METROPOLITAN TRANSIT AUTHORITY

INVITATION FOR BIDS

FOR

PURCHASE AND DELIVERY OF LOW FLOOR AXLES FOR METRO’S RAIL CARS

METRO INVITATION FOR BIDS NO. 4018000010

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:

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

Metropolitan Transit Authority
Procurement Division Plan Room
1900 Main
Houston, Texas 77002
P.O. Box 61429
Houston, Texas 77208-1429

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

1 INVITATION FOR BIDS SUMMARY

IFB NO.: 4018000010

PROJECT NAME: Purchase and Delivery of Low Floor Axles for METRO's Rail Cars

ISSUED BY: Metropolitan Transit Authority

METROPOLITAN TRANSIT AUTHORITY
Procurement Division
Houston, Texas 77002
P.O. Box 61429
Houston, Texas 77208-1429

Submit Inquiries by writing or calling:
NAME: Raul Arenas Jr.
TITLE: Sr. Contract Administrator
TELEPHONE: (713) 652-8022
E-MAIL: ra12@ridemetro.org

BID OPENING TIME/LOCATION: Sealed bids in original form for work described herein will be received until 2:00 PM. local time on December 13, 2017 at the METRO Procurement Division Plan Room, 2nd Floor, and 1900 Main St., Houston, Texas 77002. Bids will be publicly opened and read aloud on December 14, 2017 at 10:00 AM.

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. Envelopes containing bids and other bid documents shall be sealed and clearly marked with the Invitation for Bids Number, bid due date and time, and the bidder's company name and address. Electronic, facsimile (fax) or emailed bids are not authorized. With the exception of the Bid Award Form, METRO requests that bids be printed double-sided on recycled paper that contains a minimum post-consumer content of 30% or higher on tree-free paper (i.e., paper made from raw materials other than trees, such as kenaf.)

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 in the form of an amendment or clarification letter that 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 one of three ways: 1) sign in the space provided on the 'Bid and Award' form in Section II of this Solicitation; 2) sign in the space provided on the actual Amendment form itself and submitting all with the bid; or 3) include a letter of amendment acknowledgement with the bid submission. Oral explanations or instructions given before the award of the contract will not be binding.

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.

BID EVALUATION AND AWARD: Bids will be evaluated on the basis of the total bid price. Award of a firm fixed price type contract, if awarded, will be made to the responsive responsible bidder offering the lowest total bid price as indicated above and 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.

RESPONSIBLE BIDDER DETERMINATION: Responsible bidders as 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 proposer 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.

CONFLICTS DISCLOSURE: Vendors doing business with METRO or seeking to do business with METRO are required to fill 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 [http://www.ridemetro.org/Pages/ConflictsDisclosure.aspx](http://www.ridemetro.org/Pages/ConflictsDisclosure.aspx).

DEBARMENT AND SUSPENSION: 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. 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.

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

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 using one of the following methods: 1) Internal 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; or, 2) Outside third party non-binding arbitration for which the cost is shared equally by METRO and the Contractor. The bidder should select on the bid/award form which method to be used. The METRO Contract Disputes Appeals Committee method shall be used if the bidder fails to select a method. The full text of these dispute resolution methods are contained in METRO's Procurement Manual and a copy is available upon request from the Contract Administrator identified above.

LATE BIDS, MODIFICATION OR WITHDRAWAL OF BIDS: Any bid or modification of bid received at the METRO office designated above after the exact time specified for receipt will not be accepted or considered for award of a contract.

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.

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.

PROHIBITION ON LOBBYING: No bidder or proposer shall, directly or indirectly, engage in any conduct (other than the submission of the bid, proposal 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 or proposer 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.

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

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

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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. This solicitation has a 0% Small Business Participation goal. Copies of METRO’s Small Business Program 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 www.federalreserve.gov/releases/mob/current/default.htm.

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.

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 http://www.ridemetro.org/AboutUs/Board/Meetings.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: http://www.ridemetro.org/AboutUs/Board/Meetings.aspx

2 FORMS – SUBMITTAL REQUIREMENTS LIST

Each Bidder must complete, sign and return the following forms/documents with the bid. Failure to submit these forms may render a bidder and the submitted bid as non-responsive.

Section II 1. ‘Bid and Award’ Form

2. ‘Bid/Contract Amount, Items and Prices’
SECTION II - FORMS FOR BIDDING/AWARD

1 BID AND AWARD FORM

METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY TEXAS - INVITATION FOR BIDS

For: The Purchase and Delivery of Low Floor Axles for METRO’s Rail Cars

ACKNOWLEDGMENT OF RECEIPT OF BID AMENDMENT(S) (Give number and date of each):

No./Date No./Date No./Date No./Date No./Date

OFFER (To be completed by Offeror)

In compliance with the above-referenced Invitation for Bids, the undersigned agrees, if this offer is accepted within one hundred twenty (120) 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.

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

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:
(Select One)

__ METRO Contract Disputes Appeal Committee
__ Non-binding 3rd Party Arbitration

OFFERER COMPANY NAME AND ADDRESS:

____________________________________   By: __________________________________________
____________________________________   (MUST BE SIGNED BY AUTHORIZED PERSON)
____________________________________   NAME: __________________________________________
EMAIL:  _____________________________    TITLE: __________________________________________
PHONE:  (   ) ____________ FAX NO.: (   ) ___________ DATE: __________________________________________

AWARD (To be completed by METRO)

SUBMIT INVOICES TO:
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.:  130040
PROJECT MANAGER: __________________________________
APPROVED AS TO FORM:
NAME: ______________________________________________
TITLE: Executive Vice President & General Counsel

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: ________________________________
TITLE: ________________________________
2 BID/CONTRACT AMOUNT, ITEMS AND PRICES

A. Schedule of Items and Prices

Bidder agrees to furnish all resources necessary to supply and deliver (F.O.B. Destination) the following items at the below bid price:

<table>
<thead>
<tr>
<th>NO.</th>
<th>METRO PART NUMBER</th>
<th>MATERIAL DESCRIPTION</th>
<th>APPROVED MFG</th>
<th>MFG PART NUMBER</th>
<th>Quantity</th>
<th>UOM</th>
<th>Unit Bid Price</th>
<th>Total Bid Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1510-122-0002</td>
<td>AXLE- LOW FLOOR WTH PIN, DIN7, 10H8 X 20</td>
<td>STS IS BS</td>
<td>VC-ABP-7002</td>
<td>2</td>
<td>Each</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3. BRAND NAME:
This is brand name procurement. Only the above brand is approved for bidding. The bidding of an equivalent product will render the bid non-responsive and will result in the rejection of the bid.
SECTION III - DELIVERIES OR PERFORMANCE ARTICLES

1 CONTRACT PERIOD

The overall Contract term shall be effective on January 04, 2018 through October 4, 2018 or until the Contract deliveries have all been completed, inspected and accepted by METRO, whichever comes last, at which time the contract is considered complete unless otherwise modified.

2 DELIVERY

A. The Contractor shall deliver the two (2) Low Floor Axles within one hundred fifty (150) calendar days after notice of contract award.

B. The Contractor agrees to notify METRO immediately if, at any time, it appears that the delivery schedule set forth may not be met. Such notification shall include the reasons for any possible delays, steps being taken to remedy any delays, and a proposed revised delivery schedule, if the Contractor is of the opinion that such a change in delivery is required. Nothing herein shall be interpreted as waiving remedies otherwise available to METRO.

C. It shall be the responsibility of the Contractor to insure delivery with no over shipments. Any over shipped material will not be accepted by METRO. The Contractor will be responsible for the arrangement and cost of return. Charges for these over shipments may be deducted from the Contractor's invoice.

D. The item(s) shall be delivered to the following F.O.B. destination point:

   METROPOLITAN TRANSIT AUTHORITY
   Rail Operation Center
   1601 West Bellfort
   Houston, Texas 77054
   Telephone No.: (713) 982-8149

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.

3 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. All materials, goods or work that 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 ordered and accepted 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. The Contractor shall submit an original invoice for payment to the address shown below for the low floor axles, which have been inspected and accepted by METRO:

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

1 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 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 - SPECIAL TERMS AND CONDITIONS ARTICLES

1 COMMERCIAL WARRANTY

Unless otherwise required herein, the Contractor’s standard commercial warranty shall apply for all materials, goods or work purchased under this contract and warrants that they will be free from defects, will conform to all applicable specifications, and will be suitable 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.

2 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 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.

3 NEW MATERIAL

All supplies, components, materials and equipment to be furnished under this Contract shall be in new and unused condition.

4 PACKAGING AND SHIPPING

A. All items shall be suitably packaged to prevent damage, distortion or other defects which may occur during shipping, handling and storage.

B. The Contract number and Purchase Order number shall appear on all containers, packing list and supporting documents.

C. Single item containers shall be identified with the Purchase Order number part number, and quantity. When multiple Purchase Orders are combined within one container, the items must be separately packaged and the packages identified as to Purchase Order number, part number and quantity.

D. Separate packing lists shall be required for each Purchase Order and shall accompany each shipment. When multiple cartons are used, the packing list will show the parts in each carton. Multiple cartons shall be numbered. Example: 1 of 4, 2 of 4, etc.
SECTION VIII - GENERAL TERMS AND CONDITIONS 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 ‘Contractor’ shall mean the individual, partnership, corporation, organization, or association contracting with METRO to furnish all materials, goods and work defined herein.

2 ACCEPTANCE

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

3 AMENDMENTS AND/OR MODIFICATIONS

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.

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, by written order, make changes within the general scope of the Contract, in any one or more of the following: in the description of the materials and goods to be furnished and/or work to be performed; time (i.e., hours of the day, days of the week, etc.); and place of performance thereof. If any such change causes an increase or decrease in the cost of, or the time required for performance of any part of the work under this Contract, METRO shall make an equitable adjustment in the Contract price, delivery schedule, or both, and shall modify the Contract accordingly in writing.

6 DISPUTES

The dispute method listed below as selected by the Contractor on the Bid and Award form, Section II, Article 1 will apply. If the Contractor did not select a dispute method on the Bid and Award form with the submission of its bid, the METRO Contract Disputes Appeals Committee method shall apply.

METRO CONTRACT DISPUTES APPEAL COMMITTEE

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.

OR

NON-BINDING THIRD PART ARBITRATION
A. 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 of the final decision.

B. Upon receipt of written appeal, an arbitrator mutually acceptable to METRO and the Contractor shall be selected. Unless 
otherwise agreed by the parties, arbitrators shall be selected through the American Arbitration Association. Unless otherwise 
agreed by the parties, the arbitrator shall schedule a hearing within ten (10) days of his/her selection. The hearing shall be 
informal but either party has the right to be represented by counsel if it so desires. No post hearing brief shall be filed or transcripts 
made. Either party may file a written statement of position at the hearing. There shall be no formal rules of evidence. The hearing 
shall normally be completed within one (1) day. The arbitrator shall render a written recommendation within three (3) working 
days after the conclusion of the hearing. By mutual agreement of the parties, the time for rendering a decision may be extended 
for an additional two (2) working days. The recommendation of the arbitrator shall be based on the record before the arbitrator 
and should include a brief written explanation of the basis for the recommendation. The written findings of the arbitrator shall be 
submitted to the President & Chief Executive Officer who shall make the final decision on the dispute. Costs of the arbitration, 
including transportation, travel, lodging and any other directly related charges by the arbitrator or the American Arbitration 
Association, shall be shared equally by METRO and the Contractor.

C. 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.

7 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.

8 EQUAL EMPLOYMENT OPPORTUNITY

A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, 
age or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees 
are treated during employment, without regard to their race, color, religion, sex, age or national origin. Such action shall include, 
but shall not be limited to the following: employment, upgrading, or transfer; recruitment or recruitment advertising; layoff or 
termination; rates of pay or other compensation; and selection for training, including apprenticeship. The Contractor shall post 
in conspicuous places available to employees and applicants for employment, notices setting forth these provisions.

B. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all 
qualified applicants shall receive consideration for employment without regard to race, color, religion sex, age or national origin.

C. The Contractor shall notify each labor union with which he has a collective bargaining agreement about this commitment.

D. The Contractor shall furnish all information and reports required to ensure compliance with this Article; this includes, but is not 
limited to, Equal Employment Opportunity data reports and Affirmative Action Plans. Said plans shall be consistent with Federal 
Transit Administration (FTA) Circular 1155.1. Further, the Contractor shall permit access to his books, records, and accounts by 
representatives of METRO, including its designated agents, for the purposes of investigation and monitoring for compliance with 
this Article until three (3) years after final payment under this Contract.

E. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, this Contract may be 
canceled, terminated or suspended in whole or in part.

F. The Contractor shall include the terms and conditions of paragraphs A through F in every subcontract entered into in connection 
with this Contract.

9 EQUAL OPPORTUNITY FOR VEVRAA PROTECTED VETERANS

The definitions set forth in 41 CFR 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.

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 protected 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:

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,
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.

10 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.
11 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.

12 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.

13 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.

A. 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.

14 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.

15 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.

16 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, the Contractor shall cease performance 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 service(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 service(s) actually furnished and verifiable costs that have been incurred or will be incurred by the termination, which shall be the sole amount owed to the Contractor whether for damages or otherwise, by virtue of the termination of this Contract.

17 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,

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.

18 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.

19 ENTIRE AGREEMENT

This Contract and attached Exhibits, if any, 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.