METROPOLITAN TRANSIT AUTHORITY

INVITATION FOR BIDS (IFB)

FOR

H1 & H3 LRV PASSENGER SEAT INSERTS

METRO IFB NO. 4020000141

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 %      FEDERAL FUNDING: 0%

IMPORTANT – INVITATION FOR BIDS
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.: 4020000141 IFB ISSUE DATE: May 11, 2020

PROJECT NAME: H1 & H3 LRV Passenger Seat Inserts

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: Kevin Moore
TITLE: Supervisor – Contract Specialist
TELEPHONE: (713) 739-3894
E-MAIL: km04@ridemetro.org

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

A PRE-BID CONFERENCE will be held at 9:00 a.m. on May 19, 2020 at the Rail Operating Center (ROC), 1601 W. Belfort, Houston, TX 77208. (Note: Check-in at the security desk is required, and a Procurement Representative will escort attendees to the meeting room.)

INDIVIDUALS PLANNING TO ATTEND ARE LIMITED TO ONE (1) PERSON FROM COMPANY AND SHALL INDICATE INTENT TO ATTEND NLT 12:00 NOON MONDAY (5/18/2020) BY SENDING EMAIL TO KM04@RIDEMETRO.ORG. BIDDERS WILL BE RESPONSIBLE FOR TAKING THEIR OWN MEASUREMENTS OF SEATS AND WILL BE ABLE OBTAIN A SAMPLE OF THE ORIGINAL SEAT INSERTS AND A SAMPLE PIECE FOR COLOR MATCHING. SOCIAL DISTANCING WILL BE REQUIRED AND INDIVIDUALS MUST WEAR MASKS AND GLOVES.

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

REQUEST(S) FOR APPROVAL OR DEVIATION: Request(s) for Approval or Deviation are required twenty (20) calendar days before original bid due date. (See Instructions to Bidders, paragraph entitled "REQUEST(S) FOR APPROVAL OR DEVIATION "). Failure to submit the Mandatory RFA’s in Section II no later than twenty (20) days before bid due date will render your bid non-responsive. METRO will notify Bidders of RFA approval/denial no later than ten (10) days prior to bid due date RFA’s.

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 June 24, 2020, in 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, June 25, 2020, in the same location. Digital signatures on bids are acceptable. Bidders can watch the bid opening live at http://ridemetro.granicus.com/ViewPublisher.php?view_id=3

After the bid opening, bidders will receive an email request from METRO to email a PDF of their bids to km04@ridemetro.org Do not email bids prior to receiving the request from METRO. Each emailed PDF bid must not exceed 15MB. PDFs of bids can be sent with multiple emails if necessary.

PERFORMANCE PERIOD: The period of performance under this Contract shall be for forty five (45) calendar days for Group 1 and sixty (60) calendar days for Group 2 calendar days, unless otherwise extended by METRO. (See Contract Article ‘Period of Performance’ in Section III).

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

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

OBLIGATION: This Invitation for Bids does not obligate the Metropolitan Transit Authority to award a contract, or to pay any costs incurred in the preparation or submittal of any bid.
REGISTRATION ON PROCUREMENT WEBSITE: All bidders/proposers MUST register on METRO's procurement website at https://www.ridemetroapp.org/procurement/ to ensure that they receive the latest solicitations and updates via their registered e-mail address.

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

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

The link to the METRO SBE directory is https://ridemetro.sbdbe.com/ The link to the TUCP DBE directory is https://txdot.txdotcms.com/

This solicitation has a N/A% Small Business Participation goal.

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

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

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

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

INSTRUCTIONS TO BIDDERS

A. APPROVAL OF CONTRACT

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

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

B. AWARD OF CONTRACT

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

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

3. The successful bidder must provide a current Workers' Compensation Insurance Certificate prior to being awarded the contract.
4. METRO reserves the right to reject any and all bids, to waive any informalities in bids received and the right to reject all nonconforming, unbalanced, non-responsive or conditional bids. Discrepancies between words and figures will be resolved in favor of words.

C. **BID EVALUATION**

1. Bids will be evaluated on the basis of the total extended bid amount per group as identified on the Bid/Contract Amount Items and Prices.

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

3. Award will be based on lowest responsible/responsive bid per Group. Bidders must bid on all items and award will be made based on the total aggregate price.

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

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

D. **BIDDER QUALIFICATIONS/ELIGIBILITY FOR AWARD**

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

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

3. Responsible bidders as a minimum must:
   a. 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 in behalf of METRO and/or other owners, including the areas of scheduling, submittals; record keeping, reporting, qualified supervision, skilled workforce, safety, quality of equipment, materials and workmanship, timely performance, warranties and guarantees;
   d. Have the necessary technical equipment, material and capability, including qualified supervision and skilled workforce, adequate to perform the contract, or the ability to obtain such resources as are required during the course of the contract;
   e. Have a satisfactory record of business integrity and ethics;
   f. If applicable, have a satisfactory record as a Contractor of achieving Small Business Participation goals in past METRO projects, as well as providing evidence satisfactory to METRO that the bidder will comply with Small Business Program requirements and any Small Business Participation goal contained herein;
   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.

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

5. Bids deviating or taking exception to the solicitation requirements will not be considered.
E. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTION

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

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

F. 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.

G. CONTRACT INSURANCE

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

H. COVENANT AGAINST CONTINGENT FEES

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

I. DISCOUNTS

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

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

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

J. DISQUALIFICATION

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

K. EXAMINATION OF DOCUMENTS

1. A complete set of bid documents shall be used in preparing a bid. Bids will be accepted from only bidders who respond to this solicitation by the designated bid opening time. METRO assumes no responsibility for errors or misinterpretations resulting from the use of incomplete sets of documents.

2. METRO, in making copies of these documents available on the above terms, does so only for the purpose of obtaining bids on the work and does not convey a license or grant for any other use.

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

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

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

M. INDEPENDENT PRICE DETERMINATION

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

N. INSTRUCTIONS FOR CERTIFICATION

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

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

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

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

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

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

O. LATE BIDS, MODIFICATION OR WITHDRAWAL OF BIDS

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

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

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

P. METRO-FURNISHED PROPERTY

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

Q. POSTPONEMENT OF BID OPENING

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

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

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

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

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

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

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

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

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

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

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

11. In an effort to promote greater use of recycled and environmentally preferable products and minimize waste, all bids submitted should comply with the following:
   a) All bids and copies should be printed on recycled paper with a minimum post-consumer content of thirty percent (30%) or on tree-free paper (i.e., paper made from raw materials other than trees, such as kenaf).
   b) Unless absolutely necessary, all bids and copies should minimize or eliminate the use of non-recyclable or non-reusable materials, such as plastic report covers, plastic dividers, vinyl sleeves and bindings.
   c) To further reduce the use of materials not essential to bids, METRO encourages Bidders to forgo the use of three-ringed binders or glued materials when assembling the originals and copies of the bid. Instead, METRO prefers and appreciates the use of paper clips, binder clips, staples, rubber bands, and other materials containing recycled content, such as folders, paper clips, discs or thumb drives, envelopes, boxes, etc. METRO also appreciates receiving bids assembled in formats that allow for easy removal and recycling of paper and other materials.
   d) Unnecessary samples, attachments or documents not specifically asked for should not be submitted with a bid.

S. 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.
T. PROTESTS

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

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

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

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

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

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

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

U. PUBLIC OPENING OF BIDS

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

V. RECEIPT OF SINGLE BID

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

W. SOLICITATION ORDER OF PRECEDENCE

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

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

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

3. Instructions to Bidders including Invitation for Bids form;

4. Solicitation, Bid and Award form/Attachments;

5. Technical specifications/Scope of services;

6. Contract Articles;

7. Drawings;

8. Any other full-text provision of this solicitation whether incorporated by reference or otherwise.
X. **SUBMISSION OF BIDS**

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

Y. **TAXES**

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

3 **SMALL BUSINESS AND DISADVANTAGED BUSINESS ENTERPRISE PROGRAMS**

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

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

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

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

N/A %

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

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

F. **Small Business Goal Commitment for a Small Business Participation goal listed in above item D: EXAMPLE SCENARIOS**

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

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

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

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

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

   b) The SBE/DBE prime combined with a SBE/DBE subcontractor performs at a minimum the Small Business Participation goal percentage
Example: Small Business Participation goal is 40%
The SBE/DBE prime self-performs 35%
SBE/DBE subcontractor performs 5%
The prime has satisfied the 40% Small Business Participation goal
c) The SBE/DBE prime cannot self-perform 100% of the contract. The prime must subcontract at a minimum the Small Business Participation goal percentage. At a minimum, fifty percent (50%) of the Small Business Participation goal must be subcontracted to a SBE, DBE or a combination of both.
Example: Small Business Participation goal is 35%
The SBE/DBE prime self-performs 65%
Subcontractors (METRO-certified) perform 17.5%
Subcontractors (non-certified) performs 17.5%
The prime has satisfied the 35% Small Business Participation goal
d) Joint venture Contractors with SBE/DBE partners will count towards the Small Business Participation goal only for the percentage of the SBE/DBE partner.
Example: Joint venture
1 - Non-SBE/DBE partner @ 50% of joint venture
1 - SBE/DBE partner @ 50% of joint venture
Joint venturer is performing 30% of the contract = 15% Small Business participation
e) Joint venturers and their partners are prohibited from submitting as a prime and as a subcontractor on the same submission.
Example: Joint venturer submits as a prime
Joint venture partners are listed as subcontractors on the same submission
Joint venturers and partners are prohibited from submitting in this way

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

5. Certified bidders/proposers may submit as a Prime in one submission and as a subcontractor in one (1) other submission for the same project.

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

7. SBEs and DBEs, not submitting as a Prime are limited to submitting as subcontractors on only four (4) bid/proposal submissions for the same project. Failure to adhere to this four (4) bid/proposal limit may result in the disqualification of the offending SBE or DBE from all bids/proposals.

G. Required Small Business Documents

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

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

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

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

   a) IT IS MANDATORY that every bidder or proposer submit a Contractor's Utilization Plan (the 'Plan') when submitting a bid or proposal or response to request for qualifications, whether or not a Small Business Participation goal has been established.
b) The bidder/proposer must use this form to identify all subcontractors with whom the bidder/proposer intends to contract, specifing the agreed price and/or percentage to be paid each subcontractor for such work, and certifying the contract items and parts thereof to be performed by each subcontractor. Only percentages of Contract Work Effort are to be indicated when responding to RFQ/RFP submissions, as pricing is determined later in the procurement process.

c) If applicable, the Plan should set forth how the Small Business Participation goal for the proposed project is to be met. The Plan will be used by METRO as a factor in evaluating whether a bidder/proposer has complied with the requirements of the Program to satisfy the Small Business Participation goal.

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

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

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

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

h) The Contractor Utilization Plan must include the following:

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

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

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

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

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

   i. **METRO accepts** the following certifications:

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

   ii. **METRO does not accept** the following certifications:

      • State of Texas HUB (Historically Underutilized Business)
      • Minority Business Enterprise only
      • Women Business Enterprise only
      • City of Houston Small Business certification only
iii. The link to the METRO SBE directory is https://ridemetro.sbdbe.com/ The link to the TUCP DBE directory is https://txdot.txdotcms.com/

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

4) When requested, a timeline for performance by subcontractors.

5) Signature of the bidder/proposer

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

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

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

H. Incentives Utilizing Small Businesses

1. Fees for Solicitation Documents. Submitters making a valid bid and participating in the Program will receive a refund for up to seven (7) sets of documents purchased from METRO.

2. METRO’s Incentives. METRO may utilize other incentives, as set forth in the bid specifications or request for proposal, as it determines appropriate.

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

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

<table>
<thead>
<tr>
<th>SUBMIT WITH COMPLETED BID</th>
<th>Section or Exhibit</th>
</tr>
</thead>
<tbody>
<tr>
<td>‘Solicitation, Bid and Award’ form</td>
<td>Section II, Article 1</td>
</tr>
<tr>
<td>‘Bid/Contract Amount, Items and Prices’ form</td>
<td>Section II, Article 2</td>
</tr>
<tr>
<td>‘Bidder’s Questionnaire’</td>
<td>Section I, Article 5</td>
</tr>
<tr>
<td>‘Certification of Restrictions on Lobbying’ form</td>
<td>Section XI, Exhibit C</td>
</tr>
<tr>
<td>‘Debarment and Suspension Certification’ form</td>
<td>Section XI, Exhibit D</td>
</tr>
<tr>
<td>‘Buy America Certificate’ form</td>
<td>Section XI, Exhibit G</td>
</tr>
<tr>
<td>‘Contractor’s Utilization Plan’ form</td>
<td>Section XI, Exhibit F, Form 1</td>
</tr>
</tbody>
</table>
### SUBMIT IF A SMALL BUSINESS GOAL IS ESTABLISHED

- Business Assurance Statement form  Section XI, Exhibit F, Form 2
- Subcontractor/Supplier Letter of Intent form  Section XI, Exhibit F, Form 3
- Contractor’s Utilization Plan Pledge form  Section XI, Exhibit F, Form 4
- Acceptable certification documentation

### SUBMIT ONLY IF APPLICABLE

- Evidence of attainment of proper license or permit, if special licensing or permitting is required by federal, state or local law or ordinance.
5 REQUEST FOR APPROVAL (RFA FORM)

(NOTE: See next page for instructions on the use of this form)

SOLICITATION/CONTRACT NO.____________________________________________________

MANUFACTURER____________________ REPRESENTATIVE_________________________

RFA NO._________________________ DATE________________

SECTION__________ PAGE NO._____________ PARAGRAPH NO._____________

MANUFACTURER'S REQUEST:


METRO'S RESPONSE:

APPROVED________________________ DENIED________________________

APPROVED AS MODIFIED______________________________________________

COMMENTS:


APPROVED BY:_______________________ DATE________________________
INSTRUCTION FOR USE OF REQUEST FOR APPROVAL (RFA FORM)

In order to assure full and prompt response to all requests for approval or exception to the technical specifications, Bidder is required to submit said requests on this form. If the Bidder has multiple requests for approval or exception with a particular section of the technical specifications each request shall be individually addressed with the Bidder submitting a form for each request. The lumping of a series of requests together on one form may cause METRO to deny all requests.

The Bidder shall insert the name of the manufacturer and their representatives in the space provided and note the section, paragraph and page number of METRO’s technical specifications for which the request is being made. The Bidder shall sequential number their request using the space provided.

The Bidder shall submit this form and copies of any supporting documentation noted. The Bidder shall submit this form via e-mail as described in the paragraph entitled "REQUEST(S) FOR APPROVAL OR DEVIATION". METRO will not respond to any request for exception or approval that fails to use this form.

Failure to submit the Mandatory RFA’s will render your bid non-responsive.
6 MANDATORY REQUEST FOR APPROVALS (RFA)

Bidders shall submit the following Mandatory Request For Approval (RFA) twenty (20) days prior to the published deadline for submittal of bids for each of the following. Failure to submit the Mandatory RFA’s in Section II no later than twenty (20) days before bid due date will render your bid non-responsive. METRO will notify Bidders of RFA approval/denial no later than ten (10) days prior to bid due date RFA’s.

Mandatory RFA’s

1. The Contractor shall submit sample of seat(s) type to METRO for approval along with test reports showing compliance with the required specification.
5 BIDDER'S QUESTIONNAIRE

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

A. NAME OF BIDDER: __________________________
   PRINCIPAL BUSINESS ADDRESS:
   ___________________________________________________
   ___________________________________________________

B. Are you an individual _____, a partnership _____, a corporation _____, or a joint venture _____? (Check as applicable).
   Incorporated in the State of _______________
   Texas Taxpayer Number: _______________

   If a partnership, list names and addresses of partners; if a corporation, list names of officers and directors and state of incorporation; if a joint venture, list names and addresses of venturers and, if any venturer is a corporation, partnership or joint venture, list the same information for each such corporation, partnership and joint venture.
   ___________________________________________________
   ___________________________________________________
   ___________________________________________________

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

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

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

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

<table>
<thead>
<tr>
<th>JOB CLASSIFICATION</th>
<th>NO. OF EMPLOYEES</th>
<th>JOB CLASSIFICATION</th>
<th>NO. OF EMPLOYEES</th>
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</tbody>
</table>
G. What is the total square footage of your company's facilities?

<table>
<thead>
<tr>
<th>Inside Plant Space:</th>
<th>In Texas</th>
<th>Out of Texas</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>____ sq. ft.</td>
<td>____ sq. ft.</td>
</tr>
<tr>
<td>Office Space:</td>
<td>____ sq. ft.</td>
<td>____ sq. ft.</td>
</tr>
<tr>
<td>Outside Plant Yard:</td>
<td>____ sq. ft.</td>
<td>____ sq. ft.</td>
</tr>
<tr>
<td>Parking Area:</td>
<td>____ sq. ft.</td>
<td>____ sq. ft.</td>
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</tbody>
</table>

H. List names of clients, other than individuals, including public bodies, for whom you have furnished the same or similar type service. Reference which is your largest client for similar type of services.

<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS</th>
<th>EMAIL</th>
<th>TELEPHONE</th>
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</table>

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

Provide details:

______________________________________________________________________________________
______________________________________________________________________________________
______________________________________________________________________________________
______________________________________________________________________________________

J. Is any litigation pending against your organization?  Yes __ No __ If yes:

Provide details:

______________________________________________________________________________________
______________________________________________________________________________________
______________________________________________________________________________________

K. Name your principal financial institution for financial responsibility reference.

Name of Bank: _____________________________
Street Address: __________________________
City and State: ___________________________
Telephone: _______________________________
E-Mail: _________________________________
Officer Familiar with Bidder's Account: ___________________________
L. State your firm’s annual average receipts over the past three (3) fiscal years:

<table>
<thead>
<tr>
<th>YEAR</th>
<th>AVE. ANNUAL RECEIPTS</th>
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</tbody>
</table>

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

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

NAME: ________________________________
TITLE: ________________________________

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

1 SOLICITATION, BID AND AWARD FORM

METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY TEXAS

INVITATION FOR BIDS

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

IFB No.: 4020000141 Date of IFB: May 11, 2020 Contract No.: ________________

Description of Project: H1 & H3 LRV Passenger Seat Inserts

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

In compliance with the above referenced Invitation for Bids, the undersigned hereby proposes to furnish all of the labor, tools, machinery, equipment, supervision, specified materials and other means to complete the above referenced project for the bid amount(s) listed in the ‘Bid/Award Form ‘Bid/Contract Amount, Items and Prices’ Article herein and in accordance with the Contract documents.

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

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

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

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

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

(TO BE COMPLETED BY BIDDER)

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

FULL NAME OF PARTNERS (Type or Print):

BUSINESS NAME (Type or print) ________________________________  ________________________________

ADDRESS (Type or print) ________________________________  ________________________________

CITY, STATE, ZIP CODE (Type or print) ________________________________

PHONE: ( ) ________  FAX NO: ( ) ________

EMAIL: _________________________

BY: (Sign in ink) ________________________________

NAME (Type or print) ________________________________  TITLE (Type or print) ________________________________

PHONE: ( ) ________

DATE: ________________________________

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

DIRECTIONS FOR SUBMITTING BIDS:

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

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

NOTE: Identify the envelope containing a bid with the project title, Invitations for Bids number, bid opening date and time, and the bidder’s company name and address.

======================================================================================================
2 OFFER/ACCEPTANCE/AWARD SIGNATURE PAGE

OFFER

(TO BE COMPLETED AND SIGNED BY BIDDER/CONTRACTOR)

SIGNATURE OF BIDDER/CONTRACTOR:  

BY: ___________________________________  
(MUST BE SIGNED BY AUTHORIZED PERSON)  

NAME: ___________________________________  
(Type or Print)  

TITLE: ___________________________________  

DATE: ___________________________________

Note:  
1) If Joint Venture, each party shall provide the above information and sign the offer.  
2) Bidder/Contractor’s signature constitutes acceptance of a Contract that may result from this solicitation.

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

ACCEPTANCE AND AWARD
(TO BE COMPLETED AND SIGNED BY METRO)

METRO and the Contractor have executed this Contract and it shall be effective on the ___ day of ____________, 2020.

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.

BY: ___________________________________  
Name: Michael Kyme  
Title: Chief Procurement Officer  

APPROVED:

Name: Debbie Sechler  
Title: Executive Vice President, Administration

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

APPROVED AS TO FORM:

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

ATTEST:

Title: Assistant Secretary
Contractor agrees to furnish all resources necessary to provide seat inserts in accordance with the attached Specification, Exhibit “A” and the terms and conditions of this Contract at the below bid prices.

**GROUP 1 – H1 LRV SEAT INSERTS**

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>ITEM DESCRIPTION</th>
<th>EST. QTY</th>
<th>UNIT</th>
<th>UNIT BID AMOUNT</th>
<th>EXTENDED BID AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>Seat Bottom Inserts</td>
<td>1188</td>
<td>Ea</td>
<td>$ __________</td>
<td>$ __________</td>
</tr>
<tr>
<td>002</td>
<td>Seat Back Inserts</td>
<td>1188</td>
<td>Ea</td>
<td>$ __________</td>
<td>$ __________</td>
</tr>
<tr>
<td>003</td>
<td>Handicap Seat Bottom Inserts</td>
<td>80</td>
<td>Ea</td>
<td>$ __________</td>
<td>$ __________</td>
</tr>
<tr>
<td>004</td>
<td>Handicap Seat Back Inserts</td>
<td>80</td>
<td>Ea</td>
<td>$ __________</td>
<td>$ __________</td>
</tr>
</tbody>
</table>

**TOTAL EXTENDED AMOUNT (Group 1)** $__________

**GROUP 2 – H3 LRV SEAT INSERTS**

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>ITEM DESCRIPTION</th>
<th>EST. QTY</th>
<th>UNIT</th>
<th>UNIT BID AMOUNT</th>
<th>EXTENDED BID AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>Seat Bottom Inserts</td>
<td>2560</td>
<td>Ea</td>
<td>$ __________</td>
<td>$ __________</td>
</tr>
<tr>
<td>002</td>
<td>Seat Back Inserts</td>
<td>2240</td>
<td>Ea</td>
<td>$ __________</td>
<td>$ __________</td>
</tr>
<tr>
<td>003</td>
<td>Handicap Seat Bottom Inserts</td>
<td>320</td>
<td>Ea</td>
<td>$ __________</td>
<td>$ __________</td>
</tr>
</tbody>
</table>

**TOTAL EXTENDED AMOUNT (Group 2)** $__________

**AWARD WILL BE MADE ON LOWEST TOTAL EXTENDED AMOUNT PRICE PER GROUP.**
4 KEY PERSONNEL FORM

PRIME CONTRACTOR: ________________________________

Name: ________________________________ TEL (____) __________________

Title: ________________________________ FAX (____) __________________

E-Mail: __________________________________________________________________

SUBCONTRACTORS:

Subcontractor Firm: ________________________________

Name: ________________________________ TEL (____) __________________

Title: ________________________________ FAX (____) __________________

E-Mail: __________________________________________________________________

Subcontractor Firm: ________________________________

Name: ________________________________ TEL (____) __________________

Title: ________________________________ FAX (____) __________________

E-Mail: __________________________________________________________________

Subcontractor Firm: ________________________________

Name: ________________________________ TEL (____) __________________

Title: ________________________________ FAX (____) __________________

E-Mail: __________________________________________________________________
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 ‘Contractor’ shall mean the individual, partnership, corporation, organization, or association contracting with METRO to furnish all materials, goods and work defined herein. As may be used herein, the terms ‘Contractor’ and ‘Consultant’ are synonymous.

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

2 PERIOD OF PERFORMANCE

A. This Contract shall be for a period of forty five (45) calendar days for Group 1 and sixty (60) calendars for Group 2 unless otherwise extended or terminated by METRO in accordance with the terms and conditions of this Contract.

3 SERVICES TO BE PERFORMED

The Contractor shall furnish all necessary resources, including all materials, equipment, facilities, disposal sites, supplies, skilled and qualified supervisory and non-supervisory personnel, to provide LRV Seat Inserts in accordance with the terms and conditions of this Contract. Specific services to be performed are listed in Exhibit A, ‘Scope of Services,’ and made a part hereof.

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 OF SERVICES

A. The Contractor shall provide and maintain a quality control and service inspection system acceptable to METRO covering the Services under this Contract. Complete records of all inspection services performed by the Contractor shall be maintained and made available to METRO during Contract performance and for a three (3) year period after the term of the Contract.

B. METRO has the right to inspect and test all services called for by the Contract, to the extent practicable at all times and places during the term of the Contract. METRO shall perform inspections and tests in a manner that will not unduly delay the services.

C. If any of the services do not conform to Contract requirements, METRO may require the Contractor to perform the services again in conformity with Contract requirements, at no additional compensation.

D. When the defects in services cannot be corrected by performance, METRO may:
   1. Require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements; and
   2. Reduce the Contract price to reflect the reduced value of the services performed.

E. If the Contractor fails to promptly perform the services again or take the necessary action to ensure future performance in conformity with Contract requirements, METRO may:
   1. By contract or otherwise, perform the services and charge to the Contractor any cost incurred by METRO that is directly related to the performance of such services; or
   2. Terminate the Contract for default.
SECTION V - CONTRACT ADMINISTRATION DATA ARTICLES

1 COMPENSATION

A. As full consideration for the satisfactory performance by the Contractor of this Contract, METRO shall pay to the Contractor compensation in the amount of ________________ and ___/100 Dollars ($___________), in accordance with Section II, No. 3, less any prompt payment discount earned or set forth in Paragraph B below, and in accordance with the payment provisions of this Contract.

B. 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 Work, services, equipment, materials or other items that have been received, inspected and accepted by METRO, to the address shown below:

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

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

1. Acceptance of Services;

2. Presentation of a properly prepared invoice;

3. For each invoice with a Small Business Participation goal, update METRO’s Online Contract Audit screen demonstrating payments to subcontractors and confirmation of receipt of payment by subcontractors;

4. For each invoice with a Small Business Participation goal, update METRO’s online Subcontractor Invoice Report demonstrating subcontractor’s invoices for the billing period and upload a copy of the subcontractor’s invoice. The Contractor’s invoice to METRO should include subcontractor’s invoice for the same period of performance.

5. Presentation of a completed ‘Contractor’s Release’ form, Exhibit B, with every invoice, thereby releasing all claims against METRO arising by virtue of this Contract, other than claims, in stated amounts that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor’s claim to amounts payable under this Contract has been assigned. The Contractor shall complete a ‘Contractor’s Release’ form, Exhibit B, or other Contractor’s release form acceptable to METRO and submit with every invoice.

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

C. Subcontractor and Supplier Payments:

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

2. In the event of disputed amounts, the Contractor shall provide a written response to a subcontractor or supplier, with a copy to the Contracting Officer, specifically addressing any disputed amounts on invoices. The Contractor should resolve all disputed invoices at the earliest time to avoid a delay in the submission of print out of METRO’s Online Contract Audit screen with subcontractor payment verification which could delay payment to the Contractor. In the event that the Contractor cannot resolve a subcontractor or supplier disputed invoice, the Contractor shall bring the matter to the attention of the Contracting Officer at the time of submitting the Contractor’s invoice for payment. The Contracting Officer will investigate the situation and make a determination whether the Contractor’s invoice should be processed for payment without the required contract Audit verification. The Contracting Officer will not mediate the dispute between the Contractor and any subcontractor or supplier in the resolution of disputed invoices.
D. METRO’s Online Contract Audit on Contracts with Small Business Participation Goals:
1. Contractors are required to update METRO’s Online Contract Audit screen and Subcontractor Invoice Report, and to upload subcontractor invoices.
2. Failure of the Contractor to update METRO’s Online Contract Audit screen, Subcontractor Invoice Report and/or subcontractor’s invoices will be cause for the return of the invoice to the Contractor as an improperly prepared invoice.
3. In the event that no invoice is due for the past month, METRO’s Online Contract Audit screen shall nevertheless be updated, showing payment/nonpayment confirmation by the subcontractor/supplier.

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

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

G. All material and Work covered by payments made shall, at the time of payment, become the sole property of METRO, but this provision shall not be construed as:
1. Relieving the Contractor from the sole responsibility for all material, goods and Work upon which payments have been made or the restoration of any damaged Work; or as
2. Waiving the right of METRO to require the fulfillment of all of the terms of the Contract.

3 ADMINISTRATIVE CONTROL OF CORRESPONDENCE

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

4 CONTRACTOR REPRESENTATIVE

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

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

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

N/A

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 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 PROGRAM ARTICLES FOR CONTRACTS WITH SMALL BUSINESS GOALS

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

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

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

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

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

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

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

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

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

4  CONTRACTOR'S EMPLOYEES

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

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

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

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

E. The Contractor shall require its employees and subcontractors to comply with the instructions pertaining to conduct and other regulations called to the attention of the Contractor by the Project Manager or his designee.

F. At the request of the Contracting Officer or Project Manager, the Contractor shall remove an employee from its work force who is found unacceptable or unsatisfactory by the Project Manager. It shall be the Contractor's responsibility to find a suitable replacement for the removed employee. No claim associated with such an action will be authorized.
The Contractor’s personnel shall comply with all written rules and regulations supplied to the Contractor regarding personal and professional conduct, safety, security and other matters that are generally applicable to METRO’s employees, such as the Electronic Communications Guideline; and otherwise conduct themselves in a businesslike manner.

5 HEALTH, SAFETY AND FIRST AID

A. METRO places and requires the Contractor to place the highest importance and priority on health and safety for all services performed by the Contractor at any METRO facility. At all METRO facilities, the Contractor shall comply with all applicable fire, safety and health laws and regulations, as well as any safety and health requirements of METRO. The Contractor shall ensure that all of its employees are made aware of all safety, fire and health requirements and regulations applicable to the Work to be performed pursuant to this Contract. METRO shall furnish the Contractor with copies of all safety and health requirements of METRO that relate particularly to the services the Contractor has been requested to perform and to the general safety of any particular METRO facility. The Contractor shall contact METRO’s Safety Department by telephone, (713) 652-7939, to review safety procedures.

B. The Contractor shall not permit to exist a hazardous, unsafe, unhealthy or environmentally unsound condition or activity over which it has control at a METRO facility. In the event the Contractor becomes aware of any such condition or activity, it shall promptly notify METRO and immediately take whatever steps are necessary to eliminate, terminate, abate or rectify such condition. If METRO becomes aware of such condition or activity before it is known to the Contractor, it shall notify the Contractor and request the Contractor’s prompt corrective action. METRO shall take prompt corrective action with respect to any hazardous, unsafe, unhealthy or environmentally unsound condition or activity resulting from its activities or operations. Each party shall cooperate with the other to eliminate, terminate, abate and rectify any such condition.

C. In the case of any emergency, METRO shall make emergency first aid and related services available to the employees of the Contractor to the same extent that such emergency first aid and related services would be available to an employee of METRO located at the same facility. Nothing contained herein shall be construed as imposing any duty upon METRO to provide emergency first aid treatment or related services to the Contractor’s employees where such emergency first aid treatment or related services are not already available to any employee.

6 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.

7 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.
1 ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

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

2 ASSIGNMENT

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

3 CHANGES

A. The President & Chief Executive Officer or the duly authorized representative may, at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this 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.); and
   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 justify it, 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. The 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.

4 COMPLIANCE WITH LAWS/PERMITS AND LICENSES

The Contractor shall give notices and comply with all federal, state and municipal laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of this Contract, including, but not limited to, the laws referred to in this Contract. If the Contractor or METRO observes that this Contract is at variance therewith in any respect, the observing party shall promptly notify the other party in writing, and any necessary changes shall be adjusted by appropriate contract modification. Upon request, the Contractor shall furnish to METRO certificates of compliance with all such laws, ordinances, rules, regulations and orders. The Contractor shall also be responsible for obtaining all necessary permits and licenses required for performance under the Contract.
5 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

6 CONTRACTOR'S KEY PERSONNEL

The Contractor’s key personnel listed in Section II.4, ‘Key Personnel,’ are considered to be essential to performance of any of the Services being contemplated hereunder. Prior to substituting other personnel for any of the individuals specified, the Contractor shall notify METRO reasonably in advance and shall submit justification in sufficient detail to permit evaluation of the impact on these Services. No such substitutions shall be made by the Contractor without first securing METRO approval. The bid form entitled ‘Key Personnel’ may be amended from time to time during the course of the Contract to either add or delete personnel, as appropriate.

7 CONTRACTUAL RELATIONSHIPS

No contractual relationship will be recognized under the Contract other than the contractual relationship between METRO and the Contractor.

8 COVENANT AGAINST CONTINGENT FEES

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

9 DISPUTES

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

10 DISSEMINATION OF CONTRACT INFORMATION

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

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 undertake 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 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, 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.
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.

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 the 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.

INDEPENDENT CONTRACTOR

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

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.

LABOR REQUIREMENTS

A. No Contractor or subcontractor holding a service contract for any dollar amount shall pay any of its employees working on the contract less than the minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. § 206).

B. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof).

C. METRO reserves the right to audit Contractor-certified payroll records at METRO's discretion.

PROTECTION OF METRO BUILDINGS, EQUIPMENT AND VEGETATION

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on METRO property. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to METRO, as directed by the President and Chief Executive Officer or his designee. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the Contract price.

RIGHTS AND REMEDIES

The rights and remedies of METRO provided for under this Contract are in addition to any rights or remedies provided by law.
19  SEVERABILITY

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

20  SUBCONTRACTING

A. The Contractor shall not subcontract any portion of the work without obtaining the Contracting Officer's written consent thereto.

B. Subcontractors identified in the 'Contractor Utilization Plan' form, Exhibit F, Form 1, shall not be replaced without obtaining the Contracting Officer's written consent thereto.

21  SUPERINTENDENCE BY CONTRACTOR

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

22  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.

23  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. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted work was obtainable from other sources in sufficient time for the Contractor to meet the required performance schedule.

F. 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.

G. 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.

H. 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.

24 USE OF METRO’S NAME IN CONTRACTOR ADVERTISING OR PUBLIC RELATIONS

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

25 WAIVERS

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

B. The waiver by METRO of any breach of any term, covenant, condition, or agreement herein contained shall not be deemed to be a waiver of any subsequent breach of the same, or of a breach of any other term, covenant, condition, or agreement herein contained.
SECTION X - FEDERAL REQUIREMENTS ARTICLES

1 ACCESS TO RECORDS

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

B. The Contractor agrees to provide METRO, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor’s records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)1, that is receiving federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at $100,000.

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

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

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

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

2 CONTRACT WORK HOURS - SAFETY STANDARDS – OVERTIME COMPENSATION

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

A. Overtime Requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the Clause set forth in Paragraph A of this Article, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the Clause set forth in Paragraph A of this Article, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the Clause set forth in Paragraph A of this Article.

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

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

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

4 DEBARMENT AND SUSPENSION

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

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

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

5 DRUG AND ALCOHOL TESTING

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

B. A safety-sensitive function is defined as:

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

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

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

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

5. Carrying a firearm for security purposes.

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

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

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

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

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

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

A. Clean Air

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

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

B. Clean Water

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

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

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

7 FEDERAL CHANGES

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

8 FLY AMERICA

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

9 FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

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

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

C. The Contractor agrees to include the above two (2) clauses in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.
INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation (DOT), whether or not expressly set forth in the Contract provisions. All contractual provisions required by DOT, as set forth in the latest edition of FTA Circular 4420.1F in effect at the time of this Contract award, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any METRO requests, which would cause METRO to be in violation of the FTA terms and conditions.

METRO NON-DISCRIMINATION

METRO shall not discriminate on the basis of race, color, national origin, religion, sex (including gender identity and sexual orientation), disability, or age in the award and performance on any DOT-assisted Contractor in the administration of its program or the requirements of 49 C.F.R. Part 26. METRO shall take all necessary and reasonable steps under 49 C.F.R. Part 26 to ensure non-discrimination in the award and administration of DOT-assisted contracts. METRO’s program, as required by 49 C.F.R. Part 26 and as approved by the DOT, is incorporated by reference in this Contract. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Contract. Upon notification to METRO of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. § 3801, et seq.).

NO OBLIGATION BY THE FEDERAL GOVERNMENT

A. METRO and the Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the federal government, the federal government is not a party to this Contract and shall not be subject to any obligations or liabilities to METRO, the Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.

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

OFFICIALS NOT TO BENEFIT

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

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

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

RECYCLED PRODUCTS

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

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 other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contracts on its behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 U.S.C. § 1352. Such disclosures are forwarded from tier to tier, up to the recipient. See Section XI, Exhibit C, ‘Certification of Restrictions on Lobbying.’
16 BUY AMERICA

A. The Contractor agrees to comply with 49 U.S.C. § 5323(j) and 49 C.F.R. Part 661, which provide that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at § 5323 (j)(2)(C) and 49 C.F.R. § 661.11. Rolling stock must be manufactured in the United States and have a 60 percent domestic content.

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

17 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.
EXHIBIT A
SCOPE OF SERVICES
H1 SEAT INSERT REPLACEMENT

SCOPE

Metropolitan Transit Authority of Harris County (METRO) is in the process of replacing cloth seat inserts with plastic fiber seat inserts. There are 18 H1 Vehicles, with 64 seats on each. There are four different types of inserts, for the H1 vehicles. See Table 1, for quantities of each type of insert that METRO is requesting.

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>QUANTITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEAT BOTTOM INSERTS</td>
<td>1188</td>
</tr>
<tr>
<td>SEAT BACK INSERTS</td>
<td>1188</td>
</tr>
<tr>
<td>HANDICAP SEAT BOTTOM INSERTS</td>
<td>80</td>
</tr>
<tr>
<td>HANDICAP SEAT BACK INSERTS</td>
<td>80</td>
</tr>
</tbody>
</table>

**TABLE 1.** Seat insert types and quantities requested.

Sample seat inserts, for evaluation, will be due, to METRO, 30 days after the site visit. Lowest bidder, from the approved samples, will be awarded the solicitation.

SPECIFICATIONS

Seat inserts shall have a smoothly finished surface, free of sharp edges, open gaps or other objectionable surface defects. Inserts shall be removable, cleanable, and will have an interlocking design to prevent gapping or pinching between the bottom or back inserts. All seat inserts of a given type shall be completely interchangeable. The seat inserts shall not require any modifications to the existing seat frames.

The seat contour shall provide lumbar support and the seat bottom shall be angled from the horizontal to prevent passengers from sliding forward on the seat surface during deceleration.

Material shall be a glass-fiber reinforced polyester material. Material should consist of a combination of reinforced fibers in a thermoset polymer resin matrix, where the reinforcement has an aspect ratio that enables the transfer of load between fibers, and the fibers are chemically bonded to the resin. The material shall be resistant to acids, alkalis, and cleaning solutions used by METRO.

The color of the inserts shall match the color of the sample given during the site-visit.

A test report shall be provided identifying flammability, toxicity, and smoke emissions per ASTM E1354. Report shall show test identity, test facility, test requirements, test results, nature, and quantity of the products combustion, heat content, and heat release.

Materials shall be tested for toxicity using Boeing Specification Support Standard BSS-7239. Materials shall meet the following maximum toxic gas release limits (ppm) as determined per BSS-7239:

- Carbon Monoxide (CO) 3,500 ppm
- Hydrogen Fluoride (HF) 200 ppm
- Nitrogen Dioxide (NO₂) 100 ppm
- Hydrogen Chloride (HCL) 500 ppm
- Hydrogen Cyanide (HCN) 150 ppm
- Sulfur Dioxide (SO₂) 100 ppm

The tests shall be conducted in the flaming mode after 240 seconds using the NBS Smoke Density Chamber for sample combustion. The gas sampling may be conducted during the smoke density test. The test reports shall indicate the maximum concentration (ppm) for each of the above gases at the specified sampling time shall be submitted to METRO for review and approval.

SAMPLES

Prior to placing a quantity order for seats, the Contractor shall furnish to METRO one complete seat of each type for METRO approval. Each sample shall include test reports showing compliance with this specification.

DELIVERY

The full quantities shall be delivered within six weeks of placing the order.
H3 SEAT INSERT REPLACEMENT

SCOPE

Metropolitan Transit Authority of Harris County (METRO) is in the process of replacing cloth seat inserts with plastic fiber seat inserts. There are 39 H3 Vehicles, with 64 seats on each. There are three different types of inserts, for the H3 vehicles. See Table 1, for quantities of each type of insert that METRO is requesting.

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>QUANTITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEAT BOTTOM INSERTS</td>
<td>2560</td>
</tr>
<tr>
<td>SEAT BACK INSERTS</td>
<td>2240</td>
</tr>
<tr>
<td>HANDICAP SEAT BACK INSERTS</td>
<td>320</td>
</tr>
</tbody>
</table>

**TABLE 1.** Seat insert types and quantities requested.

Sample seat inserts, for evaluation, will be due, to METRO, 30 days after the site visit. Lowest bidder, from the approved samples, will be awarded the solicitation.

SPECIFICATIONS

Seat inserts Shall have a smoothly finished surface, free of sharp edges, open gaps or other objectionable surface defects. Inserts shall be removable, cleanable, and will have an interlocking design to prevent gapping or pinching between the bottom or back inserts. All seat inserts of a given type shall be completely interchangeable. The seat inserts shall not require any modifications to the existing seat frames.

The seat contour shall provide lumbar support and the seat bottom shall be angled from the horizontal to prevent passengers from sliding forward on the seat surface during deceleration.

Material shall be a glass-fiber reinforced polyester material. Material should consist of a combination of reinforced fibers in a thermoset polymer resin matrix, where the reinforcement has an aspect ratio that enables the transfer of load between fibers, and the fibers are chemically bonded to the resin. The material shall be resistant to acids, alkalis, and cleaning solutions used by METRO.

The color of the inserts shall match the color of the sample given during the site-visit.

A test report shall be provided identifying flammability, toxicity, and smoke emissions per ASTM E1354. Report shall show test identity, test facility, test requirements, test results, nature, and quantity of the products combustion, heat content, and heat release.

Materials shall be tested for toxicity using Boeing Specification Support Standard BSS-7239. Materials shall meet the following maximum toxic gas release limits (ppm) as determined per BSS-7239:

- Carbon Monoxide (CO) 3,500 ppm
- Hydrogen Fluoride (HF) 200 ppm
- Nitrogen Dioxide (NO₂) 100 ppm
- Hydrogen Chloride (HCL) 500 ppm
- Hydrogen Cyanide (HCN) 150 ppm
- Sulfur Dioxide (SO₂) 100 ppm

The tests shall be conducted in the flaming mode after 240 seconds using the NBS Smoke Density Chamber for sample combustion. The gas sampling may be conducted during the smoke density test. The test reports shall indicate the maximum concentration (ppm) for each of the above gases at the specified sampling time shall be submitted to METRO for review and approval.

SAMPLES

Prior to placing a quantity order for seats, the Contractor shall furnish to METRO one complete seat of each type for METRO approval. Each sample shall include test reports showing compliance with this specification.
DELIVERY

Two shipments of equal quantities shall be delivered monthly, starting 30 days after order.
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: ______________________________________________________

(Signature of Company Official)

CERTIFICATE

I, ___________________, certify that I am ______________________ (title) of the firm named 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.

By: ______________________________________________________

(Signature of Certifying Person)

(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’s/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
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
Form 1 CONTRACTOR UTILIZATION PLAN FORM

INSTRUCTIONS TO COMPLETING CONTRACTOR UTILIZATION PLAN FORM

The Contractor Utilization Plan identifies the bidder’s/proposer’s (prime) team of certified and non-certified subcontractors and suppliers. It is also used to determine the percent (%) of Small Business (SB) participation on the team. All team members must be listed on the form regardless of certification status. Make additional copies of the appropriate Section(s) of the form, if needed, to include all team members.

Information applicable to all members of the team in Sections 1, 2, 3 & 4 of the CUP:

- Name, tax identification number, business address and contact information of prime, subcontractors and suppliers.
- Brief description of work to be performed by prime or subcontractors; or products to be provided by the suppliers.
- Certification status of prime, subcontractor(s) and supplier(s). Include a copy of the METRO SBE certificate or a DBE certificate for any applicable members of the team. Be sure to reference the solicitation regarding the types of SB certifications that METRO accepts or visit the METRO website [www.ridemetro.org](http://www.ridemetro.org) and go to the Small Business link.
- Percentages of the total contract value to be performed by the prime and each subcontractor and supplier. (Note: The total of all team members must equal 100%)
- Price is REQUIRED on this form when responding to “Invitations for Bid” (IFB) solicitations. Price is only required on the FINAL CUP for “Requests for Qualifications” (RFQ) or “Requests for Proposals” (RFP) solicitations.

<table>
<thead>
<tr>
<th>Name of Business</th>
<th>Type of Work to be Performed or Materials Supplied</th>
<th>Indicate if SBE/DBE (Y/N)</th>
<th>Percent of Contract Effort</th>
<th>Price (IFB ONLY)</th>
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<td>SBE</td>
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</table>

CUP Completion Instructions continued on next page
Section 1 – Prime Contractor: This Section is only for the bidder’s/proposer’s information.

Section 2 – Subcontractors: This Section is used to list all certified and non-certified subcontractors.

Section 3 – Suppliers – Manufacturers (100%): In this section, list all certified and non-certified suppliers that manufacturer or produce the product they are providing.

- 100% of each certified supplier’s contract value (or percentage) will count towards the SB goal.

Section 4 – Suppliers – Dealers (60%): In this section, list all certified and non-certified suppliers that purchase their products from a wholesaler.

- 60% of each certified supplier’s contract value (or percentage) will count towards the SB goal.

- Note that the “Percent of Contract Effort” in this section is divided into 2 parts: “100%” and “60%”. BOTH PERCENTAGES MUST BE SPECIFIED IF A SUPPLIER IS CERTIFIED.

- The “100%” represents the total value of the P.O. (or Contract) as a percentage of the total value of the bid. For example: If the total bid is $1,000,000 and the P.O. value is $100,000, then the 100% value = 10% and the 60% value = 6%. In this example, only 6% ($60,000) will be counted towards the SB goal. See example below:

<table>
<thead>
<tr>
<th>Percent of Contract Effort</th>
<th>Price (IFB ONLY)</th>
</tr>
</thead>
<tbody>
<tr>
<td>100% Value (%): 10%</td>
<td>100% Value ($): $100,000</td>
</tr>
<tr>
<td>60% Value (%): 6%</td>
<td>60% Value ($): $60,000</td>
</tr>
</tbody>
</table>

- Reminder: In the case of an RFP or RFQ, only specify the percentages.

Summary Totals & SBE/DBE Participation Section

- In this section, under “TOTAL AMOUNT OF BID/PROPOSAL”, specify the dollar amounts and the corresponding percentages relative to the total bid amount from Sections 1, 2, 3, & 4. (Important: The total dollars must match your bid amount and the corresponding percentages must total to 100%.)

- Under “% SBE/DBE Participation” specify the percent of SB participation per Sections 1, 2, 3 & 4. See IFB example below:

**EXAMPLE ONLY SCENARIO:** The Prime is not certified, and all of the subcontractors and suppliers are certified firms. The Small Business goal is 35%.

<table>
<thead>
<tr>
<th>TOTAL AMOUNT OF BID/PROPOSAL</th>
<th>% SBE/DBE Participation</th>
</tr>
</thead>
<tbody>
<tr>
<td>PRIME: $500,000</td>
<td>50 %</td>
</tr>
<tr>
<td>SUBCONTRACTORS: $300,000</td>
<td>30 %</td>
</tr>
<tr>
<td>SUPPLIER-MANUFACTURERS: $100,000</td>
<td>10 %</td>
</tr>
<tr>
<td>SUPPLIERS-DEALERS: $100,000</td>
<td>10 %</td>
</tr>
<tr>
<td>TOTAL BID/PROPOSAL AMOUNT: $1,000,000</td>
<td>100 %</td>
</tr>
</tbody>
</table>

(Note: If the solicitation is an RFP or RFQ, only specify the percentages.)

Remember to submit all Sections, enter the information highlighted in yellow below, sign and date the form.

Submitted By: [Signature of Owner/Officer of Business] (Date)  Business Name: ____________________________

Address: ____________________________  Telephone/Email: ____________________________
Bidder/Proposer presents the following participants in this solicitation and any resulting contract.

### Section 1 – PRIME CONTRACTOR

<table>
<thead>
<tr>
<th>Name of Business</th>
<th>Tax ID No.</th>
<th>Business Address</th>
<th>Telephone No.</th>
<th>Contact Person</th>
<th>Title</th>
<th>Email Address</th>
</tr>
</thead>
<tbody>
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<tr>
<th>Type of Work to be Performed or Materials Supplied</th>
<th>Indicate if SBE/DBE (Y/N)</th>
<th>Percent of Contract Effort</th>
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<tbody>
<tr>
<td></td>
<td>SBE</td>
<td>DBE</td>
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### Section 2 – SUBCONTRACTORS

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<tr>
<th>Name of Business</th>
<th>Tax ID No.</th>
<th>Business Address</th>
<th>Telephone No.</th>
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<tbody>
<tr>
<td></td>
<td>SBE</td>
<td>DBE</td>
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35
Bidder/Proposer presents the following participants in this solicitation and any resulting contract.

### Section 3 – SUPPLIERS – MANUFACTURERS

Counts for 100% toward small business goal when purchased from small business manufacturer (see Instructions to Bidders/Proposers).

<table>
<thead>
<tr>
<th>Name of Business</th>
<th>Tax ID No.</th>
<th>Business Address</th>
<th>Telephone No.</th>
<th>Contact Person</th>
<th>Title</th>
<th>Email Address</th>
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<th>Name of Business</th>
<th>Tax ID No.</th>
<th>Business Address</th>
<th>Telephone No.</th>
<th>Contact Person</th>
<th>Title</th>
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Bidder/Proposer presents the following participants in this solicitation and any resulting contract.

### Section 4 – SUPPLIERS – DEALERS

Counts for 60% toward small business goal when purchased from small business regular dealer (see Instructions to Bidders/Proposers).

<table>
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<tr>
<th>Type of Work to be Performed or Materials Supplied</th>
<th>Indicate if SBE/DBE (Y/N)</th>
<th>Percent of Contract Effort</th>
<th>Price (IFB ONLY)</th>
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<tr>
<td></td>
<td>SBE</td>
<td>100%</td>
<td>60%</td>
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<tr>
<td></td>
<td>DBE</td>
<td>60%</td>
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| Name of Business                                    | __________________________ |
| Tax ID No.                                           | __________________________ |
| Business Address                                     | __________________________ |
| Telephone No.                                        | __________________________ |
| Contact Person                                      | __________________________ |
| Title                                               | __________________________ |
| Email Address                                       | __________________________ |

| Name of Business                                    | __________________________ |
| Tax ID No.                                           | __________________________ |
| Business Address                                     | __________________________ |
| Telephone No.                                        | __________________________ |
| Contact Person                                      | __________________________ |
| Title                                               | __________________________ |
| Email Address                                       | __________________________ |

**TOTAL AMOUNT OF BID/PROPOSAL**

- **PRIME:** $__________________ __________ %
- **SUBCONTRACTORS:** $__________________ __________ %
- **SUPPLIERS-MANUFACTURERS:** $__________________ __________ %
- **SUPPLIERS-DEALERS:** $__________________ __________ %

**TOTAL BID/PROPOSAL AMOUNT:** $__________________ __________ %

The Contractor agrees to adhere to this Plan submitted unless a waiver is received from the Office of Small Business. Any changes in the Plan regarding the proposed use of certified subcontractors in discharging the contract duties must be approved by the Office of Small Business. The approval of the Office of Small Business will not be unreasonably withheld upon a showing of good cause to make the change.

Submitted By: _____________________________________________
Signature of Owner/Officer of Business                (Date)
Business Name: ___________________________________________
Address: _________________________________________________
Telephone/Email: _________________________________________
Form 2 BUSINESS ASSURANCE STATEMENT

The undersigned certifies that he/she has read, understands and agrees to be bound by the small business provisions set forth in this Solicitation. The undersigned further certifies that he/she is legally authorized by the bidder/contractor to make the statements and representations in this solicitation and that said statements and representations are true and accurate to the best of his/her knowledge and belief. The undersigned agrees to attain the small business utilization percentages of the total offer amount as set forth below:

Small Business contract Goal Commitment = ___% - must match commitment on the Contractor Utilization Plan form

The undersigned will enter into formal agreement(s) for work to be identified on the ‘Contractor Utilization Plan Form’ form conditioned upon execution of a contract with METRO and agrees to include the two assurance statements below in all subcontracts.

Copies of the subcontract agreements will be submitted to the Contracting Officer within fifteen 15 days of contract award and within fifteen 15 days of the addition of new subcontractors to the Contractor Utilization Plan.

The undersigned certifies that the firm shown below has not discriminated against any subcontractors because of race, color, national origin, religion, sex (including gender identity and sexual orientation), disability, or age, but has provided full and equal opportunity to all potential subcontractors irrespective of race, color, national origin, religion, sex (including gender identity and sexual orientation), disability, or age.

The undersigned understands that if any of the statements and representations are made knowing them to be false or there is a failure to implement any of the stated intentions, objectives, goals, and commitments set forth herein without prior approval of METRO's President & Chief Executive Officer or duly authorized representative, the bidder/contractor will be subject to the loss of any Contractor, the termination thereof resulting from this bid, and could be ineligible for future METRO contract awards.

Signature: ____________________________________________

Title:____________________________________________________ Date of Signing:____________________

Firm or Corporation: ______________________________________________

Address: ____________________________________________________________

________________________________________________________________________

Telephone Number: __________________________
Form 3  SUBCONTRACTOR/SUPPLIER LETTER OF INTENT

PLEASE SUBMIT SEPARATE FORMS FOR EACH SUBCONTRACTOR/SUPPLIER

For use by submitters to identify subcontractors and suppliers.

Solicitation No.: __________________________

Project Title: ______________________________________________________________________

Prime Contractor: __________________________________________________________________

Subcontractor/Supplier: _____________________________________________________________

Small Business  Yes ☐  No ☐  Disadvantaged Business:  Yes ☐  No ☐

Contact Name: _________________________________________________________________

Address: _________________________________________________________________________

Phone: ______________________________ Fax: _________________________________________

Period of Performance: ___________________________________________________________

Description of proposed materials or services to be performed under the Contract Utilization Plan:

Signature of Subcontractor/Supplier ________________________________________________

Title

Signature of Prime Contractor _____________________________________________________

Title
Form 4 CONTRACTOR UTILIZATION PLAN PLEDGE

Copies of the Subcontract Agreements will be submitted to the Contracting Officer within fifteen (15) days of Contract award and within fifteen (15) days of the addition of new Subcontractors to the Contractor Utilization Plan and will include the Clauses below:

**Pledge of Prompt Payments**

I pledge to pay all Subcontractors within five (5) business days after receiving payment from METRO for amounts previously invoiced for work performed or materials furnished under the Contract.

Signature: ________________________________
Title: ____________________________________
Date: ____________________________________

**METRO’s Non-discrimination Mandate**

I affirm that ______________________________ (Company name) adheres to METRO's Non-discrimination Mandate and has not discriminated against any subcontractors in considering subcontracting opportunities based on race, color, national origin, religion, sex (including gender identity and sexual orientation), disability, or age.

Signature: ________________________________
Title: ____________________________________
Date: ____________________________________

**FOR CONSTRUCTION CONTRACTS**

I pledge to release the retainage of all Subcontractors within thirty (30) days after satisfactory completion and approval of work performed. Subcontractors may petition the prime Contractor to make the final payment and may notify METRO of the request. As METRO releases retainage for payment to the Subcontractor, the prime Contractor is required to immediately (within 15 days) pay the Subcontractor. The release of retainage will be made to the Subcontractor regardless of the prime invoicing METRO.

Signature: ________________________________
Title: ____________________________________
Date: ____________________________________