REQUEST FOR PROPOSALS

FOR

AUDIT TRACKING SOFTWARE

METRO REQUEST FOR PROPOSALS NO. 4020000169

Proposer’s signature on Request for Proposals (Section II – Forms for Proposing/Award) constitutes acceptance of a contract that may result from this solicitation. Contract award/execution may be made by METRO without discussion.

METRO FUNDING 100%

IMPORTANT – REQUEST FOR PROPOSAL

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:
Proposer/Contractor Name and Address

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

1  REQUEST FOR PROPOSAL

RFP NO.: 4020000169

RFP ISSUE DATE: June 17, 2020

PROJECT NAME: Audit Tracking Software

For: [ ] Supplies/Equipment [ ] Services [x] Other

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: LaChandra Wilson
TITLE: Senior Contracts Administrator
TELEPHONE: (832) 303-3537
E-MAIL: LaChandra Wilson

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

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

PROPOSAL DUE DATE/TIME/LOCATION: Proposals will be received until 2:00 PM Central Standard Time (CST) on July 9, 2020.
The Proposal, ONE (1) ORIGINAL HARDCOPY delivered in a sealed envelope to the METRO Procurement Office Plan Room, 1900
Main Street, Houston, Texas 77002, and ONE (1) ELECTRONIC PDF COPY delivered to LACHANDRA.WILSON@RIDEMETRO.ORG,
is to be submitted bearing the name and address of the Proposer and the identification ‘Request for Proposal No. 4020000169.’
Proposals received will not be opened publicly. Both the electronic and hardcopy proposal MUST be received by the deadline specified
herein.

A PRE-PROPOSAL TELECONFERENCE will be held at 10:00 AM CST on June 23, 2020—see dial-in information below. (In -person
participation is not offered for this conference.) The purpose of the conference is to explain the solicitation requirements and answer any
questions prospective proposers 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-Proposal Conference. IT IS STRONGLY URGED THAT ALL
PROPOSERS ATTEND THE PRE-PROPOSAL CONFERENCE.

Dial-In Telephone No.: (866) 528-2256
Participant Passcode: 4078379

PERFORMANCE PERIOD: The period of performance under this Contract shall be for a three (3) year base with two (2), one- (1) year
option periods. (See Contract Article ‘Period of Performance’ in Section III).

INSURANCE: Each prospective proposer 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 proposer must be properly licensed
prior to proposing and furnish evidence of such with the proposal.

OBLIGATION: This Request for Proposals does not obligate the Metropolitan Transit Authority to award a contract, or to pay any costs
incurred in the preparation or submittal of any proposal.

REGISTRATION ON PROCUREMENT WEBSITE: All 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 proposal or for any other reason.
SMALL BUSINESS PARTICIPATION GOAL: The Small Business Participation goal is NOT APPLICABLE.

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.

IF A SMALL BUSINESS PARTICIPATION GOAL IS LISTED ABOVE, PROPOSERS ARE REQUIRED TO DEMONSTRATE A COMMITMENT TO THE SMALL BUSINESS PARTICIPATION GOAL IN ORDER TO BE CONSIDERED IN THE EVALUATION PROCESS.

METRO ENCOURAGES SMALL BUSINESS PARTICIPATION EVEN IF NO SMALL BUSINESS PARTICIPATION 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.

2 INSTRUCTIONS TO PROPOSERS

A. INTRODUCTION

1. The Metropolitan Transit Authority of Harris County Texas, (METRO) is seeking proposals from qualified proposers (firms), under the negotiated method of procurement, to provide Audit Tracking Software METRO invites firms to submit a proposal in response to this Request for Proposals (RFP) as generally described in the Scope of Services, Exhibit A of this solicitation.

2. This document is comprised of a RFP and a proposed contract. The proposed contract is made available so proposers are made aware of the contemplated terms and conditions of any resulting contract. If exceptions are taken to the solicitation (including the terms and conditions of the proposed contract), please elaborate in the proposal.

B. 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 proposer to check METRO’s website for notices on the specific dates for METRO Board meetings. All proposers of this solicitation and METRO hereby agree that this provision shall serve as the minimum required action by the proposer 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 proposers shall be required to check the METRO web site regarding whether or not the solicitation associated with their proposal 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

C. AWARD OF CONTRACT

1. A Not-to-Exceed Contract, with fixed, unit prices, will be awarded to the responsive, responsible proposer(s) whose proposal conforming to this solicitation will be most advantageous to METRO, price and other factors considered.

2. METRO may accept within the time specified herein, any proposal whether or not there are negotiations subsequent to its receipt, unless the proposal is withdrawn by written notice received by METRO prior to award. If subsequent negotiations are conducted, they shall not constitute a rejection or counteroffer on the part of METRO.

3. METRO may award a contract, based on initial proposals received, without discussion of such proposals. Accordingly, a proposer should submit each initial proposal on the most favorable terms from a price and technical standpoint.

4. The lowest price proposer is not guaranteed receipt of the METRO contract award.
5. METRO reserves the right to: 1) cancel the entire solicitation; (2) issue subsequent Request for Proposals; (3) negotiate with all qualified proposers considered to be within the competitive price range; (4) reject any or all proposals and (5) waive informalities and minor irregularities in proposals received.

6. Any financial data submitted with any proposal hereunder or any representation concerning facilities or financing will not form a part of any resulting contract.

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

8. Unsuccessful proposers can request a debriefing by contacting the Contract Administrator named in this solicitation.

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

1. The proposer certifies, by submission of the proposal, 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 proposer is unable to certify to any of the statements in this certification, the proposer shall attach an explanation to the proposal it submits to METRO.

E. 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.

F. COVENANT AGAINST CONTINGENT FEES

By submitting this proposal, the proposer certifies that it has not employed any company or person (other than a full-time, bona fide employee working solely for the proposer) 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 proposer) 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.

G. DISCOUNTS

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

2. Discounts for early payment may be offered in the original proposal 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 proposals become a part of the resulting contract and are binding on the Contractor.

H. DISQUALIFICATION

METRO reserves the right to disqualify a proposal, after receipt of the proposal, upon evidence of collusion with intent to defraud or other illegal practices on the part of a proposer.

I. EVALUATION CRITERIA

Proposer’s proposal will be evaluated on both technical and pricing criteria for a possible total score of up to 100 points. Technical Evaluation Criteria are identified with relative weights adding up to a maximum of 80 points. Pricing evaluation criterion is identified with a relative weight and maximum of 20 points.

Proposals are expected to be organized under the headings below and address each topic to demonstrate the qualifications and capabilities of the Proposer and its proposed solution.

1. **Software Capability (30 points maximum)**
   a. Demonstrate compliance with the minimum requirements in the Exhibit A, Scope of Services.
   b. Describe and demonstrate any additional software capability that exceeds the requirements of the Exhibit A, Scope of Services, or is provided in addition to the Scope of Services.
c. Describe how the software, in general, offers ease of use in administration, configuration and support.

2. Qualifications & Experience of the Firm (25 points maximum)
   a. Provide the names, addresses and email and/or telephone numbers of three companies or agencies where their technology has been installed.
   b. Submit a synopsis of their experience in the marketplace of performing the services described in the scope of work, as well as their experience in managing and implementing large projects. Proposers shall include their customers’ contact information in this synopsis, as well as highlight the resources (e.g. personnel and technology) used in these previous engagements that are proposed under this solicitation.
   d. Provide introduction of the proposing firm and identify history, and experience.
   e. Demonstrate a minimum of 5 years’ experience in providing the services described in the scope of work.

3. Qualifications & Experience of Key Personnel (15 points maximum)
   a. Identify direct qualifications and experience of all personnel proposed for assignment to the project. (Note—Key personnel must be pre-approved by METRO prior to commencement of work.)
   b. Identify professional personnel, provide resumes and special licenses or education

4. Price (20 points maximum)
   Provide price that includes all costs related to the software purchase, installation, training, final implementation, recurring fees, and any other related costs. Price shall include year by year cost items for design, implementation, licensing, training and support. Price shall also be inclusive of all yearly escalation costs and fees.
   If Proposer deems additional costs are applicable in providing METRO the ownership described Section III, Article 9 (Use of Work – Assignment of Copyright), such costs must be added to the Price Proposal as an optional item that includes applicable yearly escalation costs.

5. Project Methodology (10 points maximum)
   a. Provide general explanation and chart that identifies project leadership and reporting responsibilities and ensures designation of one or more representatives to coordinate project tasks and subtasks.
   b. Submit a concise, articulated work plan that addresses the scope.
   c. Submit a high-level estimate of time-to-completion, from concept to successful delivery of all project deliverables.
   d. Describe how questions, support and the software life cycle/patching will be handled, over the life of the contract, including but not limited to standard Information Technology Infrastructure Library (ITIL) process guides and their associated Information Security Management System (ISMS) policies.

J. EXAMINATION OF DOCUMENTS
   1. A complete set of proposal documents shall be used in preparing a proposal. 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 proposals on the Work and does not convey a license or grant for any other use.
   3. Each proposer 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 the proposer 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.

K. EXPLANATIONS/AMENDMENTS ISSUED TO PROPOSERS
   1. Any explanation desired by a proposer regarding the meaning or interpretation of the RFP or its scope of services must be requested in writing and received by METRO no later than 2:00 PM CST, June 26, 2020. METRO’s response will be in the form of an amendment and will be furnished to all prospective proposers. METRO may also issue amendments when a solicitation is changed.
2. The proposer 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 proposal, or send a letter of amendment acknowledgement to be received by METRO before the time set for receipt of proposals. 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.

L. INDEPENDENT PRICE DETERMINATION

By submitting this proposal, the proposer certifies that he has not colluded, conspired, connived, or agreed, directly or indirectly, with any proposer, to put in a sham proposal or to refrain from proposing; 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 proposal amount herein or any other proposer, or to fix any overhead, profit, or cost element of said proposal amount, or that of any other proposer, or to secure any advantage against METRO or any person interested in the proposed contract.

M. INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting a proposal, the proposer is providing the certification set out in Paragraph D above.

2. The certification in this Instructions to Proposers 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 proposer/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 proposer shall provide immediate written notice to METRO if at any time the proposer 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,’ ‘proposal,’ and ‘voluntarily excluded,’ as used herein, have the meanings set out in the Definition and Coverage sections of rules implementing Executive Order 12549. The proposer may contact the designated METRO Contracts Administrator for assistance in obtaining a copy of this regulation.

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

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

N. LATE PROPOSALS; MODIFICATION OR WITHDRAWAL OF PROPOSALS

1. Any proposal or modification of proposal received at the METRO office designated in the Request for Proposals after the exact time specified for receipt will not be considered. Late proposals received will be retained unopened in the official contract file.

2. A proposal may be withdrawn in person by a proposer or his authorized representative, provided his identity is made known and he signs a receipt for the proposal, but only if the withdrawal is made prior to the exact time set for receipt of proposals.

3. Modifications of proposals already submitted will be considered if received at the office designated in the Request for Proposals by the time set for receipt of proposals.

O. PREPARATION OF PROPOSAL

1. A proposal 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 proposal. Electronic, facsimile (fax) or emailed proposals are not authorized.

2. If a proposal is from an individual, sole proprietorship, or a proposer operating under a trade name, the proposal shall be signed by that individual.

3. A proposal by a partnership shall be executed in the partnership name and signed by a partner; the official address of the partnership shall be shown below the signature.

4. A proposal 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.
5. A proposal 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 proposals. The signature portion of the Proposal form in Section II shall be altered as appropriate for execution by the joint venture and all joint venturers.

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

7. The proposal shall contain an acknowledgment of receipt of all amendments to the solicitation. Refer to Paragraph K above.

8. Communications regarding this solicitation are to be directed to the address and to the attention of the METRO person shown in this Request for Proposals document.

9. If a proposer considers any of the terms or conditions of the solicitation (including the proposed contract) to be unacceptable, the proposer should identify those which are so, and cite reasons therefore in a supplement to its proposal cover letter. Any such exceptions or revisions, and the reasons therefore, will be considered as factors in evaluation of the proposal.

10. In an effort to promote greater use of recycled and environmentally preferable products and minimize waste, all proposals submitted shall comply with the following:
   a) All RFPs 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 proposals 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 proposals, METRO encourages Proposers to forgo the use of three-ring binders or glued materials when assembling the originals and copies of the RFP and other required information. 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 Submittals assembled in formats that allow for easy removal and recycling of paper and other materials; and
   d) Unnecessary samples, attachments or documents not specifically asked for should not be submitted with a proposal.

**P. PROHIBITION ON LOBBYING**

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

**Q. PROPOSAL CONTENTS**

There are two parts of this Request for Proposal that must be completed, the Technical and Pricing proposals as described below. Documents for both parts must be submitted by the date and time established for receipt of proposals for a proposal to be considered for contract award by METRO.

1. **Technical Proposal:** The Proposer shall submit ONE (1) ORIGINAL HARDCOPY and ONE (1) ELECTRONIC PDF COPY in accordance with the instructions in Section I, Article 1 above. The technical proposal establishes a proposer’s technical qualifications based on set criteria listed herein. Proposer’s technical proposals should be structured to respond to criteria noted within each of the Evaluation Criteria shown in Paragraph I above and in the same order as the factors are listed.

2. **Price Proposal:** The Proposer shall submit ONE (1) ORIGINAL, HARDCOPY and ONE (1) ELECTRONIC PDF COPY in accordance with the instructions in Section I, Article 1 above. Each proposer's cost proposal (see proposal form, 'Proposal Amount/Schedule of Items and Prices,’ in Section II) shall be submitted concurrently with the Technical Proposal and shall be in a separate, sealed envelope clearly named as such, and referencing RFP No. 4020000169.

**R. PROPOSAL EVALUATION PROCESS**

1. Selection of a firm to provide the services required herein may be made by an Evaluation Committee comprised of METRO staff members who have expertise and knowledge in the disciplines related to the project and in accordance with this Request for Proposals. The Committee's evaluations will be based on all available information, including proposals, reports,
discussions, reference and other appropriate checks, and the personal knowledge of the individual members' areas of expertise. Proposal requirements set forth herein are designed to provide guidance to the proposer concerning the type of documentation that will be used by the Evaluation Committee. Proposals will be evaluated using the criteria set forth in Paragraph I above. The weight of each factor is also shown.

2. The evaluation process may also include the participation of an Oral Presentation Committee; an Executive Selection Committee, or a Board Selection Committee. The participation of some or all of these committees may occur at the beginning of the evaluation process, foregoing a staff member Evaluation Committee altogether, or to convene after the Evaluation Committee has made an initial shortlist. Members of the METRO Board of Directors may elect to participate as scoring members or non-scoring observers on any of these committees.

3. Small Business Participation: The proposer shall demonstrate commitment to meet or exceed the Small Business Participation goal. Where applicable, consideration will be given to a proposer’s performance with respect to Small Business goal achievements on past METRO contracts. Proposals must include all required Small Business forms properly completed and executed. (See Article 3, ‘Summary of Proposal Forms Submission,’ in Section I).

S. PROPOSER QUALIFICATIONS/ELIGIBILITY FOR AWARD

1. Each proposer shall complete, and submit the applicable forms contained in this document. If the proposer is a joint venture, each joint venturer shall prepare and submit separate forms.

2. In order for a proposer to be eligible to be awarded the contract, a proposal must be responsive to the Request for Proposals, show the proposer’s technical competency, and METRO must be able to determine that the proposer is responsible to perform the contract satisfactorily.

3. A responsive proposal complies with all material aspects of the solicitation. Proposals that do not comply with all the terms and conditions of this solicitation will be rejected as nonresponsive.

4. Responsible proposers 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 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;

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

   e) If applicable, 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;

   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 proposer 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 proposal is so certifying;

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

5. A proposer may be requested to submit written evidence verifying that it meets the minimum criteria necessary to be determined a responsible proposer. Refusal to provide requested information will result in the proposer being declared nonresponsive, and the proposal will be rejected.

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 proposal due date, shall be submitted so that it is received by the Chief Procurement Officer no later than five (5) calendar days prior to the specified
For a protest concerning an award decision, including proposal 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.

Each protest will be processed in accordance with METRO's Protest Procedures located in Chapter 12 of METRO's Procurement Manual, and as selected by the awarded Contractor, as will be displayed in the 'Disputes' Article in Section IX of a resultant contract. A copy of the procedures will be provided to the protester upon written request to METRO's Chief Procurement Officer.

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

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

Federal Transit Administration (FTA) Circular 4220.1F, Paragraph 7L, addresses proposal protests. A copy of this Paragraph will be provided to the protester 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 protester 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.

Notwithstanding the time for receipt of proposals established in the Request for Proposals, the date and time for receipt of proposals may be postponed solely at METRO's discretion.

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. Instructions to Proposers;
3. The Proposal Form;
4. The proposed contract articles;
5. Scope of services; and
6. Any other full-text provision of this solicitation whether incorporated by reference or otherwise.

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

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 these taxes.

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 nondiscrimination in all of its procurement matters in accordance with state and federal law. The Program seeks to provide METRO-certified Small Businesses (SBE) and Texas Unified Certification Program (TUCP)-certified Disadvantaged Businesses Enterprises (DBE) a full and fair opportunity to participate in METRO projects through race-gender neutral means. The Small
RFP No. 4020000169

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 nondiscrimination 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. **The Small Business Participation goal is NOT APPLICABLE.** 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.

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

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

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

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

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

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

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

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

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

   Example: Small Business Participation goal is 35%
   SBE/DBE prime self-performs 65%
   Subcontractors (certified and/or non-certified) perform 35%
   The prime has satisfied the 35% Small Business Participation goal

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

   Example: Joint venture
   1 - Non-SBE/DBE partner @ 50% of joint venture
   1 - SBE/DBE partner @ 50% of joint venture
   Joint 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
f) All prime Contractors, whether SBE/DBE or non-SBE/DBE, must always **self-perform at a minimum thirty percent (30%)** of the contract regardless of the Small Business Participation goal percentage.

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

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

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

F. Required Small Business Documents

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

Note: Submission of the forms identified as ‘Contractor Owned’ are a condition to be met by the proposers 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, specifying the agreed price and/or percentage to be paid each subcontractor for such work, and certifying the contract items and parts thereof to be performed by each subcontractor. Only percentages of Contract Work Effort are to be indicated when responding to 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 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:
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; and

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

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

i. METRO accepts the following certifications:

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

ii. METRO does not accept the following certifications:

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

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

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

5) Signature of the bidder/proposer.

2. Business Assurance Statement (BAS) ‘Contractor Owned’ See Exhibit 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 Nondiscrimination Mandate.
d) When applicable, bidders/proposers must pledge prompt payment of retainage
e) Bidders/proposers must include the Pledge Clauses in their subcontractor agreements

G. Incentives Utilizing Small Businesses

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

2. Bid Security/Bond. A bid security will no longer be required except for federally funded construction solicitations exceeding $100,000.

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

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

Insert requested information and sign and date where indicated.

SUBMIT WITH COMPLETED PROPOSAL

SUBMIT WITH COMPLETED PROPOSAL

- 'Proposer's Questionnaire' Section I, Article 5
- 'Technical Proposal Submission' page Section I, Article 6
- 'Technical Proposal' (without pricing) Section I, Article 7, in sealed envelope, separate from pricing
- 'Pricing Proposal' Submission Section II, Article 1
- 'Offer/Acceptance/Award Signature; page Section II, Article 2
- 'Solicitation/Contract Amount, Items and Prices' form Section II, Article 3, in separate, sealed envelope
- 'Key Personnel' form Section II, Article 4
- 'Certification of Restrictions on Lobbying' form Section XI, Exhibit C
- 'Debarment and Suspension Certification' form Section XI, Exhibit D
- 'Contractor's Utilization Plan' form Section XI, Exhibit F, Form 1

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 Small Business 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 PROPOSER'S QUESTIONNAIRE

Every Contractor and subcontractor anticipated to be utilized in performance of these services is to complete this questionnaire where applicable. All completed questionnaires are to be submitted with the prime proposer’s proposal.

A. Name of Company: _____________________________________________________

B. Address of Company: ___________________________________________________

_____________________________________________________________________
_____________________________________________________________________
_____________________________________________________________________

Telephone #: _____________ Fax #:________________ Email: _________________________________
Office hours: ___________________________________________________

C. Location of office responsible for providing services if different from above:

_____________________________________________________________________
_____________________________________________________________________
_____________________________________________________________________

_____________________________________________________________________

Telephone #: _____________ Fax #:________________ Email: _________________________________
Office hours: ___________________________________________________

D. Is the building where the firm is located (check one):

Leased ____ Corporate-owned ____ Individual-owned ____

E. Geographical Service Area: _____________________________________________

F. Texas Taxpayer Number: _______________________________________________

G. What is the address and telephone number of your firm’s headquarters?

_____________________________________________________________________
_____________________________________________________________________
_____________________________________________________________________

H. What is the address of the office/location where your firm’s financial records are kept/stored?

_____________________________________________________________________
_____________________________________________________________________
_____________________________________________________________________

I. Who at your office would be a METRO Auditor’s principal contact?

Name: ________________________________________________________________

Telephone #: _____________ Fax#:________________ Email: _________________________________
Office hours: ___________________________________________________

J. Name your principal financial institution for financial responsibility reference:
RFP No. 4020000169

Name of Bank: _______________________________________________________
Street Address: _______________________________________________________________________
City and State: _______________________________________________________________________
Telephone: __________________________________________________________________________
E-Mail: _______________________________________________________________________________
Officer Familiar with Proposer’s Account: ________________________________________________

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

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L. Is your firm aware of, and will it comply with Texas Government Code, Title 10, Chapter 2251 when making payments to subcontractors? Yes ____ No ____

M. Does your firm agree (if awarded a contract) to make corporate data and records (as they relate to the contract) available to METRO for audit during performance of and for a period of three (3) years after contract completion? Yes ____ No ____

N. Your firm maintains its accounts on a(n) (check one):

Accrual Basis Accounting System ____    Cash Basis Accounting System ____

O. What is your firm's fiscal year ending date? ____________________

P. Have you attached a copy of your firm's last annual financial (profit/loss) statement? Yes ____ No ____

Q. Does your firm have other branches operating in other places? Yes ____ No ____ If yes:
   How many? ____    Are separate accounting reports prepared for each branch? Yes ____ No ____

   What indirect overhead rate will be used in the Contract?
   The branch that will provide the services ____    The combined rate of the home office and all branches ____

R. Has your firm ever been audited by METRO? Yes ____ No ____ If yes:
   The date of the last audit was: ______________________________

S. Have your firm's accounting records been subjected to an annual independent audit? Yes ____ No ____
   If yes, please provide a copy of CPA reports for the last two (2) years.

T. Has your firm recently been audited by a cognizant Federal Government Audit Agency? Yes ____ No ____
   If yes:
   By which agency? _____________________________________________
   Periods covered by the audit: ________________________________
   Have you attached a copy of the latest audit performed by such agency? Yes ____ No ____

U. Has your firm established project accounting records to record costs by individual project? Yes ____ No ____

V. Are the costs in these records used as the basis for your firm's financial status reports and billing purposes? Yes ____ No ____

W. Does your firm post credits for rebates, returns and allowances as a reduction to expenditures? Yes ____ No ____

X. Are employees consistently identified and classified as to direct and indirect categories of labor? Yes ____ No ____
Y. Does your firm currently employ or has it ever employed, at any time over the past twelve (12) months, any current or former METRO employees, associates, or representatives in any capacity whatsoever? Yes ____ No ____

If yes, please provide on a separate sheet of paper the name of the individual, the purpose of employment, and the period employed.

Z. Does your firm currently employ or carry on its payrolls any individual of a nationality other than United States citizen? Yes ____ No ____

If yes, is the individual known to have entered and are working in the United States in accordance with the established laws of the United States Immigration and Naturalization Authority? Yes ____ No _____

AA. Please list the individuals authorized to negotiate with METRO in connection with this Request for Proposal.

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

CC. How many people are currently employed by your firm? In Harris County?_______ Outside Harris County?_______

DD. List the names of personnel who will be directly responsible for or in any way involved in providing the required services. Resumes must be included for named personnel.

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EE. Have you or your organization, or any officer or partner thereof, failed to complete a contract? Yes ____ No ____

If yes, provide details:

____________________________________________________________________________________
____________________________________________________________________________________
____________________________________________________________________________________
____________________________________________________________________________________

Please provide a name and contact information of a representative at client firms for which your firm was unable to complete any contract or project within the last five years, who can describe circumstances surrounding that event. (Include projects from which your firm was removed, terminated, contract not extended, or lost for any reason.)

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FF. Is any litigation pending against your organization that will affect your company’s ability to perform the required services?  
   Yes ____ No ____ If yes, provide details:
   ______________________________________________________________________________________
   ______________________________________________________________________________________
   ______________________________________________________________________________________
   ______________________________________________________________________________________

GG. List names of client companies, including public bodies, for whom you have furnished the same or similar type of service.

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By signing below, the proposer/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 proposer/contractor shall provide METRO proof to support the above representations.

The undersigned certifies that he/she is legally authorized by the proposer to make the statements and representations contained in this proposal, 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 proposal.

PRINTED NAME: _________________________________________  TITLE: ______________________________

SIGNATURE: ___________________________________   DATE OF SIGNING: ___________________
METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY TEXAS

REQUEST FOR PROPOSALS (RFP)

Requisition No.: 1119002045   RFP No.: 4020000169   Date of RFP: June 17, 2020

Description of Project: Audit Tracking Software

(TO BE COMPLETED BY PROPOSER)

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

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

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)

PHONE: (   ) _______________ FAX NO: (   ) _______________

CITY, STATE, ZIP CODE (Type or print)

EMAIL: __________________________

BY: (Sign in ink)

NAME: (Type or print)     TITLE

DATE: _______________

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

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

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

DIRECTIONS FOR SUBMITTING PROPOSALS: Envelopes containing proposals, guarantee, and other proposal documents shall be sealed, marked and addressed as follows:

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

NOTE: Identify the envelope containing a proposal with the project title, Request for Proposals number, proposal due date, and the proposer's company name and address.
7 TECHNICAL PROPOSAL

THE TECHNICAL PROPOSAL EXCLUDES PRICE AND IS TO BE SUBMITTED IN A SEPARATE SEALED ENVELOPE FROM THE PRICING PROPOSAL.
SECTION II
FORMS FOR PROPOSING/AWARD

1 PRICING PROPOSAL SUBMISSION PAGE

METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY TEXAS
REQUEST FOR PROPOSALS

Requisition No.: 1119002045   RFP No.: 4020000169   Date of RFP: June 17, 2020

Description of Project: Audit Tracking Software

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

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

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

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(TO BE COMPLETED BY PROPOSER AT THE CONCLUSION OF NEGOTIATIONS OF THE CONTRACT)

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)

PHONE: ( )       FAX NO: ( )

CITY, STATE, ZIP CODE (Type or print)

EMAIL:

BY: (Sign in ink)

NAME (Type or print)       TITLE (Type or print)     PHONE: ( )

DATE: ____________________

DIRECTIONS FOR SUBMITTING PROPOSALS:

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

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

NOTE: Identify the envelope containing a proposal with title, the project Request for Proposals number, proposal due date, and the proposer’s company name and address.
OFFER

(TO BE COMPLETED AND SIGNED BY PROPOSER/CONTRACTOR
AT THE CONCLUSION OF NEGOTIATIONS OF THE CONTRACT)

SIGNATURE OF PROPOSER/CONTRACTOR:  ATTEST:

BY: _______________________________________  BY: __________________________________
(MUST BE SIGNED BY AUTHORIZED PERSON)

NAME: ____________________________________   NAME: _______________________________
(Type or Print)   (Type or Print)

TITLE: ____________________________________ TITLE: _______________________________

DATE: ____________________________________

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

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

ACCEPTANCE AND AWARD

(TO BE COMPLETED AND SIGNED BY METRO)

Contract No. _______________

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

METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY

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

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

APPROVED:

Name: Debbie Sechler
Title: Executive Vice President, Administration

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

APPROVED AS TO FORM:

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

ATTEST:

Title: Assistant Secretary
THE PRICING PROPOSAL EXCLUDES THE TECHNICAL PROPOSAL AND IS TO BE SUBMITTED IN A SEPARATE SEALED ENVELOPE FROM THE TECHNICAL PROPOSAL.

<table>
<thead>
<tr>
<th>Line Item Description</th>
<th>Quantity</th>
<th>Unit</th>
<th>Unit Rate</th>
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<td>Project Charter</td>
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<td>Each</td>
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<tr>
<td>Blueprint/Design</td>
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<td>System Implementation Plan</td>
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<tr>
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<tr>
<td>Configuring/Implementation</td>
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<td>System Implementation</td>
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<td>Systems Acceptance Testing</td>
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<td>Each</td>
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<tr>
<td>Training</td>
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<td>*Licenses</td>
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*Proposer may alter this schedule to accurately describe its annual licensing price.
### Key Personnel Form

**Prime Contractor:**

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<thead>
<tr>
<th>Name</th>
<th>TEL (__)</th>
<th>Title</th>
<th>FAX (__)</th>
<th>E-Mail</th>
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**Subcontractors:**

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<tr>
<th>Subcontractor Firm</th>
<th>Name</th>
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**RFP No. 4020000169**

**Page 23**
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.

I. The term ‘System Acceptance’ means the point in the Period of Performance at which every aspect of the Contractor’s systems, along with any supporting data conversion routines and system utilities, are validated and accepted by METRO prior to the system’s deployment.

2 PERIOD OF PERFORMANCE

A. The Period of Performance shall be for three (3) years from the Effective Date of the Contract with two (2), one- (1) year option periods.

B. In the event additional time is required by METRO to initiate a new contract, the Contractor agrees to continue providing services to METRO on a month-to-month basis for a period not-to-exceed six (6) months at the same prices, terms and conditions of the original Contract.

3 SERVICES TO BE PERFORMED

The Contractor shall furnish all necessary resources required to provide Audit Tracking Software 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. On a METRO-approved payment milestone schedule, the Contractor shall submit an original invoice for Work, services, equipment, materials or other items that have been 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; and
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 Office, 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; and

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: LaChandra Wilson  
Senior Contracts Administrator  
METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TEXAS  
1900 Main Street, 8th Floor  
Houston, Texas  77002

Contractor: _________________________________  
_________________________________  
_________________________________  
_________________________________

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

1  CONTRACTOR'S INSURANCE

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

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

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

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

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

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

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

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

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

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

PROFESSIONAL LIABILITY covering acts, error or omissions arising out of the rendering of or failure to render professional services, whether committed or alleged to have been committed by the Contractor or by its employees, subcontractors, consultants or other to whom the Contractor is legally responsible. The limit of liability shall not be less than:

- $2,000,000 Each Occurrence

Contractor shall maintain Professional Liability insurance for not less than five (5) years following completion of services performed under this contract and shall so evidence by Certificate of Insurance each year.

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

The insurance coverages required in this section shall not limit the Contractor's liability or limit the indemnification provisions set forth herein.
If the Contractor maintains higher limit than the minimums shown above, METRO requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specific minimum limits of insurance and coverage shall be available to METRO.

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

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

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

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

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

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

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

Such insurance will be primary and non-contributing with any other insurance and be in a form and from insurance companies reasonably acceptable to METRO.

Any request to deviate from the stipulated insurance limits required of subcontractor must be approved by METRO and will be based solely on the scope of work to be performed by the subcontractor. Contractor shall obtain and make available for inspection by METRO upon request current certificates of insurance evidencing insurance coverages carried by subcontractor.

2 INDEMNIFICATION AGREEMENT

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

B. THE INDEMNITY PROVIDED FOR IN THIS ARTICLE SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS OR DAMAGE, CAUSE OF ACTION, SUIT OR LIABILITY BROUGHT OR RECOVERABLE AGAINST METRO, ITS DIRECTORS AND/OR EMPLOYEES TO THE EXTENT THE INJURY, DEATH OR DAMAGE RESULTS SOLELY FROM A GROSS NEGLIGENT ACT OR WILLFUL BEHAVIOR BY METRO.
SECTION VII
SMALL BUSINESS 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
   6. Subcontractor’s obligation to participate in the B2GNow Payment Compliance System.

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 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 an identification badge to be furnished by METRO, containing their name and status as temporary.

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.

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

H. 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 COPYRIGHT AND PATENT INDEMNITY

The Contractor warrants and represents to METRO that the licensed products do not infringe any patent, copyright, trademark or trade secret. In the event any legal proceedings are brought against METRO claiming an infringement of a patent, copyright, trademark or trade secret based on METRO’s use of the licensed products, the Contractor agrees to defend and indemnify METRO at the Contractor’s own expense any for any claims or such legal proceeding relating to such claim, and to hold METRO harmless from any damage incurred or awarded as the result of settlement or judgment against METRO.

6 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.

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.

7 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 Interlocal 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.

8 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.
9 USE OF WORK PRODUCTS – ASSIGNMENT OF COPYRIGHT

A. The Contractor conveys and assigns to the METRO its entire interest and full ownership worldwide in and to any work, invention, notes, plans, computations, databases, tabulations, exhibits, reports, underlying data, photographs and other work products, and any modifications and improvements to them (collectively 'Documents'), and the copyrights, patents, trademarks, trade secrets, and any other proprietary rights therein (collectively ‘Proprietary Rights’) that the Contractor, its agents, employees, Contractors, and subcontractors (collectively ‘Authors’) develop, write, or produce under this Agreement.

B. The Authors shall not claim or exercise any Proprietary Rights related to the Work. If requested by METRO’s Project Manager, the Contractor shall place a conspicuous notation on any Works that indicate that METRO owns the Proprietary Rights.

C. The Contractor shall execute all Documents required by the Project Manager to further evidence this assignment and ownership. The Contractor shall cooperate with METRO in registering, creating, and enforcing Proprietary Rights arising under this Agreement. If the Contractor’s assistance is requested and rendered under this Section, then METRO shall reimburse the Contractor for all out-of-pocket expenses it incurs in rendering assistance, subject to the availability of funds. On termination of this Agreement, or if requested by the Project Manager, the Contractor shall deliver all Works to METRO. The Contractor shall obtain written agreements from the Authors that bind them to the terms in this Section. All Works developed, written, or produced under this Agreement for use as a contribution to a collective work; a part of a motion picture or other audiovisual work; a translation; a supplementary work; a compilation; an instructional text; a test; answer material for a test; or an atlas, are ‘works made for hire.’

D. The Contractor may retain copies of the Documents for its archives. The Contractor shall not otherwise use, sell, license, or market the Documents.

10 OFF-RAMP TERMINATION

A. METRO may terminate the Contract upon the completion of the Blueprint/Design Deliverable by providing written notice to the Contractor if METRO determines that such termination is in its best interest (‘Off-Ramp Termination’).

B. Upon receipt of written notice of Off-Ramp Termination, the Contractor shall cease performance entirely, and prepare and submit to METRO a final invoice within thirty (30) calendar days. The invoice shall include payments for the Blueprint/Design Deliverable and, if applicable, any prior un-invoiced milestone payment furnished to METRO in accordance with the Contract and to the satisfaction of METRO.

C. The Contractor shall execute a binding release and mutual termination agreement in order to receive such payment.

D. METRO agrees to pay the Contractor for the Blueprint/Design Deliverable and all previous un-invoiced milestone payments, providing they are in accordance with the terms of the Contract. This payment shall be the Contractor’s sole remedy for such Off-Ramp Termination, and shall be the sole amount owed to the Contractor whether for damages or otherwise, by virtue of this Off-Ramp Termination.

E. If software licenses are furnished under this Contract, then the Contractor shall refund to METRO any and all license fees, including third-party license fees, paid by METRO prior to this Off-Ramp Termination.

F. The Contractor and METRO shall jointly own any deliverable furnished under the Contract to date, without any restrictions for future Work other than software licenses, ownership of which shall be returned to the Contractor in accordance with the Paragraph above.
SECTION IX
GENERAL TERMS AND CONDITIONS ARTICLES

1 ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

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

2 ASSIGNMENT

The performance of the services under 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.); or
3. Place of performance of the services.

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

C. The Contractor must submit any ‘proposal for adjustment’ under this Article within thirty (30) calendar days from the date of receipt of the written order. However, if the President & Chief Executive Officer or the duly authorized representative decides that the facts 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 proposal 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 COVENANT AGAINST CONTINGENT FEES

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

8 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.

9 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.

10 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 take affirmative action to employ, advance in employment and otherwise treat qualified
individuals without discrimination based on their status as a protected veteran in all employment practices, including the following:

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

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

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

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

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

F. As used in this Clause:

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

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

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

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

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

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

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

K. The Contractor will include the provisions of this Clause in every subcontractor purchase order of $100,000 or more, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to VEVRAA so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontractor purchase order as the Director, Office of Federal Contract Compliance Programs, may direct to enforce such provisions, including action for noncompliance.

L. The Contractor must, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to their protected veteran status.

11 ETHICAL CONDUCT

A. The METRO Board of Directors has adopted a Code of Ethics governing the conduct of its officers and employees. The Contractor agrees it will familiarize itself with this Code of Ethics and that it will not offer, confer or agree to confer any prohibited 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.
12 **FORCE MAJEURE**

A. To the extent that the Contractor shall be wholly or partially prevented from its performance within the terms specified of any obligation or duty placed on the Contractor by reason of or through riot, acts of war, acts of terrorism, insurrection, by order of court, legislative action, act of God, or specific cause reasonably beyond 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.

13 **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.

14 **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.

15 **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.

16 **METRO-FURNISHED PROPERTY**

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

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

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

1. For reasonable wear and tear;

2. To the extent the property is consumed in performing this Contract; or

3. As otherwise provided for by the provisions of this Contract.

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

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

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

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

17 RESPONSIBILITY OF THE CONTRACTOR

A. The Contractor shall be responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications, and other services furnished by the Contractor under this Contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.

18 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

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

21 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.

22 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. The Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include:

1. Acts of God or of the public enemy;
2. Fires;
3. Floods;
4. Epidemics;
5. Quarantine restrictions;
6. Unusually severe weather; or,


In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

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

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

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

23 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.

24 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.

25 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.
26 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.

27 DEBARMENT AND SUSPENSION

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

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

C. The Contractor must sign and submit the ‘Debarment and Suspension Certification,’ included herein as Exhibit D. The certification in this Clause is a material representation of fact relied upon by METRO. If it is later determined that the proposer 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 proposer 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 proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

28 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.).

29 RESTRICTIONS ON LOBBYING

Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 C.F.R. Part 20, ‘New Restrictions on Lobbying.’ Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contracts on its behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 U.S.C. § 1352. Such disclosures are forwarded from tier to tier, up to the recipient. See Section X, Exhibit C, ‘Certification of Restrictions on Lobbying.’

30 ENTIRE AGREEMENT

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

1 EXHIBIT A - SCOPE OF SERVICES

A. INTRODUCTION

A.1 Overview

The Contractor’s audit tracking software shall be an integrated audit management software package system, hosted on METRO premises, to replace METRO’s current Audit Leverage software implementation (http://www.auditleverage.com/).

The software shall fulfill METRO’s Audit Department requirements related to internal reviews, information systems reviews, and contract compliance divisional needs for electronic work paper system and other related audit management functionalities.

Those functionalities include but are not limited to:

a) Customization of descriptions or expressions
b) Active Directory compatibility and Single Sign On (SSO) integration
c) Audit work stages for:
   i. audit planning
   ii. fieldwork, and
   iii. audit reporting
d) Timekeeping, reporting, and online review of work-papers

A.2 Staffing and Licenses

METRO Audit Department is composed of 10 users that will be able to execute most, if not all, functionalities provided by the software.

METRO Information Technology Department shall provide the server(s) and software administrator to manage the application and server(s), as the solution will be hosted on premises.

Licensing shall include all that is needed for normal operations, configuration and administration of the solution.

B. TECHNICAL REQUIREMENTS

B.1 The Contractor must blueprint and configure the software for METRO Audit Department needs, then establish a training or implementation program for METRO Audit users which teaches the skills and knowledge necessary to effectively use the audit software technology being purchased.

B.2 The Contractor shall obtain METRO review and approval of specifications on all hardware and software required for the database(s), server(s) and desktops applications used in the solution.

B.3 METRO is a Microsoft SQL Server shop and all METRO local servers are virtual, hosted on VMWare, with the latest Windows Server operating system and patches. METRO desktop standards are Windows 10.

B.4 The Contractor shall keep the solution current and compatible with the latest Microsoft server and desktop operation system as well as current with the SQL server database. When a new release is announced, the Contractor shall have 18 months to become compliant with the release, unless METRO provides written agreement to delay compliance with the release for a period determined by METRO.

B.5 The Contractor shall provide a Service Level Agreement (SLA), including US-CST office hour support, to solve any issue that may arise during the term of the Contract. In the event the Contractor needs access to the solution, METRO shall coordinate an appropriate time for such access and shall provide supervised access to the server(s) and/or desktops.
C. IMPLEMENTATION OF REQUIREMENTS

Implementation shall occur within the first year of the Period of Performance and shall not exceed one (1) year from the Effective Date of the Contract. System Acceptance from METRO shall conclude the Implementation and initiate Licensing Year 2. Any modification to this Schedule must be approved by METRO in writing and prior to commencement of the change.

C.1 Project Management

a) The Contractor shall prepare a System Implementation Plan (SIP), including the detailed implementation activities/schedule, progress milestones/status.

b) The Contractor shall submit the draft SIP to METRO within a week from the Notice to Proceed (NTP).

c) The SIP must be approved and accepted by METRO in writing before further work on the project is performed by the Contractor, unless such other work is authorized in writing by the METRO Project Manager.

C.2 System Acceptance Testing

a) The Contractor shall submit an Acceptance Test Procedures document (ATP) for METRO written approval prior to commencing system acceptance testing.

b) The ATP shall clearly address:

   i. how each testable system and deliverables requirement shall be demonstrated, including the method for performing the test;

   ii. the results that will constitute success for each test (expected test results);

   iii. responsibilities of both Contractor and METRO representatives during each test; and

   iv. a cross-reference to which contract requirements are being addressed by each test procedure.

c) The ATP shall include an updated matrix of system requirements, to include a cross-reference to the test procedure(s) that serve to address each contract requirement.

d) The ATP document shall include sections covering the following:

   i. Server and Database Testing Procedures

   ii. Application Testing Procedures

   iii. Deliverables Implementation Matrix (list below, in Section D, Key Features)

e) The Contractor shall submit the draft ATP to METRO within one (1) month from NTP.

f) The final ATP must be approved by METRO before final testing.

g) The Contractor shall submit a written request to METRO to schedule testing at least one (1) week in advance of testing, indicating the specific tests to be completed, as well as the proposed date, time and location. The Contractor shall be responsible for all travel expenses for the METRO’s designated representative(s) to travel to the Contractor’s site to witness the testing, if required.

h) The Contractor shall be required to reschedule testing if METRO witnessing representatives cannot be present or if other circumstances prevent testing from taking place as proposed by the Contractor.

i) The system acceptance testing shall be completed within two (2) weeks of the ATP being approved.

j) The Contractor shall submit written Test Results Documentation (TRD) within one (1) week of completing the testing.

k) The TRD shall document the results of each ATP procedure and provide an updated system requirements matrix that indicates which contract requirements have been demonstrated successfully, and those contract requirements that have not been demonstrated successfully.

l) METRO will not grant System Acceptance (SA) until all contract requirements have been formally demonstrated through ATP and documented in the TRD.
m) All deliverables must be approved by METRO as a condition of SA.

n) METRO shall provide comments to all submissions within five (5) business days.

o) The Contractor shall adjust the implementation timeline as necessary to ensure that the Audit Software goes online within four (4) months from NTP, unless this deadline is adjusted by METRO.

C.3 Documentation

a) The Contractor shall be responsible for submitting the following deliverables described in other sections of the requirements, in addition to providing the RTAPS service:

i. System Implementation Plan (SIP)

ii. Acceptance Test Procedures (ATP)

iii. Security Plan (SP)

iv. Test Results Documentation (TRD)

v. Documentation on Audit Process, audit Work Stages and Reporting

b) The Contractor shall, for all deliverables, include the filename in the document footer and shall include the file release date in the file name.

c) The Contractor shall submit all deliverables in both Word and Adobe Acrobat.

D. KEY PRODUCT FEATURES/DELIVERABLES

D.1 Active Directory Compatibility and Single Sign-On Integration

D.2 The Ability to Attach Documents to Work Paper or Work Paper Areas

D.3 Time Tracking Capabilities

D.4 Ability to export Time Tracking to other Applications

D.5 Audit Scheduling (as an option)

D.6 Work Program Libraries

D.7 Risk Based/Assessment

D.8 Audit Finding/Recommendation Tracking

D.9 Audit Finding/Recommendation Reporting

D.10 Customization of descriptions or expressions;

D.11 Local Hosting requirements (Servers and Workstations)

D.12 Audit Phase Workflow for Audit Planning, Fieldwork, and Audit Reporting

D.13 Online review of work-papers

D.14 Report Templates and Ad-Hoc Reporting

D.15 Exporting Data and Reports to Excel

D.16 Vendor Support for requests
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 proposer’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
6  EXHIBIT F - SMALL BUSINESS FORMS

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 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.

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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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<td>SBE</td>
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<td>DBE</td>
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</tbody>
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Name of Business

Tax ID No.

Business Address

Telephone No.

Contact Person

Title

Email Address

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

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<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 blow, sign and date the form.

<table>
<thead>
<tr>
<th>Submitted By:</th>
<th>Business Name:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature of Owner/Officer of Business</td>
<td>(Date)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Address:</th>
<th>Telephone/Email:</th>
</tr>
</thead>
</table>
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>Type of Work to be Performed or Materials Supplied</th>
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<td></td>
<td>SBE</td>
<td>DBE</td>
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### Section 2 – SUBCONTRACTORS

<table>
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<tr>
<th>Name of Business</th>
<th>Type of Work to be Performed or Materials Supplied</th>
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Bidder/Proposer presents the following participants in this solicitation and any resulting contract.

### Section 3 – SUPPLIERS – MANUFACTURERS

100% 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>
</tr>
</thead>
<tbody>
<tr>
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</table>
Bidder/Proposer presents the following participants in this solicitation and any resulting contract.

### Section 4 – SUPPLIERS – DEALERS 60%

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

<table>
<thead>
<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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</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>SBE</td>
<td>DBE</td>
<td>100%</td>
</tr>
<tr>
<td>Name of Business</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax ID No.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Business Address</td>
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<tr>
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<tr>
<td>Title</td>
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<tr>
<td>Email Address</td>
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<td></td>
</tr>
<tr>
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<tr>
<td>Email Address</td>
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</tbody>
</table>

**TOTAL AMOUNT OF BID/PROPOSAL % SBE/DBE Participation**

<table>
<thead>
<tr>
<th>PRIME: $</th>
<th>%</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>SUBCONTRACTORS: $</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>SUPPLIERS-MANUFACTURERS: $</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>SUPPLIERS-DEALERS: $</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>TOTAL BID/PROPOSAL AMOUNT: $</td>
<td>%</td>
<td>%</td>
</tr>
</tbody>
</table>

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 proposer/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 proposer/contractor will be subject to the loss of any Contractor, the termination thereof resulting from this proposal, and could be ineligible for future METRO contract awards.

Signature: ____________________________
Title: ________________________________ Date of Signing: ________________
Firm or Corporation: __________________________
Address: ______________________________________________________________________
________________________________________________________________________________
Telephone Number: __________________________
RFP No. 4020000169

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: ____________________________________
7 EXHIBIT G: ADDENDUM ON SECURITY

This Addendum on Security ("Addendum") sets forth the minimum requirements ("Requirements") for Contractor with respect to Contractor's access to METRO Data (as defined in the Agreement) and in connection with the Services and is incorporated in, and subject to, the Agreement between METRO and the Contractor, dated in accordance with the Effective Date of the Agreement, and any Exhibits incorporated therein (the "Agreement"). This Addendum shall be deemed to be added as an exhibit to the Agreement. This Addendum supplements Contractor's obligations under the Agreement and in no way reduces or limits Contractor's obligations under the Agreement.

1. Scope and Purpose

1.1 These Requirements are intended to protect the confidentiality of all METRO's data, including customer data, and proprietary and confidential information ("METRO Data") accessed, processed or transmitted (or otherwise available for same) by Contractor, and the integrity and reliability of all METRO networks, systems, hardware, software, and computer assets ("METRO Systems") accessed, maintained by, provided to or connected with the performance of Contractor's provision of services and products under the Agreement.

1.2 These Requirements shall govern the protection of METRO's Data and METRO's Systems, to the extent applicable, including, but not limited to:
   • Access to, and use of, METRO Data and METRO Systems;
   • Return and disposal of METRO Data;
   • Access to, maintenance, use, and return or disposal of METRO Systems for the use or support of Services; and
   • Access to, maintenance, and use of METRO's Systems or any off-premises extensions of those systems and assets.

1.3 Contractor agrees to comply with the Requirements in this Addendum at each service location, facility, and provider (including, e.g., hosting, data center, or co-location facility or provider) in the performance of Contractor's provision of services and products. Contractor will provide written notice and an opportunity for METRO to review proposed changes to service and facility locations, and providers. No service, facility, or provider may be located outside the United States without METRO's prior written approval.

1.4 Contractor is responsible for ensuring that all subcontractors and vendors of Contractor comply with the Requirements in this Addendum to the extent applicable to providing services and products associated with the performance of this Agreement.

2 Requirements

Contractor will develop, implement, maintain, and monitor a comprehensive, written information security program that contains administrative, technical and physical safeguards to protect against anticipated threats or hazards to the security, confidentiality, integrity and availability of METRO Data (such as the unauthorized access, collection, use, copying, modification, disposal or disclosure, unauthorized, unlawful, or accidental loss, destruction, acquisition, or damage, or any other unauthorized form of Processing), and METRO Systems with measures that meet or exceed prevailing industry standards, as well as mandatory security requirements under laws applicable to Contractor. Contractor shall further ensure that its information security program covers all networks, systems, servers, computers, notebooks, laptops, PDAs, mobile phones, and other devices that process or handle METRO Data or allow access to METRO networks, systems or information. Contractor agrees to comply with the specific Requirements set forth herein.

1. Governance: Contractor agrees to maintain a comprehensive set of policies, procedures, and practices ("Policies") reasonably designed to manage Contractor's cybersecurity risks, including protecting facilities, systems, assets, and information against external and internal cybersecurity threats, including but not limited to network intrusions, digital threats (e.g., malware), and insider thefts, and the integrity and reliability of Contractor's products and services. In addition to maintaining Policies governing the Requirements herein, such Policies will be consistent with the governance best practices articulated in the NIST Framework and include establishing and enforcing:
   a. Establishment and identification of a primary security manager responsible for managing and coordinating the performance of Contractor’s obligations set forth in this Addendum;
   b. Processes to assess and manage cybersecurity risk;
   c. Acceptable use policies including, but not limited to, policies governing data classification and handling requirements, use of network and device resources, and password best practices;
   d. Roles and responsibilities throughout the entire workforce (including employees, management, contractors and third parties) for managing cybersecurity risk, including designating a qualified individual to oversee the cybersecurity program and policies;
   e. The workforce (including employees, management, contractors, and third parties) is appropriately trained commensurate with their roles and responsibilities on properly trained on cybersecurity policies and processes, and are provided cybersecurity risk awareness education; Contractor Parties do not store any METRO Data on their personal computers or personal mobile devices; and employ automated offboarding protocols when Contractor Parties who leave the company or no longer need access to METRO Data; and...
f. Executive level management and oversight of cybersecurity risk.

2. Asset and Software Management: Contractor agrees to maintain an asset management system to ensure data, employee and network devices, systems, software, and applications, and facilities ("assets") are inventoried and network connections are controlled; assets are properly accounted for, and that mechanisms exist to properly dispose of or reimage assets and devices; privacy and security risks associated with lost assets are appropriately managed; and the use of removable media is controlled.

3. Authorized and Unauthorized Software: Contractor agrees to establish policies and practices, including using corporate images, to identify and manage the installation of authorized software, and detect and prevent installation or execution of unauthorized software.

4. Data Security and Encryption:
   a. Hold METRO Data in strict confidence and ensure that all METRO Data are maintained in a secure manner; this includes the responsibility of holding all METRO Data persisted in digital form on an encrypted medium, and to use industry standard encryption tools, to encrypt all records and files containing METRO Data that Contractor: (i) transmits or sends wirelessly or across public networks; (ii) stores on laptops, desktops or storage media; and (iii) where technically feasible, stores on portable devices. Contractor will safeguard the security and confidentiality of all encryption keys associated with encrypted METRO Data.
   b. Contractor agrees to ensure METRO Data is properly protected in accordance with a written data classification and handling policy. Contractor agrees to segregate METRO Data to access-controlled share servers, to limit access to such data on a need to know basis, and to implement measures to prevent METRO Data from being downloaded or otherwise copied to local drives or removable media. Contractor also agrees to employ reasonable tools and techniques to detect unauthorized access, copying or leakage of sensitive information (e.g., deploy DLP, scan for social security and credit card data, etc.).

C. Vendor agrees to ensure METRO Data is secured and maintained within the boundaries of the continental United States and that no data will be stored, transmitted nor hosted in any data center located outside of the continental United States.

5. Access Controls and Secure Configurations: Contractor agrees to implement processes and controls to ensure access to data and assets is controlled based on the principle of least privileges; the identity and credentials of authorized users are managed; remote and wireless access are controlled; multifactor authentication is used to access all METRO Data and METRO Systems; to change all factory or provider default password settings for all applications, operating systems, routers, firewalls, wireless access points, and other systems with administrative access controls; and to ensure only ports, protocols, and services with validated business needs are running on each system. Ensure that all network systems that host or transport METRO Data, and related documents or other digital assets shall be segmented from the Internet and other non-METRO related business activity and projects by actively managed network access controls which shall restrict traffic to the minimum required for proper operation of those systems.

6. Communications, Email, and Web Browser Security: Contractor ensures that only fully supported, current web browsers and email clients are allowed to be used in the environment; logs URL requests; scans and filters web and email traffic; and blocks access to unauthorized sites. Contractor will educate workforce members on email phishing and other social engineering techniques.

7. Vulnerability Assessment, Maintenance and Patching: Contractor agrees to perform regular vulnerability scans using current scanning tools, and to maintain a vulnerability management process to ensure up-to-date patching as vulnerabilities are discovered, and to upgrade applications, operating systems, browsers, and other software when earlier versions are no longer supported or patched.

8. Security Protection and Monitoring: Contractor employs current, industry-standard protection tools and techniques, including firewalls, antivirus, network monitoring, and intrusion detection systems: employs blacklisting or whitelisting to block known malicious IP connections; and retains audit records of logs for event analysis. Contractor agrees to use reasonable best practices to monitor, detect and assess unauthorized access, malicious code, suspicious exfiltration of data, and other anomalous network and system activity in a timely manner.

9. Configuration Management and Network Port Management: Contractor agrees to create and maintain a baseline configuration for information systems and assets; identifies, documents, and develops approval processes for deviations from established configurations; and monitors, controls and documents changes to configuration settings. Contractor agrees to limit and control network ports and wireless access points, including using continuous monitoring to detect access and transmissions through open ports and endpoints.

10. Business Continuity and Data Recovery: Contractor ensures that all information systems are backed up on a daily
basis, and that backups are properly protected via physical security and encryption and stored offsite to protect against physical and environmental hazards. Restoration processes should be tested.

11. Physical Security: Contractor maintains a written physical facility protection policy, maintains control over access to facilities, including monitoring visitor access, and restricts access to data centers and network systems used to provide products and services.

12. Incident Response Planning: Contractor has a written comprehensive incident response plan to detect, respond to, contain, investigate, and remediate cybersecurity incidents, including all incidents that compromise the confidentiality, integrity, and availability of data, systems, networks, and services. The plan identifies and assigns roles and responsibilities to key stakeholders and decision-makers across the organization. Contractor regularly tests the incident response plan.

13. Application Software Security: For all software and applications developed in-house or procured from third party developers ensure software is developed and tested secure software development lifecycle practices pursuant to a documented development processes that explicitly addresses security requirement and identifies the standards and tools used in the development process.

14. Penetration Testing/Vulnerability Scanning: Contractor agrees to conduct regularly scheduled penetration tests and vulnerability scans, and to promptly remediate any detected vulnerabilities.

15. Risk Assessments and Audits: Conduct periodic risk assessments to identify and assess reasonably foreseeable internal and external risks to the security, confidentiality and integrity of electronic, paper and other records containing METRO Data, and evaluate and improve, where necessary, the effectiveness of its safeguards for limiting those internal and external risks. Such assessments will also consider Contractor's compliance with its information security program and the laws applicable to Contractor and assessment results will be available for inspection by METRO on demand.

2.6. Review and, as appropriate, revise its information security program: (i) at least annually or whenever there is a material change in Contractor's business practices or a significant breach occurred that may reasonably implicate the security, confidentiality or integrity of METRO Data; (ii) in accordance with prevailing industry practices; and (iii) as reasonably requested by METRO. If Contractor modifies its information security program following such a review, Contractor will promptly notify METRO of such modifications and will provide such modifications to METRO in writing upon METRO's request. Contractor may not alter or modify its information security program in such a way that will weaken or compromise the confidentiality and security of METRO Data.