



METROPOLITAN TRANSIT AUTHORITY

INVITATION FOR BIDS (IFB)

FOR

PURCHASE OF ULTRA LOW SULFUR DIESEL

METRO IFB NO. 4022000132

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

METRO FUNDING 100%

**IMPORTANT – Notice to Bidder**

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

Metropolitan Transit Authority  
Procurement Division  
Plan Room, 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

## TABLE OF CONTENTS

<b>SECTION I – BIDDING REQUIREMENTS AND INSTRUCTIONS .....</b>	<b>iii</b>
1 INVITATION FOR BIDS SUMMARY .....	iii
2 FORMS – SUBMITTAL REQUIREMENTS CHECKLIST .....	vi
<b>SECTION II - FORMS FOR BIDDING/AWARD .....</b>	<b>1</b>
1 BID AND AWARD FORM.....	1
2 BID CONTRACT AMOUNT, ITEMS AND PRICES .....	2
<b>SECTION III - DELIVERIES OR PERFORMANCE ARTICLES.....</b>	<b>3</b>
1 DEFINITIONS .....	3
2 CONTRACT PERIOD .....	3
3 ESTIMATED VOLUMES .....	3
4 ORDERING AND DELIVERY REQUIREMENTS.....	4
5 COMPLIANCE WITH LAWS AND PERMITS.....	4
6 DELIVERY OF FUEL .....	4
7 SPILLAGE CLEAN-UP.....	4
8 EMERGENCY DELIVERY .....	4
9 TEXAS ETHICS COMMISSION (TEC) ELECTRONIC FILING .....	4
<b>SECTION IV - INSPECTION AND ACCEPTANCE ARTICLES.....</b>	<b>5</b>
1 INSPECTION .....	5
<b>SECTION V - CONTRACT ADMINISTRATION DATA ARTICLES .....</b>	<b>6</b>
1 COMPENSATION .....	6
2 INVOICING AND PAYMENT.....	6
<b>SECTION VI - INSURANCE ARTICLES.....</b>	<b>7</b>
1 CONTRACTOR'S INSURANCE.....	7
1 INDEMNIFICATION AGREEMENT.....	8
<b>SECTION VII - SPECIAL TERMS AND CONDITIONS ARTICLES.....</b>	<b>9</b>
1 AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR.....	9
2 COMMERCIAL WARRANTY .....	9
3 INTER-LOCAL/COOPERATIVE PURCHASE.....	9
4 MOST FAVORED CUSTOMER .....	9
5 NEW MATERIAL.....	9
6 EMERGENCY FUEL SUPPLY PROVISIONS.....	9
<b>SECTION VIII - GENERAL TERMS AND CONDITIONS ARTICLES.....</b>	<b>10</b>
1 ACCEPTANCE.....	10
2 AMENDMENTS AND/OR MODIFICATIONS .....	10
3 ASSIGNMENT .....	10
4 CHANGES .....	10
5 DISPUTES .....	10
6 CONTRACT ORDER OF PRECEDENCE .....	10
7 DISSEMINATION OF CONTRACT INFORMATION .....	11
8 EQUAL EMPLOYMENT OPPORTUNITY .....	11
9 EQUAL OPPORTUNITY FOR VEVRAA PROTECTED VETERANS.....	11
10 ETHICAL CONDUCT .....	13
11 FORCE MAJEURE .....	13
12 INTERPRETATION, JURISDICTION AND VENUE .....	14
13 METRO DELAY OF WORK .....	14
14 PAYMENTS AND DISCOUNTS.....	14
15 PROHIBITED INTEREST .....	14
16 TERMINATION FOR CONVENIENCE OF METRO.....	14
17 TERMINATION FOR DEFAULT.....	14
18 TITLE AND RISK OF LOSS.....	15
19 ENTIRE AGREEMENT .....	15
<b>SECTION IX - EXHIBITS .....</b>	<b>16</b>
1 EXHIBIT A SPECIFICATION OF FUEL DELIVERY.....	16
2 EXHIBIT B SPECIFICATION - ULTRA LOW SULFUR DIESEL TXLED.....	18
3 EXHIBIT C CERTIFICATION OF RESTRICTIONS ON LOBBYING .....	20
4 EXHIBIT D DEBARMENT AND SUSPENSION FORM.....	21
5 EXHIBIT E CODE OF ETHICS OF THE METROPOLITAN TRANSIT AUTHORITY .....	22

## SECTION I - BIDDING REQUIREMENTS AND INSTRUCTIONS

### 1 INVITATION FOR BIDS SUMMARY

IFB NO.: 4022000132

IFB ISSUE DATE: June 13, 2022

PROJECT NAME: Purchase of Ultra Low Sulfur Diesel

ISSUED BY: Metropolitan Transit Authority of Harris County (METRO)

SUBMIT INQUIRIES BY WRITING OR CALLING:

METROPOLITAN TRANSIT AUTHORITY  
Procurement Division  
1900 Main Street  
Houston, Texas 77002

NAME: Blake Hohensee  
TITLE: Sr. Contract Administrator  
TELEPHONE: (713) 739-4860  
E-MAIL: [jh52@ridemetro.org](mailto:jh52@ridemetro.org)

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

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

**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, June 29, 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, June 30.](#) 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#

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

**The City of Houston** may also decide to award contracts from this solicitation/resulting contract(s). **The City of Houston** estimated volumes are listed on page 4. (METRO's estimated volumes are listed on page 3.)

**BID EVALUATION AND AWARD:** For the purposes of award, METRO will consider the fixed differential of individual items. One award of a firm fixed price contract will be made to the responsive responsible bidder whose bid conforms to the requirements of this Solicitation. The lowest price bidder is not guaranteed that it will receive the METRO contract award.

METRO reserves the right to reject any and all bids, to waive any informalities in bids received and the right to reject all nonconforming, non-responsive or conditional bids. Unless stated elsewhere in this solicitation, the bidding of equivalents is not permitted and will be cause for bid rejection. Alternate/multiple bids will not be considered. Bids in which prices are obviously unbalanced may be rejected. Bids containing apparent clerical mistakes such as discrepancy between unit bid price and the price extension or the sum of the extended amounts and the total bid price, or other apparent clerical mistakes, will be resolved by the Contract Administrator in accordance with the 'Errors in Bids' procedures contained in METRO's Procurement Manual in Chapter 4.

**CONFLICTS DISCLOSURE:** Vendors doing business with METRO or seeking to do business with METRO are required to file a completed questionnaire (FORM CIQ) disclosing the vendor's affiliations or business relationship with any Board Member, local government officer (or his or her family member). Form CIQ is available on METRO's website at <https://www.ridemetro.org/Pages/ConflictsDisclosure.aspx>.

**DEBARMENT AND SUSPENSION:** The bidder certifies, by submission of the bid, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. Where the bidder is unable to certify to any of the statements in this certification, the bidder shall attach an explanation to the bid it submits to METRO.

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

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

**DISCOUNTS:** No discounts for prompt payment will be considered in the evaluation of bids.

**DISPUTES:** Refer to Section VIII, Article 5, Disputes.

**EXPLANATION TO BIDDER/AMENDMENTS:** Any explanation desired by a bidder regarding the meaning or interpretation of this Solicitation must be requested in writing and received by METRO **at least ten (10 days) calendar days before the date set to receive bids**. METRO's response will be issued as an amendment and will be furnished to all prospective bidders. METRO may also issue amendments when a solicitation is changed.

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

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

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

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

**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 'Solicitation, Bid and Award' form may provide for submittal of a price or prices for one or more items, which may be lump sum bids, alternative prices, scheduled items resulting in a bid on a unit price, lump sum or a combination thereof. Where the Bid form explicitly requires that the bidder bid on all items, failure to do so will disqualify the bid. When submittal of a price on all items is not required, a bidder shall insert the words 'no bid' in the space provided for any item on which no price is submitted.
3. If a bid is from an individual, sole proprietorship, or a bidder operating under a trade name, the bid shall be signed by that individual.
4. A bid by a partnership shall be executed in the partnership name and signed by a partner; the official address of the partnership shall be shown where indicated on the 'Solicitation, Bid and Award' form.
5. A bid by a corporation shall be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal shall be affixed and attested by the corporate secretary or assistant secretary.
6. A bid submitted by a joint venture shall list the names of all joint venturers and the mailing addresses of each and shall be executed by all joint venturers in the same manner as if they were individually submitting bids. The signature portion of the Bid Form shall be altered as appropriate for execution by the joint venture and all joint venturers.
7. All names shall be typed or printed below the signature.
8. The bid shall contain an acknowledgment of receipt of all amendments to the solicitation.
9. Communications regarding this solicitation are to be directed to the address and to the attention of the person shown in this Invitation for Bids document.

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

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

**PROTESTS:** A complete copy of the protest procedures can be obtained by submitting a written request to the Contract Administrator for this Solicitation. Each protest or objection to the solicitation documents shall be submitted for resolution to the Chief Procurement Officer. Each such protest shall be in writing and shall be supported by sufficient information as set forth in Chapter 12 of METRO's Procurement Manual to enable the protest to be considered. A protest or objection based upon restrictive specifications, alleged improprieties, terms, conditions or form of a proposed procurement action prior to bid opening, shall be submitted so that it is received by METRO no later than five (5) calendar days prior to the specified bid opening date. A protest concerning award decisions, including bid evaluations, shall be submitted so that it is received within five (5) calendar days after the interested party knows, or through exercise of reasonable diligence should have known, whichever is earlier, of the grounds for the protest, following bid opening.

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

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

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

- a) Be an authorized distributor or reseller of any item to be furnished under this Contract by the manufacturer of that item;
- 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;
- e) Have necessary technical and management capability to perform;
- f) Have a satisfactory record of business integrity and ethics;
- g) If applicable, have a satisfactory record, as a Contractor, of achieving Small Business Contract Goals in past METRO projects, as well as providing evidence satisfactory to METRO that the bidder will comply with Small Business Program requirements and Small Business goals contained herein;
- 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.

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

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

The link to the METRO SBE directory is <https://ridemetro.sdbbe.com/> The link to the Texas Unified Certification Program (TUCP) DBE directory is <https://txdot.txdotcms.com/>

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

Copies of METRO's Small Business Program can be obtained upon request. METRO encourages Contractors to use financial institutions owned and controlled by socially and economically disadvantaged individuals. A listing of such institutions may be found at <https://www.fdic.gov/regulations/resources/minority/mdi.html>

**TAXES:** METRO is exempt from payment of Federal Excise and Transportation Tax and the Texas Limited Sales, Excise and Use Tax. The Contractor's invoice(s) shall not contain assessments of any of these taxes.

## **2 FORMS – SUBMITTAL REQUIREMENTS CHECKLIST**

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

'Signed Bid and Award' form	Section II, Article 1
'Bid/Contract Amount, Items and Prices' form	Section II, Article 2
'Certification of Restrictions on Lobbying form	Section IX, Exhibit C
'Debarment and Suspension Certification form	Section IX, Exhibit D
'Code of Ethics of the Metropolitan Transit Authority 'Amendments (if issued)	Section IX, Exhibit E

### **SUBMIT ONLY IF APPLICABLE**

Evidence of attainment of proper license or permit, if special licensing or permitting is required by federal, state or local law or ordinance.

SECTION II - FORMS FOR BIDDING/AWARD

1 BID AND AWARD FORM

METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY TEXAS - INVITATION FOR BIDS

For: Purchase of Ultra Low Sulfur Diesel

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

\_\_\_\_\_ No./Date \_\_\_\_\_ No./Date \_\_\_\_\_ No./Date \_\_\_\_\_ No./Date \_\_\_\_\_ No./Date

OFFER (To be completed by Offeror)

In compliance with the above-referenced Invitation for Bids, the undersigned agrees, if this offer is accepted within one hundred twenty (120) calendar days from receipt of bids, to furnish any or all items listed in Section II, 'Bid/Contract Amount, Items and Prices,' upon which prices are offered. The undersigned further agrees to deliver at the designated delivery point and within the time specified in Section III.

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

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

DISCOUNT FOR PROMPT PAYMENT:
\_\_\_% 10 DAYS \_\_\_% \_\_\_ DAYS

OFFEROR COMPANY NAME AND ADDRESS:

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

EMAIL: \_\_\_\_\_

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

SIGNATURE OF OFFEROR:

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

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

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

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

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

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

METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY
Executed for and on behalf of the Metropolitan Transit Authority
pursuant to Resolution No. \_\_\_\_\_ of the Board of Directors on
the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, and on file in the office of the
Assistant Secretary of the Authority.

CONTRACT NO.: \_\_\_\_\_

ITEM NO. AWARDED: \_\_\_\_\_

AWARD AMOUNT: \_\_\_\_\_

BUDGET NO.: 130010

PROJECT MANAGER: \_\_\_\_\_

APPROVED AS TO FORM:

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

APPROVED BY:

NAME: \_\_\_\_\_
Michael Kyme
TITLE: Chief Procurement Officer

NAME: \_\_\_\_\_
Debbie Sechler
TITLE: Executive Vice President, Administration

NAME: \_\_\_\_\_
George Fotinos
TITLE: Interim Chief Financial Officer

ATTEST:

NAME: \_\_\_\_\_
Reca Perry
TITLE: Board Support Coordinator

**2 BID CONTRACT AMOUNT, ITEMS AND PRICES**

Bidder shall provide all necessary resources to supply fuel in accordance with the specifications listed for the items at the bid prices below.

The Contractor shall provide Ultra Low Sulfur Diesel from fuel racks located within 25 miles of any METRO facility listed in Section IV, List of METRO Facilities. Withdrawal of fuel will begin October 1, 2022, for 36-month requirements type Contract. Yearly volume of fuel is estimated according to Section III, Estimated Volume. Fuel shall be available to be loaded to fuel trailers 24 hours a day, 7 days a week, 365 days a year. The wait time to load fuel at the rack shall not exceed 2 hours. Transportation of fuel to METRO facilities is not requested for this solicitation.

The Contractor shall be a fuel producer with prominent presence at the primary racks location from which fuel will be obtained. The Contractor shall provide METRO with a fixed primary rack position for the duration of the contract and be able to consistently provide the fuel volumes specified herein. The Contractor shall also have a backup rack location that must be able to supply fuel when the primary location is down more than 1 hour during a 24-hour period. (METRO will not award a contract to a Contractor that will require METRO to load fuel from different rack locations from day to day.

Resultant Contract pricing will be based on the corresponding OPIS Price Index or PLATTS Price Index whichever is beneficial to METRO listed below for Item 1a or 1b, plus the corresponding Fixed Differential Amount, plus the applicable State taxes and fuel delivery fees. Note: METRO is exempt from paying Federal Fuel taxes.

**Item No. 1 - Ultra Low Sulfur Diesel** as specified in Exhibit B

1a. OPIS PRICE INDEX: OPIS CONTRACTS – HOUSTON, TX 10:AM EASTERN Time Edition, Ultra Low Sulfur Diesel per gallon the day fuel is lifted from the rack. The Contractor shall supply proof of the relevant OPIS Newsletter pricing with each invoice.

1b. PLATT’S PRICE INDEX: PLATT’S Marketscan U.S. Gulf Coast Ultra Low Sulfur Diesel Mean Daily Average (Pipeline) per gallon for the day prior to the day the fuel is lifted from the rack.

BID FIXED DIFFERENTIAL AMOUNT per gallon shall include all applicable fees for all additives necessary for the fuel to meet the Ultra Low Sulfur Diesel specifications of Exhibit B and transport fees to METRO facilities. The BID FIXED DIFFERENTIAL AMOUNT (B) shall not include any taxes. The differential shall be no more than 4 decimal places.

(A)		(B)	(C)	(D)
(1a.) OPIS PRICE INDEX PER GALLON (hypothetical)		BID FIXED DIFFERENTIAL AMOUNT PER GALLON (PLUS or MINUS)	ESTIMATED APPLICABLE TAXES & PETROLEUM PRODUCT DELLIVERY FEE PER GALLON	TOTAL BID UNIT PRICE  PER GALLON
\$1.7240	(+/-)	\$	(+) \$0.2062	= \$X.XXXX

(A)		(B)	(C)	(D)
(1b.) PLATTS PRICE INDEX PER GALLON (hypothetical)		BID FIXED DIFFERENTIAL AMOUNT PER GALLON (PLUS or MINUS)	ESTIMATED APPLICABLE TAXES & PETROLEUM PRODUCT DELLIVERY FEE PER GALLON	TOTAL BID UNIT PRICE  PER GALLON
\$1.7240	(+/-)	\$	(+) \$0.2062	= \$X.XXXX



### SECTION III - DELIVERIES OR PERFORMANCE ARTICLES

#### 1 DEFINITIONS

- A. 'METRO' shall mean Metropolitan Transit Authority of Harris County, Texas.
- B. The term 'President & Chief Executive Officer' means the President & Chief Executive Officer of the Metropolitan Transit Authority and the term 'the duly authorized representative' means any person specifically authorized to act for the President & Chief Executive Officer. These representatives are authorized to obligate METRO by executing this Contract, and any modification thereto.
- C. The term 'Contracting Officer' means the Contract Administrator who has been designated the responsibility, by the METRO Chief Procurement Officer, for overall administration of the contract, excluding the execution of contract modifications.
- D. The term 'METRO Project Manager' means the technical representative who has been designated to act on behalf of METRO in monitoring and assessing the Contractor's services and/or technical performance and progress; inspecting and periodically reporting on such performance and progress during the stated period of performance, and finally certifying as to the acceptability of the contract Work in its entirety or any portion thereof, as required by the contract documents.
- E. Depending on the disputes resolution process selected by the Contractor at the time of bidding:
  - 1. The term 'Contract Disputes Appeals Committee' means the METRO administrative body designated by the President & Chief Executive Officer to hear a Contractor's appeal submitted under the 'Disputes' Article of this Contract.
  - 2. The term 'Arbitrator' means the individual selected by both METRO and the Contractor to hear an appeal submitted under the 'Disputes' Article of this Contract.
- F. The term 'Work' means all construction, labor, materials, equipment, and contractual requirements as specified, or indicated in the Contract documents, including all alterations, amendments, or extensions thereto made by authorized changes.
- G. The term 'Contractor' shall mean the individual, partnership, corporation, organization, or association contracting with METRO to furnish all materials, goods and work defined herein. As may be used herein, the terms 'Contractor' and 'Consultant' are synonymous.
- H. The term 'subcontract' means any agreement including purchase orders (other than one involving an employer employee relationship) entered into between the Contractor and a subcontractor calling for services, labor, equipment, and/or materials required for Contract performance, including any modifications thereto.
- I. The terms 'subcontractor' and 'subcontractor and supplier' mean any individual, partnership, firm, corporation or joint venture that contracts with the Contractor to furnish services, labor, equipment and/or materials under this Contract. As used herein, the terms 'subcontractor' and 'subcontractor and supplier' are synonymous.

#### 2 CONTRACT PERIOD

- A. The overall performance period for this Contract shall be three (3) years from the effective date of the Contract, unless otherwise extended or terminated by METRO in accordance with the terms and conditions of this Contract.
- B. In the event additional time is required by METRO to initiate a new contract, Contractor agrees to continue providing services to METRO on a month-to-month basis for a period not-to-exceed six (6) months at the same prices and terms and conditions of the original contract.

#### 3 ESTIMATED VOLUMES

The METRO estimated volume of fuel shall be plus (+) or minus (-) 20% of the following. These are estimated volumes and METRO shall not be held responsible if lesser volumes are purchased.

##### Ultra Low Sulfur Diesel

**9,421,760 gallons Oct. 2022 – Sep. 2023**

**10,363,936 gallons Oct. 2023 – Sep. 2024**

**10,778,493 gallons Oct. 2024 – Sep. 2025**

**The City of Houston may also decide to award contracts from this solicitation/resulting contract.**

The City of Houston estimated volume of fuel would be plus (+) or minus (-) 20% of the following:

**Ultra Low Sulfur Diesel**

**2,953,485 gallons Oct. 2022 – Sep. 2023**

**3,027,322 gallons Oct. 2023 – Sep. 2024**

**3,103,005 gallons Oct. 2024 – Sep. 2025**

**4 ORDERING AND DELIVERY REQUIREMENTS**

- A. The fuel under this Contract shall be ordered via telephone or email by the Project Manager or designee who shall be identified to the Contractor in writing upon execution of the Contract. All orders shall be considered “placed” on the date the verbal or emailed order was placed.
- B. The Contractor shall notify METRO immediately, if at any time, it appears that the delivery schedule set forth may not be met. Nothing herein shall be interpreted as waiving remedies otherwise available to METRO.
- C. Orders placed on the last day of the Contract period of performance shall be completed by the Contractor within the time specified in the order. The Contract shall govern the Contractor’s and METRO’s right and obligation with respect to the delivery to the same extent as if the delivery were completed during the Contract term; provided, the Contractor shall not be required to make any deliveries under this Contract more than thirty (30) calendar days after Contract expiration.

**5 COMPLIANCE WITH LAWS AND PERMITS**

The Contractor shall give all notices and comply with Federal, State and Municipal law, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Contract. If the Contractor or METRO observes that this Contract is at variance therewith in any respect, any necessary changes shall be adjusted by appropriate modifications. Upon request, the Contractor shall furnish to METRO certificates of compliance with all laws, ordinances, rules, regulations and orders.

**6 DELIVERY OF FUEL**

All fuel transport services shall be made using trucks that are in compliance with all laws and regulations and made only to the facilities designated herein.

**7 SPILLAGE CLEAN-UP**

- A. Contractor shall be responsible for cleaning up and spillage that may occur during delivery. Delivery Driver shall not leave METRO premises until spillage is cleaned. If the spillage cannot be cleaned by the Delivery Driver, he or she shall inform METRO and then in turn, inform the Contractor, who shall send staff immediately to clean up the spillage.
- B. If the Contractor does not clean up spillage caused by their delivery and METRO undertakes the task, in accordance with Exhibit A, Paragraph 6.4, Contractor shall be liable for the cost incurred by METRO in the cleaning up of spillage.
- C. Contractor shall provide their contact personnel in cases of spillage:

**8 EMERGENCY DELIVERY**

The Contractor shall make every reasonable attempt to deliver fuel during and following natural disaster, such as hurricanes, to METRO.

**9 TEXAS ETHICS COMMISSION (TEC) ELECTRONIC FILING**

In the event this Contract requires the approval of METRO’s Board of Directors, the Contractor shall submit to METRO, after notification that METRO’s Board has authorized the Contract and prior to final execution of the Contract, a completed, signed and notarized Form 1295 generated by the Texas Ethics Commission’s (the TEC) electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (a Form 1295). The Contractor hereby confirms and agrees to submit such forms with the TEC through its electronic filing application at: [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm).

**SECTION IV - INSPECTION AND ACCEPTANCE ARTICLES**

**1 INSPECTION**

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

**SECTION V - CONTRACT ADMINISTRATION DATA ARTICLES**

**1 COMPENSATION**

- A. The Contractor shall be compensated for the items ordered and accepted at the firm fixed unit prices as provided in Section II, No. 2, 'Bid/Award form 'Bid/Contract Amount, Items & Prices.'
- B. METRO's total obligation for the satisfactory performance of this Contract shall not exceed \_\_\_\_\_ and \_\_\_/100 Dollars (\$\_\_\_\_\_.\_\_\_\_), less any prompt payment discount earned or set forth in Paragraph C below.
- C. Prompt payment discount(s): \_\_\_\_%. In connection with any discount offered for prompt payment, time shall be computed from the date of receipt of a properly prepared invoice by METRO or acceptance of all materials and goods furnished and work performed, whichever is later. For the purposes of computing the discount earned, payment shall be considered to have been made on the date that the payment is mailed or the date which an electronic funds transfer was made.
- D. The Contract price is not subject to any adjustment should METRO not order the full quantity described as estimated.

**2 INVOICING AND PAYMENT**

- A. The Contractor shall submit an original invoice for payment to the address shown below for the purchase and delivery of Ultra Low Sulfur Diesel, which has been inspected and accepted by METRO:

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

**SECTION VI - INSURANCE ARTICLES**

**1 CONTRACTOR'S INSURANCE**

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

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

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

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

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

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

- Policy shall be endorsed with the MCS-90.
- Policy shall be endorsed to name METRO and its directors and employees, 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.

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

The insurance coverages required in this section shall not limit the Contractor's liability or limit the indemnification provisions set forth herein.

If the Contractor maintains higher limit than the minimums shown above, METRO requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specific minimum limits of insurance and coverage shall be available to METRO.

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

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

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

## **2 INDEMNIFICATION AGREEMENT**

- A. **THE CONTRACTOR AGREES TO AND SHALL INDEMNIFY AND HOLD HARMLESS METRO, ITS DIRECTORS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEY'S FEES, FOR BODILY INJURY, SICKNESS, DISEASE OR DEATH OF ANY PERSON, OR FOR DAMAGES TO ANY PROPERTY, INCLUDING CONSEQUENTIAL DAMAGES OR LOSS OF USE THEREOF, BROUGHT OR RECOVERABLE BY THIRD PARTIES AGAINST METRO, ITS DIRECTORS AND/OR EMPLOYEES AND ARISING OUT OF OR RESULTING FROM ANY NEGLIGENT ACT OR OMISSION BY THE CONTRACTOR IN THE PERFORMANCE OF THIS CONTRACT.**
- B. **THE INDEMNITY PROVIDED FOR IN THIS ARTICLE SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS OR DAMAGE, CAUSE OF ACTION, SUIT OR LIABILITY BROUGHT OR RECOVERABLE AGAINST METRO, ITS DIRECTORS AND/OR EMPLOYEES TO THE EXTENT THE INJURY, DEATH OR DAMAGE RESULTS SOLELY FROM A GROSS NEGLIGENT ACT OR WILLFUL BEHAVIOR BY METRO.**

## SECTION VII - SPECIAL TERMS AND CONDITIONS ARTICLES

### 1 AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR

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

### 2 COMMERCIAL WARRANTY

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

### 3 INTER-LOCAL/COOPERATIVE PURCHASE

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

- A. Unless specifically stated otherwise, any volume of products or services stated in this Contract document reflects only products or services to be purchased by METRO and does not include potential purchases by other entities.
- B. The Contractor shall establish a direct relationship with each entity concerning the placement of orders, issuance of the purchase order, contractual disputes, invoicing, payment and all other matters relating or referring to such entity's access to the agreement.
- C. Each entity is a financially separate entity and shall be solely responsible for the financial commitments of that entity.
- D. METRO shall not be held liable for any costs, damages or other obligations incurred by any participating entity.
- E. It is the entity's decision whether or not to enter into an agreement with the Contractor.
- F. Any purchases made by an entity shall be in accordance with each entity's purchasing policy and procedures.

### 4 MOST FAVORED CUSTOMER

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

### 5 NEW MATERIAL

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

### 6 EMERGENCY FUEL SUPPLY PROVISIONS

#### METRO Only

The Contractor shall guarantee, subject to Section VIII, Article 11 - Force Majeure, that METRO or its assignees (fuel transport carriers) will be able to withdraw a minimum of 200,000 gallons of Ultra Low Sulfur Diesel per week during hurricanes or similar emergencies over a 30-calendar day period following the event. Should a United States Federal agency waive restrictions on different types of fuel during or following a hurricane or similar emergency, the Contractor shall be allowed to substitute a suitable alternative fuel if the Contractor has a shortage of the fuel specified for this contract. The fuel supplied for hurricane or similar emergencies shall be priced according to the Contract.

#### City of Houston Only

Should the City of Houston decide to award a contract from this solicitation/resulting contracts the following would apply to their contract. The Contractor shall guarantee, subject to Section VIII, Article 11 - Force Majeure, that City of Houston or its assignees (fuel transport carriers) will be able to withdraw a minimum of 72,000 gallons per week of Ultra Low Sulfur Diesel during hurricanes or similar emergencies over a 30-calendar day period following the event. Should a United States Federal agency waive restrictions on different types of fuel during or following a hurricane or similar emergency, the Contractor shall be allowed to substitute a suitable alternative fuel if the Contractor has a shortage of the fuel specified for this contract. The fuel supplied for hurricane or similar emergencies shall be priced according to the Contract.

## SECTION VIII - GENERAL TERMS AND CONDITIONS ARTICLES

### 1 ACCEPTANCE

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

### 2 AMENDMENTS AND/OR MODIFICATIONS

The parties agree that the terms and conditions of this contract may only be modified and/or amended by mutual agreement between the parties. Said mutually agreed upon amendment and/or modification shall be written and executed by both parties prior to becoming effective.

### 3 ASSIGNMENT

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

### 4 CHANGES

- A. The President & Chief Executive Officer or the duly authorized representative may, at any time, by written order, make changes within the general scope of the Contract, in any one or more of the following: in the description of the materials and goods to be furnished and/or work to be performed; time (i.e., hours of the day, days of the week, etc.); and place of performance thereof. If any such change causes an increase or decrease in the cost of, or the time required for performance of any part of the work under this Contract, METRO shall make an equitable adjustment in the Contract price, delivery schedule, or both, and shall modify the Contract accordingly in writing.
- B. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, whether or not changed by the order, the President & Chief Executive Officer or the duly authorized representative shall make an equitable adjustment in the Contract price, the time of performance, or both, and shall modify the Contract.
- C. The Contractor must submit any 'proposal for adjustment' under this Article within thirty (30) calendar days from the date of receipt of the written order. However, if the President & Chief Executive Officer or the duly authorized representative decides that the facts so justify, the President & Chief Executive Officer or the duly authorized representative may receive and act upon a proposal submitted before final payment of the Contract.
- D. Failure to agree to any adjustment shall be a dispute under the 'Disputes' Article of this Contract. However, nothing in this Article shall excuse the Contractor from proceeding with the Contract as changed.
- E. Except for those changes properly authorized and executed as provided in this Article, the Contractor shall notify the Contracting Officer in writing promptly within fifteen (15) calendar days from the date that the Contractor identifies any METRO conduct (including actions, inactions and written or oral communications) that the Contractor regards as a change to the Contract terms and conditions. This notification shall contain all information available to the Contractor regarding the change. Contractor's failure to provide notification as required herein may jeopardize being compensated for the change if in fact a change has been made.
- F. The parties agree that the terms and conditions of this Contract may only be modified and/or amended by mutual agreement between the parties. Said mutually agreed upon amendment and/or modification shall be written and executed by both parties prior to becoming effective.

### 5 DISPUTES

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

### 6 CONTRACT ORDER OF PRECEDENCE

In the event of an inconsistency between provisions of this Contract, the inconsistency shall be resolved by giving precedence in the following order:



1. Contract Modifications, if any
2. Contract Articles;
3. Scope of Services
4. Technical Specifications;
5. Drawings

**7 DISSEMINATION OF CONTRACT INFORMATION**

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

**8 EQUAL EMPLOYMENT OPPORTUNITY**

- A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, national origin, religion, sex (including gender identity and sexual orientation), disability, or age. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, national origin, religion, sex (including gender identity and sexual orientation), disability, or age. Such action shall include but shall not be limited to the following: employment, upgrading, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other compensation; and selection for training, including apprenticeship. The Contractor shall post in conspicuous places available to employees and applicants for employment, notices setting forth these provisions.
- B. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion sex, age or national origin.
- C. The Contractor shall notify each labor union with which he has a collective bargaining agreement about this commitment.
- D. The Contractor shall furnish all information and reports required to ensure compliance with this Article; this includes, but is not limited to, Equal Employment Opportunity data reports and Affirmative Action Plans. Said plans shall be consistent with Federal Transit Administration (FTA) Circular 1155.1. Further, the Contractor shall permit access to his books, records, and accounts by representatives of METRO, including its designated agents, for the purposes of investigation and monitoring for compliance with this Article until three (3) years after final payment under this Contract.
- E. In the event of the Contractor's noncompliance with the non-discrimination provisions of this Contract, this Contract may be canceled, terminated or suspended in whole or in part.
- F. The Contractor shall include the terms and conditions of Paragraphs A through F in every subcontract entered into in connection with this Contract.

**9 EQUAL OPPORTUNITY FOR VEVRAA PROTECTED VETERANS<sup>3</sup>**

<sup>3</sup>The definitions set forth in 41 C.F.R. § 60-300.2 apply to the terms used throughout this Clause, and they are incorporated herein by reference.

- A. The Contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran, recently separated veteran, active-duty wartime or campaign badge veteran, or Armed Forces service medal veteran (hereinafter collectively referred to as 'protected veteran(s)') in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals without discrimination based on their status as a protected veteran in all employment practices, including the following:
- B.
  1. Recruitment, advertising, and job application procedures;
  2. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
  3. Rates of pay or any other form of compensation and changes in compensation;
  4. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
  5. Leaves of absence, sick leave, or any other leave;

6. Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
  7. Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
  8. Activities sponsored by the Contractor including social or recreational programs; or
  9. Any other term, condition, or privilege of employment.
- C. 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.
- D. Listing of employment openings with the appropriate employment service delivery system pursuant to this Clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a *bona fide* job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicants or from any particular group of job applicants, and nothing herein is intended to relieve the Contractor from any requirements in executive orders or regulations regarding non-discrimination in employment.
- E. Whenever a Contractor, other than a state or local governmental Contractor, becomes contractually bound to the listing provisions in Paragraphs 2 and 3 of this Clause, it shall advise the employment service delivery system in each state where it has establishments that: (a) it is a federal Contractor, so that the employment service delivery systems are able to identify them as such; and (b) it desires priority referrals from the state of protected veterans for job openings at all locations within the state. The Contractor shall also provide to the employment service delivery system the name and location of each hiring location within the state and the contact information for the Contractor official responsible for hiring at each location. The 'Contractor Official' may be a chief hiring official, a Human Resources contact, a senior management contact, or any other manager for the Contractor who can verify the information set forth in the job listing and receive priority referrals from employment service delivery systems. In the event that the Contractor uses any external job search organizations to assist in its hiring, the Contractor shall also provide to the employment service delivery system the contact information for the job search organization(s). The disclosures required by this Paragraph shall be made simultaneously with the Contractor's first job listing at each employment service delivery system location after the effective date of this final rule. Should any of the information in the disclosures change since it was last reported to the employment service delivery system location, the Contractor shall provide updated information simultaneously with its next job listing. As long as the Contractor is contractually bound to these provisions and has so advised the employment service delivery system, there is no need to advise the employment service delivery system of subsequent contracts. The Contractor may advise the employment service delivery system when it is no longer bound by this Contract clause.
- F. The provisions of Paragraphs B and C of this Clause do not apply to the listing of employment openings which occur and are filled outside of the 50 states, the District of Columbia, the commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the commonwealth of the Northern Mariana Islands, Wake Island, and the Trust Territories of the Pacific Islands.
- G. As used in this Clause:
1. *All employment openings* includes all positions except executive and senior management, those positions that will be filled from within the Contractor's organization, and positions lasting three days or less. This term includes full-time employment, temporary employment of more than three days' duration, and part-time employment.
  2. *Executive and senior management* means: (1) Any employee (a) compensated on a salary basis at a rate of not less than \$455 per week (or \$380 per week, if employed in American Samoa by employers other than the federal government), exclusive of board, lodging or other facilities; (b) whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; (c) who customarily and regularly directs the work of two or more other employees; and (d) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight; or (2) any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.

3. *Positions that will be filled from within the Contractor's organization* means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings which the Contractor proposes to fill from regularly established 'recall' lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of his or her own organization.
- H. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- I. 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.
- J. 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.
- K. 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.
- L. The Contractor will include the provisions of this Clause in every subcontractor purchase order of \$100,000 or more, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to VEVRAA so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontractor purchase order as the Director, Office of Federal Contract Compliance Programs, may direct to enforce such provisions, including action for noncompliance.
- M. 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.

## **10 ETHICAL CONDUCT**

- A. The METRO Board of Directors has adopted a Code of Ethics governing the conduct of its officers and employees. The Contractor agrees it will familiarize itself with this Code of Ethics and that it will not offer, confer or agree to confer any prohibited benefit as consideration for a METRO Board Member's or employee's decision, opinion, recommendation, vote or other exercise of discretion as a public servant or in exchange for the Board Member's or employee's having exercised his official powers or performed his official duties nor will the Contractor participate in any other violation of this Code.
- B. The Contractor is required to maintain those records necessary to prove beyond a reasonable doubt the Contractor's compliance with the METRO Code of Ethics Policy. METRO shall have the right to review for the purpose of determining compliance with the Code of Ethics Policy all disbursement records and supporting documents including invoices, payment vouchers, employee expense reports and petty cash records.
- C. Breach of this Article by the Contractor may result in termination of the Contract and exclusion of the Contractor from future contracts with METRO for a period of time determined by the METRO Board of Directors.

## **11 FORCE MAJEURE**

- A. To the extent that the Contractor shall be wholly or partially prevented from its performance within the terms specified of any obligation or duty placed on the Contractor by reason of or through riot, acts of war, acts of terrorism, insurrection, by order of court, legislative action, act of God, or specific cause reasonably beyond parties' control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty may be suspended until such disability to perform is removed. Determination of force majeure shall rest solely with METRO.
- B. In the event the Contractor seeks to characterize an event as a 'Force Majeure Event,' the Contractor shall have the obligation to immediately notify METRO at the time the Contractor becomes aware of said Force Majeure event. Further, the Contractor shall have the obligation to provide METRO with written notice upon the cessation of said Force Majeure event.

**12 INTERPRETATION, JURISDICTION AND VENUE**

This Contract shall be construed and interpreted solely in accordance with the laws of the state of Texas. Venue of any suit, right or cause of action arising under or in connection with this Contract shall lie exclusively in Harris County, Texas.

**13 METRO DELAY OF WORK**

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

**14 PAYMENTS AND DISCOUNTS**

The Contractor shall submit the original and one (1) copy of each invoice containing the following information: Contract Number; item number; description of materials, goods, services; unit prices; and extended amount. Payment will be made to the Contractor within thirty (30) calendar days after receipt of the invoice or acceptance of all materials and goods furnished and work performed, whichever is later. For the purpose of earning any discounts, payment is deemed to be made on the date the METRO check is mailed. Partial payments may be authorized. Interest on payments under this Contract shall accrue and be paid only in accordance with Texas Government Code, Title 10, Chapter 2251, which shall be the Contractor's sole remedy under this Paragraph.

**15 PROHIBITED INTEREST**

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

**16 TERMINATION FOR CONVENIENCE OF METRO**

- A. METRO may terminate this Contract at any time after award of the Contract by written notice to the Contractor if METRO determines that such termination is in its best interest. Upon receipt of written notice of termination, the Contractor shall cease performance to the extent specified in the notice of termination. In the event of termination in whole, the Contractor shall prepare a final invoice within thirty (30) calendar days of such termination reflecting the service(s) actually furnished pursuant to the Contract and to the satisfaction of METRO, that have not appeared on any previous invoice.
- B. METRO agrees to pay the Contractor, in accordance with the terms of the Contract, for conforming service(s) actually furnished and verifiable costs that have been incurred or will be incurred by the termination, which shall be the sole amount owed to the Contractor whether for damages or otherwise, by virtue of the termination of this Contract.

**17 TERMINATION FOR DEFAULT**

- A. METRO may, subject to Paragraphs D and E below, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to perform the services within the time and in the manner specified in this Contract or any extension thereof; or fails to perform any of the other provisions of this Contract.
- B. METRO's right to terminate this Contract may be exercised if the Contractor does not cure the condition or conditions constituting default within ten (10) calendar days (or such longer period as may be authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.
- C. If METRO terminates this Contract, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, services similar to that terminated, and the Contractor will be liable to METRO for any excess costs.
- D. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include:
  - 1. Acts of God or of the public enemy;
  - 2. Fires;

3. Floods;
4. Epidemics;
5. Quarantine restrictions;
6. Unusually severe weather; or
7. 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. METRO shall pay the Contract price(s) for completed and accepted services. METRO may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect METRO against loss because of outstanding liens or claims of former lien holders.
- F. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of METRO.
- G. The rights and remedies of METRO under this Article are in addition to any other rights and remedies provided by law or under this Contract.

**18 TITLE AND RISK OF LOSS**

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

**19 ENTIRE AGREEMENT**

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

**SECTION IX - EXHIBITS**

**1 EXHIBIT A SPECIFICATION OF FUEL DELIVERY**

**1.0 GENERAL**

1.1 This specification covers the requirements for the METRO designated Contractor to load and deliver ultra-low sulfur diesel, hereinafter referred to as "fuel", to the Metropolitan Transit Authority of Harris County, Texas (METRO) from local racks.

**2.0 LOADING LOCATION**

2.1 The Metro designated Contractor shall load fuel destined to METRO from a local rack within twenty-five (25) miles of any of the facilities listed in 3.1 below.

**3.0 LOADING PROCEDURES**

3.1 The METRO designated Contractor shall comply with rules, procedures and certification requirements for loading fuel as required by the terminal operator.

**4.0 DELIVERY LOCATIONS/TIMES**

4.1 The METRO designated Contractor shall deliver fuel during the hours specified, Monday through Friday, at the following METRO facilities:

<u>METRO Facility</u>	<u>Number of Tanks/Capacity</u>	<u>Delivery Hours</u>
<b>Kashmere Bus Operating Facility (BOF)</b> 5700 Eastex Freeway Houston, Texas 77026	Diesel 3 UST / 48,000 gal. ea.	08:30 A.M. to 6:00 P.M.
<b>Polk BOF</b> 5700 Polk Houston, Texas 77023	Diesel 3 UST/ 48,000 gal. ea.	08:30 A.M. to 06:00 P.M.
<b>West BOF</b> 11555 Westpark Dr. Houston, Texas 77082	Diesel 5 UST/20,000 gal. ea.	08:30 A.M. to 06:00 P.M.
<b>Hiram Clarke BOF</b> 4175 Uptown Dr. Houston, TX 77084	Diesel 3 UST/48,000 gal. ea.	08:30 A.M. to 06:00 P.M.
<b>Field Service Center</b> 1215 Labco Houston, TX 77045	Diesel 1 UST/6,000 gal. ea.	08:30 A.M. to 06:00 P.M.
<b>Fallbrook BOF</b> 111 Fallbrook Drive Houston, Texas 77038	Diesel 3 UST/20,000 gal. ea. Diesel 2 AST/30,000 gal. ea	08:30 A.M. to 06:00 P.M.
<b>Northwest BOF</b> 555 Deauville Lot Houston, TX 77092	Diesel 3 UST/48,000 gal. ea.	08:30 A.M. to 06:00 P.M.

4.2 METRO reserves the right to add or delete facilities in the Metropolitan Houston area.

4.3 METRO may change the delivery times due to emergencies or operational requirements.

**5.0 DELIVERY VEHICLE/RESOURCES**

5.1 The METRO designated Contractor shall provide all the necessary resources needed to deliver and dispense diesel fuel in accordance with the requirements specified herein.

5.2 Delivery trailers shall possess the following characteristics:

- 5.2.1 Certificate of Cleanliness or written documentation that the trailer used is dedicated for the sole purpose of transporting ultra-low sulfur diesel fuel. The C of C or documentation provided must be signed by Contractors management staff or dispatcher.
- 5.2.2 Properly equipped to deliver to an above ground storage tank.
- 5.2.3 7800 minimum net gallon capacity.
- 5.2.4 Be capable of delivering split deliveries when ordered by METRO.
- 5.2.5 All equipment on the trailer shall be fully functional.

5.3 METRO's Project Manager or designee may inspect the truck and trailer at any time the vehicle is on METRO's property.

#### 6.0 DELIVERY PROCEDURE

6.1 Upon arrival at each METRO facility, the Contractor shall report to METRO's security guard, who will record the arrival time, truck number, driver's name and bill of lading number(s). Once signed in, the Contractor shall drive the truck to METRO's storage tank area. METRO will utilize an electronic monitoring system or a stick reading to determine the tank levels before delivery of fuel, and determine if any water is present in the tank. METRO's Project Manager or designee will record the fuel volume and water content (if any), on METRO's Fluid Delivery Quantity Reconciliation (MFDQR) form and the Contractors bill of lading.

6.2 The METRO designated Contractor shall dispense a sample of fuel to detect the presence of water or contaminants. If water or contaminant(s) are detected, the Contractor shall not dispense the fuel. If no water or contaminants are visually detected, the Contractor shall give the sample to METRO personnel and unload the trailer. METRO's Project Manager or designee will utilize the electronic monitoring system or a stick reading to ensure the delivery has occurred per the bill of lading.

6.3 Once hoses have been removed the Contractor shall place a container under the hose outlet that delivered METRO's fuel and open the valve(s) to show the tank(s) are empty. Any residual fuel shall be poured carefully into METRO's storage tank.

6.4 The METRO designated Contractor shall be responsible for all costs of fuel lost and clean-up of any spillage which may occur during transit, loading or unloading operations.

#### 7.0 DOCUMENTATION

7.1 The METRO designated Contractor shall provide the following documents to METRO:

7.1.1 Bill of lading for each delivery containing the following minimum information:

- o Gross and net rack gallons
- o Temperature of fuel when loaded at the rack
- o Time of trailer start loading/stop loading
- o Miles from rack to METRO's location
- o Time of arrival at METRO's facility
- o Meter ticket number (when used)
- o Gallons of fuel in METRO's tank before and after delivery
- o Amount of water (if any), in accordance with paragraph 5.1
- o Amount of water or other contaminant(s) (if any), in accordance with paragraph 5.2

7.1.2 Certificate of Cleanliness or written confirmation that the trailer is used solely for ultra-low sulfur diesel.

#### 8.0 FUEL SAMPLING

8.1 METRO's Project Manager or designee may collect samples of fuel from the delivery truck (in accordance with paragraph 5.2), to verify compliance with the requirements specified herein.

#### 9.0 QUALITY ASSURANCE

9.1 The METRO designated Contractor must assure that the trailers used are clean and free of water, contaminants or other products.

9.2 In the event the delivery sample shows visual signs of water or contamination, the Contractor will be liable for the load of fuel.

9.3 METRO shall have the right upon delivery of fuel, to determine compliance with fuel loaded at the contracted local rack. If the diesel fuel delivered is determined to be non-compliant, signifying a contaminated trailer was used, the Contractor will be responsible for all costs incurred to remove and replace the contaminated product as well as any damage incurred to METRO vehicles.

**2 EXHIBIT B SPECIFICATION - ULTRA LOW SULFUR DIESEL TXLED****SPECIFICATION - ULTRA LOW SULFUR DIESEL**

The Contractor shall ensure that all ultra-low sulfur diesel fuel provided shall comply with all local, state and federal regulations.

**1.0 DIESEL SAMPLING**

1.1 The Contractor shall provide diesel testing report(s), to include invoice information on ultra-low sulfur diesel provided to METRO, when requested. Reports shall include as many tests as are available regarding section 3 of this specification.

**2.0 QUALITY ASSURANCE**

2.1 METRO reserves the right to verify compliance with this specification upon obtaining fuel from Contractor at any time.

2.2 If at any time the ultra-low sulfur diesel fuel is found not to be in compliance with the specification, as obtained from the Contractor racks, the Contractor shall be responsible for removing the fuel from METRO tanks, cleaning the tanks, and replacing with ultra-low sulfur diesel that meets the specification. The Contractor will be responsible for all costs incurred as well as any resulting damage and repairs necessary to engines/fuel/emission systems due to non-compliant ultra-low sulfur diesel.

**3.0 AMERICAN SOCIETY FOR TESTING AND MATERIALS TEST METHODS**

3.1 The Contractor shall ensure the Ultra low Sulfur Diesel fuel meets or exceeds the latest edition of the following American Society for Testing and Materials (ASTM) requirements:

<b>TEST METHODS</b>		<b>MIN</b>	<b>MAX</b>
D-86	Standard Test Method for Distillation of Petroleum Products 50 Percent 90 Percent (°F) End Point (°F)	--- 540	Report 640 675
D-93	Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester	130°F	---
D-97	Standard Test Method for Pour Point of Petroleum Products Sept., Oct., Nov., Dec., Jan., Feb., Mar. April, May, June, July, August	--- ---	0°F +10°F
D-130	Corrosion, 3 hours @ 50°C (122°F)	---	1.0
D-287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method)	30.0	---
D-445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (the Calculation of Dynamic Viscosity @ 100°F (38°C))	2.0	3.6
D-482	Standard Test Method for ash from Petroleum Products	---	0.01
D-524	Standard Test Method for Ramsbottom Carbon Residue of Petroleum Products	---	.35
D-613	Standard Test Method for Cetane Number of Diesel Fuel Oil	48.0	
D-974	Standard Test Method for acid and Base Number by Color Indicator Titration (British Standard 2634) (MG KOH/G)	Less than .04	---
D-976	Standard Test Methods for Calculated Cetane Index of Distillate Fuels One of the following properties shall be met: Cetane Index or Aromaticity (ASTM D-1319). Cetane is the ignition quality: low cetane fuel causes poor starting; high cetane fuel causes good starting.	48.0	---
D-1266	Standard Test Method for Sulfur in Petroleum Products (Lamp Method)	---	.0015
D-1319	Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Absorption (Lamp Method) Measures the part of fuels that are difficult to burn. High aromatics causes poor combustion and high white smoke at start-ups.	---	10
D-1500	Standard Test Method for ASTM Color of Petroleum Products ASTM Color Color Visual	--- Undyed	2.5 ---
D-1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method (Laboratory Procedure) Measures bottom sediment, water content and any non-usable material in fuel.	---	<0.05
D-2274	Standard Test Method for Oxidation Stability of Distillate Fuel Oil (Accelerated Method) (mg/100ml)	---	2.5
D-2276	Particulate Contamination mg/L max Measures the solid contaminates present in fuel. Higher amounts result in fuel system deposits, filter fouling, increased smoke and loss of usable fuel. Examples include dirt, rust, and other foreign materials.	---	1.0
D-2500	Standard Test Method for Cloud Point of Petroleum Products		



	Sept., Oct., Nov., Dec., Jan., Feb., March April, May, June, July, August	---	+15°F +20°F
D-2622	Standard Test Method for Sulfur in Petroleum Products by X-Ray Spectrometry	---	.0015
D-4176	Standard Test Method for Free Water and Particulate Contamination in Distillate Fuels Procedure 2 Haze Rating @ 25°C (77°F)	---	2.0
D-4294	Standard Test Method for Total Sulfur in Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy	---	.0015

3.2 If the Cetane number by test method D-613 is not available, D-976, or D-4737 (Standard Test Method for Calculated Cetane Index by Four Variable Equation), shall be used. A minimum Cetane index of 48 shall be met, regardless of the Cetane number. The Contractor shall conduct a Thermal Stability Test; 90-minutes at 300° F Pad Rating (DuPont Scale), with 7.0 as the maximum acceptable requirement.

The Contractor shall conduct a Lubricity Test in accordance with the proposed ASTM requirements. This test measures the ability to lubricate; also called film strength. The lubricity prevents any scuffing or damage to internal parts of the fuel system components such as injectors.

3.3 The lubricity level shall be determined using either of the following requirements:

D-6078	Scuffing Load Ball-on-Cylinder Lubricity Evaluator (SBOCLE)	3100g	
D-6079	High Frequency Reciprocating Rig (HFRR) Note: Using the HFRR, a wear scar of 0.52µ at 60° C (maximum) is equivalent to a SBOCLE test result of 3100g (minimum).	---	.52µ

**3 EXHIBIT C CERTIFICATION OF RESTRICTIONS ON LOBBYING**

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

- A. No federal appropriated funds have been or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an office or employee of any agency, a member of Congress, an officer or employee of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, 'Disclosure Form to Report Lobbying,' in accordance with its instructions. After a Contract is awarded by METRO, if applicable, the undersigned is also required to submit to METRO's Contracting Officer a signed copy of the Form-LLL, 'Disclosure Form to Report Lobbying,' for all sub-awards at all tiers in excess of \$100,000.00.
- C. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. Once a Contract is awarded by METRO, the undersigned is also required to submit to METRO's Contracting Officer a signed copy of the certificate for all sub-contracts at all tiers in excess of \$100,000.00.

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

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

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

By: \_\_\_\_\_  
(Signature of Company Official)

\_\_\_\_\_  
(Title of Company Official)

**4 EXHIBIT D DEBARMENT AND SUSPENSION FORM**

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

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

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

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

By: \_\_\_\_\_  
Signature of Company Official                      Date

\_\_\_\_\_  
Title of Company Official

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

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

\_\_\_\_\_  
Signature of Company's Attorney                      Date

**5 EXHIBIT E CODE OF ETHICS OF THE METROPOLITAN TRANSIT AUTHORITY**

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