METROPOLITAN TRANSIT AUTHORITY

INVITATION FOR BIDS (IFB)

FOR

GENTEX BUS TOP SCAFFOLD SYSTEM

METRO IFB NO. 4020000112

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

METRO does not accept electronic bid/proposal submissions. Only physical, hardcopy documents are accepted.
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SECTION I - BIDDING REQUIREMENTS AND INSTRUCTIONS

1 INVITATION FOR BIDS SUMMARY

IFB NO.: 4020000112
IFB ISSUE DATE: March 9, 2020

PROJECT NAME: Gentex Bus Top Scaffold System

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: Ada Hernandez
TITLE: Contracts Administrator I
TELEPHONE: (713) 652-6205
E-MAIL: ah33@ridemetro.org

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.

THIS IS A BRAND NAME ONLY SOLICITATION

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 March 25, 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, March 26, 2020, in the same location.

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.

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.

BID EVALUATION AND AWARD: For the purposes of award, METRO will consider the total bid amount. An award of a firm fixed price contract(s) will be made to the responsive responsible bidder whose bid conforms to the requirements of this Solicitation. The lowest price bidder is not guaranteed that it will receive the METRO contract award.

METRO reserves the right to reject any and all bids, to waive any informalities in bids received and the right to reject all nonconforming, non-responsive or conditional bids. Unless stated elsewhere in this solicitation, the bidding of equivalents is not permitted and will be cause for bid rejection. Alternate/multiple bids will not be considered. Bids in which prices are obviously unbalanced may be rejected. 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.

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.

DIRECTIONS FOR SUBMITTING BIDS: Bids shall be submitted by delivery or mail in a sealed envelope to the location shown above and on the cover page of this Solicitation, and clearly marked as indicated. Bids not identified as instructed may result in the premature opening of, or failure to open a bid. METRO must receive a bid no later than the time and date indicated in the Paragraph above. Electronic, facsimile (fax) or emailed bids are not authorized.

DISCOUNTS: No discounts for prompt payment will be considered in the evaluation of bids.
DISPUTES: Resolution of any dispute between METRO and the Contractor after award of the Contract can be resolved by using a METRO Contract Disputes Appeals Committee consisting of three METRO individuals (not associated with the Contract) to hear the dispute and make a recommendation to the President & Chief Executive Officer. The full text of the dispute resolution method is contained in METRO's Procurement Manual and a copy is available upon request from the Contract Administrator identified above.

EXPLANATION TO BIDDER/AMENDMENTS: Any explanation desired by a bidder regarding the meaning or interpretation of this Solicitation must be requested in writing and received by METRO at least seven (7) calendar days before the date set to receive bids. METRO’s response will be issued as an amendment and will be furnished to all prospective bidders. METRO may also issue amendments when a solicitation is changed.

The bidder must acknowledge receipt of every amendment issued by METRO in the space provided on the amendment form itself and submit a signed copy of all amendments with the bid, or send a letter of amendment acknowledgement to be received by METRO before the time set for opening of bids. Oral explanations or instructions given before the award of the contract will not be binding.

FEDERAL FINANCIAL ASSISTANCE: Should this procurement be subject to the availability of federal financial assistance from the Federal Transit Administration (FTA), all federal requirements such as Buy America, Cargo Preferences, and Restriction on Lobbying will be included in the resultant Contract. Refer to Section II - Forms for Bidding/Proposing and submit with bid. Failure to submit these Forms may make your bid non-responsive.

LATE BIDS, MODIFICATION OR WITHDRAWAL OF BIDS: 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 for award of a contract. Late bids received will be retained unopened and filed with unsuccessful bids in the official contract file.

OTHER BIDDING INFORMATION: This Solicitation is issued in accordance with METRO’s Competitive Bidding Procedures. Any question(s)/issue(s) which may arise not specifically addressed herein will be decided and resolved in accordance with these METRO procedures.

PREPARATION OF BID: A bid shall be signed and submitted on the forms furnished, or copies containing all terms and conditions thereof. Bids received without an original signature or without acknowledgement of receipt of all amendments may be rejected as non-responsive. Electronic, facsimile (fax) or emailed bids are not authorized.

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.

PROTESTS: A complete copy of the protest procedures can be obtained by submitting a written request to the Contract Administrator for this solicitation. 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 sufficient information as set forth in Chapter 12 of METRO's Procurement Manual to enable the protest to be considered. A protest or objection based upon restrictive specifications, alleged improprieties, terms, conditions or form of a proposed procurement action prior to bid opening, shall be submitted so that it is received by METRO no later than five (5) calendar days prior to the specified bid opening date. A protest concerning award decisions, including bid evaluations, shall be submitted so that it is received within 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. The protester must exhaust its administrative remedies by pursuing METRO’s protest procedures to completion prior to appealing METRO’s decision to the Federal Transportation Administration (FTA).

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

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.
RESPONSIBLE BIDDER DETERMINATION: Responsible bidders at a minimum must:

a) Have financial resources adequate to perform the Contract, or ability to obtain such resources as required during the performance of the Contract;
b) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments;
c) Have a satisfactory record of current and/or past performance;
d) Have necessary technical and management capability to perform;
e) Have a satisfactory record of business integrity and ethics;
f) If applicable, have a satisfactory record, as a Contractor, of achieving Small Business Contract Goals in past METRO projects, as well as providing evidence satisfactory to METRO that the bidder will comply with Small Business Program requirements and Small Business goals contained herein;
g) 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;
h) Be qualified as an established firm regularly engaged in the type of business to provide the items/work required by this Solicitation; and,
i) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

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

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.

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/mdl.html

This solicitation has a 0 % Small Business Participation goal.

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 assessments of any of these taxes.

2 ID FORMS SUBMISSION CHECKLIST

Insert requested information and sign and date where indicated.

SUBMIT WITH COMPLETED BID

- ‘Bid and Award’ form Section II, Article 1
- ‘Bid/Contract Amount, Items and Prices’ form Section II, Article 2
- ‘Certification of Restrictions on Lobbying’ form Section X, Exhibit C
- ‘Debarment and Suspension Certification’ form Section X, Exhibit D

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.
SECTION II – FORMS FOR BIDDING/AWARD

1 BID AND AWARD FORM

METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY TEXAS

INVITATION FOR BIDS

For: Gentex Bus Top Scaffold System

OFFER (To be completed by Bidder)

In compliance with the above-referenced Invitation for Bids, the undersigned agrees, if this offer is accepted within ninety (90) calendar days from receipt of bids, to furnish any or all items listed in Section II, 'Bid/Contract Amount, Items and Prices,' upon which prices are offered. The undersigned further agrees to deliver at the designated delivery point and within the time specified in Section III, and in accordance with the Contract documents.

This solicitation consists of Sections I through X. The resulting contract will consist of this form and Sections II through X.

By signing this bid, 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 Contractor’s ability to transact business in the state of Texas. If requested by METRO, the bidder/contractor shall provide METRO proof to support the above representations.

DISPUTE RESOLUTION PROCESS: SMALL BUSINESS PROGRAM (SBP): DISCOUNT FOR PROMPT PAYMENT:

METRO Contract Disputes Appeal Committee  ____% SB Participation Goal  ____% 10 DAYS  ____% ____ DAYS

OFFEROR COMPANY NAME AND ADDRESS:  SIGNATURE OF OFFEROR:  
____________________________________  By:  
(MUST BE SIGNED BY AUTHORIZED PERSON)
____________________________________  ________________________________  ________________________________
EMAIL:  PHONE: (   )  FAX NO.: (   )  DATE:  

ACCETANCE AND AWARD (To be completed and signed by METRO)

SUBMIT INVOICES TO:  METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY
Metropolitan Transit Authority of Harris County
Attention: Accounts Payable, 5th Floor
P.O. Box 61429, Houston, TX 77208-1429

CONTRACT NO.:  
ITEM NO. AWARDED:  
AWARD AMOUNT:  
BUDGET NO.:  
PROJECT MANAGER:  

APPROVED AS TO FORM:

NAME:  Cydonii Fairfax
TITLE:  Executive Vice President & General Counsel

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 __________, 2020 and on file in the office of the Assistant Secretary of the Authority.

APPROVED BY:

NAME:  Michael Kyme
TITLE:  Chief Procurement Officer

NAME:  Debbie Sechler
TITLE:  Executive Vice President, Administration

NAME:  Arthur C. Smiley III
TITLE:  Chief Financial Officer

ATTEST:

NAME:  Cydonii Fairfax
TITLE:  Executive Vice President & General Counsel

NAME:  Michael Kyme
TITLE:  Chief Procurement Officer

NAME:  Debbie Sechler
TITLE:  Executive Vice President, Administration

NAME:  Arthur C. Smiley III
TITLE:  Chief Financial Officer

NAME:  Assistant Secretary
2  BID/CONTRACT AMOUNT, ITEMS AND PRICES

The bidder agrees to furnish all resources necessary to supply, deliver and install Gentex Bus Top Scaffold System (FOB Destination) material at the bid price(s) below:

<table>
<thead>
<tr>
<th>MATERIAL</th>
<th>UNIT</th>
<th>EST QUANTITY</th>
<th>UNIT BID PRICE</th>
<th>EXTENDED BID PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>001</strong> Gentex Bus Top 24’ Long Scaffold System</td>
<td>Ea</td>
<td>1</td>
<td>$_____________</td>
<td>$_____________</td>
</tr>
<tr>
<td><strong>002</strong> On-Site Installation</td>
<td>Job</td>
<td>1</td>
<td>$_____________</td>
<td>$_____________</td>
</tr>
<tr>
<td><strong>003</strong> Freight</td>
<td>LS</td>
<td>1</td>
<td>$_____________</td>
<td>$_____________</td>
</tr>
<tr>
<td><strong>004</strong> Travel Related Expenses for Installation Team</td>
<td>LS</td>
<td>1</td>
<td>$_____________</td>
<td>$_____________</td>
</tr>
</tbody>
</table>

**TOTAL BID AMOUNT:** $_________________

THIS REQUIREMENT IS BRAND NAME ONLY
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 obligate 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 ‘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.

H. The term ‘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 ‘Consultant’ are synonymous.

2 CONTRACT PERIOD

The overall performance period for this Contract shall be for a period of thirty (30) days, from the effective date of the Contract, unless otherwise extended or terminated by METRO in accordance with the terms and conditions of this Contract.

3 DELIVERY REQUIREMENTS

A. The item(s) shall be delivered within thirty (30) days of the effective date of the Contract to the following F.O.B. destination point:

METROPOLITAN TRANSIT AUTHORITY
5700 Polk Street
Houston, Texas 77026

B. Deliveries may be made between the hours of 7:00 a.m. and 2:00 p.m., Monday through Friday except on holidays observed by METRO.

4 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 (a 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.
SECTION IV - INSPECTION AND ACCEPTANCE ARTICLES

1 INSPECTION

All materials and goods furnished and work performed pursuant to this Contract are subject to inspection by METRO prior to acceptance and or payment by METRO. At METRO’s request, the Contractor shall permit a representative of METRO to make inspection of said materials, goods, and work during the manufacturing process. However, such an inspection shall in no way serve as a waiver of or an estoppel to METRO’s right to also inspect said materials, goods, and work after completion by the Contractor. All materials, goods or work which, in the opinion of METRO, fail to conform to the required specifications of METRO or are otherwise determined by METRO to be defective may, at the discretion of METRO, be rejected and promptly replaced by the Contractor at the Contractor’s risk and expense or be refurbished or completed by METRO, the cost of said refurbishing or completion being deductible from any payments made, due or owing to the Contractor.
SECTION V - CONTRACT ADMINISTRATION DATA ARTICLES

1 COMPENSATION

A. The Contractor shall be compensated for the items and services accepted at the firm fixed unit prices as provided in the 'Bid/Contract Amount, Items & Prices' form in Section II, No. 2.

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 below.

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.

D. The Contract price is not subject to any adjustment should METRO not order the full quantity described as estimated.

2 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:  
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 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 as Additional Insured 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 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.

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 as Additional Insured 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 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.

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 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 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. 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 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 WILLFUL BEHAVIOR BY METRO.
SECTION VII - SMALL BUSINESS ENTERPRISE PROGRAM ARTICLES

The METRO Board of Directors have approved a Small Business Enterprise (SBE) Program that applies to all METRO contracts, whether Federal or non-Federal. Each contract will be reviewed for application of the policy and a subcontracting goal will be applied where applicable. METRO’s policy is to promote equal opportunity and non-discrimination in all of its procurement matters in accordance with State and Federal laws. The Program operates in a race and gender-neutral manner and is open to participation without regard to race, color, national origin, religion, sex (including gender identity and sexual orientation), disability, or age. The Program will utilize procedures that promote inclusion and opportunity, while maintaining race and gender-neutral measures in their operations.

In regards to federally funded contracts, METRO has a Federal Transit Authority (FTA) approved Disadvantaged Business Enterprise (DBE) Program. This Program ensures that DBEs as defined in 49 C.F.R. Part 26 have an equal opportunity to receive and participate in Department of Transportation (DOT)-assisted contracts through race-neutral means. The DBE Program will be applied as applicable.

METRO’s Small Business Enterprise (SBE) Program and Disadvantaged Business Enterprise (DBE) Programs are available at https://www.ridemetro.org/Pages/SB-FormsTemplates.aspx
SECTION VIII - SPECIAL TERMS AND CONDITIONS ARTICLES

1  AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR

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

2  COMMERCIAL WARRANTY

In addition to any warranty, if any, specified in the Scope of Services, Exhibit A, incorporated by reference, the Contractor shall provide its standard warranty for services as described in the Scope of Services. Warranty shall apply for all materials, goods or work purchased under this Contract, warranted that they will be free from defects, will conform to all applicable specifications, and will be suited for the intended purpose of said materials, goods or work. Neither acceptance of, nor payment for said materials, goods or work shall constitute a waiver or modification of any of the warranties of the Contractor or the rights of METRO thereunder. Upon receipt of a written request by METRO the Contractor shall submit, within fourteen (14) calendar days, a copy of its standard commercial warranty for the item(s) purchased in this Contract.

3  INTER-LOCAL/COOPERATIVE PURCHASE

The Contractor agrees that any agreement inclusive of pricing resulting from this solicitation is extended to other public entities (e.g., state agency, local government, state of Texas educational institutions) authorized by state law to participate under cooperative procurement contracts or Inter-local Agreements with the following understandings:

A. Unless specifically stated otherwise, any volume of products or services stated in this Contract document reflects only products or services to be purchased by METRO and does not include potential purchases by other entities;

B. The Contractor shall establish a direct relationship with each entity concerning the placement of orders, issuance of the purchase order, contractual disputes, invoicing, payment and all other matters relating or referring to such entity’s access to the agreement;

C. Each entity is a financially separate entity and shall be solely responsible for the financial commitments of that entity;

D. METRO shall not be held liable for any costs, damages or other obligations incurred by any participating entity;

E. It is the entity’s decision whether or not to enter into an agreement with the Contractor; and

F. Any purchases made by an entity shall be in accordance with each entity’s purchasing policy and procedures.

4  MOST FAVORED CUSTOMER

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

5  NEW MATERIAL

All supplies, components, materials and equipment to be furnished under this Contract shall be in new and unused condition.
SECTION IX - GENERAL TERMS AND CONDITIONS ARTICLES

1 ACCEPTANCE

Award of this Contract by METRO constitutes a binding contract subject to the terms and conditions set forth herein.

2 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.

Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

3 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.

4 ASSIGNMENT

The rights and obligation of the Contractor under this Contract may not be transferred, assigned, subcontracted, mortgaged, pledged, or otherwise disposed of or encumbered in any way without METRO's prior written consent.

5 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 within the general scope of the contract, including any one or more of the following:

1. Specifications or Description of services to be performed;

2. Time of performance (i.e., hours of day, days of the week, etc.); or

3. Place of performance of the services.
B. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, whether or not changed by the order, the President & Chief Executive Officer or the duly authorized representative shall make an equitable adjustment in the Contract price, the time of performance, or both, and shall modify the Contract.

C. The Contractor must submit any 'proposal for adjustment' under this Article within thirty (30) calendar days from the date of receipt of the written order. However, if the President & Chief Executive Officer or the duly authorized representative decides that the facts so justify, the President & Chief Executive Officer or the duly authorized representative may receive and act upon a proposal submitted before final payment of the Contract.

D. Failure to agree to any adjustment shall be a dispute under the ‘Disputes’ Article of this Contract. However, nothing in this Article shall excuse the Contractor from proceeding with the Contract as changed.

E. Except for those changes properly authorized and executed as provided in this Article, the Contractor shall notify the Contracting Officer in writing promptly within fifteen (15) calendar days from the date that the Contractor identifies any METRO conduct (including actions, inactions and written or oral communications) that the Contractor regards as a change to the Contract terms and conditions. This notification shall contain all information available to the Contractor regarding the change. Contractor’s failure to provide notification as required herein may jeopardize being compensated for the change if in fact a change has been made.

F. 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 mutually agreed upon amendment and/or modification shall be written and executed by both parties prior to becoming effective.

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 CONTRACTOR NON-DISCRIMINATION

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.

8 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.

9 DISPUTES

Any dispute concerning a question of fact arising under this Contract which 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 **EQUAL OPPORTUNITY FOR VEVRAA PROTECTED VETERANS**

3 The 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; and
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 non-discrimination 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 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.
B. 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.

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:

1. 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.

2. 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.

3. 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 Officer. 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.
11 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 benefits as defined by the Code of Ethics. 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, 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.

12 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.

13 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.

14 METRO DELAY OF WORK

A. If the performance of all or any part of the work is delayed or interrupted by an act of the Contracting Officer in the administration of this Contract, which act is not expressly or implicitly authorized by this Contract, or by his failure to act within the time specified in this Contract (or within a reasonable time if no time is specified), an adjustment (excluding profit) shall be made for any increase in the cost of performance of this Contract caused by such delay or interruption. However, no adjustment shall be made under this Article for any delay or interruption (i) to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor; or (ii) for which an adjustment is provided or excluded under any other provision of this Contract.

B. No claim under this Article shall be allowed (i) for any costs incurred more than twenty (20) days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved; and (ii) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such delay or interruption, but not later than the date of final payment under the Contract.

15 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 Contract 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.).
16 PAYMENTS AND DISCOUNTS

The Contractor shall submit the original and one (1) copy of each invoice containing the following information: Contract Number; item number; description of materials, goods, services; unit prices; and extended amount. Payment will be made to the Contractor within thirty (30) calendar days after receipt of the invoice or acceptance of all materials and goods furnished and work performed, whichever is later. For the purpose of earning any discounts, payment is deemed to be made on the date the METRO check is mailed. Partial payments may be authorized. 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 Paragraph.

17 PROHIBITED INTEREST

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

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 X, Exhibit C, ‘Certification of Restrictions on Lobbying.’

19 TERMINATION FOR CONVENIENCE OF METRO

A. METRO may terminate this Contract at any time after award of the Contract by written notice to the Contractor if METRO determines that such termination is in its best interest. Upon receipt of written notice of termination, performance by the Contractor shall cease to the extent specified in the notice of termination. In the event of termination in whole, the Contractor shall prepare a final invoice within thirty (30) calendar days of such termination reflecting the item(s) actually furnished pursuant to the Contract and to the satisfaction of METRO, that have not appeared on any previous invoice.

B. METRO agrees to pay the Contractor, in accordance with the terms of the Contract, for conforming item(s) furnished and accepted.

20 TERMINATION FOR DEFAULT

A. METRO may, subject to Paragraphs D and E below, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to perform the services within the time and in the manner specified in this Contract or any extension thereof; or fails to perform any of the other provisions of this Contract.

B. METRO's right to terminate this Contract may be exercised if the Contractor does not cure the condition or conditions constituting default within ten (10) calendar days (or such longer period as may be authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

C. If METRO terminates this Contract, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, services similar to that terminated, and the Contractor will be liable to METRO for any excess costs.

D. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include:

1. Acts of God or of the public enemy;
2. Fires;
3. Floods;
4. Epidemics;
5. Quarantine restrictions;
6. Unusually severe weather; or
In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

E. METRO shall pay the Contract price(s) for completed and accepted services. METRO may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect METRO against loss because of outstanding liens or claims of former lien holders.

F. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of METRO.

G. The rights and remedies of METRO under this Article are in addition to any other rights and remedies provided by law or under this Contract.

21 TITLE AND RISK OF LOSS

Title to all deliverables covered by this Contract shall pass to METRO upon acceptance. Notwithstanding the above, the Contractor shall not be liable for loss or damage to deliverables caused by the negligence of officers, agents, or employees of METRO acting within the scope of their employment.

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.
SECTION X - EXHIBITS

1  EXHIBIT A SCOPE OF SERVICES

N/A
2 EXHIBIT B CONTRACTOR'S RELEASE

Pursuant to the terms of METRO Contract No. __________, as amended, and in consideration of the sum of _______________ Dollars ($______), which has been or is to be paid under said Contract to __________________ (hereinafter called the Contractor) or its assignees, if any, the Contractor for itself and its subcontractors, upon payment of the said sum by the Metropolitan Transit Authority (hereinafter called METRO), does release and discharge METRO, its officers, agents, and employees, of and from all liabilities, obligations, claims and demand whatsoever under or arising from the said Contract, except specified claims as follows:

___________________________________________________________________________________________________________.

(IF NONE, SO STATE)________________________________________________

IN WITNESS WHEREOF, this release has been executed this ___ day of __________, 20__. 

By: ____________________________

CERTIFICATE

I, _______________________________, certify that I am _______________________(title) of the firm name as the Contractor in the foregoing release; that ________________________, (name) who signed said release on behalf of the Contractor and its subcontractors, was the ___________________(title) of said firm; that said release was duly signed for on behalf of said firm and is within the scope of its powers as so constituted.

(If a Corporation, affix the Corporate Seal)
3 EXHIBIT C CERTIFICATION OF RESTRICTIONS ON LOBBYING

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

A. No federal appropriated funds have been or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an office or employee of any agency, a member of Congress, an officer or employee of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ‘Disclosure Form to Report Lobbying,’ in accordance with its instructions. After a Contract is awarded by METRO, if applicable, the undersigned is also required to submit to METRO’s Contracting Officer a signed copy of the Form-LLL, ‘Disclosure Form to Report Lobbying,’ for all sub-awards at all tiers in excess of $100,000.00.

C. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. Once a Contract is awarded by METRO, the undersigned is also required to submit to METRO’s Contracting Officer a signed copy of the certificate for all sub-contracts at all tiers in excess of $100,000.00.

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

Executed this ______________ day of ____________________, 20___

Company Name: _____________________________________________

By: ________________________________________________________

(Signature of Company Official)

___________________________________________________________

(Title of Company Official)
4 EXHIBIT D DEBARMENT AND SUSPENSION FORM

The undersigned certifies, by submission of this certification, that neither the bidder/contractor's company nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

If the company is unable to certify to any of the statements in this certification, the company shall attach an explanation to this certification.

I hereby certify that I am authorized to execute this certification on behalf of the company and certify the truthfulness and accuracy of the contents herein or attached hereto to the best of my belief. The company does/does not (strike one) have in-house legal counsel.

Company Name: ________________________________

By: ____________________________

Signature of Company Official Date

________________________________________

Title of Company Official

The following shall also be completed if the Company has in-house legal counsel:

The undersigned legal counsel for ________________________________ hereby certifies that ________________________________ has authority under state and local law to comply with the subject assurances and that the certification above has been legally made.

______________________________

Signature of Company's Attorney Date
5  EXHIBIT E CODE OF ETHICS OF THE METROPOLITAN TRANSIT AUTHORITY

Please refer to the current versions of METRO’s Codes of Ethics for METRO Employees and for the METRO Board of Directors at https://www.ridemetro.org/Pages/ConflictsDisclosure.aspx