlement proposal within the time provided in Paragraph D or K, and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under Paragraph D, F, or K, METRO shall pay the Contractor the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or the amount finally determined on an appeal.

36 TERMINATION FOR DEFAULT

A. If the Contractor refuses or fails to prosecute the Work, or any separable part, with the diligence that will insure its completion within the time specified in this Contract including any extension, or fails to complete the Work within this time, METRO may, by written notice to the Contractor, terminate the right to proceed with the Work (or separable part of the Work) that has been delayed. In this event, METRO may take over the Work and complete it by the Contract or otherwise and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the Work. The Contractor shall be liable for any damage to METRO resulting from the Contractor's refusal or failure to complete the Work within the specified time, whether or not the Contractor's right to proceed with the Work is terminated. This liability includes any increased costs incurred by METRO in completing the Work.

B. The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this Article, if:

1. The delay in completing the Work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include:
   a. Acts of God or of the public enemy;
   b. Acts of another Contractor in the performance of a contract with METRO, the State, or the City of Houston;
   c. Fires;
   d. Floods;
   e. Epidemics;
   f. Quarantine restrictions;
   g. Freight embargoes; or

2. The Contractor, within five calendar (5) days from the beginning of any such delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the Work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the 'Disputes' Article.

C. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of METRO.

D. The rights and remedies of METRO in this Article are in addition to any other rights and remedies provided by law or under this Contract.
37 TESTING OF MATERIALS

The Contractor shall be responsible for required testing of materials prior to delivery at the site of Work, including the design of concrete mixes. Testing of materials at the site of the Work will be in accordance with the technical specifications.

38 USE AND POSSESSION PRIOR TO COMPLETION

A. METRO shall have the right to take possession of or use any completed or partially completed part of the Work. Before taking possession of or using any Work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the Work that METRO intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of this Contract. METRO's possession or use shall not be deemed to be an acceptance of any Work under this Contract.

B. While METRO has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the Work resulting from METRO's possession or use, notwithstanding the terms of the 'Permits and Responsibilities' Article in this Contract. If prior possession or use by METRO delays the progress of the Work, or causes additional expense to the Contractor, an equitable adjustment shall be made in the Contract price or the time of completion, and the Contract shall be modified in writing accordingly.

39 USE OF METRO'S NAME IN CONTRACTOR ADVERTISING OR PUBLIC RELATIONS

If the Contractor should desire to use METRO's name, logo or any other material in its advertisement or public relations programs, the Contractor shall receive prior written approval from METRO. Any such information relating to METRO shall be factual and in no way imply that METRO endorses the Contractor's firm, services, or products. The Contractor shall insert the substance of this Article in each Subcontract and Supply Contractor purchase order.

40 USE OF SPECIFICATIONS, DRAWINGS AND NOTES

All drawings (to include as-built drawings), sketches, designs, design data, specifications, note books, technical and scientific data provided to the Contractor or developed by the Contractor pursuant to this Contract and all photographs, negatives, reports, findings, recommendations, data and memoranda of every description relating thereto, as well as all copies of the foregoing relating to the Work or any part thereof, shall be the property of METRO and may be used by METRO for any use whatsoever without any claim of ownership by the Contractor or request for additional compensation. The Contractor shall not use any documents listed above for any purpose outside the scope of this Contract without the prior written consent of METRO.

41 VARIATIONS IN ESTIMATED QUANTITY

If the quantity of a unit-priced item in this Contract is an estimated quantity and the actual quantity of the unit-priced item varies within an allowable range of 20 percent (20%) above or below the estimated quantity, the overrun/underrun quantities shall be adjusted at the time of final closeout of the Contract at the fixed unit prices, stated in the Contract. The Contractor shall not exceed 120 percent (120%) of any line item estimated quantity without the prior written approval of METRO. If the Contractor exceeds this limit without METRO's written approval, he does so at his own risk. Any quantity previously approved and consumed in the performance of this Contract which is greater or lower than the original allowable variation shall be subject (on the written request of either party) to renegotiation of unit price solely for that quantity. Any request for a unit price adjustment, due to quantity variations outside the range of 20 percent (20%) above or below the estimated quantity, must be fully supported by documentation to justify any Contractor claim for increased costs experienced. However, adjustments will not be allowed for items with a total cost less than five percent (5%) of the original Contract amount or less than $100,000.00, whichever is less. If the quantity variation is such as to cause a justifiable increase in the time necessary for completion, the Contractor may request, in writing, an extension of time, to be received by the Contracting Officer within ten (10) days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer, before the date of final completion of the Work. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and extend the Contract completion date as justified.

42 WAIVERS

A. Neither METRO's review, approval or acceptance of, nor payment for, the Work required under this Contract shall be construed to operate as a waiver of any rights under this Contract of any cause of action arising out of the performance of the Contract, and the Contractor shall be and remain liable to METRO in accordance with applicable law and the terms of this Contract for all damages to METRO caused by the Contractor's negligent act, error or omission in the performance of any of the Work furnished under this Contract.

B. The waiver by METRO of any breach of any term, covenant, condition, or agreement herein contained shall not be deemed to be a waiver of any subsequent breach of the same, or of a breach of any other term, covenant, condition, or agreement herein contained.
43 WARRANTY OF CONSTRUCTION

A. In addition to any other warranties in this Contract, the Contractor warrants, except as provided in Paragraph I of this Article, that Work performed conforms to the Contract requirements and is free of any defect in equipment, material or design furnished, or workmanship performed by the Contractor or any of his Subcontractors or Suppliers at any tier.

B. This warranty shall continue for a period of one (1) year from the date of final acceptance of the Work. If METRO takes possession of any part of the Work before final acceptance, this warranty shall continue for a period of one (1) year from the date METRO takes possession.

C. The Contractor shall remedy, at the Contractor’s expense, any failure to conform any defect. In addition, the Contractor shall remedy, at the Contractor’s expense, any damage to METRO-owned or controlled real or personal property, when that damage is the result of:

1. The Contractor’s failure to conform to Contract requirements; or
2. Any defect of equipment, material, workmanship, or design furnished.

D. The Contractor shall restore any work damaged in fulfilling the terms and conditions of this Article. The Contractor’s warranty with respect to work repaired or replaced will run for one (1) year from the date of repair or replacement.

E. The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

F. If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, METRO shall have the right to replace, repair, or otherwise remedy the failure, defect or damage at the Contractor’s expense.

G. With respect to all warranties, expressed or implied, from Subcontractors, Manufacturers, or Suppliers for work performed and materials furnished under this Contract, the Contractor shall:

1. Obtain all warranties that would be given in normal commercial practice;
2. Require all warranties to be executed, in writing, for the benefit of METRO; and
3. Enforce all warranties for the benefit of METRO.

H. In the event the Contractor’s warranty under Paragraph B of this Article has expired, METRO may bring suit at its expense to enforce a subcontractor’s, manufacturer’s, or supplier’s warranty.

I. Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by METRO nor for the repair of any damage that results from any defect in METRO furnished material or design.

J. This warranty shall not limit METRO’s rights under the ‘Inspection of Construction’ Article of this Contract with respect to latent defects, gross mistakes, or fraud.
SECTION X - FEDERAL REQUIREMENTS ARTICLES

1 ACCESS TO RECORDS

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

B. The Contractor agrees to provide METRO, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)1, that 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.

C. Where METRO enters into a contract for a capital project or improvement (defined at 49 U.S.C. § 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to METRO, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

D. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

E. The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case the Contractor agrees to maintain same until METRO, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 C.F.R. § 18.39(i)(11).

F. The FTA does not require the inclusion of these requirements in subcontracts.

2 CARGO PREFERENCE--USE OF UNITED STATES-FLAG VESSELS

The Contractor agrees to:

1. Use privately owned United States-flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liner and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to the contract to the extent such vessels are available at fair and reasonable rates of United States-flag commercial vessels;

2. Furnish within twenty (20) working days following the date of loading for shipment originating within the United States or within thirty (30) working days following the date of loading, for shipment originating outside the United States, a 'legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in Paragraph 1 above to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20590, and to METRO (through the Contractor in the case of a subcontractor's bill-of-lading); and

3. 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 CONTRACT WORK HOURS - SAFETY STANDARDS -- OVERTIME COMPENSATION

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

A. Overtime Requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers 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 (40) 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 A of this Article, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the
Clause set forth in Paragraph A of this Article, 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 (40) hours without payment of the overtime wages required by the Clause set forth in Paragraph A of this Article.

C. Withholding for unpaid wages and Liquidated Damages. METRO shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Contract or any other federal contract with the same prime Contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the Clause set forth in Paragraph B of this Article.

D. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the Clauses set forth in paragraphs A through D of this Article, and a clause requiring the subcontractors to include these Clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the Clauses set forth in paragraphs A through D of this Article.

E. Records. The Contractor shall maintain payroll records containing the information specified in 29 C.F.R. § 516.2(a). Such records shall be preserved for three (3) years from the completion of this Contract.

4 CONTRACTOR NON-DISCRIMINATION

A. The Contractor or subcontractor(s) shall not discriminate on the basis of race, color, national origin, religion, sex (including gender identity and sexual orientation), disability, or age in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as METRO deems appropriate.

5 DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

A. Minimum Wages

1. All laborers and mechanics employed or working upon the site of the Work, 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 C.F.R. 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 which is attached hereto as Exhibit E and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor 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 A.7 of this Article; 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 C.F.R. 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 paragraphs A.2 through A7 of this Article) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the 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.

2. The Compliance Officer 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. METRO shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

   a. Except with respect to helpers as defined as 29 C.F.R. § 5.2(n)(4), the Work to be performed by the classification requested is not performed by a classification in the wage determination; and

   b. The classification is utilized in the area by the construction industry; and

   c. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

   d. With respect to helpers as defined in 29 § C.F.R. 5.2(n)(4), such a classification prevails in the area in which the Work is performed.

3. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives,
and METRO 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 the Compliance Officer 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 thirty (30) days of receipt and so advise the Compliance Officer or will notify the Compliance Officer within the 30-day period that additional time is necessary.

4. In the event the Contractor or the laborers or mechanics to be employed in the classification or their representatives, and METRO do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Compliance Officer shall refer the questions, including the views of all interested parties and the recommendation of METRO, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and advise the Compliance Officer or notify the Compliance Officer within the 30-day period that additional time is necessary.

5. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs A.3 and A.4 of this Article, 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.

6. 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, the 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.

7. If the Contractor does not make payments to a trustee or other third person, the 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 the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

B. Withholding

METRO 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 the Contractor under this Contract 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 the 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, all or part of the wages required by the contract, METRO may, after written notice to the 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.

C. Payrolls and basic records

1. Payrolls and basic records relating thereto shall be maintained by the 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. 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 Article 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 C.F.R. 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, the 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.

2. The Contractor shall submit to the Project Manager weekly, for each week in which any Contract Work is performed, a copy of its certified payroll (CPR) within four (4) working days after the regular payment date of its payroll period. Contractors are also responsible for the submission of copies of certified payrolls by all subcontractors. CPR’s for Subcontractors shall be submitted within seven (7) calendar days of the respective Subcontractors’ scheduled pay dates for those pay periods that each subcontractor has worked on the project. All such CPR’s must be received by METRO’s Close of Business (5:00 P.M. local time) on the applicable date. Once the first work week is established, the Contractor will submit a CPR for that week and each subsequent week, even when Work is not performed, until the Contract Work is completed. For the purposes of this Article, ‘Work’ shall mean any labor performed on the site of construction for which the Contractor will be paid by METRO. Performance of repairs, services and/or warranty work to rectify errors, defects and/or problems with the Work do not meet this definition of ‘Work.’ Regularly scheduled maintenance work (such as landscape maintenance) for which the Contractor will be paid, does meet this definition of ‘Work.’ Subcontractor CPR’s need only be submitted for the weeks in
which the subcontractors actually worked. In addition to all required information on the CPR's, the Contractor shall furnish
the following data:

a. A statement as to whether or not the Contractor actually performed work during the applicable period;

b. A statement listing the subcontractors that actually performed work during the applicable period;

c. A list of the applicable pay periods, reflecting the start and ending dates for the Contractor and each subcontractor that
worked during the applicable period;

d. A list of the applicable paydays for the Contractor and each subcontractor that worked during the applicable period;

and

e. The date of submission to METRO.

METRO’s Project Manager will record METRO’s receipt of the Contractor’s submission by date stamping it.

3. Penalty for failure to submit certified payrolls: The President and CEO of METRO may immediately terminate a Contractor
that fails to comply with the Davis Bacon and Related Acts, and/or restrict the Contractor from working on METRO contracts
for up to five (5) years.

4. These certified payrolls shall set out accurately and completely all of the information required to be maintained under Section
5.5(a)(3)(i) of Regulations, 29 C.F.R. Part 5. The Contractor shall submit such information via the use of the FM International
Labor Compliance Program software (LCPTracker), as provided by METRO. The software is a web-based system. Each
Contractor and subcontractor will be given Logon identification and a password to access METRO’s reporting system. Use
of the system will entail data entry of weekly payroll information, including employee identification, labor classification, total
hours worked and hours worked on the project, wage and benefit rates paid, etc. Online training is available for all
Contractors anytime via the web. The Contractor’s representative(s) will be required to attend any scheduled training classes
on the use of LCPTracker as deemed necessary. This requirement applies to every lower-tier subcontractor required to
provide LCP documentation.

5. Each payroll submitted shall be accompanied by a ‘Statement of Compliance,’ signed by the 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:

a. That the payroll for the payroll period contains the information required to be maintained under Section 5.5(a)(3)(i) of
Regulations, 29 C.F.R. Part 5 and that such information is correct and complete;

b. 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 C.F.R. Part 3;

c. 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.

6. The falsification of any of the above certifications may subject the 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.

7. The Contractor or subcontractor shall make the records required under Paragraph C.1 of this Article available for inspection,
copying, or transcription by authorized representatives of the FTA or the Department of Labor, and shall permit such
representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit
the required records or to make them available, the federal agency may, after written notice to the 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 C.F.R. § 5.12.

D. Apprentices and Trainees

1. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the Work they perform 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 Bureau of Apprenticeship and Training 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 the Contractor as to the entire workforce 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 hourly rate) specified in the 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 journeyman 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 Bureau of Apprenticeship and Training, or a state apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the 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.

2. Trainees. Except as provided in 29 C.F.R. § 5.16, 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, the 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.

3. 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 C.F.R. Part 30.

E. Compliance with Copeland Act Requirements. The Contractor shall comply with the requirements of 29 C.F.R. Part 3, which are incorporated by reference in this Contract.

F. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the Clauses contained in this Contract Article, 29 C.F.R. § 5.5(a)(1) through (10) and such other clauses as METRO may by appropriate instructions require, and also a clause requiring the subcontractors to include these Clauses in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the Contract Clauses in 29 C.F.R. § 5.5.

G. Contract Termination: Debarment. A breach of the contract clauses in 29 C.F.R. § 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 C.F.R. § 5.12.

H. Compliance with Davis-Bacon and Related Acts Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. Parts 1, 3, and 5 are herein incorporated by reference in this Contract.

I. Disputes concerning Labor Standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the ‘Disputes’ Clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. Parts 5, 6, and 7. Disputes within the meaning of this Clause include disputes between the Contractor (or any of its Subcontractors) and METRO, the U.S. Department of Labor, or the employees or their representatives.

J. Certification of Eligibility.

1. By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Article 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).

2. 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 C.F.R. § 5.12(a)(1).

6 DEBARMENT AND SUSPENSION

A. This Contract is a covered transaction for purposes of 49 C.F.R. Part 29. As such, the Contractor is required to verify that none of the Contractor’s principals, as defined at 49 C.F.R. § 29.995, or affiliates, as defined at 49 C.F.R. § 29.905, are excluded or disqualified as defined at 49 C.F.R. §§ 29.940 and 29.945.

B. The Contractor is required to comply with 49 C.F.R. § 29, Subpart C and must include the requirement to comply with 49 C.F.R. § 29, Subpart C in any lower tier covered transaction it enters into.

C. The Contractor must sign and submit the ‘Debarment and Suspension Certification’, included herein as Exhibit G. The certification in this Clause is a material representation of fact relied upon by METRO. If it is later determined that the bidder knowingly rendered an erroneous certification, in addition to remedies available to METRO, the federal government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder agrees to comply with the requirements of 49 C.F.R. § 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder further agrees to include a provision requiring such compliance in its lower tier covered transactions.

7 DRUG AND ALCOHOL TESTING

A. This Clause pertains if the Contractor is required to perform safety-sensitive functions under this Contract.

B. A safety-sensitive function is defined as:

1. Operating a revenue service vehicle, including when not in revenue service;

2. Operating a non-revenue service vehicle, when required to be operated by a holder of a Commercial Driver’s License;

3. Controlling dispatch or movement of a revenue service vehicle;

4. Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service;

5. Carrying a firearm for security purposes.

C. The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. Part 655, produce any documentation necessary to establish its compliance with 49 C.F.R. Part 655, 49 C.F.R. Part 40, and 49 C.F.R. Part 29 and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of the state of Texas or METRO, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. Part 655, 49 C.F.R. Part 40, and 49 C.F.R. Part 29 and review the testing process.

D. The Contractor agrees further to certify annually its compliance with Part 655 before March 1st and to submit the Management Information System (MIS) reports before March 15th to METRO’s Drug and Alcohol Coordinator at METRO, 1900 Main Street, P.O. Box 61429, Houston, Texas 77208-1429.

E. To certify compliance, the Contractor shall use the ‘Substance Abuse Certifications’ in the ‘Annual List of Certifications and Assurances for the Federal Transit Administration Grants and Cooperative Agreements,’ which is published annually in the Federal Register.

F. The Contractor agrees further to submit for review and approval before acting on a Notice to Proceed, a copy of the policy statement the Contractor has developed to implement its drug and alcohol testing program.

G. In addition, the Contractor agrees to consult with METRO on the selection of a certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium.

8 ENVIRONMENTAL REQUIREMENTS

The Contractor and any subcontractor or third-party Contractor under this Contract shall comply with all applicable environmental requirements and regulations, including any amendments, as follows:

A. Clean Air

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to METRO and understands and agrees that METRO will, in turn, report each violation as required to assure notification to the Federal Transportation Agency (FTA) and the appropriate Environmental Protection Agency (EPA) Regional Office; and

2. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in
part with federal assistance provided by the FTA.

B. Clean Water

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

2. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with federal assistance provided by the FTA.

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

9 FEDERAL CHANGES

The Contractor shall at all times comply with all applicable Federal Transit Administration (FTA) regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the FTA Master Agreement (Form FTA MA (19) dated October 1, 2012) between METRO and FTA, as they may be amended or promulgated from time to time during the term of this Contract. The Contractor’s failure to so comply shall constitute a material breach of this Contract.

10 FLY AMERICA

The Contractor agrees to comply with 49 U.S.C. § 40118 (the ‘Fly America’ Act) in accordance with the General Services Administration’s regulations at 41 C.F.R. 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. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag 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. The Contractor agrees to include the requirements of this Section all subcontracts that may involve international air transportation.

11 FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U. S. C. § 3801 et seq. And U. S. DOT regulations, ‘Program Fraud Civil Remedies,’ 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Contract, the Contractor certifies 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 the Contract Work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the federal government deems appropriate.

B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U. S. C. § 5307, the government reserves the right to impose the penalties of 18 U. S. C. § 1001 and 49 U. S. C. § 5307 (n) (1) on the Contractor, to the extent the federal government deems appropriate.

A. The Contractor agrees to include the above two (2) clauses 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.

12 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation (DOT), whether or not expressly set forth in the contract provisions. All contractual provisions required by DOT, as set forth in the latest edition of FTA Circular 4420.1F in effect at the time of this Contract award, 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. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any METRO requests, which would cause METRO to be in violation of the FTA terms and conditions.

13 METRO NON-DISCRIMINATION

METRO shall not discriminate on the basis of race, color, national origin, religion, sex (including gender identity and sexual orientation), disability, or age in the award and performance on any DOT-assisted Contractor in the administration of its program.
or the requirements of 49 C.F.R. Part 26. METRO shall take all necessary and reasonable steps under 49 C.F.R. Part 26 to ensure non-discrimination in the award and administration of DOT-assisted contracts. METRO's program, as required by 49 C.F.R. Part 26 and as approved by the DOT, is incorporated by reference in this Contract. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Contract. Upon notification to METRO of its failure to carry out its approved program, the Department may impose sanctions as provided for under 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 of 1986 (31 U.S.C. § 3801, et seq.).

14 NO OBLIGATION BY THE FEDERAL GOVERNMENT

A. METRO and the 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 this Contract and shall not be subject to any obligations or liabilities to METRO, the Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.

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

15 OFFICIALS NOT TO BENEFIT

A. No member or delegate to the Congress of the United States shall be admitted to any share or part of this Contract to any benefit arising therefrom.

B. No member, officer or employee of METRO, or of any other local public body having jurisdiction over METRO, during his tenure or for one year thereafter, shall have any interest direct or indirect, in the Contract or the proceeds thereof.

C. The Contractor covenants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the services required under this Contract. In the event any question of possible conflict should arise, the determination of METRO shall be controlling. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed by the Contractor.

16 PROJECT SIGNS

The Contractor shall erect, at the site of construction, and maintain during construction, signs meeting the requirements of the specifications and drawings of the Contract and satisfactory to the Department of Transportation (DOT) identifying the project and indicating the government agencies that are participating in the development of the project.

17 RECYCLED PRODUCTS

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

18 RESTRICTIONS ON LOBBYING

Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 C.F.R. Part 20, 'New Restrictions on Lobbying.' 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 forwarded from tier to tier, up to the recipient. See Section XI, Exhibit F, 'Certification of Restrictions on Lobbying.'

19 SEISMIC SAFETY

The 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 the Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all Work performed under this Contract including Work performed by a subcontractor is in compliance with the standards required by the seismic safety regulations and the certification of compliance issued on the project.

20 VALUE ENGINEERING

A. General. The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECPs) voluntarily. The Contractor shall share in any instant contract savings realized from accepted VECPs, in accordance with
Paragraph F below.

B. Definitions. ’Collateral costs,’ as used in this Article, means METRO costs of operation, maintenance, logistic support, or METRO-furnished property.

’Collateral savings,’ as used in this Article, means those measurable net reductions resulting from a VECP in METRO’s overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

’Contractor’s development and implementation costs,’ as used in this Article, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by METRO acceptance of a VECP.

’METRO costs,’ as used in this Article, means those METRO costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistic support. The term does not include the normal administrative costs of processing the VECP.

’Instant contract savings,’ as used in this Article, means the estimated reduction in the Contractor’s cost of performance resulting from acceptance of the VECP, minus allowable Contractor’s development and implementation costs (see Paragraph H below).

’Value engineering change proposal (VECP)’ means a proposal that:

1. Requires a change to this, the instant Contract, to implement; and

2. Results in reducing the contract price or estimated cost without impairing essential functions or characteristics; provided, that it does not involve a change to the contract type only.

C. VECP Preparation. As a minimum, the Contractor shall include in each VECP the information described in subparagraphs 1 through 7 below. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

1. A description of the difference between the existing Contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item’s function or characteristics are being altered, and the effect of the change on the item’s performance;

2. A list and analysis of the Contract requirement that must be changed if the VECP is accepted, including any suggested specification revisions;

3. A separate, detailed cost estimate for (i) the affected portions of the existing Contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor’s allowable development and implementation costs, including any amount attributable to subcontracts under Paragraph H below;

4. A description and estimate of costs that METRO may incur in implementing the VECP, such as test and evaluation and operating and support costs;

5. A prediction of any effects the proposed change would have on collateral costs to METRO;

6. A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule; and

7. Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous METRO actions, if known.

D. Submissions. The Contractor shall submit VECPs to the Project Manager at the work site, with a copy to the Contracting Officer.

E. METRO Action

1. The Contracting Officer shall notify the Contractor of the status of the VECP within forty-five (45) calendar days after the Contracting Officer receives it. If additional time is required, the Contracting Officer shall notify the Contractor within the forty-five (45) day period and provide the reason for the delay and the expected date of the decision. METRO will process VECP’s expeditiously; however, it shall not be liable for any delay in acting upon a VECP.

2. If the VECP is not accepted, the Contracting Officer shall notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by METRO. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

3. Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this Contract citing
this Article. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a Notice to Proceed (NTP) with the change. Until a NTP is issued or a contract modification applies a VECP to this Contract, the Contractor shall perform in accordance with the existing Contract. The Contracting Officer's decision to accept or reject all or part of any VECP shall be final and not subject to the 'Disputes' Article of this Contract.

F. Sharing

1. Rates. The Contractor's share of savings is determined by subtracting METRO's costs from instant contract savings and multiplying the result by 55 percent for fixed-priced contracts.

2. Payment. Payment of any share due the Contractor for use of a VECP on this Contract shall be authorized by a modification to this Contract to:

   a. Accept the VECP;

   b. Reduce the Contract price or estimated cost by the amount of instant contract savings; and

   c. Provide the Contractor's share of savings by adding the amount calculated under subparagraph F1 above to the Contract price or fee.

G. Collateral Savings. If a VECP is accepted, the instant Contract amount shall be increased by 20 percent of any projected collateral savings determined to be realized in a typical year of use after subtracting any METRO costs not previously offset. However, the Contractor's share of collateral savings shall not exceed (i) the contract's firm-fixed-price or estimated cost, at the time the VECP is accepted, or (ii) $100,000, whichever is greater. The Contracting Officer shall be the sole determiner of the amount of collateral savings, and that amount shall not be subject to the 'Disputes' Article or otherwise subject to litigation under 41 U.S.C. 601-613.

H. Subcontracts. The Contractor shall include an appropriate value engineering article in any subcontract of $50,000 or more and may include one in subcontracts of lesser value. In computing any adjustment in this Contract's price under Paragraph F above, the Contractor's allowable development and implementation costs shall include any Subcontractor's allowable development and implementation costs clearly resulting from a VECP accepted by METRO under this Contract, but shall exclude any value engineering incentive payments to a Subcontractor. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; provided, that these payments shall not reduce METRO's share of the savings resulting from the VECP.

I. Data. The Contractor may restrict METRO's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

'These data, furnished under the Value Engineering Article of Contract ________, shall not be disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the Article. This restriction does not limit METRO's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations.'

If a VECP is accepted, the Contractor hereby grants METRO unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, METRO shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms 'unlimited rights' and 'limited rights' are defined in Part 27 of the Federal Acquisition Regulations).

21 BUY AMERICA

A. The Contractor agrees to comply with 49 U.S.C. § 5323(j) and 49 C.F.R. Part 681, which provide that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 681.7. Separate requirements for rolling stock are set out at § 5323 (j)(2)(C) and 49 C.F.R. § 681.11. Rolling stock must be manufactured in the United States and have a 60 percent domestic content.

A. A bidder or offeror must submit to METRO the appropriate Buy America certification with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier subcontractors. See Exhibit K, entitled 'Buy America Certification'.

22 ENTIRE AGREEMENT

This Contract and attached Exhibits constitute the entire agreement between the parties and shall supersede all prior offers, negotiations, exceptions and understandings, whether oral or written, between the parties hereto. No modification of this Contract (including any change in the Work) shall be binding upon METRO or the Contractor unless evidenced by a written modification issued pursuant to the 'Changes Provision' or by other written order modification hereof, as appropriate.