



METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TX (METRO)

INVITATION FOR BIDS (IFB)

FOR

**Purchase and Delivery of Paratransit Vans**

METRO IFB NO. **4022000130**

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

**IMPORTANT – Notice to Bidder**

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

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

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

Lower Left Corner of Envelope Must Indicate:  
Solicitation Number  
Due Date  
Due Time  
Solicitation Title

**FEDERALLY FUNDED**

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**SECTION I - BIDDING/PROPOSING REQUIREMENTS AND INSTRUCTIONS****1 INVITATION FOR BIDS SUMMARY**

IFB NO.: 4022000130

REQUISITION NO.: 1122002507

DATE OF IFB: 06/20/2022

For: Purchase and delivery of Paratransit Vans

ISSUED BY:

SUBMIT INQUIRIES BY WRITING OR CALLING:  
(No Collect calls accepted):METROPOLITAN TRANSIT AUTHORITY  
Procurement Plan Room  
1900 Main Street  
Houston, Texas 77002NAME: Blake Hohensee  
TITLE: Contract Administrator  
EMAIL: JH52@ridemetro.org  
TELEPHONE: 713-739-4860METRO Procurement Web Site : <https://webapps.ridemetro.org/procurement/solicitations.aspx>**PRE-BID CONFERENCE CALL will be held on Tuesday July 12, 2022, at 10:00 a.m. on TEAMS.****All questions pertaining to this Solicitation shall be presented IN WRITING to the above METRO representative at or prior to the Pre-Bid Conference. (See Instructions to Bidders, paragraph 2). IT IS STRONGLY URGED THAT ALL BIDDERS ATTEND THE PRE-BID CONFERENCE Via Teleconference at the following number.**

Microsoft Teams meeting

**Join on your computer or mobile app**[Click here to join the meeting](#)**Or call in (audio only)**[+1 281-925-7469,,265561537#](tel:+12819257469265561537) United States, Houston

Phone Conference ID: 265 561 537#

**REQUEST(S) FOR APPROVAL OR DEVIATION: Request(s) for Approval or Deviation are required by July 25, 2022, by Noon. We anticipate sending RFA responses by August 01, 2022, to all potential bidders. RFA reconsiderations are required by August 09, 2022. METRO will anticipate sending responses to RFA reconsiderations by August 16, 2022. (See Instructions to Bidders, paragraph entitled "REQUEST(S) FOR APPROVAL OR DEVIATION "). Failure to submit the Mandatory RFA's in Section II will render your bid non-responsive.****BID OPENING TIME/LOCATION: Sealed bids for work described must be submitted to METRO Procurement Plan Room, 1900 Main Street, Houston, Texas 77002 received by 2:00 p.m. local time on Wednesday, August 31, 2022. Please mark Attention: Procurement Plan Room with the IFB Number on the package. Bids will be opened publicly, read aloud and recorded at 10:00 a.m. on Thursday, September 01, 2022. You may attend via the TEAMS Meeting below.**

Microsoft Teams meeting

**Join on your computer or mobile app**[Click here to join the meeting](#)**Or call in (audio only)**[+1 281-925-7469](tel:+12819257469) United States, Houston

Phone Conference ID: 246 022 158#

**RESPONSIBLE BIDDER:** Each bidder is cautioned to review and understand the requirements of this solicitation to be determined a responsible bidder. (See Section I, Instructions to Bidders, paragraph entitled "BIDDER QUALIFICATIONS/ELIGIBILITY FOR AWARD".)

**BID GUARANTEE** of not less than 5% of the total bid is required. (See Instructions to Bidders, paragraph entitled "BID SECURITY").

**PERFORMANCE BOND:** for 5% of the Contract amount required. (See Contract, Article entitled "Performance Bond").

**PERFORMANCE/DELIVERY PERIOD:** The Contract shall be for delivery of New Paratransit Vans in accordance with the delivery schedule. (See Contract Article "Period of Performance")

**LIQUIDATED DAMAGES:** will be assessed as indicated in the Contract Article entitled "Liquidated Damages".

**INSURANCE:** Each prospective bidder is cautioned to review the Insurance requirements of this Solicitation particularly to understand the criteria and the successful Contractor's responsibilities. (See Contract, Article entitled "Insurance Requirement").

**FEDERAL FINANCIAL ASSISTANCE:** This procurement is subject to the availability of Federal financial assistance from the Federal Transit Administration (FTA), therefore, all required Federal requirements such as Buy America, Cargo Preference, Debarred, Suspended or Ineligible Contractors, Paratransit Van Testing, FMVSS, and Pre-Award and post Delivery Audits for Specification and Buy America Compliance will be included in the resultant Contract (See Section II, forms to be submitted with bid). Failure to submit these will make your bid nonresponsive.

**OBLIGATION:** This Invitation for Bids does not obligate the Metropolitan Transit Authority to award a contract, or to pay any costs incurred in the preparation or submittal of any bid.

**ORGANIZATION OF BID:** The Invitation for Bid (IFB) is to be provided as follows:

**PRICE BREAKDOWN** including all detailed pricing information with particular attention to the unit price breakdown in Section II, subject to detailed METRO review as appropriate.

**SMALL BUSINESS CONTRACT GOAL:** There is no small business subcontracting goal for this Solicitation.

**TYPE OF AWARD:** METRO anticipates the award of a Firm Fixed price type contract as a result of this Solicitation.

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

**DIRECTIONS FOR SUBMITTING BIDS:** All Bid responses to this solicitation must be mailed as stated above and be received by the Due Date to be considered for award.

## 2 INSTRUCTIONS TO BIDDERS

### A. DOCUMENTS

1. A complete hard copy set of bid documents shall be used in preparing a bid. Bids will be accepted from only those bidders listed on METRO'S official Bidder's List at the designated bid opening time. METRO assumes no responsibility for errors or misinterpretations resulting from the use of incomplete sets of documents
2. METRO, in making copies of these documents available on the above terms, does so only for the purpose of obtaining bids on the work and does not convey a license or grant for any other use.
3. Each bidder should carefully examine these documents and take such other steps as may be reasonably necessary to ascertain the contract performance requirements. Failure to do so will not relieve Bidders from responsibility for estimating properly the difficulty or cost of successfully performing the Contract. Extra compensation will not be allowed for conditions which are determinable by examining these documents. METRO will assume no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of the Contract, unless included in these documents.
4. Each bidder should visit the site, carefully examine these documents and take such other steps as may be reasonably necessary to ascertain the nature and location of the work. Each bidder shall make themselves aware of local labor availability, means of transportation, local weight restrictions, laws, codes, wage scales, local tax structure, contractor's license and permit requirements, availability of required insurance, and other factors that could affect the work. Failure to do so will not relieve bidders from responsibility for estimating properly the difficulty or cost of successfully performing the work. Extra compensation will not be allowed for conditions which are determinable by examining these documents or the work site.

### B. EXPLANATION TO BIDDERS

Any explanation desired by a bidder regarding the meaning or interpretation of the Invitation for Bids, drawings, specifications, etc., must be requested in writing and with sufficient time allowed (**a minimum of ten (10) days before date set to receive bids**) for a reply to reach bidders before the submission of their bids. Any interpretation made will be in the form of an amendment to the Invitation for Bids, drawings, specifications, etc., or information letter and will be furnished to all prospective bidders. Receipt of Amendments by the bidder must be acknowledged in the space provided on the Bid or Amendment Form or by letter received by METRO before the time set for opening of bids. Oral explanations or instructions given before the award of the contract will not be binding.

### C. BIDDER QUALIFICATIONS/ELIGIBILITY FOR AWARD

1. In order for a bidder to be eligible to be awarded the Contract, the bid must be responsive to the Invitation, show the bidder's technical competency, and METRO must be able to determine that the bidder is responsible to perform the Contract satisfactorily.
2. Responsive bids are those complying with all material aspects of the Solicitation. Bids which do not comply with all the terms and conditions of the Solicitation will be rejected as non-responsive.
3. Responsible bidders as a minimum must:
  - a) Contractor must show evidence of having performed a project of similar size, scope, and complexity.
  - b) Have financial resources adequate to perform the Contract, or ability to obtain such resources as required during the performance of the Contract;
  - c) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments;
  - d) Have a satisfactory record of current and/or past performance in behalf of METRO and/or other owners, including the areas of scheduling, submittals; record keeping, reporting, qualified supervision, skilled workforce, safety, quality of equipment, materials and workmanship, timely performance, warranties and guarantees;
  - e) Have the necessary technical equipment, material and capability, including qualified supervision and skilled workforce, adequate to perform the Contract, or the ability to obtain such resources as

are required during the course of the Contract;

- f) Have a satisfactory record of business integrity and ethics;
  - g) If applicable, have a satisfactory record, as a contractor, of making good-faith efforts to achieve Small Business/Disadvantaged Business Program goals in past METRO projects, as well as providing evidence satisfactory to METRO that the bidder will comply with the Small Business Program/Disadvantaged Business requirements and goals contained herein;
  - h) Certify that it is not on the U.S. General Services Administration's "Lists of Parties Excluded from Federal Procurement or Non-procurement Programs". Signing and submitting the bid is so certifying;
  - i) Be qualified as an established firm regularly engaged in the type of business to provide the items/work required by this Solicitation; and
  - j) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.
4. A bidder may be requested to submit written evidence verifying that they meet the minimum criteria necessary to be determined a responsible bidder. Refusal to provide requested information will result in the bidder being declared non-responsive, and the bid will be rejected.
5. Bids deviating or taking exception to the Solicitation requirements will not be considered.

#### D. DISQUALIFICATION

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

#### E. PROTESTS

1. Each protest to the Solicitation documents shall be submitted for resolution to the Chief President Officer of Procurement & Materials. 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. The Chief Procurement Officer must receive the initial protest submission directed to the terms, conditions, or form of a proposed procurement action no later than five (5) calendar days prior to the date established for opening of bids or receipt of proposals.
3. The Chief Procurement Officer must receive the initial protest submission for protests concerning award decisions, including bid evaluations, no later than five (5) days after the interested party knows, or through exercise of reasonable diligence should have known, whichever is earlier, of the grounds for the protest.
4. Each protest will be processed in accordance with METRO's Protest Procedures located in Chapter 12 of METRO's Procurement Manual. A copy of the procedures will be provided to the protester upon written request to METRO's Chief Procurement Officer.
5. A written final determination on any protest will be rendered by METRO's President & Chief Executive Officer and will be provided to the protester as soon as practicable.
6. The protester must exhaust its administrative remedies by pursuing METRO's protest procedures to completion prior to appealing METRO's decision to the FTA.
7. The Federal Transit Administration (FTA) Circular 4220.1F, or any of its successors, paragraph 7L, addresses bid 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.

## F. PREPARATION OF BID

1. A bid shall be submitted on the forms furnished by METRO or re-produced copies of METRO forms; shall be completed in ink or by typewriter and shall be manually or digitally signed. If erasures or other changes appear on the forms, each erasure or change shall be initialed by the person signing the bid. 'Telegraphic or facsimile (fax) bids are not authorized.
2. The Bid Form may provide for submittal of a price or prices for one or more items, which may be lump sum bids, alternative prices, scheduled items resulting in a bid on a unit price, lump sum or a combination thereof. Where the Bid Form explicitly requires that the bidder bid on all items, failure to do so will disqualify the bid. When submittal of a price on all items is not required, a bidder shall insert the words 'no bid' in the space provided for any item on which no price is submitted.
3. If a bid is from an individual, sole proprietorship, or a bidder operating under a trade name, the bid shall be signed by that individual.
4. A bid by a partnership shall be executed in the partnership name and signed by a partner; the official address of the partnership shall be shown where indicated on the 'Solicitation, Bid and Award' form.
5. A bid by a corporation shall be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal shall be affixed and attested by the corporate secretary or assistant secretary.
6. A bid submitted by a joint venture shall list the names of all joint venturers and the mailing addresses of each and shall be executed by all joint venturers in the same manner as if they were individually submitting bids. The signature portion of the Bid Form shall be altered as appropriate for execution by the joint venture and all joint venturers.
7. All names shall be typed or printed below the signature.
8. The bid shall contain an acknowledgment of receipt of all Amendments to the Solicitation.
9. Communications regarding this Solicitation are to be directed to the address and to the attention of the person shown on the Invitation for Bids form.
10. Unless called for, alternative bids will not be considered.
11. In an effort to promote greater use of recycled and environmentally preferable products and minimize waste, all bids submitted should comply with the following:
  - a) All copies should be printed double-sided
  - b) All submittals and copies should be printed on recycled paper with a minimum post-consumer content of 30% or on tree-free paper (i.e., paper made from raw materials other than trees, such as kenaf). All bids should note the level of recycled content contained in the paper being used.
  - c) Unless absolutely necessary, all bids and copies should minimize or eliminate the use of non-recyclable or non-reusable materials, such as plastic report covers, plastic dividers, vinyl sleeves and bindings. Three-ringed binders, glued materials, paper clips and staples are acceptable.
  - d) Bids should submit materials in a format that allows for easy removal and recycling of paper materials.
  - e) Bidders are encouraged to use other products that contain recycled content in their bid documents. Such products may include, but not limited to, folders, binders, paper clips, discs, envelopes, boxes, etc. Where appropriate, Proposers may wish to note which products in their proposal are made with recycled materials.
  - f) Unnecessary samples, attachments or documents not specifically asked for should not be submitted with the bid.



**G. BID SECURITY**

1. Each bid shall be accompanied by Bid Security, drawn payable to the Metropolitan Transit Authority, in the amount required by the Invitation for Bids. The Bid Security shall be a cashier's check, a certified check or a bid bond issued by a surety licensed to do business in Texas, approved for the full amount of bond coverages required on the U.S. Department of the Treasury Circular 570 and by METRO. Failure to furnish the Bid Security in the proper form and amount by the time set for opening of bids will result in rejection of the bid.
2. Bid Security, other than a bid bond, will be returned to:
  - a) Unsuccessful bidders as soon as practicable after the opening of bids, and
  - b) The successful bidder upon execution of such further contractual documents and bonds as may be required by the Contract Documents.
3. If the successful bidder, upon acceptance of its bid by METRO within the period specified therein for acceptance, fails to execute such further contractual documents and furnish such bonds as may be required by the Contract Documents within the time specified in the Contract, will forfeit any Bid Security provided.

**H. POSTPONEMENT OF BID OPENING**

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

**I. SUBMISSION OF BIDS**

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

**J. LATE BIDS, MODIFICATION OR WITHDRAWAL OF BIDS**

1. Any bid or modification of bid received at the METRO office designated in the Invitation for Bids after the exact time specified for receipt will not be considered. Late bids received will be retained unopened and filed with unsuccessful bids in the official contract file.
2. A bid may be withdrawn in person by a bidder or authorized representative, provided their identity is made known and they sign a receipt for the bid, but only if the withdrawal is made prior to the exact time set for opening of bids.
3. Modifications of bids already submitted will be considered if received at the office designated in the Invitation for Bids by the time set for opening of bids.

**K. PUBLIC OPENING OF BIDS**

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

**L. AWARD OF CONTRACT**

1. Award of a Contract, if awarded, will be made to the responsive and responsible bidder offering the lowest **TOTAL BID AMOUNT (Section III, - Bid/Contract Schedule of Items and Prices)** and whose bid conforms to the Solicitation Documents. The lowest price bidder is not guaranteed that it will receive the METRO contract award.
2. METRO reserves the right to reject any and all bids, to waive any informalities in bids received and the right to reject all nonconforming, unbalanced, non-responsive or conditional bids. Discrepancies between words and figures will be resolved in favor of words.
3. Bids containing apparent clerical mistakes such as discrepancy between unit bid price and the price extension or the sum of the extended amounts and the total bid price, or other apparent clerical mistakes, will be resolved by the Contract Administrator in accordance with the Mistake in Bid procedures contained in METRO's Procurement Manual.

4. A written Notice of Award will be issued to the successful bidder upon being selected for award of a contract and execution of any resultant contract.
5. A split award will not be made. Bidders must bid on all items and award will be made based on the total aggregate price.
6. In the event of tie bids, the successful bidder will be determined by drawing of lots at an open meeting with the tie bidders invited to attend.

M. RECEIPT OF SINGLE BID

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

N. DISCOUNTS

1. No discounts will be considered in the evaluation of bids.
2. Discounts for early payment may be offered in the original bid or on individual invoices submitted under the resulting contract, and discounts offered will be taken by METRO if payment is made within the discount period specified.
3. Discounts that are included in bids become a part of the resulting Contract and are binding on the Contractor. Discounts offered only on individual invoices will be binding on the Contractor only for the particular invoice on which the discount is offered.

O. CONTRACT BONDS AND INSURANCE

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

P. METRO-FURNISHED PROPERTY

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

Q. TAXES

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

R. INSURANCE REQUIREMENTS

The bidder/proposer whose bid is accepted shall, within the time established in the Solicitation, enter into a written Contract with METRO and, if required, furnish Certificates of Insurance in the amounts indicated in the Contract.

S. INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting a bid, the Bidder is providing the certification set out in the Paragraph entitled "CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTION.
2. The certification in this instruction to Bidders is a material representation of fact upon which reliance will be placed by METRO to enter into a resultant contract. If it is later determined that the Bidder/Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, METRO may pursue available remedies, including suspension and/or debarment.
3. The bidder shall provide immediate written notice to METRO if at any time the bidder learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, bid and voluntarily excluded, as used herein, have the meanings set out in the Definition and Coverage sections of rules implementing Executive Order 12549. You may contact the person to whom your bid is submitted for assistance in obtaining a copy of this regulation.

5. The bidder agrees by submitting a bid that, should the resulting contract for the proposed covered transactions entered into, it shall not knowingly enter into any subcontract with a firm who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by METRO.
6. The bidder further agrees by submitting this bid that it will include the instruction titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," at Paragraph 21 below, without modification, in all solicitations for lower tier covered transactions, expected to equal or exceed \$25,000.00.

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

1. The Bidder certifies, by submission of the bid, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the bidder is unable to certify to any of the statements in this certification, the Bidder shall attach an explanation to the bid being submitted to METRO.

U. REQUEST(S) FOR APPROVAL OR DEVIATION

1. Mandatory Request(s) for Approved equal and request(s) for deviation to the technical specifications or other requirements of the solicitation document shall be submitted to METRO for evaluation by December 07, 2021 and will be answered by METRO. There will be another RFA process for reconsideration.
2. All request(s) for approval shall be submitted on the enclosed RFA form, with all necessary descriptive literature, technical data, or samples to clearly indicate all specifications of the item(s) or deviation(s) proposed to permit evaluation of the request and determine that they meet all requirements of the Solicitation.
3. Individual RFA's shall include all technical data and salient characteristics of the proposed item offered to meet the specification requirement. Such technical data and salient characteristics shall cover as a minimum the installation, operation and design performance of the item offered for approval.
4. Request(s) for Approval may be submitted by e-mail at [jh52@ridemetro.org](mailto:jh52@ridemetro.org). CAUTION: Telefax or e-mail bids are not authorized.
5. **Failure to submit the Mandatory RFAs in Section II will render your bid non-responsive.**

V. INDEPENDENT PRICE DETERMINATION.

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

W. COVENANT AGAINST CONTINGENT FEES

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

X. PROHIBITION ON LOBBYING

No bidder or 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 Committee) 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 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.**

## Y. SOLICITATION ORDER OF PRECEDENCE.

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

1. Solicitation Amendments (if any) with the latest having precedence;
2. Bid/Contract Amount, Items and Prices excluding any specifications or drawings;
3. Instructions to Bidders including Invitation for Bids form;
4. Solicitation, Bid and Award form/Attachments;
5. Technical Specifications/Scope of Service;
6. Contract Articles;
7. Drawings;
8. Any other full-text provision of this Solicitation whether incorporated by reference or otherwise.

## Z. APPROVAL OF CONTRACT.

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

**Public Notice of Solicitation Results**

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

## AA. METRO-FURNISHED PROPERTY

METRO will furnish equipment ~~and~~ specifically described in the specification.

## BB. 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 web site at <http://www.ridemetro.org/Pages/ConflictsDisclosure.aspx>

## CC. SUBMISSION REQUIREMENTS AND PROCEDURES

Submission of the below forms identified as "Contractor Owned" are a condition to be met by the bidders in order to be deemed responsive and must be met as a condition prior to Contract award. Once completed and submitted, these documents will be considered "contractor owned" and will not be incorporated into the Contract. However, they will be made part of the original contract file. 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.

Each bidder must complete, sign and return the following bid forms/Attachments at the times indicated below:

## 1. Bid Forms

- \*a "Disadvantaged Business Enterprise (DBE)"
- \*b. "Buy America Certificate".
- \*c. "Cargo Preference Certification"
- \*d. "Paratransit Van" Vehicle Testing Certification"
- \*e. "Federal Motor Vehicle Safety Standard (FMVSS) Certification of Compliance"
- \*f. "Pre-Award Audit of Vehicles for Specification and Buy America Compliance"
- \*g. "Certification of Restrictions on Lobbying"
- \*h. "Price Breakdown"
- \*\*i. "Request for Approval (RFA Form). Provided when required by the paragraph entitled "REQUEST(S) FOR APPROVAL OR DEVIATION".
- \*j. "Debarment and Suspension form ". Bidder must provide this document with their bid and document must be signed.
- \*k. "Bidder's Questionnaire". Bidder must provide complete and current information in response to each question. If the bidder is a joint venture, each joint venturer shall prepare and submit a separate form.
- \*l. "Americans with Disabilities ACT (ADA) Certification of Compliance"
- \*m "Motor Vehicle Pollution Requirements Certification of Compliance"

## 2. Bid/Award Forms

- \*a. "Solicitation, Bid and Award". (must be signed by bidder)
- \*b. "Bid/Contract Amount, Items and Prices".
- \*\*3. When a special license or permit is required by Federal, State or Local law or ordinance, a bidder must be properly licensed prior to bidding and furnish evidence of such with the bid.

\* Provide with Bid  
 \*\* Provide if applicable

**SECTION II - FORMS FOR BIDDING/PROPOSING**

**1 DISADVANTAGED BUSINESS ENTERPRISES (DBE)**

I hereby certify that the Bidder has complied with the requirements of 49 CFR 26, Participation by Disadvantaged Business Enterprises in DOT Programs, and it has submitted a goal to Federal Transit Administration, and it has not been disapproved.

Signature: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Date: \_\_\_\_\_

**2 BUY AMERICA CERTIFICATE**

The Bidder/Contractor hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Act of 1982, as amended, and the regulations of 49 CFR 661.11

Name of Bidder/Contractor: \_\_\_\_\_

Date of Signing: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

OR

The Bidder/Contractor hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Act, as amended, and the regulations in 49 CFR 661.7.

Name of Bidder/Contractor: \_\_\_\_\_

Date of Signing: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

**3 CARGO PREFERENCE**

Bidder/Contractor agrees to utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage involved (computed separately for dry bulk carriers, dry cargo liners, and tankers), whenever shipping any equipment, material, or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

Bidder/Contractor agrees to furnish within 20 working days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the paragraph above to the FTA Administrator and to METRO (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20230.

Bidder/Contractor also agrees to insert the substance of the Contract article, entitled "Cargo Preference - Use of United-Flag Ships" in all subcontracts issued pursuant to the Contract.

Signature: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Date: \_\_\_\_\_



**4 DEBARRED, SUSPENDED, OR INELIGIBLE CONTRACTOR'S CERTIFICATION**

Bidder hereby certifies that its firm is not on the U.S. General Services Administration's 'List of Parties Excluded from Federal Procurement or Non-Procurement Programs' and agrees to comply with the debarment and suspension requirements set forth in the Proposed Contract.

Signature: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

**5 VEHICLE TESTING CERTIFICATION, 49 CFR PART 665**

I, \_\_\_\_\_, representing the \_\_\_\_\_  
(Representative's Name) (Bidder's Name)

\_\_\_\_\_, do hereby certify that the vehicles offered in response to this solicitation are subject to the 'Vehicle Testing Procedures' set forth in 49 CFR Part 665. Should my firm be the successful bidder and receive award of a Contract, I further certify that the vehicles offered in response to this solicitation have been or will be tested pursuant to 49 CFR Part 665 and that the test results will be furnished to METRO as specified in the Contract.

\_\_\_\_\_  
Representative's Signature

\_\_\_\_\_  
Date

**6 FEDERAL MOTOR VEHICLE SAFETY STANDARD (FMVSS)**

Bidder hereby certifies that the Vehicles offered in response to this Solicitation will comply with the Federal Motor Vehicle Safety Standards established by the Department of Transportation which are in effect at the time of vehicle manufacture.

Signature: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Date: \_\_\_\_\_

**7 PRE-AWARD AUDIT OF VEHICLES FOR SPECIFICATION AND BUY AMERICA COMPLIANCE**

Bidder hereby agrees to make available in its office, at all reasonable times, all records and documents pertaining to this solicitation in sufficient detail to permit METRO's Auditor and Quality Control Inspector to perform Pre-award audits of the vehicles offered in response to this Solicitation, for compliance with the specification and Buy America requirements, pursuant to the Federal Transit Administration's Final Rule as published in the Federal Register, dated September 24, 1991.

Signature: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Date: \_\_\_\_\_

**8 CERTIFICATION OF RESTRICTIONS ON LOBBYING**

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

- 1) 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.
- 2) 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.
- 3) 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 subrecipients shall certify and disclose accordingly.

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)

**9 AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)**

Bidder hereby certifies that the Vehicles offered in response to this Solicitation will comply with the Americans with Disabilities Act of 1990 standards established by the Department of Justice which are in effect at the time of vehicle manufacture.

Signature: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Date: \_\_\_\_\_

**10 MOTOR VEHICLE POLLUTION REQUIREMENTS**

A. The kWh rating and energy storage capacity of the vehicle is adequate for the speed, range and terrain in which it will be required to operate and also to meet the demands of all auxiliary power equipment.

B. All gases and vapors emanating from the crankcase of a start-ignition engine are controlled to minimize their escape into the atmosphere.

C. Bidder hereby certifies that the Vehicles offered in response to this Solicitation will comply with the Clean Air Act standards established by the United States Environmental Protection Agency which are in effect at the time of vehicle manufacture.

Signature: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Date: \_\_\_\_\_

**11 BIDDER'S QUESTIONNAIRE**

This questionnaire is an integral part of a bidder's bid, and shall be completed. Failure to provide the required information may cause rejection of your bid. All references and information shall be current and traceable. If the bidder is a joint venture, a separate form shall be prepared by each venturer.

NAME OF BIDDER: \_\_\_\_\_

PRINCIPAL OFFICE: \_\_\_\_\_  
(Street Address or P. O. Number)

\_\_\_\_\_  
(City) (State) Zip Code

(\_\_\_\_\_) \_\_\_\_\_  
(Area Code) (Telephone Number)

1. Are you an individual \_\_\_\_, a partnership \_\_\_\_, a corporation \_\_\_\_, or a joint venture \_\_\_\_?  
(Check as applicable).

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. How many years has your organization been in business as a contractor under your present business name? \_\_\_\_\_ years

3. How many people does your firm currently employ?

- A. In Texas \_\_\_\_\_
- B. Outside Texas \_\_\_\_\_

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

Job Classification	No. of Employees	Job Classification	No. of Employees
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____



5. What is the total square footage of your company's facilities?

		In Harris County	Outside Harris County
A.	Inside Plant Space:	_____sq ft	_____sq ft
B.	Office Space:	_____sq ft	_____sq ft
C.	Outside Plant Yard:	_____sq ft	_____sq ft
D.	Parking Area:	_____sq ft	_____sq ft

6. List names of companies and or public bodies, that you have performed similar services for within the last twelve (12) months.

Name of Company/ Public Body	Business Address	Contact Person	Telephone No.
_____			
_____			
_____			
_____			
_____			
_____			
_____			
_____			

7. List companies and public bodies for which you have current orders for the same or similar type of equipment and services.

Name of Company/ Public Body	Business Address	No. Of Paratransit Vans	Contact Person	Telephone No.
_____				
_____				
_____				
_____				
_____				
_____				
_____				
_____				

8. Have you or your organization, or any officer or partner thereof, failed to complete a contract? \_\_\_\_\_

If so, give details \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

9. Is any litigation pending against your organization? \_\_\_\_\_

If so, give details \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Name of Bank: \_\_\_\_\_

Street Address: \_\_\_\_\_

City and State: \_\_\_\_\_ Telephone: \_\_\_\_\_

Officer Familiar with Bidder's Account: \_\_\_\_\_

11. State your firm's annual average receipts over the past 3 fiscal years:

\$ \_\_\_\_\_

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

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

Name of Company: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**12 PRICE BREAKDOWN**

**PRICE BREAKDOWN**

Prior to award of a contract, the successful Bidder agrees to furnish a price breakdown as reflected below for the paratransit vans offered in accordance with this solicitation. This form is for information purposes only. Evaluation will be based on Section III, Article 2 Bid/Contract Schedule of Items and Prices.

<b>ITEM NO.</b>	<b><u>DESCRIPTION</u></b>	<b><u>PRICE</u></b>
1.	Primary Complete Chassis.	\$ _____
2.	ITS Electronic Equipment including Route and Destination Signage (Front, side and rear), camera systems	\$ _____
3.	Air Conditioning and Heating System	
4.	Passenger Seating	\$ _____
5.	Accessibility Items: securement devices	\$ _____
6.	Wheelchair Ramp/Lift	\$ _____
7.	Cost included in unit bid price for paratransit van testing pursuant to 49 CFR Part 665, if required	\$ _____
8.	Cost included in unit bid price for warranties pursuant to Exhibit A of this solicitation, if any	\$ _____
9.	Paratransit van body frame with windows, axle, wheels and all other items not listed above	\$ _____
	<b>TOTAL: (Should equal unit bid amount for one (1) paratransit van</b>	<b>\$ _____</b>

**13 REQUEST FOR APPROVAL (RFA FORM)**

(NOTE: See next page for instructions on the use of this form – must be submitted in **Word format**)

SOLICITATION/CONTRACT NO. \_\_\_\_\_

MANUFACTURER \_\_\_\_\_ REPRESENTATIVE \_\_\_\_\_

RFA NO. \_\_\_\_\_ DATE \_\_\_\_\_

SECTION \_\_\_\_\_ PAGE NO. \_\_\_\_\_ PARAGRAPH NO. \_\_\_\_\_

MANUFACTURER'S REQUEST:

METRO'S RESPONSE:

APPROVED \_\_\_\_\_ DENIED \_\_\_\_\_

APPROVED AS MODIFIED \_\_\_\_\_

COMMENTS:

\_\_\_\_\_  
APPROVED BY:

\_\_\_\_\_  
DATE

**INSTRUCTION FOR USE OF REQUEST FOR APPROVAL (RFA FORM)**

In order to assure full and prompt response to all requests for approval or exception to the technical specifications, Bidder is required to submit said requests on this form **in Word format**. (Use the Word file posted on the website. Please do not alter the headers on the Word file. Please do not insert tables.) If the Bidder has multiple requests for approval or exception with a particular section of the technical specifications each request shall be individually addressed with the Bidder submitting a form for each request. The lumping of a series of requests together on one form may cause METRO to deny all requests.

1. All of the bidder's RFA forms should be submitted with no more than 1 to 4 Word files. (Do not submit a separate Word file for each RFA form. Use page breaks between RFAs).
2. Support documents for the RFAs should be submitted separately for each RFA and should be clearly labeled with the corresponding RFA number. The RFA support documents can be submitted in Word, Excel or PDF format.

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

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

**14 MANDATORY REQUEST FOR APPROVALS (RFA)**

Bidders shall submit the following **Mandatory Request for Approvals (RFA)** Failure to submit the Mandatory RFA's will render **your bid non-responsive**. (All references are to Sections in Exhibit “

M1	Curb weight shall be provided as a Mandatory Request For Approval ( <b>See Section 1.5.2.1 Curb Weight</b> ).
M2	Complete, scaled, interior layout drawings showing seat positions, hip-to-knee room, foot room, seat height and width dimensions, aisle widths, and all other pertinent interior dimensions including wheelchair maneuverability and free floor space area of the van proposed for bid shall be submitted as a Mandatory Request For Approval ( <b>See Section 1.5.3 Capacity</b> ).
M3	A detailed description of paint system and procedures to be used must be submitted as a Mandatory Request For Approval ( <b>See Section 2.1.1.2 Finish and Color</b> ).
M4	A detailed description of all materials and their assembly to be used in the body construction of the van proposed for bid shall be submitted as a Mandatory Request For Approval ( <b>See Section 2.1.2.1 Strength and Fatigue Life</b> ).
M5	Colored samples of all interior materials shall be submitted as a Mandatory Request For Approval ( <b>See Section 2.1.4.4 Construction</b> ).
M6	A detailed description of all exterior lighting of the van proposed for bid that includes mounting methods and locations (including light dimensions) shall be submitted as a Mandatory Request For Approval ( <b>See Section 2.2.4.1 Exterior Lighting</b> ).
M7	Model and description of Operator's seat shall be submitted as a Mandatory Request For Approval ( <b>See Section 2.3.3 Operator's Seat</b> ).
M8	Description and sample of floor material and silicone caulking shall be submitted as a Mandatory Request For Approval ( <b>See Section 2.3.4 Floor Covering</b> ).
M9	Description of outside mirror type and installation for the van proposed for bid shall be submitted as a Mandatory Request For Approval ( <b>See Section 2.6.2.1 Outside Mirrors</b> ).

M10	Complete, scaled, interior layout drawings showing seat positions, hip-to-knee room, foot room, seat height and width dimensions, aisle widths, passenger assists, floor contour, fare box location and all other pertinent interior dimensions including wheelchair maneuverability and free floor space area of the van proposed for bid shall be submitted as a Mandatory Request For Approval <b>(See Section 2.7.1 General)</b> .
M11	Model and details describing the wheelchair lift that meets the above specifications shall be submitted as a Mandatory Request For Approval <b>(See Section 2.7.2 Loading System)</b> .
M12	Model and details describing the wheelchair passenger securement system that meets the above specifications and boarding chair to be provided shall be submitted as a Mandatory Request For Approval <b>(See Section 2.7.3 Wheelchair Accommodations and 2.7.4 Boarding Wheel Chair)</b> .
M13	The turn radius and front and rear swept area dimensions of the paratransit van shall be submitted as a Mandatory Request For Approval <b>(See Section 3.3.4 Front Axle)</b> .
M14	Description of the electrical system proposed shall be submitted as a Mandatory Request For Approval <b>(See Section 3.4 Electrical System)</b> .
M15	A complete description of the interior climate control system being proposed by the van manufacturer for the van to be built for METRO shall be submitted as a Mandatory Request For Approval <b>(See Section 3.5 Interior Climate Control)</b> .
M16	A detailed description of the Video Surveillance System of the van proposed for bid, along with operational information and installation locations, shall be submitted as a Mandatory Request For Approval <b>(See Section 3.7 Video Surveillance System)</b> .
M17	A detailed description of the type of Fire Sensing and Suppression (FSS) equipment of the van proposed for bid, along with operational information and installation locations, shall be submitted as a Mandatory Request For Approval <b>(See Section 3.8.1 Fire Suppression)</b> .

**SECTION III - FORMS FOR BIDDING/PROPOSING/AWARD**

**1 SOLICITATION, BID AND AWARD FORM**

**METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY TEXAS  
INVITATION FOR BIDS**

=====
Shopping Cart No. 1122002507
IFB No.
Date of Invitation: June 20, 2022
Contract No. \_\_\_\_\_
Description of Project: Purchase and Delivery of Paratransit Vans
=====

(TO BE COMPLETED BY BIDDER)
BIDDER/CONTRACTOR NAME AND ADDRESS:
(Full Name of Firm, Corporation, Partnership, Joint Venturer - Type or Print)

\_\_\_\_\_ PHONE: ( ) \_\_\_\_\_
\_\_\_\_\_ FAX NO: ( ) \_\_\_\_\_
\_\_\_\_\_

=====
In compliance with the above referenced Invitation for Bids, the undersigned hereby proposes to furnish all of the resources necessary to complete the above referenced project for the total cost listed in Section 3, Item 2 herein and in accordance with the Contract.

The undersigned agrees that this offer will remain valid for a period of one hundred twenty (120) calendar days after the date of opening of bids. Upon written acceptance of this offer, executed by METRO and mailed or otherwise furnished within the one hundred twenty (120) calendar day bid validity period, the bidder/contractor will within fourteen (14) calendar days (unless a longer period is allowed) after receipt of the award documents, provide required certification of insurance and performance bond with good and sufficient surety.

Any resulting contract will consist of this form and Sections III through XII of the original solicitation.

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

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

=====
DIRECTIONS FOR SUBMITTING BIDS: Envelopes containing bids, guarantee, or other bid documents shall be sealed, marked, and addressed as follows:

METROPOLITAN TRANSIT AUTHORITY NOTE: Identify the envelope containing a bid
Procurement Division with the Project Title, Invitation for Bid (IB)
1900 Main Street, Suite 2021 Number and bid opening date and time;
Houston, Texas 77002 and Company's name and address.



(TO BE COMPLETED BY BIDDER)  
RECEIPT OF BID AMENDMENT(S):  
(List number and date of each)

Bidder acknowledges receipt of the following Amendment(s).

\_\_\_\_\_

OFFER  
(TO BE COMPLETED AND SIGNED BY BIDDER)

SIGNATURE OF BIDDER/CONTRACTOR:

ATTEST:

BY: \_\_\_\_\_  
(MUST BE SIGNED BY AUTHORIZED PERSON)

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

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

=====

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

ALTERATIONS: The following alterations were made in this Contract before it was signed by METRO (Indicate "None" or list alterations)

\_\_\_\_\_

METRO and the Contractor have executed this Contract and it shall be effective on the \_\_\_ day of \_\_\_\_\_, 2022.

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 \_\_\_\_\_, 2022 and on file in the office of the Assistant Secretary of the Authority.

BY: \_\_\_\_\_  
Michael Kyme – Chief Procurement Officer

ATTEST:

\_\_\_\_\_  
Assistant Secretary

APPROVED:

APPROVED AS TO FORM:

\_\_\_\_\_  
George Fotinos  
Interim Chief Financial Officer

\_\_\_\_\_  
Cydonii Fairfax – EVP & General Counsel

APPROVED:

\_\_\_\_\_  
Assistant Secretary

**2 BID/CONTRACT SCHEDULE OF ITEMS AND PRICES**

Bidder/Contractor agrees to furnish all resources necessary to supply and deliver FOB Destination the following described vehicles in accordance with the specifications listed in Exhibits "A" through "E" and the attached proposed Contract at the below bid prices.

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT BID FIXED PRICE	EXTENDED BID FIXED AMOUNT
1.	Paratransit Vans All vans shall be Delivered within Eighteen (18) months From NTP.	90	EACH	\$ _____	\$ _____

**Total Bid Amount (Item 1)**

<b>\$</b>
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PROMPT PAYMENT DISCOUNT: The following prompt payment discount(s) are hereby offered for payments made within the period specified after receipt of invoice or acceptance of item(s), whichever is later.

\_\_\_\_\_% 10 days

\_\_\_\_\_% 15 days

\_\_\_\_\_% \_\_\_\_ days

**SECTION IV - 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 "Project Manager" means the technical representative who has been designated as having the responsibility for assessing the Contractor's 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 Contractor's work in its entirety or any portion thereof, as required by the Contract documents.
- E. The term "Contract 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. "Contractor" shall mean the individual, partnership, corporation, organization, or association contracting with METRO to furnish all materials, goods and work defined herein.

**2 PERIOD OF PERFORMANCE**

The period of performance shall be for Eighteen (18) months from Notice-to-Proceed (NTP) of this Contract.

**3 ITEMS PURCHASED, DELIVERY AND COMPENSATION**

The Contractor shall provide METRO with all manufacturing and assembly diagrams for the first article paratransit van no less than 10-business days prior to the start of the first article paratransit van assembly. The first article paratransit van will be placed at the head of the production line and used by production staff to ensure production paratransit vans are exact copies of the first article paratransit van. METRO will pay the Contractor for 95% of the paratransit van unit fixed price listed in Section III, Article 2 Bid/Contract Schedule of Items and Prices, Item No1. Paratransit vans after the first article paratransit van is accepted and the remaining 5% will be paid once the first article paratransit van is delivered to METRO and final acceptance is completed. The intent is for the first article paratransit van to remain at the Contractor's facility as a reference during production of the remaining paratransit vans.

Prior to the start of first article paratransit van manufacturing or assembly processes, the structure of the proposed paratransit van model shall have undergone appropriate structural testing and/or analysis, including the complete regimen of FTA required Altoona tests. Prior to assembly of the first article paratransit van, the OEM shall provide the METRO with a completed report of Altoona testing for the proposed paratransit van model along with a plan of corrective action to address deficiencies, breakdowns and other issues identified during Altoona testing. The paratransit van model tested shall match the paratransit van model proposed for procurement, including structure, axles and drivetrain. Base model and partial Altoona test reports are acceptable when the combination of these tests adequately represents the proposed paratransit van model.

The Contractor agrees that it shall exert every reasonable effort necessary to deliver all the paratransit vans according to the time frame specified in Section III, 2 Contract Schedule of Items and Prices. The Contractor agrees to notify METRO immediately if, at any time, it appears that all of the paratransit vans will not be delivered according to the time frame specified in Section III, 2 Contract Schedule of Items and Prices. Such notification shall include the reasons for any possible delays, steps being taken to remedy any such problems, and a proposed revised delivery schedule, if the Contractor is of the opinion that such a change in delivery is required. Nothing herein shall be interpreted as waiving remedies otherwise available to METRO.

Delivery shall be to the following F.O.B. destination points:

Paratransit vans to: METROPOLITAN TRANSIT AUTHORITY  
OF HARRIS COUNTY, TEXAS  
**Attn: Keith McRight**  
Field Service Center  
1215 Labco  
Houston, Texas 77029

Deliveries may be made between the hours of  
7:00 a.m. and 3:00 p.m., Monday through Friday.

Final Manuals to: METROPOLITAN TRANSIT AUTHORITY  
OF HARRIS COUNTY, TEXAS  
**Attn: Andrei Dragomir**  
Kashmere Bus Operating Facility  
5700 Eastex Freeway  
Houston, Texas 77026

Deliveries may be made between the hours of  
9:00 a.m. and 3:00 p.m., Monday through Friday.

The Contractor shall be responsible for all items purchased hereby until delivered at the designated F.O.B. delivery point and accepted by METRO unless damage results from the negligence of officers, agents, or employees of METRO arising within the scope of their employment. The Contractor shall bear all risks as to rejected items after notice of rejection.

Unless otherwise specified in the Contract Documents, reference to standard specifications of any technical society, organization or association, or to codes of local or state authorities, shall mean the latest standard, code specification, or tentative specification adopted and published and in effect on the Contract date.

Notwithstanding the provision of drawings, technical specifications, or other data by METRO, the Contractor shall have the responsibility of supplying all parts and details required to make each vehicle complete and ready for service even though such details may not be specifically mentioned in the drawings and specifications. In the event of any deviation between the description of the vehicles in the Technical Specifications and other parts of this document the technical specifications shall govern.

#### 4 LIQUIDATED DAMAGES

A. In the event of delay in the completion of deliveries of vehicles beyond the schedule as provided for according to the time frame specified in Section III, 2 Contract Schedule of Items and Prices, the Contractor shall be liable for liquidated damages in the amount of \$861.00 Dollars per day, in addition you will be charged \$37.29 per paratransit vehicle not delivered, per day until all vehicles are delivered, not including weekends or METRO recognized holidays.

B. These damages shall be deducted from any monies due, or which may thereafter become due, to the Contractor under this Contract.

C. The maximum amount of liquidated damages to which the Contractor will be subject is One Million Dollars (\$1,000,000.00). In the event the Contract has not been otherwise terminated, the Contract will be considered terminated for default when accumulated liquidated damages exceed One Million Dollars.

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

#### 5 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.

## **6 NOTIFICATION OF DELAY**

The Contractor shall notify the Contracting Officer as soon as the Contractor has, or should have, knowledge that an event has occurred which will delay deliveries. Within five (5) days, the Contractor shall confirm such notice in writing furnishing as much detail as is available.

## **7 REQUEST FOR EXTENSION**

The Contractor agrees to supply, as soon as such data are available, any reasonable proofs that are required by the Contracting Officer to make a decision on any request for extension. The Contracting Officer shall examine the request and any documents supplied by the Contractor and shall determine if the Contractor is entitled to an extension and the duration of such extension. The Contracting Officer shall notify the Contractor of his decision in writing. It is expressly understood and agreed that the Contractor shall not be entitled to damages or compensation and shall not be reimbursed for losses on account of delays resulting from any cause under this Article.

## **8 METRO DELAY OF WORK**

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

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

## **9 PERFORMANCE BOND OR LETTER OF CREDIT**

The Contractor shall furnish a Performance Bond or irrevocable Letter of Credit payable in an amount equal to five percent (5%) of the Contract amount. The Performance Bond or Letter of Credit shall remain in effect through delivery, acceptance and final payment of the last vehicle, at which time it will be released back to the Contractor. If a Performance Bond is utilized, the bonding company providing the bond must be approved for the amount of bond on U.S. Department of Treasury Circular C570 and licensed to do business in the State of Texas. If an irrevocable Letter of Credit is utilized it must be issued on a US bank and it must be payable on METRO's first demand. The Performance Bond or Letter of Credit shall be submitted to the Contracting Officer within fourteen (14) calendar days after receipt of a copy of the executed Contract. The Contractor will not be allowed to proceed with production until a properly executed bond or letter of credit is received and accepted by the Contracting Officer.

## **10 ASSIGNMENT OF VEHICLES**

METRO reserves the right to assign all or any portion of the vehicles awarded under this Contract to other grantees of FTA funds in accordance FTA Circular 4220.1F or any of its successors. This assignment, should it occur, shall be to other transit agencies and will be honored by the Contractor. METRO's right of assignment will remain in force until completion of the Contract.

## **11 MATERIALS AND WORKMANSHIP**

The Contractor shall be responsible for all materials and workmanship in the construction of the paratransit van and all accessories used, whether the same are manufactured by the Contractor or purchased from a Supplier. This provision excludes any equipment leased or supplied by METRO, except insofar as such equipment is damaged by the failure of a part or component for which the Contractor is responsible, or except insofar as the damage to such equipment is caused by the Contractor during the manufacture of the paratransit vans.

## **12 CONFORMANCE WITH CONTRACT AND SPECIFICATIONS**

A. Materials furnished and Work performed by the Contractor shall conform to the requirements of the Specifications, Exhibit "A" and other Contract documents. Notwithstanding the provision of drawings, specifications or other data by METRO, the Contractor shall have the responsibility of supplying all parts and details required to make the paratransit vans complete and ready for service even though such details may not be specifically mentioned in the drawings and specifications. Items that are installed by METRO shall not be the responsibility of the Contractor unless they are included in this Contract.

B. The Contractor shall comply with all applicable federal, state and local regulations. These shall include but not be limited

to ADA, as well as state and local accessibility, safety and security requirements. Local regulations are defined as those below the state level. The paratransit vans shall meet all applicable FMVSS and shall accommodate all applicable FMCSR regulations in effect at location of METRO and the date of manufacture. In the event of any conflict between the requirements of these specifications and any applicable legal requirement, the legal requirement shall prevail. Technical requirements that exceed the legal requirements are not considered to conflict.

### 13 REPAIRS AFTER NON-ACCEPTANCE

A. The Contractor, or its designated representative, shall perform the repairs after non-acceptance. If the Contractor fails or refuses to begin the repairs within five (5) days, then the Work may be done by METRO's personnel with reimbursement by the Contractor.

#### B. Repair Performance

1. Repairs by Contractor. After non-acceptance of the paratransit van, the Contractor must begin Work within five (5) working days after receiving notification from METRO of failure of acceptance tests. METRO shall make the paratransit van available to complete repairs timely with the Contractor repair schedule.

The Contractor shall provide, at its own expense, all spare parts, tools and space required to complete the repairs. At METRO's option, the Contractor may be required to remove the paratransit van from METRO's property while repairs are being made. If the paratransit van is removed from METRO's property, repair procedures must be diligently pursued by the Contractor's representatives, and the Contractor shall assume risk of loss while the paratransit van is under its control.

2. Repairs by METRO. METRO will not take responsibility to correct Defects, except to replace defective parts as instructed by the Contractor.

- a. Parts used. If METRO performs the repairs after non-acceptance of the paratransit van, it shall correct or repair the Defect and any Related Defects using Contractor-specified parts available from its own stock or those supplied by the Contractor specifically for this repair. Reports of all repairs covered by this procedure shall be submitted by METRO to the Contractor for reimbursement or replacement of parts monthly, or at a period to be mutually agreed upon. The Contractor shall provide forms for these reports.
- b. Contractor-supplied parts. If the Contractor supplies parts for repairs being performed by METRO after non-acceptance of the paratransit van, these parts shall be shipped prepaid to METRO.
- c. Return of defective components. The Contractor may request that parts covered by this provision be returned to the manufacturing plant. The total costs for this action shall be paid by the Contractor.
- d. Reimbursement for labor. METRO shall be reimbursed by the Contractor for labor. The amount shall be determined by METRO for a qualified mechanic at a straight time wage rate of \$95.00 per hour, which includes fringe benefits and overhead adjusted for METRO's most recently published rate in effect at the time the Work is performed, plus the cost of towing in the paratransit van, if such action was necessary. These wage and fringe benefits rates shall not exceed the rates in effect in METRO's service garage at the time the Defect correction is made.
- e. Reimbursement for parts. METRO shall be reimbursed by the Contractor for defective parts that must be replaced to correct the Defect. The reimbursement shall include taxes where applicable and fifteen (15) percent handling costs.

### 14 DELIVERABLES

See Exhibit "A", Appendix 1 for a list of deliverables.

### 15 PREPRODUCTION CONFERENCE APPROVALS

See Exhibit "A", Appendix 2 for a list of items requiring METRO approval during the Preproduction Conference

### 16 CHANGES OF LAW

Changes of Law that become effective after the Bid Due Date may result in price changes. If a price adjustment is indicated, either upward or downward, it shall be negotiated between METRO and the Contractor and the final Contract amount will be adjusted upwards or downwards to reflect such changes in Law. Such price adjustment maybe audited, where required.

**17 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 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](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

## SECTION V - INSPECTION AND ACCEPTANCE ARTICLES

### 1 VEHICLE INSPECTION AND ACCEPTANCE

A. Predelivery inspection and test, for all vehicles excluding the Pilot paratransit van in Section IV above, shall be performed at the Contractor's plant in accordance with Contract Exhibit "A", Section 6, "Contractor's In-Plant Quality Assurance". METRO's Resident Inspector shall authorize release of each vehicle for delivery upon satisfactory completion of all in-plant inspections and tests. Drivers shall keep a maintenance log en route for vehicles, which are driven to the destination point. A copy of this log shall be provided to METRO upon delivery.

B. Within fifteen (15) calendar days after arrival at the destination point the vehicle will undergo METRO post-delivery test as defined in the Technical Specifications. If the vehicle fails these tests, the Contractor shall be notified and the vehicle shall not be accepted until the defects have been corrected.

### 2 CONDITIONAL ACCEPTANCE

METRO may withhold up to 3 percent of the total cost of each delivered and accepted vehicle to assure correction of early failures and fleet defects. The withheld funds shall be paid in full to the Contractor within thirty (30) days of vehicle acceptance, unless specific defects are found in the vehicle, or it is subject to a fleet defect. The defect(s) found shall be described and submitted in writing, including the relevant specification requirement, to the Contractor when identified and within the 30-day withholding period. The withheld funds shall be paid in full to the Contractor upon repair of the vehicle or receipt of a written commitment from the Contractor reflecting a mutual agreement to resolve the identified deficiencies. The withheld funds are not subject to the late payment provisions of this Contract.

### 3 FIRST ARTICLE INSPECTION – PRODUCTION

A. The purpose of the first article inspection is to confirm that any components, systems, subsystems, major assemblies, subassemblies, products, parts, apparatuses, articles and other materials comply with the Technical Specifications and other Contract documents.

B. Where required by the Contract documents or requested by METRO, the Contractor shall cause first article inspections to be conducted. A first article inspection may include both a physical configuration inspection and a functional demonstration. First article inspections shall be conducted at the Contractor or Subcontractor's facility. The Contractor shall furnish to METRO prior to each first article inspection a written inspection and demonstration plan for each item for review. METRO's inspectors will attend each first article inspection unless METRO provides a written waiver of its right to attend any such inspection. The results of each first article inspection shall be documented by the Contractor in a format deemed acceptable by METRO, and all documents relating to the inspection shall be forwarded to METRO.

### 4 TESTING OF NEW PARATRANSIT VAN MODELS

The Contractor agrees to comply with 49 USC A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

A. A manufacturer of a new paratransit van model or a paratransit van produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient, which will be prior to the recipient's final acceptance of the first vehicle.

B. A manufacturer who releases a report under Paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

C. If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

D. If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988 and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.



**SECTION VI - CONTRACT ADMINISTRATION DATA ARTICLES**

**1 COMPENSATION**

A. The Contractor shall be compensated for the items ordered, installed and accepted at the firm fixed unit prices as provided in the Bid/Contract Amount, Items and Prices of this Contract.

B. METRO's total obligation for the satisfactory performance of this Contract shall not-to-exceed \_\_\_\_\_ 00/100 Dollars (\$\_\_\_\_\_.\_\_), less any prompt payment discount earned or set forth below, and in accordance with the payment provisions of this Contract.

C. METRO Board approval shall be required prior to execution on all options increasing the total contract amount.

**2 INVOICING AND PAYMENT**

A. The Contractor shall submit an original invoice and the corresponding certificate of origin, application for Texas title and FMVSS certifications for each paratransit van for payment to the address shown below for the item(s) or service(s) performed, which have been inspected and accepted by METRO:

Blake Hohensee  
 METROPOLITAN TRANSIT AUTHORITY  
 1900 Main St. Suite 8157  
 Houston, Texas 77002

B. METRO shall pay the amount due the Contractor under this Contract after presentation with each invoice.

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

D. Payments will be made within thirty (30) calendar days after receipt of a properly prepared invoice, which shall not be issued until the paratransit vans are accepted by METRO. Payment 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. Discount(s) offered by Contractor for early payment(s), as stipulated below, if any, will be taken by METRO if payment is made within the discount period specified.

\_\_\_\_\_% 10 days          \_\_\_\_\_% 15 days          \_\_\_\_\_% \_\_\_\_ days

E. Contractor's final invoice for work performed under this Contract shall be accompanied by a completed copy of the Exhibit entitled "CONTRACTOR'S RELEASE". If this Contract has been assigned, a release of claims is also required of the assignee.

**3 CONTRACTOR REPRESENTATIVE**

Prior to start of Contract 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 effort to receive and act on technical matters and resolve problems of a contractual nature.

**4 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:

METRO:                      Blake Hohensee  
                                  METROPOLITAN TRANSIT AUTHORITY  
                                  1900 Main, Procurement Department  
                                  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 VII - INSURANCE ARTICLES****1 INSURANCE REQUIREMENT**

- 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:

\$10,000,000	Each Occurrence
\$10,000,000	General Aggregate
\$10,000,000	Products and Completed Operations Liability Aggregate

- Policy shall be endorsed to name METRO as Additional Insureds as respects Contractor's operations in performance of this contract.
- Policy shall be endorsed with a waiver of subrogation recognizing the waiver of all rights of subrogation or recovery against METRO 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.
- A Claims Made policy will be acceptable. If this is the case, Contractor shall maintain such General Liability insurance for not less than five years after acceptance of the last paratransit van delivered under this contract. Products Liability coverage may be provided by a single policy of insurance or by a combination of primary, excess or umbrella policies.

**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
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- Policy shall be endorsed to name METRO as Additional Insureds as respects Contractor's operations in performance of this contract.
- Policy shall be endorsed with a waiver of subrogation recognizing the waiver of all rights of subrogation or recovery against METRO 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.

**PROPERTY** written on an All-Risk form, providing replacement cost coverage for property damage to METRO's owned property in the care, custody, and control of contractor while on contractor's premises, or in transit.

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

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

All policies of insurance presented as proof of compliance with the above requirements shall be on forms and with insurance companies approved by METRO. All such insurance policies shall be provided by insurance companies having Best's ratings of

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

- B. Contractor agrees to waive all rights of subrogation or recovery against METRO arising out of any claims for injury(ies) or damages resulting from the work performed by or on behalf of Contractor under this agreement and/or the use of any METRO premises or equipment in the performance of this agreement.
- C. Proof of compliance with these insurance requirements shall be furnished to METRO in the form of an original certificate of insurance including the endorsements mentioned in section A. above, or copies of the applicable policy language effecting required coverage signed by an authorized representative or agent of the insurance company(ies), within fourteen (14) days of notice of award of contract and before any work under this contract will be allowed to commence. Certificates will be unacceptable unless they clearly show that all of the above stipulated requirements have been met. Renewal or replacement certificates shall be furnished METRO not less than seven (7) days prior to the expiration or termination date of the applicable policy(ies). Otherwise, METRO may halt all work under this contract upon expiration or other termination of any required coverage, and work will not be allowed to resume until a satisfactory renewal certificate is received.
- D. The Certificate Holder shall read as follows on the Certificate of Insurance:

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

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

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

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

## **2. INDEMNIFICATION AGREEMENT**

- A. **CONTRACTOR AGREES TO AND SHALL INDEMNIFY AND HOLD HARMLESS METRO, ITS DIRECTORS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEY'S FEES, FOR BODILY INJURY, SICKNESS, DISEASE OR DEATH OF ANY PERSON, OR FOR DAMAGES TO ANY PROPERTY, INCLUDING CONSEQUENTIAL DAMAGES OR LOSS OF USE THEREOF, BROUGHT OR RECOVERABLE BY THIRD PARTIES AGAINST METRO, ITS DIRECTORS AND/OR EMPLOYEES AND ARISING OUT OF OR RESULTING FROM ANY NEGLIGENT ACT OR OMISSION BY CONTRACTOR IN THE PERFORMANCE OF THIS CONTRACT. 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 VIII - SMALL BUSINESS PROGRAM ARTICLES****1 DISADVANTAGED BUSINESS ENTERPRISES**

A. Policy: It is the policy of the U.S. Department of Transportation and METRO that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26.49 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Contract. Consequently the DBE requirements of 49 CFR Part 26 apply to this Contract.

B. DBE Obligation: The Contractor agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Contract. In this regard, all Contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. Contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts assisted by the Department of Transportation.

**SECTION IX - SPECIAL TERMS AND CONDITIONS ARTICLES****1 DATA RIGHTS**

A. Proprietary Rights/Rights in Data. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Contract. It includes the proprietary rights of the following:

1. Shop drawings and working drawings
2. Technical data including manuals or instruction materials, computer or microprocessor software
3. Patented materials, equipment, devices or processes
4. License requirements

B. METRO shall protect proprietary information provided by the Contractor to the fullest extent of the law. The Contractor shall grant a non-exclusive license to allow METRO to utilize such information in order to maintain the vehicles. In the event that the Contractor no longer provides the information METRO has the right to reverse engineer patented parts and software.

C. METRO reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the following subject data in order to operate or maintain the vehicles: (1) any subject data required to be developed and first produced in the performance of the Contract and specifically paid for as such under the Contract, whether or not a copyright has been obtained; and (2) any rights of copyright to which the Contractor, Subcontractor or Supplier purchases ownership for the purpose of performance of the Contract and specifically paid for as such under the Contract. The Contractor agrees to include the requirements of this clause, modified as necessary to identify the affected parties, in each subcontract and supply order placed under the Contract.

D. Access to Onboard Operational Data. METRO grants to the Contractor the right to inspect, examine, download, and otherwise obtain any information or data available from components provided by the Contractor, including, but not limited to, any electronic control modules or other data-collection devices, to the extent necessary to enable Contractor to perform reliability maintenance analysis, corrective action and/or other engineering type Work for the paratransit van. This right expressly excludes access to information or data collected on any equipment not provided and installed by the Contractor.

**2 SOFTWARE**

Upon execution of the Contract, the Contractor shall provide METRO a list of all OEM software comprising proprietary works ("Proprietary Software") for all major vehicle subsystems. From time to time and only upon request, information contained within the listed software may be made available to METRO through the OEM of the vehicle subsystem. The Contractor and OEM are not obligated to provide copies of source code as this is proprietary intellectual property; however, the Contractor is obligated to assist METRO with any technical assistance for the duration of the life of the vehicle.

**3 AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR**

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

**SECTION X - GENERAL TERMS AND CONDITIONS ARTICLES****1 TITLE**

Adequate documents for securing title and license plates for the vehicles in Houston, Texas shall be provided to METRO at least thirty (30) calendar days before each vehicle is released for delivery to METRO. Following final acceptance of each vehicle, the Contractor warrants that the title shall pass to METRO free and clear of all liens, mortgages and encumbrances, financing statements, security agreements, claims, and demands of any character.

**2 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.

**3 METRO-FURNISHED PROPERTY**

A. METRO shall provide the property specifically described in the Technical Specifications to the Contractor, for use only in connection with this Contract.

B. Title to METRO-furnished property shall remain with METRO. The Contractor shall maintain adequate property control records of METRO-furnished property in accordance with sound industrial practice.

C. Unless otherwise provided in this Contract, the Contractor, upon delivery to him of any METRO-furnished property, assumes the risk of, and shall be responsible for, any loss thereof or damage thereto except for reasonable wear and tear, and except to the extent that such property is consumed in the performance of this Contract.

D. The Contractor shall, upon completion of this Contract, prepare for return or dispose of all METRO-furnished property not consumed in the performance of this Contract or not theretofore delivered to the METRO, as may be directed or authorized by the Contracting Officer or his designee. The net proceeds of any such disposal shall be credited to the Contract price or paid in such other manner as the Contracting Officer or his designee may direct.

**4 WARRANTY**

The Contractor agrees that the vehicles provided under this Contract shall be covered by the warranty requirements specified in Exhibit "A" and that the rights and remedies provided therein are in addition to and do not limit any rights afforded to METRO by any other provision of this Contract or by laws.

**5 SERVICE LOCATION**

The Contractor shall have the capability to perform warranty covered repairs on the vehicle engines and transmissions in the Houston metropolitan area. In the event of a fleet defect or if warranty repairs to the basic body structure are required, the Contractor shall follow the repair procedures specified in Contract Exhibit "A". The Contractor shall have sufficient engineering, technical and support personnel to perform warranty and/or retrofit work Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m.

**6 CHANGES**

A. The METRO 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 in any one or more of the following:

1. Drawings, designs or specifications,
2. Method of shipment, or packing
3. Place of delivery,

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 delivery schedule, 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. If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the President & Chief Executive Officer or the duly authorized representative shall have the right to prescribe the manner of the disposition of the property.

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

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

## 7 DISPUTES

Any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement will be decided by the Contracting Officer, who will reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer will be final unless, within ten (10) calendar days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the METRO Contract Appeals Committee. The Contract 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.

## 8 TERMINATION FOR CONVENIENCE OF METRO

A. The performance of work under this Contract may be terminated by METRO in accordance with this Article in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in METRO's best interest. Any such termination shall be effected by delivery to the Contractor of a notice of termination specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.

B. After receipt of a notice of termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:

1. Stop work under the Contract on the date and to the extent specified in the notice of termination;
2. Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the Contract as is not terminated;
3. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination;
4. Assign METRO in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case METRO shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this Article;
6. Transfer title to METRO and deliver in the manner at the times and to the extent if any, directed by the Contracting Officer the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as part of, or acquired in connection with the performance of, the work terminated, and the completed or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to METRO;
7. Use its best efforts to sell, in the manner, at the times, to the extent, and at the price(s) directed or authorized by the Contracting Officer, any property of the types referred to above, provided, however, that the Contractor shall not be required to extend credit to any purchaser, and may acquire any such property under the

conditions prescribed by and at a price(s) approved by the Contracting Officer, and provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by METRO to the Contractor under this Contract or shall otherwise be credited to the price or cost of the work covered by this Contract or paid in such other manner as the Contracting Officer may direct;

8. Complete performance of such part of the work as shall not have been terminated by the notice of termination; and take such action as may be necessary, or as the Contracting Officer may direct, for the protection or preservation of the property related to this Contract which is in the possession of the Contractor and in which METRO has or may acquire an interest.

C. Settlement of claims by the Contractor under this "Termination for Convenience" Article shall be in accordance with the provisions set forth in Federal Acquisition Regulations (FAR) 52.249-2 (c) (d), (e), (f), (g), (h), (i), (j), and (k) except that wherever the word "Government" appears it shall be deleted and the word "METRO" shall be substituted in lieu thereof.

## 9 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 make delivery within the time and in the manner specified in this Contract or any extension thereof; or fails to perform any of the other material 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, item(s) similar to that terminated, and the Contractor will be liable to METRO for any excess costs.

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

1. Acts of God or of the public enemy,
2. Acts of METRO in its contractual capacity,
3. Fires,
4. Floods,
5. Epidemics,
6. Quarantine restrictions,
7. Strikes,
8. Unusually severe weather,
9. Acts of terrorism.

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

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

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

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

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



or under this Contract.

## **10 PATENT INDEMNITY**

Except as otherwise provided, the Contractor agrees to indemnify METRO and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any Patent of the United States arising out of the performance of this Contract or out of the use or disposal by or for the account of METRO of supplies or equipment furnished hereunder.

## **11 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.

## **12 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. Two (2) copies of any material proposed to be published or distributed shall be submitted to the METRO through the Contracting Officer.

## **13 CONFIDENTIAL INFORMATION**

All cost estimates and supporting data are considered confidential. Any other reports, information, data, etc., given or prepared or assembled by the Contractor under this Contract which METRO requests in writing to be kept as confidential shall not be made available to any individual or organization by the Contractor without the prior written approval of METRO. These obligations with regard to confidentiality shall be for three (3) years after completion of this Contract but shall not apply to:

1. Information that was in the Contractor's possession prior to this Contract;
2. Information that is or becomes in the public domain; and
3. Information received lawfully from third parties which have no confidentiality obligations in connection with this Contract.

## **14 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 contract or purchase order.

## **15 ASSIGNMENT**

The Contractor's performance under this Contract shall not be assigned except upon written consent of METRO. The Contractor may assign monies due or to become due to him under the Contract and such assignment will be recognized by METRO, if given proper notice thereof, to the extent permitted by law. Assignment of monies will be subjected to proper offsets in favor of METRO and to deductions provided for in the 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.

## **16 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 Contractor's employees or independent subcontractors; that Contractor 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.

## **17 CONTRACTUAL RELATIONSHIPS**

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

**18 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. The Contract Articles
3. Request for Approval (RFA Forms)
4. Technical Specifications/Scope of Service
5. Drawings

**19 SEVERABILITY**

If any provision of this Contract or 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 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 or 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.

**21 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.

**22 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.

**23 NOTICE TO METRO OF LABOR DISPUTES**

A. Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to METRO.

B. The Contractor agrees to insert the substance of this Article, including this paragraph B, in any subcontract hereunder as to which a labor dispute may delay the timely performance of this Contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify his next higher tier subcontractor, or the prime contractor, as the case may be, of all relevant information with respect to such dispute.

**24 ETHICAL CONDUCT**

A. The METRO Board of Directors has adopted a Code of Ethics governing the conduct of its officers and employees. 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. Contractor is required to maintain those records necessary to prove beyond a reasonable doubt Contractor's compliance with METRO Code of Ethics Policy. METRO shall have the right to review for the purpose of determining compliance with 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

## **25 SUSPENSION OF WORK**

A. METRO may at any time and for any reason within its sole discretion issue a written order to the Contractor suspending, delaying or interrupting all or any part of the Work for a specified period of time.

B. The Contractor shall comply immediately with any such written order and take all reasonable steps to minimize costs allocable to the Work covered by the suspension during the period of work stoppage. Contractor shall continue the Work that is not included in the suspension and shall continue such ancillary activities as are not suspended. The Contractor shall resume performance of the suspended Work upon expiration of the notice of suspension, or upon direction from METRO.

C. The Contractor shall be allowed an equitable adjustment in the Contract price (excluding profit) and/or an extension of the Contract time, to the extent that cost or delays are shown by the Contractor to be directly attributable to any suspension. However, no adjustment shall be made under this section for any suspension, delay or interruption due to the fault or negligence of the Contractor, or for which an equitable adjustment is provided for, or excluded under any other term or condition of the Contract. As soon as reasonably possible but no later than forty-five (45) calendar days, or any other period of time agreed to by the parties, after receipt of the written suspension of work notice, the Contractor shall submit to the Contracting Officer a detailed price and schedule Proposal for the suspension, delay or interruption.

## **26 CONFLICTS OF INTEREST, GRATUITIES**

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

## **27 METRO NON DISCRIMINATION**

METRO shall not discriminate on the basis of race, color, national origin, or sex in the award and performance on any DOT-assisted contract or in the administration of its Program or the requirements of 49 CFR Part 26. METRO shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. METRO's Program, as required by 49 CFR Part 26 and as approved by 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.).

## **28 CONTRACTOR NON DISCRIMINATION**

The Contractor or subcontractor(s) shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR 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.

## **29 EQUAL OPPORTUNITY FOR VEVRAA PROTECTED VETERANS**

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

1. 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:

- i. Recruitment, advertising, and job application procedures.
- ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring.
- iii. Rates of pay or any other form of compensation and changes in compensation.
- iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.

v. Leaves of absence, sick leave, or any other leave.

vi. Fringe benefits available by virtue of employment, whether or not administered by the contractor.

vii. 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.

viii. Activities sponsored by the contractor including social or recreational programs.

ix. Any other term, condition, or privilege of employment.

2. 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.

3. 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.

4. 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 that 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.

5. The provisions of paragraphs 2 and 3 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.

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

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

other type of organization, and who is actively engaged in its management.

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

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

8. 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.

9. 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.

10. 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.

11. The contractor will include the provisions of this clause in every subcontract or 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 subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs, may direct to enforce such provisions, including action for noncompliance.

12. 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.

**SECTION XI - FEDERAL REQUIREMENTS ARTICLES****1 FEDERAL CHANGES**

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

**2 OFFICIALS NOT TO BENEFIT**

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

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

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

**3 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

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

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

C. Withholding for unpaid wages and liquidated damages. METRO shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph B of this Article.

D. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this Article and also an Article requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor with the clauses set forth in this Article.

E. Payrolls and basic records. 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 (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1 (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the cost anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

**4 TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 OBLIGATIONS**

During the performance of this Contract, the Contractor, its assignees and successors in interest agrees as follows:

A. The Contractor shall comply with all requirements of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d; 49 U.S.C. § 5332; and Department of Transportation ("DOT") regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act", 49 C.F.R. Part 21, including any amendments and implementing requirements FTA may issue.

B. The Contractor, with regard to the Work performed by it during the Contract, shall not discriminate on the grounds of race, color, creed, religion, sex, age, disability or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

C. In all solicitations either by competitive bidding or negotiation made by the Contractor for services to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Contract and the regulations relative to nondiscrimination on the grounds of race, color, religion, sex, age, national origin or disability.

D. The Contractor shall provide all information and reports required by the regulations and directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by METRO or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information is required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to METRO, or FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

E. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Article, METRO will impose such contract sanctions as it or FTA may determine to be appropriate, including, but not limited to:

1. withholding of payments to the Contractor under the Contract, in whole or in part.
2. cancellation, termination or suspension of the Contract, in whole or in part.

F. The Contractor shall include the provisions of paragraphs 1 through 7 of this Article in every subcontract, including procurement of materials and leases of equipment, unless exempt by the regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as METRO or FTA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request METRO to enter into such litigation to protect the interests of METRO, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

G. If at any time METRO has reason to believe that the Contractor is in violation of its obligations under these provisions, or has otherwise failed to comply with these provisions, METRO may, in addition to pursuing any other available legal remedy, commence proceedings to impose sanctions on the Contractor. Such sanctions may include, but not be limited to, one or more of the following:

1. The suspension of any payment or part thereof until such time that compliance is demonstrated;
2. The termination or cancellation of the Contract in whole or in part unless compliance is demonstrated within a reasonable time; and
3. The denial of the Contractor to participate in any future contracts awarded by METRO.

**5 BUY AMERICA**

A. The Contractor agrees to comply with 49 USC 5323(j) and 49 CFR Part 661, which provide that federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7. A general public interest waiver from the Buy America requirements applies to microprocessors, computers, microcomputers, software or other such devices, which are used solely for the purpose of processing or storing data. This general waiver does not extend to a product or device that merely contains a microprocessor or microcomputer and is not used solely for the purpose of processing or storing data.

B. Separate requirements for rolling stock are set out at 49 USC 5323(j)(2)(C) and 49 CFR 661.11.

C. A Bidder or Proposer must submit to the Agency the appropriate Buy America Certification with all offers on FTA-funded contracts, except those subject to a general waiver. Proposals that are not accompanied by a properly completed Buy America certification are subject to the provisions of 49 CFR 661.13 and may be rejected as nonresponsive.

## **6 POST-DELIVERY AUDIT OF VEHICLES FOR SPECIFICATION AND BUY AMERICA COMPLIANCE**

The Contractor agrees to comply with 49 USC § 5323(l) and FTA's implementing regulation at 49 CFR Part 663 and to submit the following certifications:

A. The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the recommended Bidder/Proposer certifies compliance with Buy America, it shall furnish METRO at the time each vehicle is delivered, (1) a list of components and subcomponents used in the assembly and manufacturing of the vehicles; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly. The list of components and subcomponents that must be furnished is attached hereto as the Contract Exhibit "C", "LIST OF VEHICLE COMPONENTS AND SUBCOMPONENTS", and will be used by METRO's Auditor to perform FTA required post-delivery audit of vehicles for specification and Buy America compliance.

B. The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

C. The Contractor shall submit (1) manufacturer's FMVSS self-certification, Federal Motor Vehicle Safety Standards, that the vehicle complies with relevant FMVSS or (2) manufacturer's certified statement that the contracted paratransit van will not be subject to FMVSS regulations.

D. Further to the above, the Contractor shall make available in its office, at all reasonable times, all records and documents pertaining to this Contract in sufficient detail to permit METRO's Auditor and Resident Inspector to perform a post-delivery audit of the vehicles, for compliance with the Contract specifications and Buy America requirements, pursuant to the Federal Transit Administration's Final Rule as published in the Federal Register.

## **7 FEDERAL MOTOR VEHICLE SAFETY STANDARDS**

The Contractor shall furnish to the Contracting Officer, at time of delivery, a certification of compliance that each vehicle is in compliance with the Federal Motor Vehicle Safety Standards established by the Department of Transportation, which are in effect at time of vehicle manufacture.

## **8 MOTOR VEHICLE POLLUTION REQUIREMENTS**

The Contractor shall provide a certification in writing that:

A. The horsepower of the vehicle is adequate for the speed, range and terrain in which it will be required to operate and also to meet the demands of all auxiliary power equipment.

B. All gases and vapors emanating from the crankcase of a start-ignition engine are controlled to minimize their escape into the atmosphere.

## **9 ACCESS TO RECORDS**

A. The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three 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 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 CFR 18.39(i)(11).

B. In accordance with 49 CFR 18.36(i), 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. Contractor also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5307, 5309 or 5311.

## **10 ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES**

The Contractor agrees to comply with, and assure 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.



## 11 ENVIRONMENTAL REQUIREMENTS

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

A. Environmental Protection. The Contractor shall comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq.

B. Air Quality. The Contractor shall to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to METRO, to FTA and the appropriate EPA Regional Office. The Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

C. Clean Water. The Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to METRO, to FTA and the appropriate EPA Regional Office. The Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

D. Use of Public Lands. The Contractor shall ensure that no publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, state, or local significance as determined by the Federal, state, or local officials having jurisdiction thereof, or any land from a historic site of national, state, or local significance may be used under this Contract unless the FTA makes the specific findings required by 49 U.S.C. § 303.

E. Historic Preservation. The Contractor shall assist the Federal Government in complying with section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f, involving historic and archaeological preservation.

F. Mitigation of Adverse Environmental Effects. The Contractor shall take all reasonable steps to minimize adverse environmental effects in accordance with 49 U.S.C. § 5324(b), and all other applicable Federal laws and regulations, specifically the procedures of 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

G. Energy Conservation. The Contractor shall comply with the mandatory energy efficiency standards and policies within the applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 et seq.

## 12 RECYCLED PRODUCTS

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

## 13 FLY AMERICA

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

## 14 CARGO PREFERENCE--USE OF UNITED STATES-FLAG VESSELS

The Contractor agrees:

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

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

C. to include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material or commodities by ocean vessel.

## **15 RESTRICTIONS ON LOBBYING**

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49CFR 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 form in Section II, entitled "Certification of Restrictions on Lobbying".

## **16 DEBARMENT AND SUSPENSION**

A. The Contractor, including any of its officers or holders of a controlling interest, is obligated to inform METRO whether or not it is or has been on any debarred bidders' list maintained by the United States Government. Should the Contractor be included on such a list during performance of this Contract, it shall so inform METRO.

B. The Contractor and any subcontractor under this Contract shall comply with the certification process under 49 C.F.R. Part 29, "Government Wide Debarment and Suspension (Non-Procurement)", whereby, unless otherwise permitted by law, any person, corporation, partnership or legal entity that is debarred, suspended, or voluntarily excluded by the Federal Government from obtaining federal assistance funds through grants, cooperative agreements or third party contracts may not participate in a federally assisted project.

## **17 NO OBLIGATION BY THE FEDERAL GOVERNMENT**

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

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

## **18 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

The preceding provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation (DOT), whether or not expressly set forth in the contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, or its successors, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any METRO requests, which would cause METRO to be in violation of the FTA terms and conditions.

## **19 FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

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

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

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

subject to the provisions.

## **20 MAINTENANCE OF RECORDS; ACCESS BY METRO; RIGHT TO AUDIT RECORDS**

A. In accordance with 49 CFR § 18.36(i), 49 CFR § 19.48(d), and 49 USC § 5325(a), provided METRO is the FTA recipient or a sub-grantee of the FTA recipient, the Contractor agrees to provide METRO, FTA, the Comptroller General of the United States, the Secretary of the U.S. Department of Transportation, the State of Texas or any of their duly authorized representatives access to any books, documents, papers and records of the Contractor that are directly pertinent to or relate to this Contract (1) for the purpose of making audits, examinations, excerpts and transcriptions and (2) when conducting an audit and inspection.

1. In the event of a sole source Contract, single Proposal, single responsive Proposal, or competitive negotiated procurement, the Contractor shall maintain and the Contracting Officer, the U.S. Department of Transportation (if applicable) or the representatives thereof shall have the right to examine all books, records, documents and other cost and pricing data related to the Contract price, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, or combinations thereof. Data related to the negotiation or performance of the Contract shall be made available for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data. The right of examination shall extend to all documents necessary for adequate evaluation of the cost or pricing data, along with the computations and projections used therein, including review of accounting principles and practices that reflect properly all direct and indirect costs anticipated for the performance of the Contract.

2. For Contract modifications or change orders the Contracting Officer, the U.S. Department of Transportation, if applicable, or their representatives shall have the right to examine all books, records, documents and other cost and pricing data related to a Contract modification, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, or combinations thereof. Data related to the negotiation or performance of the Contract modification or change order shall be made available for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data. The right of examination shall extend to all documents necessary for adequate evaluation of the cost or pricing data, along with the computations and projections used therein, either before or after execution of the Contract modification or change order for the purpose of conducting a cost analysis. If an examination made after execution of the Contract modification or change order reveals inaccurate, incomplete or out-of-date data, the Contracting Officer may renegotiate the Contract modification or change order price adjustment, and METRO shall be entitled to any reductions in the price that would result from the application of accurate, complete or up-to-date data. Lines 2 to end of paragraph are off by one space on the left margin.

3. The requirements of this section are in addition to other audit, inspection and record-keeping provisions specified elsewhere in the Contract documents.

## **21 VETERANS EMPLOYMENT**

Recipients and subrecipients of Federal financial assistance under this chapter shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

## **22 ENTIRE AGREEMENT**

This Contract along with the attached exhibits constitutes 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 XII - EXHIBITS**

**1 EXHIBIT" A" PARATRANSIT VAN TECHNICAL SPECIFICATIONS AND DRAWINGS**

**Please Note: Exhibit "A" is a separate document on the IFB website.**

**2 EXHIBIT" B" CONTRACTOR'S RELEASE**

Pursuant to the terms of METRO Contract No. \_\_\_\_\_, as amended, and in consideration of the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), which has been or is to be paid under said Contract to \_\_\_\_\_ (hereinafter called the Contractor) or its assignees, if any, the Contractor for itself and its subcontractors, upon payment of the said sum by the Metropolitan Transit Authority (hereinafter called METRO), does release and discharge METRO, their 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 \_\_\_\_\_, 200\_.

By:

**CERTIFICATE**

I, \_\_\_\_\_, certify that I am \_\_\_\_\_ (Title) of the firm named as the Contractor in the foregoing release; that \_\_\_\_\_, 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 and behalf of said firm; and is within the scope of its powers as so constituted.

(If Corporation, Affix the Corporate (If Corporation, Affix the Corporate Seal)

**3 EXHIBIT "C" REQUEST FOR APPROVALS RESPONSES**

**(To be inserted at Contract award) The requests for Approvals (RFA's) submitted by prospective bidders and METRO's responses thereto, attached hereto, are hereby incorporated into the Proposed Contract**

**4 EXHIBIT "D" SUPER CIRCULAR**

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. 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 must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See § 200.322 Procurement of recovered materials.

(K) Prohibition on contracting for certain Telecommunications and video surveillance services or equipment

A. Definitions. The definitions set forth in 48 C.F.R. 52.204-25(a) shall apply to this Section K.

B. Prohibitions.

1. The Contractor is prohibited from providing to METRO any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at Paragraph C of this Section applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.
2. The Contractor is prohibited from using any equipment, system or services that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception under Paragraph C of this Section applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a federal contract.

C. Exceptions. This Section does not prohibit the Contractor from providing:

1. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
2. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

D. Reporting Requirement.

1. In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in Paragraph D.2 of this clause to the Contracting Officer, unless elsewhere in this Contract are established procedures for reporting the information.
2. The Contractor shall report the following information pursuant to Paragraph D.1 of this Section :
  - a) *Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.*
  - b) *Within 10 business days of submitting the information in Paragraph D.2.b of this Section by further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.*

E. Subcontracts. The Contractor shall insert the substance of this clause, including this Paragraph E and excluding Paragraph B.2 in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.



(L) Domestic Preferences for Procurements

As appropriate and to the extent consistent with law, the Contractor and all subcontractors shall provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). This requirement must be included in all subcontracts.

M) National Intelligent Transportation Systems Architecture and Standards

The Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture requirements of 23 U.S.C. § 517(d), unless it obtains an exemption from those requirements, and to follow FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 Fed. Reg. 1455, January 8, 2001, and all other applicable federal guidance.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014]

**5 EXHIBIT "E" FEDERAL CERTIFICATES**

**(To be inserted at Contract award Contract)**