



METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TX (METRO)

CONSTRUCTION MANAGEMENT AT-RISK (CMAR)

(For qualifying Construction Management services pursuant to Texas Government Code § 2269 Subch. F)
(Proposals for Technical Qualifications and Pricing to be Submitted Separately)

FOR

METRO CMAR NO. [REDACTED]

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

Please contact the following Contract Administrator with any questions about this CMAR.

[REDACTED]
Title
Email: [REDACTED]@ridemetro.org -
Office: (713) [REDACTED] -
Mobile: () [REDACTED] -

IMPORTANT – Notice to Proposer

All responses to and questions regarding this solicitation must be submitted electronically through METRO's Bonfire hub at: <https://ridemetro.bonfirehub.com>

There is no cost to Contractors to register to submit bids on METRO's Bonfire hub

Additionally, submit One (1) Original hardcopy labeled as indicated below and delivered or mailed to the following address:

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

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

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

Both the electronic (via Bonfire) and hardcopy submittal MUST be received by the deadline specified in the solicitation. A submittal MAY be deemed non-responsive if both the electronic and hardcopy are not received by the deadline specified in this solicitation.

METRO FUNDING [REDACTED]% FEDERAL FUNDING [REDACTED]% SMALL BUSINESS GOAL [REDACTED]%

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SECTION I - PROPOSING REQUIREMENTS AND INSTRUCTIONS

1 GENERAL INFORMATION

CMAR NO.:

CMAR ISSUE DATE:

PROJECT NAME:

For: ☐ Supplies/Equipment ☐ Services ☐ Other

ISSUED BY: Metropolitan Transit Authority of Harris County (METRO) Website: <https://www.ridemetroapp.org/procurement/>

All questions & bid responses to this solicitation must be submitted electronically through METRO's Bonfire hub at: <https://ridemetro.bonfirehub.com> Registration on METRO's Bonfire hub is free. Additionally, submit One (1) Original hardcopy delivered in a sealed envelope to the METRO Procurement Office Plan Room, 1900 Main Street, Houston, Texas 77002

CONTRACT ADMINISTRATOR:

Name

Title

Procurement Services
1900 Main Street, 8th Floor
Houston, Texas 77002

Email: [@ridemetro.org](mailto: @ridemetro.org)

Phone: (713)

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

PROPOSAL DUE DATE/TIME/LOCATION: Proposals (digital signatures accepted) for work described herein must be submitted through METRO's Bonfire hub at: <https://ridemetro.bonfirehub.com> and + **received by 2:00 PM Central Standard Time(CST)** Time (DST) on **day, month, date, year**. Additionally, submit One (1) Original hardcopy delivered in a sealed envelope bearing the name and address of the Responder and the identification CMAR No. **XXXXXXXXXXXX** to the METRO Procurement Office Plan Room, 1900 Main Street, Houston, Texas 77002

Both the electronic (via Bonfire) and hardcopy submittal **MUST** be received by the deadline specified in the solicitation. A submittal **MAY** be deemed non-responsive if both the electronic and hardcopy are not received by the deadline specified in this solicitation. See additional submission requirements in Section 2 below.

A PRE-SUBMITTAL BRIEFING will be held at **a.m. or p.m.** Central Standard Time (CST) OR Daylight Savings Time (DST) on **day, month, date, year**. See access information below. (**Note:** In-person participation is not offered for this briefing.)

The purpose of the briefing is to explain the solicitation requirements and answer any questions prospective bidders may have regarding the solicitation. All questions pertaining to this solicitation shall be presented **IN WRITING** through Bonfire hub. **All interested firms are strongly encouraged to attend and have a copy of this CMAR proposal readily accessible during the briefing.**

MS Teams Link: [Join Microsoft Teams Meeting](#)

Dial-In Telephone No.: +1 281-925-7469

Conference ID: xxx xxx xxx #

PERFORMANCE PERIOD: The period of performance under this Contract shall be for a period of () years, and shall have () option period(s). (See Contract Article 'Period of Performance' in Section III).

INSURANCE: Each prospective proposer is cautioned to review the Insurance requirements of this solicitation. (See Section VI.)

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

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

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

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

SMALL BUSINESS PARTICIPATION GOAL:

This solicitation has a [redacted] % Small Business Participation goal for this Contract (Preconstruction and Construction Phases).

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

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

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

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

Veteran and Disability-Owned Business Enterprise Programs: METRO has also adopted a Veteran-Owned Business Enterprise (VOBE) Program and a Disability-Owned Business Enterprise (DOBE) Program and encourages the participation of veteran and disability owned firms. Copies of METRO's VOB and DOBE programs can be found at www.ridemetro.org.

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

WRITTEN QUESTIONS: Written questions will be accepted until [redacted] TIME, [redacted] DAY, [redacted] DATE. Submit questions via Bonfire hub.

2 INSTRUCTIONS TO PROPOSERS**A. INTRODUCTION**

1. The Metropolitan Transit Authority of Harris County Texas, (METRO) is seeking proposals from qualified proposers (firms), under the CMAR method of procurement, to provide **Preconstruction and Construction Management Services**. METRO invites firms to submit a proposal in response to this Construction Management At-Risk (CMAR) as generally described in the Scope of Services, Exhibit A2 of this solicitation.
2. This document is comprised of CMAR instructions to proposers and a contract that governs the performance of the Preconstruction Services and (subject to METRO authorization and a Contract Amendment) the Construction Management services. The proposed contract is made available so proposers are made aware of the contemplated terms and conditions of any resulting contract. Any agreement resulting from this solicitation will generally be in accordance with the enclosed Contract draft and all services thereunder will be performed in accordance with its terms and conditions, including Exhibit A2, 'Scope of Services.'
3. This CMAR solicitation is a one-step selection process. Before bids are submitted METRO may communicate in writing a change to a two-step process following the Texas Code Chapter 2269 Subpart F.
4. For referential use during this solicitation process, the preliminary estimated budget for the Construction Phase is \$ **000,000,000** (see also form in Section II.3).

B. APPROVAL OF CONTRACT

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

Public Notice of Solicitation Results

The anticipated METRO Board meeting month for approval of a contract resulting from this solicitation will be forthcoming. It is the responsibility of the proposer to check METRO's website for notices on the specific dates for METRO Board meetings. All proposers of this solicitation and METRO hereby agree that this provision shall serve as the minimum required action by the proposer toward exercising due diligence in obtaining the results of this solicitation. The requirement of approval by the METRO Board of Directors for any particular solicitation is dependent upon several factors. However, all proposers shall be required to check the METRO web site regarding whether or not the solicitation associated with their proposal requires approval by the METRO Board of Directors. All persons and/or entities responding to this solicitation hereby acknowledge the public notice of solicitation results enumerated in this

C. AWARD OF CONTRACT

1. A CMAR Contract for Preconstruction and Construction Management services, with agreed not-to-exceed preconstruction fee and fixed CMAR fee will be awarded to the responsive, responsible proposer(s) whose proposal conforming to this solicitation will be best value to METRO, price and other factors considered in the evaluation section.
2. METRO may accept within the time specified herein, any proposal whether or not there are negotiations subsequent to its receipt, unless the proposal is withdrawn by written notice received by METRO prior to award. If subsequent negotiations are conducted, they shall not constitute a rejection or counter offer on the part of METRO.
3. METRO may award a contract, based on proposals received, without discussion of such proposals. Accordingly, a proposer should submit each proposal on the most favorable terms from a price and technical standpoint.
4. The lowest price proposer is not guaranteed receipt of the METRO contract award.
5. METRO reserves the right to: 1) cancel the entire solicitation; (2) issue subsequent CMAR; (3) negotiate with all qualified proposers considered to be within the competitive price and proposal score range; (4) reject any or all proposals and (5) waive informalities and minor irregularities in proposals received.
6. Any financial data submitted with any proposal hereunder or any representation concerning facilities or financing will not form a part of any resulting contract.
7. A written Notice-of-Award will be issued to the successful proposer upon being selected for award of a contract and execution of any resultant contract.
8. The Notice-of-Award and subsequent Notice to Proceed (NTP) is for the Preconstruction services only, the CMAR is required to submit a Guaranteed Maximum Price (GMP) proposal according to Exhibit A2, and METRO at its sole discretion may amend the Contract to include the construction services within this Contract.
9. Unsuccessful proposers can request a debriefing by contacting the Contract Administrator named in this solicitation.
10. METRO shall evaluate and rank the proposals submitted no later than the 45th day after the date on which the proposals are opened.

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

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

E. CONFLICTS DISCLOSURE

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

F. COVENANT AGAINST CONTINGENT FEES

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

G. DISCOUNTS

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

H. DISQUALIFICATION

METRO reserves the right to disqualify a proposal, after receipt of the proposal, upon evidence of collusion with intent to defraud

or other illegal practices on the part of a proposer.

I. EVALUATION CRITERIA

1. A Proposer's proposal will be evaluated on both technical and Small Business Program criteria for a possible total score of up to 100 points.
2. Technical evaluation criteria are identified with relative weights adding up to a maximum of 95 points. If a Small Business Participation goal has been set for the solicitation, a Proposer may be awarded up to 5 additional points if the Proposer commits to Small Business participation at a rate higher than the Small Business Goal.
3. Proposals should be organized under the following headings and should address each topic to demonstrate the Proposer's qualifications and ability to perform the Work.
4. Failure on Pass/Fail Item 1.A.1 Financial Capabilities will result in disqualification of the Proposer from further consideration.
5. In accordance with Texas Government Code § 2269.154 (b) the proposals shall be evaluated and ranked no later than the 45th day after the proposals are opened.

SELECTION CRITERIA

MAXIMUM POINTS AVAILABLE BY CRITERIA

CMAR Selection Criteria	Points
Packet 1: CMAR Proposal – Pass/Fail Criteria (Pass/Fail, 0 points)	
1.A. Pass/Fail Items (0 points)	
1.A.1. Financial Capabilities	P/F
1.A.2. SBE Responsiveness	P/F
Total Score for Section 1.A. – Pass/Fail Items (0 points)	
Packet 2: CMAR Proposal – Qualifications (0 to 100 points)	
2.A. Small Business Enterprise Commitment (0 to 5 points)	
2.A.1. Small Business Enterprise (SBE) Commitment	(0 – 5)
Total Score for Section 2.A. – SBE Commitment (0 to 5 points)	
2.B. Company Experience (0 to 15 points)	
2.B.1. Safety Records	(0 – 5)
2.B.2. Ability to manage critical Project items	(0 – 5)
2.B.3. Experience - Relevant Projects and value delivery techniques	(0 – 5)
Total Score for Section 2.B. – Company Experience (0 to 15 points)	
2.C. Key Personnel (0 to 15 points)	
2.C.1. Key Personnel – Experience relevant Projects and best practices	(0 – 5)
2.C.2. Key Personnel – Experience with Alternative Delivery	(0 – 5)
2.C.3. Key Personnel – Team Value Proposition	(0 – 5)
Total Score for Section 2.C. – Key Personnel (0 to 15 points)	
2.D. Project Approach (0 to 35 points)	
2.D.1. Preconstruction Approach	(0 – 5)
2.D.2. Construction Approach	(0 – 5)
2.D.3. Community Outreach	(0 – 2)
2.D.4. Stakeholder Management	(0 – 3)
2.D.5. Managing Sub-Contractors	(0 – 5)
2.D.6. QA/QC & Safety Plan	(0 – 5)
2.D.7. Cost Management	(0 – 5)
2.D.8. Schedule Management	(0 – 5)
Total Score for Section 2.D. – Project Approach (0 to 35 points)	
2.E. CMAR Pricing (0 to 30 points)	
2.E.1. Preconstruction & CMAR Fees	(0 – 30)
Total Score for Section 2.E. – CMAR Pricing (0 to 30 points)	
Total Score for Packet 1 and 2 Combined (0 to 100 points)	

J. DESCRIPTION OF SCORING METHODS

Packet 1: CMAR Proposal – Pass Fail Items (Pass/Fail)

	PACKET 1 PASS/FAIL ITEMS	POINTS POSSIBLE
1.A.1	<p><u>Financial Capabilities</u> – Submit last 3 years of audited financial statements and an optional two-page narrative.</p> <ul style="list-style-type: none"> Proposer demonstrated ability to complete the project without imposing effort to invoke Bonds. Proposer failed to demonstrate ability to complete the project without imposing effort to invoke Bonds. 	PASS/FAIL
1.A.2	<p><u>SBE Responsiveness</u> – respondents must demonstrate a commitment to meet the mandatory requirements stated in the following section:</p> <p>SMALL BUSINESS AND DISADVANTAGED BUSINESS ENTERPRISE PROGRAMS</p> <ul style="list-style-type: none"> A respondent that commits to attaining the specific small business participation goal, as well as the other mandatory Small Business Program requirements, will be deemed responsive and its submittal will continue in the evaluation process. A respondent that fails to commit to the small business participation goal, as well as the other mandatory Small Business Program requirements, will be deemed nonresponsive and no further consideration will be given to its submittal. 	PASS/FAIL

Packet 2: CMAR Proposal – Qualifications (0 to 100 points)

	PACKET 2 (0 to 100 points)	Points Possible
	2.A SMALL BUSINESS ENTERPRISE COMMITMENT	0-5
2.A.1	<p><u>SBE Commitment</u> - The determining factors in awarding any of the 5 points include, but are not limited to:</p> <ul style="list-style-type: none"> Exceeding the specified SBE goal. Satisfactory completion of all administrative requirements of the SBE Program. Negative past history on METRO projects with SBE requirements/goals. 	0-5
	2.B COMPANY EXPERIENCE	0 – 15
2.B.1	<p><u>Safety Records</u> – Submit most recent Experience Modification Rate (EMR) in a letter from insurance carrier (based on submittal date of proposal) and provide a description of how the CMAR will manage safety during construction.</p> <ul style="list-style-type: none"> High Range - Proposer submitted a detailed safety plan. Low Range – Proposer did not submit a detailed safety plan. 	0 – 5
2.B.2	<p><u>Ability to Manage Critical Project Items</u></p> <ul style="list-style-type: none"> High Range – Approach and infrastructure in place to manage project budget and schedule. Software and tools specifically designed to benefit METRO. History of completing projects on time. Low Range – Limited information on corporate experience managing project budgets and schedules. Limited tools in Place to achieve project success. Does not align team with project goals as described in Exhibit A1. 	0 – 5
2.B.3	<p><u>Experience relevant Projects and Value Delivery Techniques</u></p> <ul style="list-style-type: none"> High Range – Understands approach to working with engineering teams and constructive/collaborative feedback. Describes philosophy to estimating and scheduling. Experience managing GMPs. Experience delivering large and complex projects. Low Range – Limited experience working with engineering teams in alternative delivery, no corporate philosophy to estimate and scheduling. Experience limited to firm fixed pricing of design-bid-build projects. 	0 – 5
	2.C KEY PERSONNEL	0 – 15
2.C.1	<p><u>Experience relevant Projects and Best Practices</u></p> <p>1. Resume (0 to 3 points): provide resume for key personnel over the previous 10 years and include description of training, related work experience, number of years in area of expertise, education, professional licensing, and work experience with similar projects. Section 1.A.2 information may be used.</p> <ul style="list-style-type: none"> Proposer's key personnel work experience and qualifications is exceptional. Proposer's key personnel work experience and qualifications is average. Proposer's key personnel work experience and qualifications is inadequate. Proposer's key personnel have no work experience and/or qualifications. 	0 – 5

	PACKET 2 (0 to 100 points)	Points Possible
	<p>2. Written Assurance (0 to 2 points): provide written assurance and signatures from key personnel who will perform the work and an organizational chart of the overall team with role descriptions.</p> <ul style="list-style-type: none"> Proposer provided both documents. Proposer provided one of the documents. Proposer provided none of the documents. 	
2.C.2	<p><u>Experience with Alternative Delivery</u></p> <ul style="list-style-type: none"> High Range – Broad experience in alternative delivery models including CMAR/D-B/CM-GC/P-D-B, experience managing Quality Control, value engineering, experience with change management and managing contingencies. Low Range – Limited exposure in alternative delivery, does not address quality control, limited experience in managing contingencies. 	0 – 5
2.C.3	<p><u>Team Value Proposition</u></p> <ul style="list-style-type: none"> High Range – Clearly defines team best practices and how they will contribute to the success of the project, public, and METRO. Low Range – Value propositions not clearly defined. Value not clearly communicated in how it will improve project Outcomes. 	0 – 5
	2.D PROJECT APPROACH	0 – 35
2.D.1	<p><u>Preconstruction Approach</u></p> <p>For this section of the Proposal, the following information will be evaluated:</p> <ul style="list-style-type: none"> Overall Preconstruction Approach (3 Points) – Describe the Proposer's general approach of due diligence and collaboration during the preconstruction phase. Provide an overall introduction to the proposer's preconstruction approach. Design and Constructability Review (2 Points) – Describe the Proposer's approach to design and constructability reviews. Include the Proposer's approach to develop schedules and meeting the project goals. Risk Management/Innovation Process (1 Points) – Describe the Proposer's approach to assisting the Project Team in managing risks. Describe the Proposer's approach to assisting the Project Team to develop and evaluate potential innovations. Proposed initial risk matrix identifies most relevant project risks, their potential impacts to the project, and a mitigation strategy for each. Cost Estimating (4 Points) – Describe the Proposer's approach to ensure that METRO is receiving a transparent and fair price for the work through a GMP proposal. Describe the Proposer's approach to competitive selecting subcontractors. 	0 – 5
2.D.2	<p><u>Construction Approach</u></p> <p>For this section of the Proposal, the following information will be evaluated:</p> <ul style="list-style-type: none"> Overall Construction Approach (4 Points) – Describe the Proposer's overall approach to assemble a construction organization and. Include descriptions of proposed innovations and processes. Addresses labor agreements, staffing, supply chain and logistics of vendor and material shipments. Provides approach to mitigate risks, schedule and cost through corrective construction actions. Approach to escalation of commodities and labor market. Progress and Earn Value (3 Points) – Describe the Proposer's methods to accurately calculate and report the progress in procurement and construction activities. Change Management (3 Points) – Describe the Proposer's construction approach to maintain a Change Management system during construction to clearly identify third party changes, scope gaps, scope development, design evolution, etc to deliver this project on time and within budget. 	0 – 5
2.D.3	<p><u>Community Outreach</u></p> <ul style="list-style-type: none"> High Range – Approach to and understands local community leaders project needs. Provides on-the-job training program. Approach to periodic updates in coordination with METRO. Low Range – Does not address or appropriately understand community needs. Limited communication approach to coordinate with METRO staff and public. No program to build community trade skills. 	0 – 2
2.D.4	<p><u>Stakeholder Management</u></p> <p>Will evaluate the management of authorities having Jurisdiction, and interactions with Utility, Railroad or other Agencies:</p> <ul style="list-style-type: none"> High Range – Clearly understands METRO policies, procedures and specification manual. Understands coordination requirements with METRO inspectors and other authorities 	0 – 3

	PACKET 2 (0 to 100 points)	Points Possible
	<p>having jurisdiction. Clear understanding of utility, railroad, and other agencies challenges. Develops strategies to mitigate risk. Clearly understands process to get permits, as necessary, and requirements during construction.</p> <ul style="list-style-type: none"> Low Range – Limited discussion on CMAR coordination or familiarity with METRO. Utility, railroad, and other agency challenges not identified or understood. No risk management strategies identified. Limited discussion on requirements during construction. 	
2.D.5	<p><u>Managing Sub-Contractors</u></p> <ul style="list-style-type: none"> High Range – Approach to bid conditioning to not miss scope. Engaging all subcontractors in project communications. Approach to quality management of subcontractors. Low Range – Does not address subcontractor quality management. Does not describe communication approach with subcontractors. Does not describe approach to managing subcontractors. 	0 – 5
2.D.6	<p><u>QA/QC & Safety Plan</u></p> <ul style="list-style-type: none"> High Range – Addresses impacts to motorists and craft labor. Approach to managing subcontractors clearly defined. Approach to pedestrian safety, if applicable. Innovative solutions to enhance project value. Low Range – Fails to address impacts to motorists and craft labor. Does not address pedestrian safety or subcontractors. Safety approach not tailored to this project. 	0 – 5
2.D.7	<p><u>Cost Management</u></p> <ul style="list-style-type: none"> High Range – Clearly articulates process to obtain best value pricing. Describes approach to limit change orders after design phase, describes approach to clearly articulate project trending budget, risk register impacts to cost, and contingencies. Describes any tools or approaches specific to this project. Low Range – Limited discussion of process to obtain best value pricing. No discussion of change order management. Limited discussion on approach to project trending budget, risk register without impacts, and contingency. No discussion of tools. 	0 – 5
2.D.8	<p><u>Schedule Management</u></p> <ul style="list-style-type: none"> High Range – Describes approach to integrate multiple schedules and critical path management. Uses schedule to determine capital cost forecasting. Using risk management software to determine schedule risks and describes strategies to mitigate challenges. Describes approach to accuracy, quality, and logical sequencing. Uses schedule to determine capital cost forecasting. Using risk management software to determine schedule risks and describes strategies to mitigate challenges. Describes approach to accuracy, quality, and maintaining proper logic. Mid Range – Articulates critical path method and management. Uses schedule to identify critical work items. Determines schedule risks but does not clearly describe approach to mitigation. Low Range – Does not address critical path. Does not adequately address schedule risks or mitigation strategies. 	0 – 5
	2.E CMAR PRICING (0 to 30 points)	0 – 30
2.E.1	<p><u>Preconstruction & CMAR Fees</u></p> <p>CMAR PROPOSED FEES:</p> <ul style="list-style-type: none"> A. Preconstruction Services Fee (Not-to-Exceed Sum) B. CMAR's proposed Construction Phase General Conditions (GCs) % C. CMAR's proposed Construction Phase Fixed Fee % <p>CALCULATIONS:</p> <ul style="list-style-type: none"> D. Reference Cost of Construction Phase w/o GCs = \$100M E. CMAR proposed Construction Phase GCs dollar amount = B x D F. Cost of Construction Phase Work = D + E G. CMAR proposed Construction Phase Fixed Fee dollar amount = C x F H. Total CMAR Price Proposal = A + E + G <p>Use form from Section II.3</p>	0-30

K. EXAMINATION OF DOCUMENTS

1. A complete set of proposal documents shall be used in preparing a proposal. METRO assumes no responsibility for errors or misinterpretations resulting from the use of incomplete sets of documents.
2. METRO, in making copies of these documents available on the above terms, does so only for the purpose of obtaining proposals on the Work and does not convey a license or grant for any other use.
3. Each proposer should carefully examine these documents and take such other steps as may be reasonably necessary to ascertain the contract performance requirements. Failure to do so will not relieve the Proposer from responsibility for estimating properly the difficulty or cost of successfully performing the contract. Extra compensation will not be allowed for conditions which are determinable by examining these documents.

L. EXPLANATIONS/AMENDMENTS ISSUED TO PROPOSERS

1. Any explanation desired by a proposer regarding the meaning or interpretation of the CMAR or its scope of services must be requested in writing and received by METRO **at least ten (10) calendar days before the date set to receive proposals.** METRO's response will be in the form of an amendment and will be furnished to all prospective proposers. METRO may also issue amendments when a solicitation is changed.
2. The proposer must acknowledge receipt of every amendment issued by METRO in the space provided on the Amendment form itself and submit a copy of all amendments with the proposal or send a letter of amendment acknowledgement to be received by METRO before the time set for receipt of proposals. Oral explanations or instructions given before the award of the contract will not be binding. METRO will assume no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of the contract, unless included in these documents.

M. INDEPENDENT PRICE DETERMINATION

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

N. INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting a proposal, the proposer is providing the certification set out in Paragraph D above.
2. The certification in this Instructions to Proposers is a material representation of fact upon which reliance will be placed by METRO to enter into a resultant contract. If it is later determined that the proposer/contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, METRO may pursue available remedies, including suspension and/or debarment.
3. The proposer shall provide immediate written notice to METRO if at any time the proposer learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms 'covered transaction,' 'debarred,' 'suspended,' 'ineligible,' 'lower tier covered transaction,' 'participant,' 'person,' 'primary covered transaction,' 'principal,' 'proposal,' and 'voluntarily excluded,' as used herein, have the meanings set out in the Definition and Coverage sections of rules implementing Executive Order 12549. The proposer may contact the designated METRO Contracts Administrator for assistance in obtaining a copy of this regulation.
5. The proposer agrees by submitting a proposal that, should the resulting contract for the proposed covered transactions entered into, it shall not knowingly enter into any subcontract with a firm that is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by METRO.
6. The proposer further agrees by submitting this proposal that it will include the instruction titled 'Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction,' at Paragraph D, without modification, in all solicitations for lower tier covered transactions, expected to equal or exceed \$25,000.00.
7. Where the proposer is unable to certify to any of the statements in this certification, the proposer shall attach an explanation to the proposal it submits to METRO.

O. LATE PROPOSALS; MODIFICATION OR WITHDRAWAL OF PROPOSALS

1. Any proposal or modification of proposal received at the METRO office designated in the CMAR after the exact time specified for receipt will not be considered. Late proposals received will be retained unopened in the official contract file.
2. A proposal may be withdrawn in person by a proposer or his authorized representative, provided his identity is made known and he signs a receipt for the proposal, but only if the withdrawal is made prior to the exact time set for receipt of proposals.

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

P. METRO-FURNISHED PROPERTY

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

Q. POSTPONEMENT OF DATE SET FOR RECEIPT OF PROPOSALS

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

R. PREPARATION OF PROPOSAL

1. All proposal responses to this solicitation must be submitted electronically through METRO's Bonfire hub at <https://ridemetro.bonfirehub.com>. Facsimile (fax) or emailed bids are not authorized.
2. If a proposal is from an individual, sole proprietorship, or a proposer operating under a trade name, the proposal shall be signed by that individual.
3. A proposal by a partnership shall be executed in the partnership name and signed by a partner; the official address of the partnership shall be shown below the signature.
4. A proposal by a corporation shall be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal shall be affixed and attested by the corporate secretary or assistant secretary.
5. A proposal submitted by a joint venture shall list the names of all joint venturers and the mailing addresses of each and shall be executed by all joint venturers in the same manner as if they were individually submitting proposals. The signature portion of the Proposal form in Section II shall be altered as appropriate for execution by the joint venture and all joint venturers.
6. All names shall be typed or printed below the signature.
7. The proposal shall contain an acknowledgment of receipt of all amendments to the solicitation.
8. Communications regarding this solicitation are to be directed to the address and to the attention of the METRO person shown in this CMAR document.
9. If a proposer considers any of the terms or conditions of the solicitation (including the proposed contract) to be unacceptable, the proposer should identify those which are so, and cite reasons therefore in a supplement to its proposal cover letter. Any such exceptions or revisions, and the reasons therefore, will be considered as factors in evaluation of the proposal.
10. In an effort to promote greater use of recycled and environmentally preferable products and minimize waste, all proposals submitted should comply with the following:
 - a) All proposals and copies should be printed on recycled paper with a minimum post-consumer content of thirty percent (30%) or on tree-free paper (i.e., paper made from raw materials other than trees, such as kenaf);
 - b) Unless absolutely necessary, all proposals and copies should minimize or eliminate the use of non-recyclable or non-reusable materials, such as plastic report covers, plastic dividers, vinyl sleeves and bindings;
 - c) To further reduce the use of materials not essential to proposals, METRO encourages Responders to forgo the use of three-ringed binders or glued materials when assembling the originals and copies of the CMAR and other required information. Instead, METRO prefers and appreciates the use of paper clips, binder clips, staples, rubber bands, and other materials containing recycled content, such as folders, paper clips, discs or thumb drives, envelopes, boxes, etc. METRO also appreciates receiving proposals assembled in formats that allow for easy removal and recycling of paper and other materials; and
 - d) Unnecessary samples, attachments or documents not specifically asked for should not be submitted with a proposal.

S. PROHIBITION ON LOBBYING

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

T. PROPOSAL CONTENTS

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

1. **Technical Proposal:** The Proposer shall submit **one (1) original hardcopy and one (1) electronic PDF file as directed in SECTION I, CMAR**. The technical proposal establishes a proposer's technical qualifications based on set technical criteria listed herein. Proposer's technical proposals should be structured to respond to criteria noted within each of the Evaluation Factors shown in Paragraph I, above, and in the same order as the factors are listed.
2. **Pricing Proposal:** The Proposer shall submit **one (1) original hardcopy and one (1) electronic PDF file as directed in SECTION I, CMAR**. Each proposer's CMAR fees (see Section II, Article 3, 'CMAR Proposed Fees') shall be submitted concurrently with the CMAR Proposal and shall be in a **separate, sealed envelope** clearly named as such, and referencing Solicitation No. [REDACTED].

U. PROPOSAL EVALUATION PROCESS

1. Selection of a firm to provide the services required herein will be made by an Evaluation Committee comprised of METRO staff members who have expertise and knowledge in the disciplines related to the project and in accordance with this CMAR. The Committee will evaluate technical proposals, only to the extent necessary to determine that the Contractor's technical proposal meets METRO's minimum requirements as set forth above, and oral presentations, if necessary. If the decision is made to conduct oral presentations, the firms will make a final presentation to the Evaluation Committee. METRO will first review technical proposals without consideration of pricing in order to determine which proposals are acceptable to METRO or could, after clarifications are finalized, be made acceptable to METRO. Following this determination, METRO will evaluate the proposed CMAR fees submitted with the technically acceptable proposals.
2. The Committee's evaluations are to be based on all available information, including proposals, reports, discussions, reference and other appropriate checks, and the personal knowledge of the individual Committee members in the areas of their expertise. Proposals requirements set forth herein are designed to provide guidance to the proposer concerning the type of documentation that will be used by the Evaluation Committee.
3. Proposers Price Scores will be calculated by dividing the lowest "Total CMAR Price Proposal" by the Proposer's "Total CMAR Price Proposal" multiplied by the total possible points.

V. PROPOSER QUALIFICATIONS/ELIGIBILITY FOR AWARD

1. Each proposer shall complete, and submit the applicable forms contained in this document. If the proposer is a joint venture, each joint venturer shall prepare and submit separate forms.
2. In order for a proposer to be eligible to be awarded the contract, a proposal must be responsive to the CMAR, show the proposer's technical competency, and METRO must be able to determine that the proposer is responsible to perform the contract satisfactorily.
3. A responsive proposal complies with all material aspects of the solicitation. Proposals that do not comply with all the terms and conditions of this solicitation will be rejected as nonresponsive.
4. Responsible proposers as a minimum must:
 - a. Have financial resources adequate to perform the contract, or ability to obtain such resources as required during the performance of the contract;
 - b. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments;
 - c. Have the necessary technical equipment, material and capability, including qualified supervision and skilled workforce, adequate to perform the contract, or the ability to obtain such resources as are required during the course of the contract;
 - d. Have a satisfactory record of business integrity and ethics;
 - e. Have a satisfactory record of current and/or past performance in behalf of METRO and/or other owners, including the areas of scheduling, submittals; record keeping, reporting, qualified supervision, skilled workforce, safety, quality of equipment, materials and workmanship, timely performance, warranties and guarantees;
 - f. If applicable, have a satisfactory record as a Contractor of achieving Small Business Participation goals in past METRO projects, as well as providing evidence satisfactory to METRO that the proposer will comply with Small Business Program requirements and any Small Business Participation goal contained herein;
 - g. Certify that it is not on the U.S. General Services Administration's 'Lists of Parties Excluded from Federal Procurement or Non-Procurement Programs.' Signing and submitting the proposal is so certifying; and

- h. Be otherwise qualified and eligible to receive an award under applicable laws and regulations.
5. A proposer may be requested to submit written evidence verifying that it meets the minimum criteria necessary to be determined a responsible proposer. Refusal to provide requested information will result in the proposer being declared non-responsive, and the proposal will be rejected.

W. PROTESTS

1. Each protest or objection to the solicitation documents shall be submitted for resolution to the Chief Procurement Officer. Each such protest shall be in writing and shall be supported by the information set forth in Chapter 12 of METRO's Procurement Manual to enable the protest to be considered. A protest or objection will not be considered if it is insufficiently supported, or it is not received within the time limits specified herein.
2. A protest based upon terms, conditions or form of a proposed procurement action prior to proposal due date, shall be submitted so that it is received by the Chief Procurement Officer no later than five (5) calendar days prior to the specified proposal due date.
3. For a protest concerning an award decision, including proposal evaluations, the initial protest must be received by the Chief Procurement Officer not later than five (5) calendar days after the interested party knows, or through exercise of reasonable diligence should have known, whichever is earlier, of the grounds for the protest.
4. Each protest will be processed in accordance with METRO's Protest Procedures located in Chapter 12 of METRO's Procurement Manual, and as displayed in the 'Disputes' Article in a resultant contract. A copy of the procedures will be provided to the protester upon written request to METRO's Chief Procurement Officer.
5. A written final determination on any protest will be rendered by METRO's President & Chief Executive Officer and will be provided to the protester as soon as practicable.
6. The protester must exhaust its administrative remedies by pursuing METRO's protest procedures to completion prior to appealing METRO's decision to the FTA.
7. Federal Transit Administration (FTA) Circular 4220.1F, Paragraph 7L, addresses bid protests. A copy of this Paragraph will be provided to the protester upon written request to METRO. Review of a protest by FTA will be limited to a grantee's failure to have or follow its written protest procedures, its failure to review a complaint or protest, or violations of federal law or regulations. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester learned or should have learned of an adverse decision by METRO or other basis of appeal to FTA. Violations of a specific federal law or regulation will be handled by the complaint process stated within that law or regulation. Alleged violations on other grounds are under the jurisdiction of the appropriate state or local administrative or judicial authorities.

X. SOLICITATION ORDER OF PRECEDENCE

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

1. Solicitation Amendments (if any) with the latest having precedence;
2. Instructions to Proposers;
3. The Proposal Form;
4. The proposed contract articles;
5. Scope of services; and
6. Any other full-text provision of this solicitation whether incorporated by reference or otherwise.

Y. SUBMISSION OF PROPOSALS

A proposal shall be submitted so as to be received no later than the exact time and at the place indicated in the CMAR and shall be enclosed in a sealed envelope clearly identified as a proposal with the project title, CMAR number and proposal receipt time. The envelope shall identify the name and address of the proposer and shall contain all required documents. Failure to do so may result in a premature opening of, or a failure to open, such proposal. THE TECHNICAL PROPOSAL and the PRICE PROPOSAL are to be sent in SEPARATE, SEALED ENVELOPES. AN ELECTRONIC PDF FILE OF EACH PROPOSAL IS ALSO REQUIRED, as directed in Section I.

Z. TAXES

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

3 SMALL BUSINESS AND DISADVANTAGED BUSINESS ENTERPRISE PROGRAMS

- A. The Metropolitan Transit Authority of Harris County, Texas (METRO) has implemented a Small Business Enterprise Program, hereinafter referred to as the Program, for small businesses attempting to provide goods and/or services as prime Contractors to METRO or as subcontractors to other prime Contractors to METRO. It is the policy of METRO to promote equal opportunity and non-discrimination in all of its procurement matters in accordance with state and federal law. The Program seeks to provide METRO-certified Small Businesses (SBE) and federally-certified Disadvantaged Businesses Enterprises (DBE) a full and fair opportunity to participate in METRO projects through race-gender neutral means. The Small Business Enterprise Program shall not be used to discriminate against any person or company or group of persons or companies because of race, color, national origin, religion, sex (including gender identity and sexual orientation), disability, or age. Each bidder, proposer, Contractor and subcontractor shall comply with this non-discrimination requirement.
- B. The Small Business Enterprise Program is a separate program from METRO's Disadvantaged Business Enterprise (DBE) Program which is administered by the federal government and applies to federally funded projects. METRO's Small Business and Disadvantaged Business Enterprise Programs can be found at <https://www.ridemetro.org/Pages/SB-FormsTemplates.aspx>
- C. Nothing in the Small Business or Disadvantaged Business Enterprise Programs should be construed to give a bidder or proposer a property interest in a proposal, bid or contract prior to the Board of Directors' award of the contract and compliance with all statutory and legal requirements.
- D. **The Small Business Participation goal METRO established for this solicitation is %.** The Small Business Participation goal may be satisfied by utilizing a METRO-certified Small Business Enterprises (SBE), a federally-certified Disadvantaged Business Enterprises (DBE) or a combination of both. These certification types are hereafter referred to as "certified". All references to Small Businesses include Disadvantaged Businesses.

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

- E. Below are the requirements to satisfy the minimum Small Business Participation goal and the Small Business Enterprise Program:
1. A non-certified prime:
 - a) cannot self-perform one hundred percent (100%) of the contract;
 - b) must subcontract, at a minimum, the Small Business Participation goal percentage to one or more certified firms;
 - c) is **prohibited from multiple submissions** of bids or proposals, i.e. submitting as a prime Contractor in one submission and as a subcontractor in another submission for the same project. Such multiple submissions may result in the disqualification of all submissions where the bidder/proposer is listed.
 2. A certified SBE/DBE prime:
 - a) participation will count towards the Small Business Participation goal;
 - b) cannot self-perform one hundred percent (100%) of the contract;
 - c) must subcontract, at a minimum, the Small Business Participation goal percentage;
 - d) must subcontract, at a minimum, fifty percent (50%) of the Small Business Participation goal to one or more certified small or disadvantaged subcontractor(s);
 - e) may submit as a prime in one submission and as a subcontractor in **one (1)** other submission for the same project.
 3. A Joint Venture (JV) can participate on a METRO project as a prime contractor (JV-prime) or as a subcontractor (JV-subcontractor). METRO views a JV as one legal entity and is subject to the same rules and requirements as other primes and subcontractors. For example (but not limited to):
 - a) The JV-prime cannot self-perform 100% of the total contract value.
 - b) The JV-prime must demonstrate a commitment to the small business goal. Failure to commit to the SB goal will deem the JV-prime non-responsive and will not be considered for contract award.
 - c) If one (or more) of the firms that make up the JV partnership is a certified small or disadvantaged business, then the portion of the Work performed by the certified firm(s) will be counted towards the small business goal.
 - d) The JV-prime must subcontract at a minimum, the small business goal percentage.
 - e) JV primes with a certified small or disadvantaged partner(s) are viewed the same as certified SBE/DBE primes, and therefore must subcontract, at a minimum, fifty percent (50%) of the Small Business Participation goal to a small or disadvantaged subcontractor(s).
 - f) The certified small or disadvantaged firm(s) that is part of a JV-prime partnership, can also be listed as a subcontractor(s) on one other team.
 - g) A JV-prime, without certified small or disadvantaged partners, is prohibited from submitting as a prime and as a subcontractor on the same submission.
 - h) A JV-subcontractor, with a certified small or disadvantaged partner(s), is limited to submitting as subcontractor(s) on only four (4) bid/proposal submissions for the same project. Only the portion of the Work performed by the certified firm(s) will be counted towards the small business goal. Failure to adhere to this four (4) bid/proposal limit may result in the disqualification of the offending JV-subcontractor on all bids/proposals.
 4. Agreements between a bidder/proposer and a certified SBE/DBE subcontractor in which the certified subcontractor promises not to provide subcontracting quotations to other bidders/proposers shall be prohibited.
- F. Required Small Business Documents

Note: The 'Contractor's Utilization Plan,' 'Business Assurance Statement,' 'Subcontractor/Supplier Letter of Intent,' and 'Contractor Utilization Plan Pledge' forms constitute the Contractor's commitment to subcontract to certified businesses. Submission of these documents is a condition to be met by the primes to be deemed responsive.

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

1. Contractor Utilization Plan See Exhibit **F**, Form 1

- a) **IT IS MANDATORY that every bidder or proposer submit a Contractor's Utilization Plan (the 'Plan') when submitting a bid or proposal or response to request for qualifications, whether or not a Small Business Participation goal has been established.**
- b) The bidder/proposer must use this form to identify all subcontractors with whom the bidder/proposer intends to contract, specifying the agreed price and/or percentage to be paid each subcontractor for such work, and certifying the contract items and parts thereof to be performed by each subcontractor. Only percentages of Contract Work Effort are to be indicated when responding to CMAR submissions, as pricing is determined later in the procurement process.
- c) If applicable, the Plan should set forth how the Small Business Participation goal for the proposed project is to be met. The Plan will be used by METRO as a factor in evaluating whether a bidder/proposer has complied with the requirements of the Program to satisfy the Small Business Participation goal.
- d) **If the Small Business participation submitted by the bidder/proposer does not meet an established Small Business Participation goal, if any, the bidder/proposer will be deemed non-responsive and will not be considered for contract award.**
- e) **Failure to submit a complete Plan for a contract with a Small Business Participation goal will result in bid/proposal being deemed non-responsive and will not be considered for contract award.**
- f) When a Small Business Participation goal has been established, the Contractor shall adhere to the Plan submitted unless a waiver is received from the Office of Small Business. Any changes in the Plan regarding the proposed use of certified subcontractors in discharging the contract duties must be approved by the Office of Small Business. The approval of the Office of Small Business will not be unreasonably withheld upon a showing of good cause to make the change.
- g) When adding a certified subcontractor to the Plan with a Small Business Participation goal, the Contractor must submit a copy of the subcontract agreement to the Office of Small Business within fifteen (15) days of receiving approval from the Office of Small Business.
- h) The Contractor Utilization Plan must include the following:
 - 1) A simple, straight-forward statement outlining subcontractor participation regardless of certification, inclusive of scope, responsibilities and percentage of work.
 - 2) Materials and supplies shall be counted towards the small business goal as follows:
 - i. One hundred percent of the cost of materials or supplies purchased from a small business manufacturer can be applied towards the Small Business Participation goal of a Contract. A manufacturer is defined as a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment of the general character described by the scope and/or specifications of the contract.
 - ii. Sixty percent of the cost of materials or supplies purchased from a small business regular dealer can be applied towards the Small Business Participation goal of a Contract. A regular dealer is defined as a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the scope and/or specifications of the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
 - 3) Copies of documents demonstrating that each Small Business team member is acceptably certified as either a METRO-certified Small Business or TUCP-certified Disadvantaged Business Enterprise and verifying that such certification is current as of the date of submission.
 - i. METRO **accepts** the following certifications:
 - SBE – Metropolitan Transit Authority of Harris County (METRO)
 - DBE – City of Houston/Texas Unified Certification Program (TUCP)
 - DBE – City of Austin
 - DBE – Corpus Christi Regional Transportation Authority
 - DBE – North Central Texas Regional Certification Agency
 - DBE – South Central Texas Regional Certification Agency
 - Texas Department of Transportation (DOT) approved DBE certification

- ii. METRO **does not accept** the following certifications:
 - State of Texas HUB (Historically Underutilized Business)
 - Minority Business Enterprise only
 - Women Business Enterprise only
 - City of Houston Small Business certification only
 - iii. The link to the METRO SBE directory is <https://ridemetro.sbdbe.com/> The link to the TUCP DBE directory is <https://txdot.txdotcms.com/>
 - iv. If a proposer/bidder submits plans to add a firm as part of its small business participation that is not yet certified as referenced above, that firm must be either METRO Small Business- or federal Disadvantaged Business Enterprise-certified **prior** to the bid/proposal submittal date. Firms certified after the bid/proposal submittal date will not be counted towards the commitment. Additional Small Business certification information and forms may be found at METRO's website: www.ridemetro.org under Small Business.
- 4) When requested, a timeline for performance by subcontractors.
 - 5) Signature of the bidder/proposer.
2. Business Assurance Statement (BAS) See Exhibit **F**, Form 2
 - a) Bidders/proposers are **required to submit an executed Business Assurance Statement form with their bid/proposal when a Small Business Participation goal has been established.**
 - b) Bidders/proposers must enter their Small Business Participation goal commitment. This includes the SBE/DBE prime's participation if applicable.
 - c) Bidders/proposers must enter into agreements with the subcontractors listed on the Plan
 - d) Bidders/proposers must include the BAS Clauses in their subcontractor agreements
 3. Letter of Intent (LOI) See Exhibit **F**, Form 3
 - a) Bidders/proposers are **required to submit a Letter of Intent form for all subcontractors when a Small Business Participation goal has been established.**
 - b) The Letters of Intent must be executed by the prime and the subcontractor
 4. Contractor Utilization Plan Pledge (Pledge) Exhibit **F**, Form 4
 - a) Bidders/proposers are **required to submit an executed Pledge form with their bid or proposal when a Small Business Participation goal has been established.**
 - b) Bidders/proposers must pledge prompt payment to **ALL** subcontractors
 - c) Bidders/proposers must pledge to notify **ALL** subcontractors of disputed invoices.
 - d) Bidders/proposers must affirm adherence to METRO's Non-discrimination Mandate.
 - e) When applicable, bidders/proposers must pledge prompt payment of retainage
 - f) Bidders/proposers must include the Pledge Clauses in their subcontractor agreements
- G. Incentives Utilizing Small Businesses
1. Fees for Solicitation Documents. Submitters making a valid bid and participating in the Program will receive a refund for up to seven (7) sets of documents purchased from METRO.
 2. Bid Security/Bond. A bid security will no longer be required except for federally funded construction solicitations exceeding \$100,000.
 3. METRO's Incentives. METRO may utilize other incentives, as set forth in the bid specifications or CMAR, as it determines appropriate.
- I. METRO encourages Contractors to use financial institutions owned and controlled by socially and economically disadvantaged individuals. A listing of such institutions may be found at <https://www.fdic.gov/regulations/resources/minority/mdi.html>

4 BID FORMS SUBMISSION CHECKLIST

Insert requested information and sign and date where indicated.

SUBMIT WITH COMPLETED PROPOSAL

<input type="checkbox"/> 'Proposer's Questionnaire'	Section I, Article 5
<input type="checkbox"/> Technical Proposal Submission Page	Section I, Article 6
<input type="checkbox"/> Technical Proposal (without pricing)	Section I, Article 7, in sealed envelope, separate from pricing
<input type="checkbox"/> Pricing Proposal Submission Page	Section II, Article 1
<input type="checkbox"/> CMAR Proposed Fees	Section II, Article 3, in separate, sealed envelope
<input type="checkbox"/> Key Personnel form	Section II, Article 4
<input type="checkbox"/> Certification of Restrictions on Lobbying form	Section XI, Exhibit C
<input type="checkbox"/> Debarment and Suspension Certification form	Section XI, Exhibit D
<input type="checkbox"/> Contractor's Utilization Plan' form	Section XI, Exhibit F, Form 1
<input type="checkbox"/> Buy America' Certificate, if applicable	Section XI, Exhibit G
<input type="checkbox"/> SIGNED copy of all Amendments issued (if any) to acknowledge receipt	

SUBMIT IF A SMALL BUSINESS GOAL IS ESTABLISHED

<input type="checkbox"/> 'Business Assurance Statement' form	Section XI, Exhibit F, Form 2
<input type="checkbox"/> 'Subcontractor/Supplier Letter of Intent' form	Section XI, Exhibit F, Form 3
<input type="checkbox"/> 'Contractor's Utilization Plan Pledge' form	Section XI, Exhibit F, Form 4
<input type="checkbox"/> Acceptable certification documentation	

SUBMIT ONLY IF APPLICABLE

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

METRO SBE Program Checklist (Applicable Only For Solicitations With a SB Goal)

The following SBE Program items are **MANDATORY TO BE DEEMED RESPONSIVE** to this solicitation, which has a Small Business Participation goal. Bidders/Proposers that fail to meet these requirements, will be deemed non-responsive and no further consideration will be given to their bid/proposal.

- ☐ A certified or non-certified prime cannot self-perform 100% of their bid/proposal value.
- ☐ All certified and non-certified primes must, at a minimum, meet the small business participation goal percentage. (A certified prime's participation counts towards the SB goal percentage.)
- ☐ All certified and non-certified primes must subcontract, at a minimum, the Small Business Participation goal percentage.
- ☐ **ALL CERTIFIED PRIMES** must subcontract, at a minimum, fifty percent (50%) of the Small Business Participation goal to one or more certified firms.

Special Note:

For a firm's participation (prime/subcontractor/supplier) to be counted towards the Small Business Participation goal percentage, the firm must be certified as a METRO certified Small Business Enterprise (SBE), a Disadvantaged Business Enterprise (DBE) and/or an SBA (8a).

5 PROPOSER'S QUESTIONNAIRE

Every Contractor and subcontractor anticipated to be utilized in performance of these services is to complete this questionnaire where applicable.

All completed questionnaires are to be submitted with the prime proposer's proposal.

A. Name of Company: _____

B. Address of Company: _____

Telephone #: _____ Fax #: _____ Email: _____

Office hours: _____

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

Telephone #: _____ Fax #: _____ Email: _____

Office hours: _____

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

Leased ____ Corporate-owned ____ Individual-owned ____

E. Geographical Service Area: _____

F. Texas Taxpayer Number: _____

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

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

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

Name: _____

Telephone #: _____ Fax #: _____ Email: _____

Office hours: _____

J. Name your principal financial institution for financial responsibility reference:

Name of Bank: _____

Street Address: _____

City and State: _____

Telephone: _____

E-Mail: _____

Officer Familiar with Proposer's Account: _____

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

YEAR	AVE. ANNUAL RECEIPTS
_____	_____
_____	_____
_____	_____

L. Is your firm aware of, and will it comply with Texas Government Code, Title 10, Chapter 2251, when making payments to subcontractors?

Yes ____ No ____

M. Does your firm agree (if awarded a contract) to make corporate data and records (as they relate to the contract) available to METRO for audit during performance of and for a period of three (3) years after contract completion? This CMAR contract requires an open book format with information pertaining to this contract.

Yes ____ No ____

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

Accrual Basis Accounting System ____ Cash Basis Accounting System ____

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

P. Have you attached a copy of your firm's last annual financial (profit/loss) statement?

Yes ____ No ____

Q. Does your firm have other branches operating in other places?

Yes ____ No ____ If yes:

How many? ____ Are separate accounting reports prepared for each branch?

Yes ____ No ____

What indirect overhead rate will be used in the Contract?

The branch that will provide the services ____ The combined rate of the home office and all branches ____

R. Has your firm ever been audited by METRO?

Yes ____ No ____ If yes:

The date of the last audit was: _____

- S. Have your firm's accounting records been subjected to an annual independent audit? Yes ____ No ____
If yes, please provide a copy of CPA reports for the last two (2) years.
- T. Has your firm recently been audited by a cognizant Federal Government Audit Agency? Yes ____ No ____ If yes:
By which agency? _____
Periods covered by the audit: _____
Have you attached a copy of the latest audit performed by such agency? Yes ____ No ____
- U. Has your firm established project accounting records to record costs by individual project? Yes ____ No ____
- V. Are the costs in these records used as the basis for your firm's financial status reports and billing purposes?
Yes ____ No ____
- W. Does your firm post credits for rebates, returns and allowances as a reduction to expenditures? Yes ____ No ____
- X. Are employees consistently identified and classified as to direct and indirect categories of labor? Yes ____ No ____
- Y. Does your firm currently employ or has it ever employed, at any time over the past twelve (12) months, any current or former METRO employees, associates, or representatives in any capacity whatsoever?
Yes ____ No ____ If yes:
Please provide on a separate sheet of paper the name of the individual, the purpose of employment, and the period employed.
- Z. Does your firm currently employ or carry on its payrolls any individual of a nationality other than United States citizen?
Yes ____ No ____ If yes:
Is the individual known to have entered and are working in the United States in accordance with the established laws of the United States Immigration and Naturalization Authority?
Yes ____ No ____
- AA. Please list the individuals authorized to negotiate with METRO in connection with this CMAR.
- | NAME | TITLE | TELEPHONE | EMAIL |
|-------|-------|-----------|-------|
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
- BB. How many years has your organization been in business as a Contractor or consultant under your present business name?
_____ Years
- CC. How many people are currently employed by your firm?
In Harris County? _____ Outside Harris County? _____

DD. List the names of personnel who will be directly responsible for leading the Preconstruction and Construction activities needed to provide the required services. Resumes must be included in the proposal Section 2.C "Key Personnel".

NAME	TITLE

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

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

NAME	TITLE	TELEPHONE	EMAIL

FF. Is any litigation pending against your organization that will affect your company's ability to perform the required services?

Yes ____ No ____

If yes, provide details:

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

NAME	ADDRESS	EMAIL	TELEPHONE

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

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

NAME: _____
Please Print

TITLE: _____

SIGNATURE: By: _____

DATE OF SIGNING: _____

METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY TEXAS

CONSTRUCTION MANAGEMENT AT-RISK

Requisition No.: _____ CMAR No.: _____ Date of CMAR: _____ Contract No.: _____

Description of Project: _____

(TO BE COMPLETED BY PROPOSER)

In compliance with the above referenced CMAR, the undersigned hereby proposes to furnish all of the services and resources necessary to complete the above referenced project for the total price listed in the 'CMAR Proposed Fees' Article herein and in accordance with the Contract documents. The undersigned agrees that this offer will remain valid for a period of one hundred twenty (120) calendar days after the date of receipt of proposals.

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

FULL NAME OF PARTNERS (Type or print)

BUSINESS NAME (Type or print)

ADDRESS (Type or print)

CITY, STATE, ZIP CODE (Type or print)

BY: (Sign in ink)

NAME: (Type or print)

DATE: _____

PHONE: () _____ FAX NO: () _____

EMAIL: _____

TITLE _____ PHONE: () _____

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

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

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

DIRECTIONS FOR SUBMITTING PROPOSALS:

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

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

NOTE: Identify the envelope containing a proposal with the project title, CMAR number, proposal due date, and the proposer's company name and address.

THE TECHNICAL, NON-PRICED PROPOSAL IS TO BE SUBMITTED IN A SEALED ENVELOPE
SEPARATE FROM THE PRICING PROPOSAL.

Proposer to insert proposal here, EXCLUSIVE OF PRICING

SECTION II – FORMS FOR PROPOSING/AWARD

1 CMAR FEES PROPOSAL SUBMISSION PAGE

METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY TEXAS

CONSTRUCTION MANAGEMENT AT-RISK

Requisition No.: _____ CMAR No.: _____ Date of CMAR: _____ Contract No.: _____

Description of Project: _____

In compliance with the above referenced CMAR, the undersigned hereby proposes to furnish all of the services and resources necessary to complete the above referenced project for the service fees listed in the 'CMAR Proposed Fees' Article herein and in accordance with the Contract documents.

Any resulting contract will consist of this form and Sections II through XI of the original solicitation. The undersigned agrees that this offer will remain valid for a period of one hundred twenty (120) calendar days after the date of receipt of proposals.

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

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

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

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

FULL NAME OF PARTNERS (Type or Print):

BUSINESS NAME (Type or print)

ADDRESS (Type or print)

CITY, STATE, ZIP CODE (Type or print)

BY: (Sign in ink)

NAME (Type or print)

DATE:

PHONE: () _____ FAX NO: () _____

EMAIL:

TITLE (Type or print) PHONE: () _____

DIRECTIONS FOR SUBMITTING PROPOSALS:

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

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

NOTE: Identify the envelope containing a proposal with the project title, CMAR number, proposal due date, and the proposer's company name and address.

OFFER

(TO BE COMPLETED AND SIGNED BY PROPOSER/CONTRACTOR)

SIGNATURE OF PROPOSER/CONTRACTOR:

ATTEST:

BY: _____
(MUST BE SIGNED BY AUTHORIZED PERSON)

BY: _____

NAME: _____
(Type or Print)NAME: _____
(Type or Print)

TITLE: _____

TITLE: _____

DATE: _____

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

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

Contract No. _____

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

METROPOLITAN TRANSIT AUTHORITY
OF HARRIS COUNTYExecuted for and on behalf of the Metropolitan Transit Authority
pursuant to Resolution No. _____ of the Board of
Directors on the ____ day of _____, 20__, and on
file in the office of the Assistant Secretary of the Authority.BY: _____
Name: Michael Kyme
Title: Chief Procurement Officer

APPROVED:

Name: Debbie Sechler
Title: Executive Vice President, Administration_____
Name: Arthur C. Smiley III
Title: Chief Financial Officer

APPROVED AS TO FORM:

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

ATTEST:

Title: Assistant Secretary

THE PRICING PROPOSAL IS TO BE SUBMITTED IN A SEALED ENVELOPE SEPARATE FROM THE TECHNICAL PROPOSAL.

1. CMAR PROPOSED FEES:

- A. Preconstruction Services Fee (Not-to-Exceed Sum) \$ _____
- B. CMAR's proposed Construction Phase General Conditions (GCs) % _____%
- C. CMAR's proposed Construction Phase Fixed Fee % _____%

2. CALCULATIONS:

- D. Reference Cost of Construction Phase excluding GCs (Referential number) \$ **100,000,000**
- E. CMAR proposed Construction Phase GCs dollar amount = B x D \$ _____
- F. Cost of Construction Phase Work = D + E \$ _____
- G. CMAR proposed Construction Phase Fixed Fee dollar amount = C x F \$ _____
- H. **Total CMAR Price Proposal = A + E + G** \$ _____

EXAMPLE #1**Notes:****Technical Specifications included in Proposed Construction Phase General Conditions Percentage:**

Section	Description	Section	Description
1001	General Requirements	1505	Mobilization
1010	Summary of Work	1600	Product Requirements
1220	Measurement and Partial Payment	1715	Pre-Construction Inspections
1312	Project Meetings	1722	Filed Engineering - Surveying
1320	Construction Schedule and Progress Reports	1770	Contract Closeout
1130	Submittals	1785	Project Record Documents
1340	Shop Drawings, Product Data, and Samples	1786	Operation & Maintenance Instructions
1345	Construction Photographs	Other	Small Tools and Safety Supplies
1454	Field Samples and Mock-ups	Other	Insurance Costs
1500	Temporary Facilities and Services		

Technical Specifications and items NOT included in Proposed Construction Phase General Conditions Percentage:

Section	Description	Section	Description
1450	Quality Control and Quality Assurance	1740	Cleaning
1532	Tree & Shrub Protections	1790	Spare Parts and Maintenance Materials
1533	Temporary Decking	1800	Integrated Testing and Start-up
1560	Environmental Protection	Other	Railroad Flagging
1562	Soil Erosion and Sediment Control	Other	Trinity Metro Facilities
1570	Maintenacne and Control of Traffic	Other	Temporary Construction Easements/Land Use
1580	Project Signs		

APPENDIX C: CONSTRUCTION GENERAL CONDITIONS

	Costs NOT TO BE included in CM/GC Management Price Percentage	Costs TO BE included in CM/GC Management Price Percentage
Item	Costs for the categories below will be negotiated and included in the direct "Cost of the Work"	Other indirect and non-reimbursable costs to be included in the CM/GC price percentage are listed below
E.1	Mobilization	Project Principal – all costs
E.2	Project Manager	Project Manager relocation, housing, and subsistence costs.
E.3	Construction Manager/Superintendent	Construction Manager/Superintendent relocation, housing, and subsistence costs.
E.4	All other on-site, construction management staff as approved by the Agency	Additional CM/GC staff relocation, housing, and subsistence cost.
E.5	On-site administrative staff, including clerical and secretarial staff	Home, branch and regional office administrative support staff and all related costs
E.6	All project direct costs related to Safety	Home, branch and regional office safety support staff and all related costs
E.7	All project direct costs related to Quality Control	Home, branch and regional office quality control support staff and all related costs
E.8	Project office costs for cleaning, set-up/demo, maintenance, security, utilities, rent/lease, equipment, and furniture	Profit
E.9	Materials and equipment handling, including shipping/transport to site and storage costs	
E.10	Costs to co-locate with Agency staff	
E.11	Job site temporary toilet facilities and maintenance	
E.12	Partnering workshops	
E.13	Construction rental equipment	
E.14	Actual cost of permits	
E.15	All project direct costs related to implementation of Agency-approved sustainable practices	
E.16	All project direct costs related to implementation of Agency-approved DBE/ESB program	
E.17	Construction equipment and vehicles at Proposer's internal cost rate, including costs of maintenance and fuel	
E.18	All costs related to cell phones, radios, fax machines, pagers, computers and software.	
E.19	All costs of capital and interest; licenses and taxes required by law.	

4 KEY PERSONNEL FORM

PRIME CONTRACTOR: _____

Name: _____ TEL (____) _____

Title: _____ FAX (____) _____

E-Mail: _____

SUBCONTRACTORS:

Subcontractor Firm: _____

Name: _____ TEL (____) _____

Title: _____ FAX (____) _____

E-Mail: _____

Subcontractor Firm: _____

Name: _____ TEL (____) _____

Title: _____ FAX (____) _____

E-Mail: _____

Subcontractor Firm: _____

Name: _____ TEL (____) _____

Title: _____ FAX (____) _____

E-Mail: _____

Subcontractor Firm: _____

Name: _____ TEL (____) _____

Title: _____ FAX (____) _____

E-Mail: _____

Subcontractor Firm: _____

Name: _____ TEL (____) _____

Title: _____ FAX (____) _____

E-Mail: _____

Subcontractor Firm: _____

Name: _____ TEL (____) _____

Title: _____ FAX (____) _____

E-Mail: _____

SECTION III – DELIVERIES OR PERFORMANCE ARTICLES

1 DEFINITIONS

- A. 'METRO' or 'Owner' shall mean Metropolitan Transit Authority of Harris County, Texas.
- B. The term 'President & Chief Executive Officer' means the President & Chief Executive Officer of the Metropolitan Transit Authority and the term 'the duly authorized representative' means any person specifically authorized to act for the President & Chief Executive Officer. These representatives are authorized to obligate METRO by executing this Contract, and any modification thereto.
- C. The term 'Contracting Officer' means the Contract Administrator who has been designated the responsibility, by the METRO Chief Procurement Officer, for overall administration of the contract, excluding the execution of contract modifications.
- D. The term 'METRO Project Manager' means the technical representative who has been designated to act on behalf of METRO in monitoring and assessing the Contractor's services and/or technical performance and progress; inspecting and periodically reporting on such performance and progress during the stated period of performance, and finally certifying as to the acceptability of the contract Work in its entirety or any portion thereof, as required by the contract documents.
- E. The term 'Contract Disputes Appeals Committee' means the METRO administrative body designated by the President & Chief Executive Officer to hear a Contractor's appeal submitted under the 'Disputes' Article of this Contract.
- F. The term 'Contractor' or 'CMAR' shall mean the individual, partnership, corporation, organization which has been selected by METRO by virtue of its in-house capabilities of budgeting, cost estimating, management and labor relations personnel, the required technical and professional services expertise to work with the METRO Project Manager and the Design Consultant in order to help formulate the Project budget, furnish the Design Consultant with the information on construction technology and market conditions to help assure that the Project design stays within the time and budget expectations.
- G. The term 'subcontract' means any agreement including purchase orders (other than one involving an employer employee relationship) entered into between the Contractor and a subcontractor calling for services, labor, equipment, and/or materials required for Contract performance, including any modifications thereto.
- H. The terms 'subcontractor' and 'subcontractor and supplier' mean any individual, partnership, firm, corporation or joint venture that contracts with the Contractor to furnish services, labor, equipment and/or materials under this Contract. As used herein, the terms 'subcontractor' and 'subcontractor and supplier' are synonymous.
- I. The term 'Design Consultant' means the legally approved professional designer or group or association or professional corporation of such approved professional Design Consultants, engineers and consultants, who have contracted with the METRO to accomplish Design Services necessary for the Project.
- J. The term 'Design Services' means architectural and engineering services provided by the Design Consultant and/or the Contractor.
- K. The term 'Preconstruction Phase' means the phase of the Work in which the Preconstruction Services are performed and which commences on the issuance of Preconstruction NTP and finishes when all the Preconstruction Services have been completed. For clarification, the extent that Preconstruction Services remain to be completed, the Preconstruction Phase may overlap the Construction Phase.
- L. The term 'Construction Phase' means the phase of Work performed by the CMAR Contractor in the construction of the Work from award of construction contracts for any Bid Package until the final acceptance by METRO. Construction Phase excludes all Design and Preconstruction services.
- M. The term 'Preconstruction Fee' means the amount to be paid by METRO to the CMAR for Work performed by Contractors and subcontractors through the Preconstruction Phase which is equal to the amount of the fees and costs for administrative costs, overhead and profit, including, but not limited to, directs, indirects, burden, corporate costs, JV costs, and all resources needed to perform the Preconstruction duties described in Exhibit A1 and A2. Preconstruction Fee is a "not-to-exceed" amount that the CMAR will be reimbursed based on hours actually spent multiplied by agreed salary rates multiplied by approved overhead and fees.
- N. The term 'CMAR Fee' means the sum of money or percentage to be applied to all GMP proposals (LLTP or Construction) equal to the amount of profit, overhead, and construction general conditions as listed in Section II.3 of this document.
- O. The term 'GMP' means Guaranteed Maximum Price and shall the maximum amount for which all Work required for each Construction Phase, excepting LLTP (see definition below "LLTP GMP"), and it shall be computed by the Contractor in accordance with the provisions of Exhibit A2.
- P. The term 'LLTP' means long lead-time procurements which must be ordered and/or procured in advance of the Construction Phase for which it shall be used.

- Q. The term 'LLTP GMP' means the maximum amount for which any LLTP shall be procured and it shall be computed by the Contractor in accordance with all METRO requirements. The CMAR Price Percentage is applied to all LLTP GMP proposals. For any LLTP GMP to be accepted by the METRO Project Manager, the Owner's Estimate and the Contractor's GMP must be within a percentage acceptable to the METRO Project Manager, which shall be demonstrated by the METRO Project Manager's issuance of a "LLTP GMP Acceptance Letter" to the CMAR.
- R. The term 'Direct Cost of Construction Work' or 'Direct Cost' means those items included in any GMP which, pursuant to the Construction General Conditions, are directly related to construction and not otherwise defined under such Construction Phase.
- S. The term 'Contract Price' means the total of all amounts agreed for the CMAR services including; Preconstruction Fee, LLTP GMPs and Construction GMPs.
- T. The term 'Construction Cost Estimates' or 'CCE' is the cost to complete the Work for the Construction Phase, a Work Package, or any portion of the Work. This cost includes all labor, materials, equipment, bond premiums, and actual costs of procurement or construction that the Contractor will use for the duration of such LLTP or Construction Phase to complete the Work. Each CCE shall be produced in an open book process throughout the Preconstruction Phase of the Project so that the METRO Project Manager, the Design Consultant, and the Independent Cost Estimator (ICE) can make accurate assumptions, calculate prices, and determine the amount of risk in the Project.
- U. The term 'Independent Cost Estimate' means an estimate that is conducted with the Project design and construction information independent of the CMAR.
- V. The term 'Owner's Estimate' means the estimate reviewed and approved by the METRO Project Manager to be compared to each CCE or GMP. The Independent Cost Estimate can serve as the Owner's Estimate if approved by the METRO Project Manager.
- W. The term 'Amendment' means a written change to this Contract signed by the Contractor, METRO, and the METRO Project Manager, issued after the Effective Date of this Contract, authorizing a change in the Work, the method or manner of performance, an adjustment in the GMP, the Contractor's Preconstruction Fee, or the Term, which can only be changed by Amendment. An Amendment may be executed using a form attached to this Contract as Exhibit and approved by the Contractor and Principal.
- X. The term 'Work' means all the CMAR services and all LLTPs required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.
- Y. The term 'Work Package' means any portion of the Construction Work that is feasible of being worked and delivered independently, is sufficiently complete to permit a GMP proposal to be prepared by the CMAR and for which METRO issues a construction Work Package NTP.

2 PERIOD OF PERFORMANCE

- A. The CMAR will perform preconstruction and construction services for this Project under a Two-Phase Construction Manager at Risk delivery method. The two phases consist of:
- a. **The Preconstruction Phase** – Will commence after execution of the Contract and upon issuance by METRO of a Preconstruction Notice to Proceed (NTP). The Contractor shall perform the Preconstruction Services as set forth in Exhibit A2.
 - b. **The Construction Phase** – Will commence subject to agreement by METRO of a GMP for the Work or any Work Package, the execution of a Contract Amendment by the Parties and the issuance by METRO of a Construction NTP.

METRO reserves the right not to issue a Construction NTP and is entitled to terminate the Contract as provided in the Contract Documents. Upon such termination, METRO will own all work products in electronic and physically provided formats developed in the Preconstruction Phase.

3 SERVICES TO BE PERFORMED

The Contractor shall furnish all necessary resources required to perform Construction Management At Risk in accordance with the terms and conditions of this Contract. Specific services to be performed are listed in Exhibit A2, 'CMAR Scope of Services' and made a part hereof.

4 TEXAS ETHICS COMMISSION (TEC) ELECTRONIC FILING

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

SECTION IV - INSPECTION AND ACCEPTANCE ARTICLES

1 INSPECTION OF SERVICES

- A. The CMAR shall provide and maintain a quality control and service inspection system acceptable to METRO covering the services under this Contract. Complete records of all inspection services performed by the CMAR shall be maintained and made available to METRO during Contract performance and for a three (3) year period after the term of the Contract.
- B. CMAR shall perform its Quality Control and Quality Assurance responsibilities according to the "Metropolitan Transit Authority / Standard Specification".
- C. METRO has the right to inspect and test all services called for by the Contract, to the extent practicable at all times and places during the term of the Contract. METRO shall perform inspections and tests in a manner that will not unduly delay the services.
- D. If any of the services do not conform to Contract requirements, METRO may require the CMAR to perform the services again in conformity with Contract requirements, at no additional compensation.
- E. When the defects in services cannot be corrected by performance, METRO may:
 - 1. Require the CMAR to take necessary action to ensure that future performance conforms to Contract requirements; and
 - 2. Reduce the Contract Price to reflect the reduced value of the services performed.
- F. If the Contractor fails to promptly perform the services again or take the necessary action to ensure future performance in conformity with Contract requirements, METRO may:
 - 1. By contract or otherwise, perform the services and charge to the CMAR any cost incurred by METRO that is directly related to the performance of such services; or
 - 2. Terminate the Contract for default.

SECTION V - CONTRACT ADMINISTRATION DATA ARTICLES

1 COMPENSATION

- A. Preconstruction Services - METRO shall pay to the CMAR compensation a Not-to-Exceed amount indicated in Section II, No. 3, less retentions, deductions or any prompt payment discount earned or set forth in Paragraph C below, and in accordance with the payment provisions of this Contract. A schedule of values, including hours worked per person, is to be agreed upon prior to contract execution indicating how monthly payments will be progressed.
- B. Construction Services - METRO shall pay to the CMAR compensation via a GMP amount to be agreed upon, less retentions, deductions or any prompt payment discount earned or set forth in Paragraph C below, and in accordance with the payment provisions of this Contract. A schedule of values will be agreed upon during final design and will be executed as a separate work authorization under this agreement.
- C. Prompt payment discount(s): %. In connection with any discount offered for prompt payment, time shall be computed from the date of receipt of a properly prepared invoice by METRO or acceptance of all materials and goods furnished and work performed, whichever is later. For the purposes of computing the discount earned, payment shall be considered to have been made on the date that the payment is mailed or the date which an electronic funds transfer was made.

2 INVOICING AND PAYMENT

- A. The contractor shall submit their monthly invoice payment application to METRO, containing all work, services, equipment, materials or other items that have been inspected and accepted by METRO from the prior calendar month, by the 5th day of each month to the address shown below:

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

- B. METRO shall pay the amount due the Contractor under this Contract after:
 - 1. Acceptance of services;
 - 2. Presentation of a properly prepared invoice;
 - 3. For each invoice with a Small Business Participation goal, update METRO's Online Contract Audit screen demonstrating payments to subcontractors and confirmation of receipt of payment by subcontractors;
 - 4. For each invoice with a Small Business Participation goal, update METRO's online Subcontractor Invoice Report demonstrating subcontractor's invoices for the billing period and upload a copy of the subcontractor's invoice. The Contractor's invoice to METRO should include subcontractor's invoice for the same period of performance.
 - 5. METRO shall make payment less 5% withheld as retainage per pay application, except that no retainage shall be held on CMAR's fixed Fee or General Conditions Costs. CMAR's Construction Services Fee and General Conditions costs shall each be shown as separated line item in the Application for Payment.
 - 6. Presentation of a completed 'Contractor's Release' form, Exhibit B, with every invoice, thereby releasing all claims against METRO arising by virtue of this Contract, other than claims, in stated amounts that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this Contract has been assigned. The Contractor shall complete a 'Contractor's Release' form, Exhibit B, or other Contractor's release form acceptable to METRO and submit with every invoice.
 - 7. If the Contractor has previously been paid for items or services that are later found to be deficient, defective or otherwise unacceptable, subsequent invoices may be adjusted accordingly. In such instances, METRO shall provide the Contractor a written explanation for such adjustments.
- C. Subcontractor and Supplier Payments:
 - 1. The Contractor shall provide payment to each subcontractor and supplier within five (5) business days after receiving payment from METRO for amounts previously invoiced for work performed or materials furnished under the Contract with a Small Business Participation goal. Subcontract payment provisions shall require payments to subcontractors within five (5) business days after the Contractor received payment from METRO. Interest on late payments is subject to the provisions of Texas Government Code, Title 10, Chapter 2251, regarding payments to subcontractors.
 - 2. In the event of disputed amounts, within five (5) business days of receiving a disputed invoice, the Contractor shall provide a written response to a subcontractor or supplier, with a copy to the Contracting Officer, specifically addressing any disputed amounts on invoices. The Contractor should resolve all disputed invoices at the earliest time to avoid a delay in the

submission of print out of METRO's Online Contract Audit screen with subcontractor payment verification which could delay payment to the Contractor. In the event that the Contractor cannot resolve a subcontractor or supplier disputed invoice, the Contractor shall bring the matter to the attention of the Contracting Officer at the time of submitting the Contractor's invoice for payment. The Contracting Officer will investigate the situation and make a determination whether the Contractor's invoice should be processed for payment without the required contract Audit verification. The Contracting Officer will not mediate the dispute between the Contractor and any subcontractor or supplier in the resolution of disputed invoices.

D. METRO's Online Contract Audit on Contracts with Small Business Participation Goals:

1. Contractors are required to update METRO's Online Contract Audit screen and Subcontractor Invoice Report, and to upload subcontractor invoices.
2. Failure of the Contractor to update METRO's Online Contract Audit screen, Subcontractor Invoice Report and/or subcontractor's invoices will be cause for the return of the invoice to the Contractor as an improperly prepared invoice.
3. In the event that no invoice is due for the past month, METRO's Online Contract Audit screen shall nevertheless be updated, showing payment/nonpayment confirmation by the subcontractor/supplier.

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

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

G. All material and Work covered by payments made shall, at the time of payment, become the sole property of METRO, but this provision shall not be construed as:

1. Relieving the Contractor from the sole responsibility for all material, goods and Work upon which payments have been made or the restoration of any damaged Work; or as
2. Waiving the right of METRO to require the fulfillment of all of the terms of the Contract.

3 ADMINISTRATIVE CONTROL OF CORRESPONDENCE

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

4 CONTRACTOR REPRESENTATIVE

- A. Prior to the start of performance, the Contractor shall advise METRO in writing of the primary and alternate representative (including phone number) who will have management responsibility for the total Contract, with the authority to transmit instructions, receive information, receive and act on technical matters and resolve problems of a contractual nature, and represent the Contractor in all matters with regard to the Project. These representatives may be changed by the Contractor from time to time, with the written approval of METRO.
- B. Contractor personnel who will require access to any METRO property on a frequent basis (greater than 20 hours a week), will require a Contractor badge. METRO's Project Manager is responsible for coordinating these badges with METRO's Facilities Maintenance Department. Badges will carry an expiration date of 90 days; if further access is required, METRO's Project Manager must resubmit a Contractor badge request on the Contractor's behalf to the Facilities Maintenance Department with the appropriate levels of approval.
- C. At the termination of this Contract, the Contractor shall return to METRO's Project Manager all METRO issued identification badges and METRO Q Cards for deactivation by METRO's Human Resources Department. The Contractor shall also immediately notify METRO's Project Manager and return such identification badges and METRO Q Cards for those Contractor employees whose services are no longer needed during the course of this Contract. The Contractor will be assessed a \$10.00 fee for each identification badge or METRO Q Card that is lost or not returned to METRO.

5 WORK AUTHORIZATIONS

- A. Performance of the Services contemplated in this Contract shall be undertaken only upon the issuance of written Work Authorization by the METRO Contracting Officer. The format for the Work Authorization documents itself shall be as indicated in Exhibit I, "Work Authorization Form" form, except that the Contracting Officer may add such other items of information as they

may deem necessary to accurately describe the requirement of that Work Authorization.

- B. Work Authorizations may be amended by the METRO Contracting Officer in the same manner as they are issued.
- C. METRO reserves the right to contract with other sources for the provision of similar services, however, Metro will use best efforts to issue at least one Work Authorization to the Contractor during the term of this Contract.
- D. Work Authorizations issued prior to and in effect at the time of the expiration date of this Contract shall continue to be in effect and performed by the Contractor until such time as all requirements have been met and a written acceptance of the Services performed has been made by METRO's Project Manager.
- E. No new Work Authorizations shall be issued against this Contract after the performance term of this Contract has expired.
- F. All Terms and Conditions of the basic Contract shall apply to any Work Authorization issued there under.

6 NOTICES

All notices to either party by the other shall be delivered personally or sent by U.S. registered or certified mail, postage prepaid, addressed to such party at the following respective addresses for each:

Authority: [REDACTED]
Contracting Officer
METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, TEXAS
1900 Main St., 8th Floor
Houston, Texas 77002

Contractor: [REDACTED]
[REDACTED]
[REDACTED]

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

SECTION VI - INSURANCE ARTICLES

1 CONTRACTOR'S INSURANCE

Insert insurance certificate as prescribed by Risk Management.

2 INDEMNIFICATION AGREEMENT

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

3 CONSTRUCTION BONDS

- A. Contractor shall be required to obtain performance and payment bonds and supply any security acceptable to METRO as follows:
1. **Performance Bonds:** The penal amount of performance bonds shall be [redacted] percent of the Contract Price of any construction Work on the Project and any amendments to the Contract that increase the construction cost, unless METRO determines that a lesser amount would be adequate for the protection of METRO.
 2. **Payment Bonds:** The penal amount of the payment bonds shall be [redacted] percent of the Contract Price of any construction Work on the Project and any amendments to the Contract that increase the construction cost, unless METRO determines that a lesser amount would be adequate for the protection of METRO.
 3. Contractor shall be required to submit all required bonds within **thirty (30)** calendar days from the date of Construction NTP or METRO may have the rights to terminate Contractor for default.
 4. METRO may, at its option and by notice to Contractor, require additional performance and payment bond protection if the Contract Price is increased due to the GMP Amendment or any other changes in the Work.
 5. METRO may secure such additional protection by directing Contractor to increase or update the penal amount of the existing bond or to obtain an additional bond.
 6. Contractor shall furnish all properly executed bonds (including additional or increased bonds required by this section) to METRO within **thirty (30)** calendar days or the time period specified in notices from METRO requiring any increased or additional bonds under this Section.
 7. The surety company or companies providing the bonds must be authorized to conduct business in the State of Texas.
- B. In addition to any increased or additional bonds required by METRO pursuant to Section A above, Contractor shall promptly furnish additional bonds or security acceptable to METRO required to protect METRO and persons supplying labor or Materials under the Contract if:
1. Any surety upon any bond, or issuing financial institution for other security, furnished with the Contract becomes unacceptable to METRO.
 2. Any surety fails to furnish reports on its financial condition as required by METRO.
 3. The Contract Price is increased so that the penal sum of any bond becomes inadequate in the opinion of METRO.
 4. An irrevocable letter of credit used as security will expire before the end of the period of required security. CMAR must furnish an acceptable extension or replacement irrevocable letter of credit, or other acceptable substitute, within **thirty (30)** days before an irrevocable letter of credit's scheduled expiration, otherwise METRO has the right to immediately draw on the irrevocable letter of credit.

SECTION VII - SMALL BUSINESS PROGRAM ARTICLES FOR CONTRACTS WITH SMALL BUSINESS GOALS

- A. The Contractor hereby agrees to attain Small Business participation in the amount of % of the total Contract amount.
- B. The Contractor shall enter into agreements for the Work identified in the 'Contractor Utilization Plan Form' (Plan) and submit copies of the agreements to the Contracting Officer within 15 days of contract award. The agreements will include:
1. Prompt payment clause;
 2. Non-discrimination clause;
 3. Release of retainage clause, where applicable;
 4. Business Assurance clauses;
 5. Federal clauses, where applicable; and
 6. Subcontractor's obligation to participate in the B2GNow Payment Compliance System.
- C. The Contractor shall adhere to the Plan submitted, unless a waiver is received from the Office of Small Business. Any changes in the Plan regarding the proposed use of certified subcontractors in discharging the Contract duties must be approved by the Office of Small Business. The approval of the Office of Small Business will not be unreasonably withheld upon a showing of good cause to make the change. When adding a certified subcontractor to the Plan, the Contractor must submit a copy of the subcontract agreement to the Contracting Officer within 15 days of receiving approval from the Office of Small Business.
- D. The Contractor's failure to comply with the aforementioned Small Business participation provisions and the Contractor Utilization Plan Pledge provisions may result in the:
1. Withholding of payment until such compliance is achieved or a waiver of the provisions is provided by METRO;
 2. Revocation of the benefits and incentives provided under the Program; or
 3. Cancellation, termination or suspension of the Contract, in whole or in part.
- E. Where applicable, the Contractor's Small Business Participation goal achievement and compliance with the Small Business Program will be considered during evaluation for future METRO contracts.
- F. The Contractor and Subcontractors shall permit access to their books, records, and accounts by the Contracting Officer, Office of Small Business representative or a designated representative for the purpose of investigation to ascertain compliance with these specified requirements. Such records shall be maintained by the Contractor in a fashion which is readily accessible to METRO for a minimum of three (3) years following completion of this Contract. The Contractor will include this provision in the subcontractor agreements.
- G. To ensure that all obligations under this Contract are met, METRO will conduct periodic reviews of the Contractor's Small Business efforts during Contract performance. The Contractor shall bring to the attention of METRO's Contracting Officer and Office of Small Business any situation in which regularly scheduled progress payments are not made to Small Business subcontractors. Failure to make prompt payment or to notify METRO could result in the action outlined in item D above.
- H. The Contractor may review documents at METRO which specify:
1. Guidance for making determinations of Small Business participation in the Program;
 2. The procedure used to determine whether a company is in fact a Small Business; and
 3. Appeals procedure for denial of certification as a Small Business.

SECTION VIII - SPECIAL TERMS AND CONDITIONS ARTICLES

1 AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR

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

2 COMMERCIAL WARRANTY

In addition to any warranty, if any, specified in the Scope of Services, Exhibit A2, incorporated by reference, the Contractor shall provide its standard warranty for services as described in the Scope of Services. Warranty shall apply for all materials, goods or work purchased under this Contract, warranted that they will be free from defects, will conform to all applicable specifications, and will be suited for the intended purpose of said materials, goods or work. Neither acceptance of, nor payment for said materials, goods or work shall constitute a waiver or modification of any of the warranties of the Contractor or the rights of METRO thereunder. Upon receipt of a written request by METRO the Contractor shall submit, within fourteen (14) calendar days, a copy of its standard commercial warranty for the item(s) purchased in this Contract.

3 CONFIDENTIALITY AND NONDISCLOSURE

- A. The Contractor acknowledges that in rendering these services, METRO Confidential Information [will or may] be revealed to the Contractor. 'Confidential Information' means non-public, sensitive or proprietary information disclosed before, on or after the effective date, by METRO to the Contractor or its employees, agents, officers, directors, or affiliates. Except as required by applicable federal, state or local law or regulation, Confidential Information does not include information that at the time of disclosure is, or thereafter becomes, generally available to and known by the public other than as a result of this Contract, information from a lawful third-party source, and information that was already in the possession of the Contractor. The Contractor shall not use any such Confidential Information without METRO's written permission. The Contractor shall not disclose METRO Confidential Information to any person or entity other than its representatives involved in this Contract.
- B. If the Contractor knows or suspects any misuse or disclosure of METRO Confidential Information, the Contractor will immediately notify METRO and restrict the use and disclosure of such Confidential Information.
- C. On METRO's request, the Contractor shall promptly return or destroy all Confidential Information in its possession.
- D. At any time during the term of this and for a period of three (3) years from the date of expiration of this Contract, at METRO's request, the Contractor shall provide to METRO or its designated agents full access to the Contractor's premises to inspect and audit the relevant books, records, physical and electronic controls to verify the Contractor's compliance with the terms of this clause. Notwithstanding the above, any valid order of disclosure under the Texas Public Information Act shall be lawful if prompt written notice is given to METRO before disclosure. The Contractor understands that disclosure can lead to irreparable harm which injunctive relief alone may not be an adequate remedy. METRO reserves its right to all other remedies available at law.

4 CONTRACTOR'S EMPLOYEES

- A. The Contractor shall screen all employees and require satisfactory personal references in order to determine the character of prospective employees before hiring.
- B. The Contractor's employees shall, while on duty at a METRO facility, wear in plain view an identification badge to be furnished by METRO, containing their name and status as temporary.
- C. All Contractor and subcontractor employees shall be neatly attired at all times in a manner that will reflect credit both upon Contractor and the facility in which they are working.
- D. All Contractor and subcontractor employees shall be U.S. citizens or possess written documentation verifying legal authorization to work in the United States.
- E. The Contractor shall require its employees and subcontractors to comply with the instructions pertaining to conduct and other regulations called to the attention of the Contractor by the Project Manager or his designee.
- F. At the request of the Contracting Officer or Project Manager, the Contractor shall remove an employee from its work force who is found unacceptable or unsatisfactory by the Project Manager. It shall be the Contractor's responsibility to find a suitable replacement for the removed employee. No claim associated with such an action will be authorized.
- G. The Contractor shall replace the removed worker, at the Contractor's expense, with a suitable replacement within twenty four (24) hours after immediately removing the violating employee.
- H. The Contractor's personnel shall comply with all written rules and regulations supplied to the Contractor regarding personal and professional conduct, safety, security and other matters that are generally applicable to METRO's employees, such as the

5 HEALTH, SAFETY AND FIRST AID

- A. METRO places and requires the Contractor to place the highest importance and priority on health and safety for all services performed by the Contractor at any METRO facility. At all METRO facilities, the Contractor shall comply with all applicable fire, safety and health laws and regulations, as well as any safety and health requirements of METRO. The Contractor shall ensure that all of its employees are made aware of all safety, fire and health requirements and regulations applicable to the Work to be performed pursuant to this Contract. METRO shall furnish the Contractor with copies of all safety and health requirements of METRO that relate particularly to the services the Contractor has been requested to perform and to the general safety of any particular METRO facility.
- B. The Contractor shall not permit to exist a hazardous, unsafe, unhealthy or environmentally unsound condition or activity over which it has control at a METRO facility. In the event the Contractor becomes aware of any such condition or activity, it shall promptly notify METRO and immediately take whatever steps are necessary to eliminate, terminate, abate or rectify such condition. If METRO becomes aware of such condition or activity before it is known to the Contractor, it shall notify the Contractor and request the Contractor's prompt corrective action. METRO shall take prompt corrective action with respect to any hazardous, unsafe, unhealthy or environmentally unsound condition or activity resulting from its activities or operations. Each party shall cooperate with the other to eliminate, terminate, abate and rectify any such condition.
- C. In the case of any emergency, METRO shall make emergency first aid and related services available to the employees of the Contractor to the same extent that such emergency first aid and related services would be available to an employee of METRO located at the same facility. Nothing contained herein shall be construed as imposing any duty upon METRO to provide emergency first aid treatment or related services to the Contractor's employees where such emergency first aid treatment or related services are not already available to any employee.

6 INTER-LOCAL/COOPERATIVE PURCHASE

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

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

7 MOST FAVORED CUSTOMER

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

SECTION IX - GENERAL TERMS AND CONDITIONS ARTICLES

1 ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

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

2 ASSIGNMENT

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

3 CHANGES

- A. The President & Chief Executive Officer or the duly authorized representative may, at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Contract, including any one or more of the following:
1. Specifications or description of services to be performed;
 2. Time of performance (i.e., hours of day, days of the week, etc.); or
 3. Place of performance of the services.
- B. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Contract, whether or not changed by the order, the President & Chief Executive Officer or the duly authorized representative shall make an equitable adjustment in the Contract Price, the time of performance, or both, and shall modify the Contract.
- C. The Contractor must submit any 'proposal for adjustment' under this Article within thirty (30) calendar days from the date of receipt of the written order. However, if the President & Chief Executive Officer or the duly authorized representative decides that the facts justify it, the President & Chief Executive Officer or the duly authorized representative may receive and act upon a proposal submitted before final payment of the Contract.
- D. Failure to agree to any adjustment shall be a dispute under the 'Disputes' Article of this Contract. However, nothing in this Article shall excuse the Contractor from proceeding with the Contract as changed.
- E. Except for those changes properly authorized and executed as provided in this Article, the Contractor shall notify the Contracting Officer in writing promptly within fifteen (15) calendar days from the date that the Contractor identifies any METRO conduct (including actions, inactions and written or oral communications) that the Contractor regards as a change to the Contract terms and conditions. This notification shall contain all information available to the Contractor regarding the change. The Contractor's failure to provide notification as required herein may jeopardize being compensated for the change if in fact a change has been made.
- F. The parties agree that the terms and conditions of this Contract may only be modified and/or amended by mutual agreement between the parties. Said mutually agreed upon amendment and/or modification shall be written and executed by both parties prior to becoming effective.
- G. METRO reserves and shall have the right to make such changes in the Work as it deems necessary or desirable to complete the Work. Accordingly, METRO shall be and is hereby authorized to make such changes in the Work as may increase or decrease the Work, the Contract quantities, or to omit from the Work any Contract Item. Changes in the Work shall be covered by Change Order, or, in the absence of agreement on the terms of a Change Order, METRO may order a change in the Work by Force Account. Such changes shall not invalidate any other Contract provision or requirement. The Contractor shall proceed promptly with the changed Work unless otherwise provided in the Change Order or METRO's directive to perform the Work by Force Account. The Contractor agrees to accept payment for such changes as if the altered Work had been a part of the original Contract.
- H. CHANGE ORDERS. Change Orders may include a change in the Contract Sum or an extension of Contract Time where, in METRO's opinion, such extensions are commensurate with the amount and difficulty of added Work. The Contractor's execution of a Change Order is its agreement that it represents and is the full and final settlement and accord and satisfaction of all known and unknown changes necessary in compensation and time with respect to the event(s), occurrence(s), or matter(s) arising out of or related to the changes set forth in the Change Order, all prior Change Orders and modifications, and all claims whatsoever,

known or unknown, including without limitation, claims for delays, acceleration, loss of productivity, scope changes, design changes, force majeure, disruption, hinderance, interference, inefficiencies, extra work, equitable adjustment, impact, direct costs, indirect costs, overhead costs (of any type and concerning any location), general conditions costs and expenses, general and administrative costs and expenses, general requirements, bonds/insurance costs, profits, fees, all effects (direct, indirect and consequential, including all impacts and ripple effects) and for any other reason whatsoever that the Contractor and/or any of the Contractor's personnel, subcontractors, or suppliers of any tier have, may have, had or may have had, or could have asserted with respect to the event(s), occurrence(s), or matter(s) arising out of or related to the changes set forth in the Change Order. No "reservation of rights" or other attempt by the Contractor to reserve rights concerning a Change Order will be effective unless METRO and the Contractor both agree in writing to the reservation in the Change Order, as may be applicable.

- I. GC's + Fee on changes shall not exceed 10%, please see an example below for reference purposes:

Labor	= \$100
Material	= \$100
Equipment	= \$20
Subtotal	= \$220
GC's + Fee (10%)	= \$22
Total Change	= \$242

- J. Any claim for payment of a change in the Work that is not covered by a Change Order shall be rejected by METRO. Accordingly, the Contractor must notify METRO in writing before proceeding to perform any Work that it believes will add additional cost or require additional time, except in an emergency endangering life or property. Failure to provide the requisite notice will invalidate any subsequent claim for an increase in the Contract Sum or the Contract Time.
- K. SUBCONTRACTOR CHANGE ORDERS: The CMAR contractor is only allowed to markup subcontractor change orders 5%. Subcontractors are only allowed to markup their change order work 15%, which is inclusive of any overhead, profit, fees, etc. Subcontractors are only allowed to markup Sub-Tier change order work 5%, whereas Sub-Tiers are only allowed to markup their change order work 15%, which is inclusive of any overhead, profit, fees, etc.
- L. CHANGE ORDER DOCUMENTATION. Change Orders will be processed using METRO's system. The Contractor shall respond to a Request for Proposal, within 7 Calendar Days of the date of the request. The Contractor's response shall include, at a minimum, the following in order to expedite the review, validation and approval process, and all Contractor proposals shall be prepared in the categories listed below (additional requirements may be requested by METRO to complete cost validation):

Cover Letter.

1. Primary and subcontractor pricing breakdown.
2. Schedule of line items reflecting existing line-item adjustments and establishment of new line items, if warranted.
3. Labor Breakdown. All field labor shall be priced in compliance with Construction Wage Rate Requirements for the Project. If Construction Wage Rate Requirements are not included or not applicable for the Project, the Contractor shall state the hourly rate in the Standard Contractor Proposal Form Template. Certified payroll is required on federally funded Project Change Orders and may be requested by METRO to validate proposed labor rates on other Change Orders. Additional information required includes, but may not be limited to, name, classification, date, daily hours, total hours, rate and extension for each laborer and foreman/supervisor.
4. Backup for Equipment Cost. In all cases, the most favorable rental rates will be used (hourly, daily, monthly, yearly, etc.) based on the total time the equipment is required. Additional vehicles will be compensable only if required by additional staff needed to complete Change Order-related work. Additional information required includes, but may not be limited to, designation, dates, daily hours, total hours, rental rate, and extension.
5. Contractor-Owned Equipment and Vehicles in addition to those already specified in the Contract Documents. Rates not defined in the Contract will be paid at the lower of the two following rates taking into account owner rate, equipment age, and geographic region: (a) local EquipmentWatch Blue Book rate found at www.equipmentwatch.com; or (b) actual quotes from a local lease/rental company. Any equipment or vehicles already in use on the Project or already specified in the Contract Documents are not compensable as part of a Change Order unless additional equipment or vehicles are approved by METRO in its sole discretion.
6. Leased/Rented Equipment and Vehicles in addition to those already specified in the Contract Documents. These Will be validated using an actual invoices/quotes from a local lease/rental company. Any equipment or vehicles already in use on the Project or already specified in the Contract Documents are not compensable as part of a Change Order unless additional equipment or vehicles are approved by METRO in its sole discretion.
7. Backup for Material Cost. Materials costs shall include all materials required by the Contractor and incorporated into the proposal, showing costs, quantities, or unit prices of all items, and transportation costs, as appropriate. Supporting documentation shall include invoices and/or quotes from suppliers and distributors and receipted invoices for all Materials used and transportation charges. Reimbursement of materials costs shall only be allowed in the amount of the Contractor's actual cost including any and all discounts, rebates or related credits. However, if Materials used on any changed Work are not specifically purchased for such Work but are taken from the Contractor's stock, then in lieu of the invoices the Contractor shall furnish an affidavit certifying that such Materials were taken from his/her stock, that the quantity claimed was actually

used, and that the price and transportation claimed represent the actual cost to the Contractor.

8. Related correspondence.

9. Time Impact Analysis. See Exhibit H for Special Schedule Requirements and all supplements and amendments thereto.

M. The Contractor's Labor Burden is defined as its actual costs for payroll taxes, social security, unemployment insurance, employee fringe benefits required by agreement or custom, and workers' compensation insurance, all substantiated by payroll and accounting data requested by METRO. The Contractor shall provide METRO, for its review and approval, with its Labor Burden and all actual costs used to calculate its Labor Burden within 21 days of the award of the Contract or no later than the date of the execution of the Contract, whichever is earliest. Upon METRO's approval, an expiration date will be established. These rates will be used for all changed Work, including Force Account Work, until they expire. The Contractor shall provide METRO with revised/updated Labor Burden rates 30 days prior to the aforementioned expiration date for approval by METRO. METRO's approval of the Contractor's Labor Burden is a material condition precedent to the submission and the Contractor and METRO's execution of a Change Order, except that METRO has the right, but not the obligation, to waive application of a Labor Burden. The Contractor is aware that incompleteness of its Labor Burden information may cause delays in the review, processing, and execution of Change Orders. Further, if the Contractor fails to provide METRO with revised/updated Labor Burden rates 30 days prior to the applicable expiration date, METRO may, in its discretion, apply the prior approved Labor Burden or waive the Labor Burden.

No additional allowance will be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided.

N. **FORCE ACCOUNT.** METRO may, in the absence of agreement on the terms of a Change Order, order the Contractor to proceed with a change in the Work by Force Account, and its payment shall be as provided in the Section V.2. On receipt of METRO's directive to proceed with a change in the Work by Force Account, the Contractor shall promptly proceed with the changed Work. If METRO and the Contractor agree on any adjustments in the Contract Sum and/or Contract Time, such written agreement will be effective immediately and the parties shall execute a Change Order for such changes.

O. **PAYMENT FOR FORCE ACCOUNT WORK.** If the Work to be performed by Force Account provides for an adjustment in the Contract Sum, such Work shall be measured and paid for by unit prices stated in the Contract Documents or, if there are no unit prices in the Contract Documents, then either (i) mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by METRO; or (ii) costs to be determined in a manner agreed upon by the Parties and a mutually acceptable fixed or percentage fee; or, in the absence of one of the foregoing agreements, any adjustment in the Contract Sum shall be limited as follows:

1. **Miscellaneous.** No additional allowance will be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided. If a METRO controlled allowance or contingency line item is established in the CMAR contract, such shall only be exercised upon written approval from METRO.
2. **Contractor-Owned Equipment and Vehicles in addition to those already specified in the Contract Documents.** Contractor-owned trucks, machinery and Equipment will be paid at the rates agreed by METRO or at the rates specified in at the lower of the two following rates taking into account owner rate, equipment age, and geographic region: (a) local EquipmentWatch Blue Book rate found at www.equipmentwatch.com; or (b) actual quotes or invoices from a local lease/rental company. Such payment will be only for the time actually used on such changed Work and will be full compensation for the use of the trucks, machinery and Equipment including fuel, lubricants, water, depreciation and similar operating expenses. Any equipment or vehicles already in use on the Project or already specified in the Contract Documents are not compensable as part of Force Account Work unless additional equipment or vehicles are approved by METRO in its sole discretion.
3. **Rented Equipment in addition to those already specified in the Contract Documents.** Rental equipment operating costs will be determined and paid using actual invoices paid by the Contractor for equipment rental, fuel/maintenance, delivery, removal and other direct expenses provided the Contractor can substantiate the costs as representative of the most favorable rates for the Dallas/Fort Worth metropolitan area. Contractor shall use the rental time frame that provides the best pricing option for the estimated time of the rented equipment is required to accomplish the construction task(s). Any equipment or vehicles already in use on the Project or already specified in the Contract Documents are not compensable as part of Force Account Work unless additional equipment or vehicles are approved by METRO in its sole discretion.
4. **Preconstruction Costs.** Costs of labor will be determined based on the fixed labor rates per hour for the labor classifications set forth in the Contract and as described in Section III.1. Amount will be calculated and reimbursed based on hours actually spent multiplied by agreed salary rates multiplied by approved overhead and fees.
5. **Construction Costs.** Costs of labor will be determined at the fixed labor and material rates for the respective disciplines and categories set forth in the agreed GMP plus approved GCs and multiplied by approved CMAR Fee. No additional compensation for Labor Burden, overhead, and profit will be considered.
6. **Comparison of Record.** The Contractor and the Engineer shall compare records of the cost of Force Account Work at the end of each day. Agreement shall be indicated by signature of the Contractor and the Engineer or their duly authorized representatives.

7. **Statements Required.** No payment will be made for Work performed on a Force Account basis until the Contractor has furnished the Engineer with duplicate itemized statements of the cost of such Force Account Work detailed as follows:
- a. Name, classification, date, daily hours, total hours, rate and extension for each laborer and foreman.
 - b. Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and Equipment.
 - c. Quantities of Materials, prices, and extensions.
 - d. Transportation of Materials.
 - e. Cost of property damage, liability and workman's compensation insurance premiums, unemployment insurance contributions, and social security tax.

Statements shall be accompanied and supported by a receipted invoice for all materials used and transportation charges. However, if materials used on the Force Account Work are not specifically purchased for such Work but are taken from the Contractor's stock, then in lieu of the invoices the Contractor shall furnish an affidavit certifying that such materials were taken from his/her stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to the Contractor. METRO reserves the right to audit and oversee the force account work to ensure that the costs and efforts are reasonable, necessary, and in compliance with this Contract.

4 COMPLIANCE WITH LAWS/PERMITS AND LICENSES

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

5 CONTRACT ORDER OF PRECEDENCE

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

1. Contract Modifications, if any
2. Contract Articles;
3. Scope of Services;
4. Technical Specifications; and
5. Metropolitan Transit Authority / Standard Specification
6. Drawings

6 CONTRACTOR'S KEY PERSONNEL

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

7 COVENANT AGAINST CONTINGENT FEES

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

8 DISPUTES

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

decision. In connection with any appeal proceeding under this Article, the Contractor will be afforded an opportunity to be heard and to offer evidence in support of his appeal. The decision of the President & Chief Executive Officer will be final and conclusive with respect to the Contractor's administrative remedies under this 'Disputes' Article. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Contracting Officer's decision. This 'Disputes' Article does not preclude consideration of questions of law in connection with decisions provided for above. Nothing in this Contract, however, shall be construed as making final the decision of any administrative official, representative, or committee on a question of law.

9 DISSEMINATION OF CONTRACT INFORMATION

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

10 EQUAL OPPORTUNITY FOR VEVRAA PROTECTED VETERANS³

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

- A. The Contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, or Armed Forces service medal veteran (hereinafter collectively referred to as 'protected veteran(s)') in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals without discrimination based on their status as a protected veteran in all employment practices, including the following:
1. Recruitment, advertising, and job application procedures;
 2. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
 3. Rates of pay or any other form of compensation and changes in compensation;
 4. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 5. Leaves of absence, sick leave, or any other leave;
 6. Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
 7. Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. § 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 8. Activities sponsored by the Contractor including social or recreational programs; and
 9. Any other term, condition, or privilege of employment.
- B. The Contractor agrees to immediately list all employment openings which exist at the time of the execution of this Contract and those which occur during the performance of this Contract, including those not generated by this Contract and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, with the appropriate employment service delivery system where the opening occurs. Listing employment openings with the state workforce agency job bank or with the local employment service delivery system where the opening occurs will satisfy the requirement to list jobs with the appropriate employment service delivery system. In order to satisfy the listing requirement described herein, Contractors must provide information about the job vacancy in any manner and format permitted by the appropriate employment service delivery system which will allow that system to provide priority referral of veterans protected by VEVRAA for that job vacancy. Providing information on employment openings to a privately run job service or exchange will satisfy the Contractor's listing obligation if the privately run job service or exchange provides the information to the appropriate employment service delivery system in any manner and format that the employment service delivery system permits which will allow that system to provide priority referral of protected veterans.
- C. Listing of employment openings with the appropriate employment service delivery system pursuant to this Clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a *bona fide* job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicants or from any particular group of job applicants, and nothing herein is intended to relieve the Contractor from any requirements in executive orders or regulations regarding nondiscrimination in employment.
- D. Whenever a Contractor, other than a state or local governmental Contractor, becomes contractually bound to the listing provisions in Paragraphs 2 and 3 of this Clause, it shall advise the employment service delivery system in each state where it has establishments that: (a) it is a federal Contractor, so that the employment service delivery systems are able to identify them

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

- E. The provisions of Paragraphs B and C of this Clause do not apply to the listing of employment openings which occur and are filled outside of the 50 states, the District of Columbia, the commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the commonwealth of the Northern Mariana Islands, Wake Island, and the Trust Territories of the Pacific Islands.
- F. As used in this Clause:
1. *All employment openings* includes all positions except executive and senior management, those positions that will be filled from within the Contractor's organization, and positions lasting three days or less. This term includes full-time employment, temporary employment of more than three days' duration, and part-time employment.
 2. *Executive and senior management* means: (1) Any employee (a) compensated on a salary basis at a rate of not less than \$455 per week (or \$380 per week, if employed in American Samoa by employers other than the federal government), exclusive of board, lodging or other facilities; (b) whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; (c) who customarily and regularly directs the work of two or more other employees; and (d) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight; or (2) any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.
 3. *Positions that will be filled from within the Contractor's organization* means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings which the Contractor proposes to fill from regularly established 'recall' lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of his or her own organization.
- G. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- H. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- I. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the Contracting Officer. Such notices shall state the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are protected veterans. The Contractor must ensure that applicants or employees who are disabled veterans are provided the notice in a form that is accessible and understandable to the disabled veteran (e.g., providing Braille or large print versions of the notice, posting the notice for visual accessibility to persons in wheelchairs, providing the notice electronically or on computer disc, or other versions). With respect to employees who do not work at a physical location of the Contractor, a Contractor will satisfy its posting obligations by posting such notices in an electronic format, provided that the Contractor provides computers that can access the electronic posting to such employees, or the Contractor has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the Contractor to notify job applicants of their rights if the Contractor utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.
- J. The Contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding that the Contractor is bound by the terms of VEVRAA, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, protected veterans.
- K. The Contractor will include the provisions of this Clause in every subcontractor purchase order of \$100,000 or more, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to VEVRAA so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontractor purchase order as the Director, Office of Federal Contract Compliance Programs, may direct to enforce such provisions, including action for noncompliance.

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

11 ETHICAL CONDUCT

- A. The METRO Board of Directors has adopted a Code of Ethics governing the conduct of its officers and employees. The Contractor agrees it will familiarize itself with this Code of Ethics and that it will not offer, confer or agree to confer any prohibited benefit as consideration for a METRO Board Member's or employee's decision, opinion, recommendation, vote or other exercise of discretion as a public servant or in exchange for the Board Member's or employee's having exercised his official powers or performed his official duties nor will the Contractor participate in any other violation of this Code.
- B. The Contractor is required to maintain those records necessary to prove beyond a reasonable doubt the Contractor's compliance with the METRO Code of Ethics Policy. METRO shall have the right to review for the purpose of determining compliance with the Code of Ethics Policy all disbursement records and supporting documents including invoices, payment vouchers, employee expense reports and petty cash records.
- C. Breach of this Article by the Contractor may result in termination of the Contract and exclusion of the Contractor from future contracts with METRO for a period of time determined by the METRO Board of Directors.
- D. METRO'S ETHICS AND SAFETY HOTLINE is a reporting system, administered by a third-party vendor, by which employees, Contractors, and others may report concerns or complaints they may have about improper conduct or safety conditions at METRO. Employees and Contractors may report confidentially and anonymously if desired, free of any retaliation. This reporting mechanism satisfies the Federal Transit Administration's Employee Safety Reporting Program Rule requirements (49 CFR 673.23(b), 673.27 (b) and 673.29 (b)). Employees and Contractors may submit a report to the Hotline through one of the following methods: Toll-Free: 1-888-60-REPORT (888-607-37678); Fax: 215-689-3885; Website: www.Lighthouse-services.com/ridemetro; E-Mail: reports@lighthouse-services.com.

12 FORCE MAJEURE

- A. To the extent that the Contractor shall be wholly or partially prevented from its performance within the terms specified of any obligation or duty placed on the Contractor by reason of or through riot, acts of war, acts of terrorism, insurrection, by order of court, legislative action, act of God, pandemics, epidemics, or specific cause reasonably beyond the parties' control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty may be suspended until such disability to perform is removed. Determination of force majeure shall rest solely with METRO.
- B. In the event the Contractor seeks to characterize an event as a 'Force Majeure Event,' the Contractor shall have the obligation to immediately notify METRO at the time the Contractor becomes aware of said force majeure event. Further, the Contractor shall have the obligation to provide METRO with written notice 2 business days upon the start of said Force Majeure event.

13 INDEPENDENT CONTRACTOR

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

14 INTERPRETATION, JURISDICTION AND VENUE

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

15 LABOR REQUIREMENTS

- A. No Contractor or subcontractor holding a service contract for any dollar amount shall pay any of its employees working on the contract less than the minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. § 206).
- B. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof).
- C. METRO reserves the right to audit Contractor-certified payroll records at METRO's discretion.

16 METRO-FURNISHED PROPERTY

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

- B. Title to METRO-furnished property shall remain with METRO. The Contractor shall use the METRO-furnished property only in connection with this Contract. The Contractor shall maintain adequate property control records of METRO-furnished property in accordance with sound industrial practice and shall make such records available for METRO's inspection at all reasonable times.
- C. The Contractor shall inspect the METRO-furnished property prior to acceptance. Upon acceptance of METRO-furnished property, the Contractor assumes the risk and responsibility for its loss or damage, except:
1. For reasonable wear and tear;
 2. To the extent the property is consumed in performing this Contract; or
 3. As otherwise provided for by the provisions of this Contract.
- D. The Contract performance period is based upon the expectation that METRO-furnished property, suitable for use, will be available to the Contractor at the times stated in the Schedule or if not stated, in sufficient time to enable the Contractor to meet the performance dates.
- E. If the METRO-furnished property is not available to the Contractor by the required time or is unsuitable for use as determined by a qualified professional, the Contracting Officer shall, upon the Contractor's timely written request, make a determination of delay, if any, caused the Contractor, and shall make an adjustment in the Contract performance period. The right to adjustment in the performance period shall be the Contractor's exclusive remedy. METRO shall not be liable for suit for breach of Contract for:
1. Any delay in availability of METRO-furnished property;
 2. Availability of METRO-furnished property in a condition not suitable for its intended use;
 3. A decrease in, or substitution of, METRO-furnished property; or
 4. Failure to replace METRO-furnished property for which METRO is responsible.
- F. Upon completing this Contract, the Contractor shall follow the instructions of METRO regarding the disposition of all METRO-furnished property not consumed in the performance of this Contract.

17 PATENT INDEMNITY

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

18 RESPONSIBILITY OF THE CONTRACTOR

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

19 RIGHTS AND REMEDIES

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

20 SEVERABILITY

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

21 SUBCONTRACTING

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

- A. CMAR shall publicly advertise for bids or proposals and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the Work other than the minor work that may be included in the CMAR general conditions.
- B. CMAR may seek to self-perform portions of the Work itself only if:
1. The CMAR submits its bid or proposal for those portions of the Work in the same manner as all other trade contractors or subcontractors; and
 2. The governmental entity determines that the CMAR's bid or proposal provides the best value for METRO.

22 TERMINATION FOR CONVENIENCE OF METRO

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

23 TERMINATION FOR DEFAULT

- A. METRO may, subject to Paragraphs D and E below, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to perform the services within the time and in the manner specified in this Contract or any extension thereof; or fails to perform any of the other provisions of this Contract.
- B. METRO's right to terminate this Contract may be exercised if the Contractor does not cure the condition or conditions constituting default within ten (10) calendar days (or such longer period as may be authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.
- C. If METRO terminates this Contract, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, services similar to that terminated, and the Contractor will be liable to METRO for any excess costs.
- D. 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 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.

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

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

25 WAIVERS

- A. Neither METRO's review, approval or acceptance of, nor payment for, the Work required under this Contract shall be construed to operate as a waiver of any rights under this Contract of any cause of action arising out of the performance of the Contract, and the Contractor shall be and remain liable to METRO in accordance with applicable law and the terms of this Contract for all damages to METRO caused by the Contractor's negligent act, error or omission in the performance of any of the Work furnished under this Contract.
- B. The waiver by METRO of any breach of any term, covenant, condition, or agreement herein contained shall not be deemed to be a waiver of any subsequent breach of the same, or of a breach of any other term, covenant, condition, or agreement herein contained.

SECTION X - FEDERAL REQUIREMENTS ARTICLES

1 ACCESS TO RECORDS

- A. The Contractor agrees to provide METRO, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor that are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 C.F.R. § 633.17, to provide the FTA Administrator or his authorized representatives including any Project Management Oversight Contractor (PMOC) access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)1, that is receiving federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309 or 5311.
- B. The Contractor agrees to provide METRO, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)1, that is receiving federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
- C. Where METRO enters into a contract for a capital project or improvement (defined at 49 U.S.C. § 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to METRO, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- D. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- E. The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case the Contractor agrees to maintain same until METRO, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 C.F.R. § 18.39(i)(11).
- F. The FTA does not require the inclusion of these requirements in subcontracts.

2 APPENDIX II TO PART 200: Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

- A. Contracts for the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual or legal remedies where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- B. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity, including the manner by which it will be effected, and the basis for settlement.
- C. Equal Employment Opportunity. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of 'federally assisted construction contract' in 41 C.F.R. Part 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. 60-1.4(b), in accordance with Executive Order 11246, 'Equal Employment Opportunity' (30 F.R. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and implementing regulations at 41 C.F.R. Part 60, 'Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.
- D. Davis-Bacon Act, as amended (40 U.S.C. 3141-3147). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, 'Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction'). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland 'Anti-Kickback' Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 C.F.R. Part 3, 'Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States'). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any Part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- E. Contract Work Hours and Safety Standards Act (40 U.S.C 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40

U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- F. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of 'funding agreement' under 37 C.F.R. §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that 'funding agreement,' the recipient or subrecipient must comply with the requirements of 37 C.F.R. Part 401, 'Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,' and any implementing regulations issued by the awarding agency.
- G. Clean Air Act (42 U.S.C 7401-7671q and Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- H. Debarment and Suspension (Executive Orders 12549 and 12689. A contract award (see 2 C.F.R. 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM). in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (3 C.F.R. Part 1986 Comp., p. 189) and 12689 (3 C.F.R. Part 1989 Comp., p. 235), 'Debarment and Suspension.' SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- I. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the non-Federal award.
- J. See §200.322 Procurement of Recovered Materials. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- K. Prohibition on contracting for certain Telecommunications and video surveillance services or equipment
 - 1. Definitions. The definitions set forth in 48 C.F.R. 52.204-25(a) shall apply to this Section K.
 - 2. Prohibitions.
 - a. The Contractor is prohibited from providing to METRO any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at Paragraph C of this Section applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.
 - b. The Contractor is prohibited from using any equipment, system or services that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception under Paragraph C of this Section applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a federal contract.
 - 3. Exceptions. This Section does not prohibit the Contractor from providing:
 - a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
 - 4. Reporting Requirement.
 - a. In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the

Contractor shall report the information in Paragraph D.2 of this clause to the Contracting Officer, unless elsewhere in this Contract are established procedures for reporting the information.

- b. The Contractor shall report the following information pursuant to Paragraph D.1 of this Section:
 - 1. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - 2. Within 10 business days of submitting the information in Paragraph D.2.b of this Section by further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

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

L. Domestic Preferences for Procurements

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

M. National Intelligent Transportation Systems Architecture and Standards

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

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

3 CONTRACT WORK HOURS - SAFETY STANDARDS – OVERTIME COMPENSATION

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

- A. Overtime Requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the Clause set forth in Paragraph A of this Article, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the Clause set forth in Paragraph A. of this Article, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the Clause set forth in Paragraph A of this Article.
- C. Withholding for unpaid wages and Liquidated Damages. METRO shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Contract or any other federal contract with the same prime Contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the Clause set forth in Paragraph B of this Article.
- D. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the Clauses set forth in paragraphs A through C of this Article and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the Clauses set forth in paragraphs A through C of this Article.
- E. Records. The Contractor shall maintain payroll records containing the information specified in 29 C.F.R. § 516.2(a). Such records shall be preserved for three (3) years from the completion of this Contract.

4 CONTRACTOR NON-DISCRIMINATION

The Contractor or subcontractor(s) shall not discriminate on the basis of race, color, national origin, religion, sex (including

gender identity and sexual orientation), disability, or age in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as METRO deems appropriate.

5 DEBARMENT AND SUSPENSION

- A. This Contract is a covered transaction for purposes of 49 C.F.R. Part 29. As such, the Contractor is required to verify that none of the Contractor's principals, as defined at 49 C.F.R. § 29.995, or affiliates, as defined at 49 C.F.R. § 29.905, are excluded or disqualified as defined at 49 C.F.R. §§ 29.940 and 29.945.
- B. The Contractor is required to comply with 49 C.F.R. § 29, Subpart C and must include the requirement to comply with 49 C.F.R. § 29, Subpart C in any lower tier covered transaction it enters into.
- C. The Contractor must sign and submit the 'Debarment and Suspension Certification,' included herein as Exhibit **D**. The certification in this Clause is a material representation of fact relied upon by METRO. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to remedies available to METRO, the federal government may pursue available remedies, including but not limited to suspension and/or debarment. The proposer agrees to comply with the requirements of 49 C.F.R. § 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

6 DRUG AND ALCOHOL TESTING

- A. This Clause pertains if the Contractor is required to perform safety-sensitive functions under this Contract.
- B. Safety-sensitive function is defined as:
 - 1. Operating a revenue service vehicle, including when not in revenue service;
 - 2. Operating a non-revenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;
 - 3. Controlling dispatch or movement of a revenue service vehicle;
 - 4. Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service; or
 - 5. Carrying a firearm for security purposes.
- C. The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. Part 655, produce any documentation necessary to establish its compliance with 49 C.F.R. Part 655, 49 C.F.R. Part 40, and 49 C.F.R. Part 29 and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of the state of Texas or METRO, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. Part 655, 49 C.F.R. Part 40, and 49 C.F.R. Part 29 and review the testing process.
- D. The Contractor agrees further to certify annually its compliance with Part 655 before March 1st and to submit the Management Information System (MIS) reports before March 15th to METRO's Drug and Alcohol Coordinator at METRO, 1900 Main Street, P.O. Box 61429, Houston, Texas 77208-1429.
- E. To certify compliance, the Contractor shall use the 'Substance Abuse Certifications' in the 'Annual List of Certifications and Assurances for the Federal Transit Administration Grants and Cooperative Agreements,' which is published annually in the Federal Register.
- F. The Contractor agrees further to submit for review and approval before acting on a Notice to Proceed, a copy of the policy statement the Contractor has developed to implement its drug and alcohol testing program.
- G. In addition, the Contractor agrees to consult with METRO on the selection of a certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium.

7 ENVIRONMENTAL REQUIREMENTS

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

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

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

B. Clean Water

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

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

8 FEDERAL CHANGES

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

9 FLY AMERICA

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

10 FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

- A.** The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U. S. C. § 3801 et seq. And U. S. DOT regulations, 'Program Fraud Civil Remedies,' 49 C. F. R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA-assisted project for which the Contract Work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the federal government deems appropriate.
- B.** The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U. S. C. § 5307, the government reserves the right to impose the penalties of 18 U. S. C. § 1001 and 49 U. S. C. § 5307 (n) (1) on the Contractor, to the extent the federal government deems appropriate.
- C.** The Contractor agrees to include the above two (2) clauses in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

11 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

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

12 METRO NON-DISCRIMINATION

METRO shall not discriminate on the basis of race, color, national origin, religion, sex (including gender identity and sexual orientation), disability, or age in the award and performance on any DOT-assisted Contractor in the administration of its program or the requirements of 49 C.F.R. Part 26. METRO shall take all necessary and reasonable steps under 49 C.F.R. Part 26 to

ensure non-discrimination in the award and administration of DOT-assisted contracts. METRO's program, as required by 49 C.F.R. Part 26 and as approved by the DOT, is incorporated by reference in this Contract. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Contract. Upon notification to METRO of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. § 3801, et seq.).

13 NO OBLIGATION BY THE FEDERAL GOVERNMENT

- A. METRO and the Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the federal government, the federal government is not a party to this Contract and shall not be subject to any obligations or liabilities to METRO, the Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.
- B. The Contractor agrees to include the above Clause in each subcontract financed in whole or in part with federal assistance provided by the FTA. It is further agreed that the Clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

14 OFFICIALS NOT TO BENEFIT

- A. No member or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising therefrom.
- B. No member, officer or employee of METRO, or of any other local public body having jurisdiction over METRO, during his tenure or for one year thereafter, shall have any interest direct or indirect, in the Contract or the proceeds thereof.
- C. The Contractor covenants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the services required under this Contract. In the event any question of possible conflict should arise, the determination of METRO shall be controlling. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed by the Contractor.

15 PRIVACY ACT

- A. The Contractor agrees to comply, and assures the compliance of its employees, with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a, regarding Drug and Alcohol enforcement activities. Among other things, the Contractor agrees to obtain the express consent of the federal government before the Contractor or its employees operate a system of records on behalf of the federal government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of the Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- B. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the federal government financed in whole or in part with federal assistance provided by the Federal Transit Administration.

16 RECYCLED PRODUCTS

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

17 RESTRICTIONS ON LOBBYING

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

18 BUY AMERICA

- A. The Contractor agrees to comply with 49 U.S.C. § 5323(j) and 49 C.F.R. Part 661, which provide that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 5323 (j)(2)(C) and 49 C.F.R. § 661.11. Rolling stock must be manufactured in the United States and have a 60 percent domestic content. See also the FTA Buy America De Minimis waiver, allowing up to 1 million dollars of foreign material in a project, if documented correctly.

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

19 ENTIRE AGREEMENT

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

SECTION XI - EXHIBITS

1 EXHIBIT A1: PROJECT INFORMATION

Insert here

PROJECT INFORMATION MUST INCLUDE:

1. Project Description/Background
2. Project Goals
3. Quantification and size of the Project (Sqft, stories, miles, stations, passengers/day, etc)
4. Estimated or expected dates:
 - a. Design start Date
 - b. Preconstruction expected start date (1st NTP)
 - c. 30% Design development submittal
 - d. 60% Design development submittal
 - e. 90% Design development submittal
 - f. Construction start Date (2nd NTP)
 - g. Design completion Date
 - h. Project Completion Date
5. Any existing Design/Environmental/Construction documents
6. Other information that a contractor may require to respond to the request

2 EXHIBIT A2: CMAR SCOPE OF SERVICES

The Construction Manager At-Risk (CMAR), will provide CMAR services for the Preconstruction phase and will have the opportunity to negotiate a Guaranteed Maximum Price (GMP) to complete the construction of the Project scope or any Work Package. If negotiation is successful, upon execution of a Contract Amendment by METRO, the CMAR will proceed executing the Construction phase services described in this exhibit.

The formal NTP for the Construction Phase to the CMAR is contingent on a successful negotiation of a GMP. The Project scope is described in Exhibit A1 of this RFP. The Project scope may be modified based on any division of the scope, CMAR input, Stakeholder input, and final design refinements. Risk assessment will be a continual process throughout the preconstruction and construction phase of the project. The process may incorporate risk sharing between public and private parties holding both parties accountable for performance and expenditure of public resources. The CMAR shall analyze the Project Goals, evaluate work elements, identify risks, quantify risk, and mitigate risks. The CMAR shall also develop a clear, well thought out, Project Management Plan (PMP) approved by METRO for delivering the Project on time and on budget, with accountability of public resources throughout the process. The CMAR shall consider new approaches, innovation, modifying the Project work elements, the Project sequencing, and/or the Project packaging to increase the efficiency of the Project delivery.

The CMAR shall partner with an integrated design team (Design Team) which will consist of METRO, the METRO Design Consultant, and the Independent Cost Estimator (ICE). The CMAR will provide input, give recommendations, and assist in the creation of schedule, phasing, constructability, quality assurance of the design, and project cost estimating throughout the preconstruction phase of the Project as well as general support services to ensure complete and efficient scoping of the different Project Elements. The CMAR will offer innovative ideas and risk mitigation measures throughout the design phase to proactively assist the Design Team. In addition to the base input expected of the CMAR, the CMAR shall also provide opportunities, means, and methods to protect the safety of the traveling public and reduce the construction duration to minimize impacts to traveling public and reduce costs.

PRECONSTRUCTION SERVICES

The CMAR's tasks during the preconstruction phase include, but are not limited to:

A. Design Review

- A.1 Thorough review of all plans, specifications, reports, diagrams, shop drawings, as-built plans, site conditions, specifications, and all other necessary Project documentation to provide design validation from a construction expertise perspective.
- A.2 Independently calculate quantities for verification purposes of construction packages, independent from both the Design Consultant and the Independent Contract Estimator.
- A.3 Provide constructability input and assist with document creation on all facets of the Project including, but not limited to:
 - Construction means & methods and techniques,
 - Temporary utilities during construction
 - Temporary facilities during construction
 - Structural elements,
 - Geotechnical and geohazards,
 - Resiliency,

- Environmental Commitments including, but not limited to, reduction of air pollution throughout the Project,
 - Safety improvements,
 - Job hazard analysis document creation,
 - Work plans,
 - Maintaining coordination or uninterrupted METRO operations
 - Minimizing impacts of Construction to the traveling public including developing traffic control plans,
 - Material availability,
 - Staging requirements,
 - Stormwater management plan,
 - Construction phasing techniques,
 - Accelerated Construction techniques,
 - Interfaces with existing subsurface utilities and potential relocation planning of such,
 - Quality assurance of design deliverables specific to mitigation of error and omission prior to negotiation
- A.4 Provide written reviews or reports and details/redlines of the Project plans and specification packages at Project milestones described in Exhibit A1. Comments should be related to constructability, construction phasing, clarifications, design errors or omission mitigation and tracking, impacts to schedule, impacts to cost, risk identification, and recommendations to increase efficiency of the Project.
- A.5 Coordinate with the Design Team to make determinations whether multiple independent design/construction packages are:
- Efficient,
 - Add value to the Project,
 - Provide an overall benefit to the Project,
 - Have the potential to accelerate the start of construction, and
 - Bring the overall Project measurably under the Construction Budget.
- A.6 Coordinate with the Design Team to make determinations whether early procurement packages for materials (long-lead-time procurement “LLTP”) are:
- Viable and cost effective,
 - Have the potential to reduce the construction schedule, and
 - Provide an overall benefit to the Project.
 - Procurement of any LLTP materials may be done by the CMAR through a separate early Construction phase Contract with METRO ahead of construction but not prior to completion of the National Environmental Policy Act (“NEPA”) process resulting in a signed decision document.
- A.7 Request METRO approval to conduct and analyze preliminary field work to assist with the design phase. This preliminary field work includes, but is not limited to: Coring and soil sampling, test holes, surveying/topography, identify needed site preparation, selected early demolition activities, tag & trace, etc.
- A.8 Actively participate in discussions to study the feasibility of design options and provide input on constructability, pricing, innovation, value, risk mitigation, and quality.
- A.9 Provide additional milestone reviews depending on package complexity.
- A.10 Provide timely feedback from design reviews to assist in decision making.

B. Cost Estimating

- B.1 The CMAR shall provide rough order of magnitude (ROM) cost estimating along with schedule impacts as design concepts/alternatives are being developed and evaluated throughout the preconstruction phase to help inform decisions. This may include:
- Evaluating means and methods of various construction techniques that may influence design solutions with considerations of cost and schedule impacts.
 - Evaluating industry standard operating and maintenance costs to determine life-cycle costs.
 - Proposing design alternatives to reduce cost. All design alternatives must adhere to the Environmental Assessment and will be approved by METRO and the Project stakeholders. Any observed cost savings may be reinvested into other items of the Project scope.
- B.2 Collaborating with METRO to establish the expectations and the format of the GMP for construction packages through a series of cost meetings. See Section I within this Exhibit of this RFP for additional information regarding the GMP.
- B.3 Providing construction cost estimates at milestones that shall include the following activities:
- Item identification that is compatible with METRO’s cost estimating, standards, and specifications.
 - Submission of Construction Cost Estimates (CCEs) at 30%, 60% and 90% milestones for each construction package. Analysis should include availability of labor, subcontractors, equipment, and materials. Additional CCEs may be required at the request of METRO if: the package complexity indicates an added benefit, analysis of proposed alternatives is necessary, analysis of means and methods is necessary, or work is added to the Project.

- Additional CCEs may be requested by METRO before determining the GMP proposal if METRO agrees on their necessity. To facilitate comparisons with ICE estimates, both Contractor and subcontractor cost estimates will be included in an open book review.
- The CMAR shall submit a GMP proposal when both the CMAR and METRO agree the design has progressed to the appropriate level, typically at 90%.
 - Quantity and schedule reconciliation will be required between the CMAR, Design Consultant, the ICE, and METRO. This may include verification of assumptions, and means of methods between METRO, the Design Consultant and the ICE.
 - METRO will request the CMAR submit a GMP proposal on early construction packages or for the procurement of long-lead items.
 - During GMP proposal reviews, the CMAR shall provide METRO all production rates, material assumptions, indirect costs, and any other information as requested by METRO to aid in reaching an agreement on a GMP proposal.
 - If a GMP proposal is successfully negotiated and accepted, the CMAR shall submit those GMP proposals as an electronic submittal in ATSER or METRO's instructed system.
 - All value engineering proposals require approval by METRO. Any value engineering savings realized after the final GMP has been agreed upon is to be shared 50/50 between the CMAR and METRO.

C. Project Schedule [This section is Project specific and need to be adjusted by Project team]

- C.1 The CMAR shall prepare and submit preliminary 30%, 60%, 90% and final CPM Schedule submittals with basis & assumption narratives in conformance with the Exhibit H "Special Schedule Requirements". Schedules shall be developed, managed, and updated via latest version of Oracle/Primavera P6. The preliminary CPM schedule shall identify critical path activities and recommend key dates and milestones to include in the construction schedule, as well as work by other stakeholders, contractors of METRO, municipal and franchise utility companies, and other third parties. The preliminary schedule shall also include design submittal reviews and provide METRO with resource data support. The final CPM schedule shall be a detailed cost and resource loaded construction schedule. The schedule shall be used for time management and progress payments during construction. The final schedule shall be based on the information contained in the preliminary schedule, and include work of contractors, material fabrication and delivery schedules, delivery and installation of any METRO's furnished materials, permits, coordination between all public and private entities that shall affect the project, systems design and testing, integrated testing, facility start up activities, and all other METRO activities affecting the completion time of the schedule. The schedule shall include all METRO's review comments to the schedule deliverables within 10 business days upon receipt of METRO's comments.
- C.2 Impacts to the traveling public must be minimized and is a high priority consideration in the determination of daily working time schedules allowed. The CMAR must work and communicate with Project stakeholders and citizens before and during construction. Seasonal, weekly, and daily traffic patterns must be considered when planning and scheduling work.
- C.3 After the scope, schedule, and budget is established, an analysis shall be performed as to the status of the Project when compared to the baseline Schedule. The CMAR shall provide continuous schedule validation for construction schedules and the overall schedule for the duration of the CMAR preconstruction phase. It is anticipated that the CMAR will incorporate or perform the following items while developing the Preconstruction Schedule and maintaining it for the duration of the preconstruction phase:
- Incorporate all preconstruction activities for both the Design Team and the CMAR.
 - Develop a preliminary construction schedule and construction packaging strategy within METRO's Construction Budget. Collaborate with the Design Team to determine if early construction packages are viable, cost effective and provide an overall benefit to the Project.
 - Assist in determining the scope for any potential early construction packages.
 - Prepare construction schedules and phasing alternatives at each preconstruction milestone to support development of CCEs, validate deadlines, and help develop Project delivery strategies.
 - Develop a resource-loaded, critical path method, construction schedule at 30%, 60% and 90% CCE milestones, as well as for all GMP proposals.
 - Ensure each GMP package will be severable; will have specific beginning and end points; and will have independent overhead, mobilization, traffic control, and Project costs. Each GMP package will include provisions for liquidated damages, incentive/disincentive, and roadway user costs as determined by METRO in its sole discretion.
 - Compare and verify construction schedules and all assumptions with the ICE.
- C.4 Notable Project schedule constraints to be considered:
- Environmental Requirements
 - All work is anticipated to conform to the EA and associated decision document that is expected to be completed in [REDACTED].
 - Any portion of the Work shall have the appropriate environmental clearances, approvals, and permits before GMP negotiation, and GMP package construction.
 - Required on-going environmental work during the design process will also be considered.
 - Resources (including SBE/DBE) availability due to other major regional projects.

C.5 See Exhibit A1 of this RFP for additional information regarding the Project Schedule.

D. Implementation Plans

D.1 The Contractor shall submit a preliminary and final Project Management Plan (PMP) to METRO. The preliminary plan shall be reviewed by all interested parties and used to establish the final plan. The PMP will continue to be updated throughout the life cycle of the Project and should reflect the latest approved changes. In each plan will include as applicable, but not limited to, the below items:

- Construction phasing, staging, sequencing of work,
- Duration of work within phases, component, units, zones, etc.
- Railroad safety, safety training, coordination/scheduling, operation impacts/mitigation, and flagging requirements,
- Railroad work plans for approval by respective railroads,
- Field office needs, craft parking requirements during construction,
- Construction equipment/material storage & staging and use of public roadways,
- Coordination of work with public including utility disruptions,
- Protection of private and public properties,
- Waste/garbage management, dirt/debris mitigation,
- Storm water drainage management,
- Temporary facilities, and temporary infrastructure,
- Construction zone pedestrian and vehicular traffic management including signage,
- Noise and vibration control,
- Work hours, including number of shifts and weekends,
- Temporary road closures or detours,
- Emergency vehicle provisions,
- Maintenance of access to all properties, public and worker safety protections,
- Construction restrictions during special events,
- Security and maintenance of construction work zones,
- Other sections of METRO's standard PMP guidelines not shown here.

D.2 The Contractor shall work with METRO to finalize and submit a Contracting Plan in conformance with Texas Government Code 2269 and FTA Circular 4220.1F and all federal and state contracting requirements for accomplishment of all construction, including utility, stations, and systems work. This plan shall recommend:

- Packaging of the work to facilitate bidding and award of trade contracts.
- Which work, if any, should be procured through best value selection, in lieu of low bid.
- Identify work which the general contractor proposes to self-perform. The Contractor shall submit its bid or proposal for Work Packages or any portion of the Work it intends to self-perform in the same manner as all other trade contractors or subcontractors to METRO 24 hours prior to the bid deadline.
- Make and implement recommendations regarding division of contract documents to facilitate subcontracts for construction activities and material procurements.
- Recommendation and implementation strategies to provide opportunities for SBE/DBE contractors and material vendors.
- Plan for Buy America compliance during the design phase and throughout construction.

E. Risk

Risk is defined as an uncertain event or condition that, if it occurs, has a negative or positive impact on a project's goals and objectives. The CMAR should provide a forum to communicate and discuss risk in the design phase and to collaboratively address and reduce risk with METRO, CMAR and the Design Consultant. A primary benefit of CMAR is the ability to contractually allocate risks to the party best able to manage the risk. Risk assessment will be a continual process throughout the preconstruction and construction stage with risk sharing between public and private parties that holds both accountable for performance and expenditure of public resources.

Risk management will be a topic at both the 2-day Kickoff meeting and an initial Risk Management and Assessment Workshop which shall be scheduled by the CMAR early in the preconstruction phase. Regular risk meetings, facilitated by the CMAR, will be held to monitor progress. Risk responsibilities include:

- E.1 As part of this proposal CMAR will prepare an initial risk matrix for the project identifying what your team has identified as the most relevant project risks, their potential impacts to the project, and a mitigation strategy for each.
- E.2 Facilitate quantitative and qualitative risk management discussions to identify risks, quantify probabilities, quantify impacts, develop mitigation strategies, and assign risk responsibility.
- E.3 Set risk meeting frequencies and prepare and update the Project Risk Matrix throughout the Project lifecycle.
- E.4 Collaborate with the Project Team to develop a Risk Management Plan, perform risk assessments, and prepare and update the Risk Matrix.

F. Innovation

- F.1 The innovation process will be a topic of the Kick-Off Workshop, see Section G of this Exhibit. The innovation process is intended to be an interactive and cooperative process to generate value for the Project. Following the Kick-Off Workshop,
- F.2 A combined Project Innovation and Value Engineering Workshop will be scheduled for early in the preconstruction phase.
- F.3 The innovation process during preconstruction will be an ongoing integrated process as the design progresses. The CMAR shall provide ongoing analysis specifically focused on seeking opportunities for innovation during all phases of the Project's development and construction. The CMAR will document this analysis through regularly submitted written reports and recommendations.
- F.4 Major cost elements of the Project will be discussed at the regular progress meeting and the topic will include innovations that may result in potential cost and schedule savings. METRO expects cost savings greater than the fee paid for preconstruction services, which will result in better project value.

G. Meetings

- G.1 The Kick-Off Workshop will emphasize the importance of partnering within the CMAR delivery method by focusing on team building and partnering over a 2-day period. This workshop is mandatory for all key team members including key subcontractors. This workshop will be facilitated by METRO and will cover at a minimum the following items:
 - Introduction to the Project, CMAR, partnering, Project stakeholder engagement, identification of roles and responsibilities. Subcontractors performing major and high-risk work items should be in attendance.
 - The Team will review Project status, vision, goals, objectives, funding, preliminary preconstruction schedule, what success would look like, current design, etc.
 - Initial discussion of preliminary innovations, phasing, and risk mitigations being proposed by the CMAR, Design Consultant, and ICE.
 - Discussion of the Cost Model review and coordination with the ICE during CCEs.
 - Cost Model components.
 - Coordinate Project Schedule meetings.
 - Coordinate progress meeting frequencies and initiate working groups for various elements of the Project. Progress meetings may include project management meetings, design meetings, discipline/specialty meetings, stakeholder meetings, and public meetings.
 - Strategy, timing, and approach for the Project Innovation and Value Engineering Workshop.
- G.2 The Project Innovation and Value Engineering Workshop will be co-facilitated by METRO, the CMAR, ICE, and the Design Consultant. Attendance and duration will be outlined at the Kick-Off Meeting. It is also anticipated that Project stakeholders' input will also be incorporated into this workshop. The approach, agenda, format, and duration for the workshop will be developed in collaboration with METRO, the CM, ICE, and the Design Consultant. The CMAR shall provide input into how to achieve the desired results for the Project. This workshop could require several sessions, over an extended period. The purpose of this workshop is to evaluate the Preferred Alternative, consider any CMAR innovations or design refinements for the Project, incorporate value engineering principles to the Project, incorporate stakeholder input and get support for endorsement of any potential changes to the Preferred Alternative.
- G.3 The CMAR shall, unless otherwise directed, meet with METRO at the METRO offices. Meetings are to be attended in person unless otherwise negotiated. If meeting in person is prohibited, the meeting may be attended virtually facilitated by CMAR.
- G.4 The following meetings are key to success on this project and attendance by the CMAR shall be anticipated. Other meetings may be deemed useful and necessary. Attendance to any additional meetings by the CMAR shall be coordinated with METRO.:
 - Kick-Off Workshop
 - Regular Partnering meetings
 - Design Discipline Task Force Meetings (as agreed upon by Design Team and CMAR)
 - Project Innovation and Value Engineering Workshop
 - Field Inspection Review (FIR) for each construction scope package – 30%
 - Design Office Review (DOR) for each construction scope package – 60%
 - Final Office Review (FOR) for each construction scope package – 90%
 - Cost Model Review Meetings
 - Quantity Reconciliation Meetings
 - Risk Management Meetings
 - Innovation Meetings
 - CCE Review Meetings
 - GMP Review Meetings
 - GMP Negotiations and Assumption Resolution Meetings (if applicable)
 - Ongoing Lessons Learned
 - Other Project Meetings:
 - Weekly Project updates with METRO Project Management Team

- Bi-Weekly Public Information Planning Meetings (twice a month)
- Monthly Project Leadership Team (PLT) Meetings
- Monthly Technical Team (TT) Meetings
- Preconstruction Public Meetings

G.5 The CMAR shall be prepared to conduct Project Vision Meetings to analyze how Project progress is aligning and tracking with Project Goals. Items of focus include priorities, commitments, approach, scope, schedule, and cost reasonableness. The Project Vision Meetings are anticipated to be scheduled quarterly, at a minimum, to track and trend the pursuit of the Project Goals.

H. Guaranteed Maximum Price (GMP)

- H.1 The Guaranteed Maximum Price (GMP) is defined as the sum of (i) the CMAR's Fixed Fee for Construction Phase Services, and (ii) the Cost of the Work. Once the applicable GMP has been established in accordance with the Contract Documents, all costs which would cause the GMP to be exceeded shall be paid by the CMAR without reimbursement by METRO. The GMP excludes all costs included in the "LLTP GMP", and it shall be computed by the Contractor in accordance with the Special Provisions of this contract. For any Construction GMP to be accepted by the METRO Project Manager, the Owner's Estimate and the Contractor's Construction GMP must be within a percentage acceptable to the METRO Project Manager, which shall be demonstrated by the METRO Project Manager's issuance of a "GMP Acceptance Letter" to Contractor.
- H.2 A reviewed, negotiated, and agreed upon GMP proposal is the amount that may be incorporated into the standard General Contract for Construction. This will be added to this contract through an addenda after agreement with METRO.
- H.3 The GMP is the sum of the direct Cost of Construction and the Management Price Percentage for a specific construction package. The Cost Model consists of bid items, quantities, risks, and assumptions for the construction package, etc. and will be refined and finalized through a series of cost review meetings.
- H.4 The CMAR company will prepare a GMP proposal to provide Construction services; METRO and the CMAR will negotiate the direct Cost of Construction for that package with the goal of agreeing on a final GMP. METRO makes no guarantees that it will accept or agree to a GMP proposal submitted by any party. If METRO successfully negotiates, agrees, and accepts a GMP proposal, then payment for the construction of the Project will be based on the negotiated and accepted GMP which includes, but is not limited to, a Schedule of Bid items as per the Standard Specifications for Road and Bridge Construction.
- H.5 For any GMP to be accepted by the METRO Project Manager, the Owner's Estimate and the Contractor's GMP must be within a percentage acceptable to the METRO Project Manager, which shall be demonstrated by the METRO Project Manager's issuance of a "GMP Acceptance Letter" to the CMAR.
- H.6 METRO anticipates requesting GMP proposals when both the CMAR and METRO agree the design has progressed to the appropriate level, typically at 90%, for each individual construction package. If METRO and the CMAR have negotiated, agreed on, and accepted a GMP proposal, the CMAR shall then submit the GMP proposal via the Electronic Bid Submittals ("EBS") system. The CMAR may develop multiple GMP proposal packages, and METRO may negotiate and accept those GMP proposals during the design and construction phases of this Project. METRO reserves the right not to award any part(s) or all the General Contracts for Construction Services, and bid/award some or all of the construction work separately.
- H.7 The CMAR shall deliver to METRO a proposed GMP supporting documents for any appropriate milestones identified at the Project Scoping Workshop, and for any appropriate LLTP or construction phase. Except for change orders due to unforeseen conditions or negotiated overrun items approved by METRO, a General Contract for Construction Services price will not be increased.
- H.8 The CMAR assumes all risk with performance of the bid items, including management of its subcontractors, suppliers, and any associated cost impacts over and above a General Contract for Construction Services price not negotiated as overrun items in the construction specifications.
- H.9 A GMP proposal can be offered and negotiated three times. If the third attempt at a GMP negotiation fails, METRO reserves the right to prepare the plans, specifications, and estimate package for public, low-bid or best value advertisement. The CMAR services contractor is not allowed to bid on this public advertisement. METRO will review and determine whether to accept the risk and shared risk contingency pools with the CMAR during the preconstruction phase, if accepted, the risk and shared risk contingency pools could potentially be incorporated into a negotiated GMP proposal. The purpose of the contingency risk-sharing pool is to develop a budget for items foreseen at the time of negotiating a GMP proposal but were not detailed enough for itemized pricing. All items fitting this category will be identified separately in a GMP proposal by METRO and the CMAR and will be monitored for progress and cost by METRO.

I. Deliverables

- I.1 The CMAR shall develop and produce the following reports and deliverables:
- Geotechnical Exploration Plan
 - Subcontractor Selection Plan
 - Material Sourcing Plan
 - Worker and Public Safety Plan
 - Risk Management Plan
 - Work Plans for major items of work
 - Project Management Plan (PMP)
 - BIM (unless specifically not required)
 - Comments, input, and support that will be incorporated into the Value Engineering Report (the CMAR will not be creating the actual document)
 - Innovation Tracking and Performance Report
 - Construction Safety and Security Plan
 - Construction Operation Work Plans
 - Construction Cost Estimates (ROM, 30%, 60%, 90%)
 - Schedules
 - GMP Proposal (GMP & Schedule)
 - Procurement Review Report for each GMP if required
 - Roadway Worker Protection Plan and Railroad Work Plan Submittals
 - Environmental and SWPPP Implementation Plan
 - Traffic Control Plan
 - Submit monthly invoices and project reports to support payment of preconstruction CMAR services

J. Other Tasks

- J.1 During the Preconstruction Phase, approved field activities such as surveys, sampling, testing, investigations, measurements, studies, etc. will be incorporated to the Preconstruction services and will be reimbursed according to approved bids from prequalified subs.
- J.2 If GMP proposals are accepted by METRO, then a separate GC Contract will be awarded to the CM, and they shall become the GC. The GC shall ensure all environmental, safety, and permit commitments that are specified in the plans, specifications, and contract documents are implemented during construction in accordance with applicable laws and regulations.
- J.3 The Design Consultant will develop the Stormwater Management Plan during preconstruction with input from the CM. METRO will review the plan throughout the development process and apply for the permit. If a GMP proposal is successfully negotiated and agreed upon, the GC will be added to the permit after the award.
- J.4 Coordinating with METRO's Public Information Officer during preconstruction to ensure a smooth transition of communication into construction. Coordination will include involvement of the CM's proposed Public Information Manager to help develop the Public Information Plan prior to construction, to aid in public/stakeholder outreach and public meetings during preconstruction.
- J.5 Assisting in the preparation and attendance of public meetings and/or open houses.

CONSTRUCTION SERVICES

Construction Services by the Contractor shall provide all construction services and activities required to complete the project in accordance with the Contract Documents, to include the following:

K. Construction

- K.1 Perform duties and responsibilities to ensure this project is constructed in accordance with the contract documents, plans and specifications, and within the time contractually specified.
- K.2 Provide full-time construction superintendence, quality control managers and project safety for all construction activities. Quality Control Managers and Safety personnel are subject to METRO's initial and continuing approval to serve on the project.
- K.3 Provide required Quality and Safety related items and documentation.
- K.4 Manage METRO assigned inspection and testing teams.
- K.5 Coordinate construction with all parties involved with the project, to include coordination of construction interface requirements with other METRO contracts, site access issues, disruptions to the community and businesses, and site safety.
- K.6 Prepare and maintain a project Schedule (both cost and resource loaded) with monthly updates (including all contract modifications). Prepare Recovery Schedules as required by the specifications or requested by METRO.

K.7 Provide on-going support for cost and schedule reports and contract close-out activities.

L. Quality Control

- L.1 Verify all Quality Control procedures are in place and work is in compliance with Contract Documents and the approved project Quality Plan.
- L.2 Provide daily Quality Control Reports and documentation to show that all procedures and tests have been followed and are in compliance with Contract requirements, and tabulate and organize the testing results for easy access.
- L.3 Project Record Manuals, Drawings and Specifications:
- L.4 Project Record Drawings and Specifications shall be updated and maintained on an on-going basis during construction and shall be verified by METRO prior to monthly invoices being approved.
- L.5 Final Record Drawings shall be certified by the Contractor Project Engineer as representing the actual construction performed during this project and shall incorporate all changes, modifications and adjustments made during construction.
- L.6 Prepare and coordinate project operation, maintenance and training manuals and training sessions.
- L.7 Prepare and coordinate an as-built Schedule which lists all finishes, hardware and amenities incorporated into the project, with points of contact for the Suppliers.

M. Project Documentation

- M.1 Provide support to METRO for on-going cost, schedule, and quality reports.
- M.2 Provide a daily Superintendent's Report (including subcontractor information), to include: job site conditions; work activities (referenced to schedule activity identifications); labor, material and equipment utilization; Quality Control activities/inspections and testing, Safety inspections, infractions and corrective measures; events, issues or problems affecting the progress of the work; developments that might lead to a change to the contract; visitors to the site, photographs of any pertinent condition of the site or work activity, and any other pertinent information relevant to the project.
- M.3 Provide detailed documentation of existing site conditions (including a DVD recording or other appropriate electronic medium of all aspects of the site) prior to any construction activities being undertaken.
- M.4 Provide weekly construction progress reports, monthly summary reports and monthly photographic documentation of the project. Monthly summary reports shall also include stakeholder issues and log.

N. Project Start-up and Close-out

- N.1 Contractor shall perform and coordinate all Phase 1 Integrated Testing prior to METRO's Phase 2 Integrated Testing.
- N.2 Contractor shall provide support of METRO's Integrated Testing.
- N.3 Contractor shall coordinate and complete all Project Close-out requirements in conformance with the Contract Specifications and METRO's requirements.

O. METRO Furnished Material

- O.1 Fare Collection Equipment (ticket vending machines)

O.2 List any other METRO's furnished material/equipment.

P. Coordination

- P.1 The Contractor shall coordinate with the fabrication and delivery schedules of METRO's other contractors and/or suppliers providing the above materials to ensure the materials are available to the Contractor at such a time and manner that shall not delay the construction schedule.

Q. Active Participation

- Q.1 The CMAR shall actively participate in the system safety and security program as described in the project SSMP. The CMAR's participation in the safety and security program shall include:
 - Implementing the hazard identification and resolution program during construction as described in the SSMP.

- Participating in the project System Safety Certification Review Team (SSCRT) Committee.
- Providing verification of all safety and security checklist items during construction.
- Providing a tracking system to provide METRO's Management Team with progress toward safety and security certification.
- Identifying work arounds for safety and security certification items that are not complete and resolved prior to the revenue service date.
- Signing off on construction safety and security certificates of conformance.

3 EXHIBIT B: CONTRACTOR'S RELEASE

Pursuant to the terms of METRO Contract No. _____, as amended, and in consideration of the sum of _____ Dollars (\$ _____), which has been or is to be paid under said Contract to _____ (hereinafter called the Contractor) or its assignees, if any, the Contractor for itself and its subcontractors, upon payment of the said sum by the Metropolitan Transit Authority (hereinafter called METRO), does release and discharge METRO, its officers, agents, and employees, of and from all liabilities, obligations, claims and demand whatsoever under or arising from the said Contract, except specified claims as follows:

(IF NONE, SO STATE) _____.

IN WITNESS WHEREOF, this release has been executed this ____ day of _____, 20__.

By: _____
(Signature of Company Official)

CERTIFICATE

I, _____, certify that I am _____ (title) of the firm named as the Contractor in the foregoing release; that _____, (name) who signed said release on behalf of the Contractor and its subcontractors, was the _____ (title) of said firm; that said release was duly signed for on behalf of said firm and is within the scope of its powers as so constituted.

By: _____
(Signature of Certifying Person)

(If a Corporation, affix the Corporate Seal)

4 EXHIBIT C: CERTIFICATION OF RESTRICTIONS ON LOBBYING

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

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

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

Executed this _____ day of _____, 20____

Company Name: _____

By: _____
(Signature of Company Official)

(Title of Company Official)

5 EXHIBIT D: DEBARMENT AND SUSPENSION FORM

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

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

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

Company Name: _____

By: _____
Signature of Company Official Date

Title of Company Official

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

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

Signature of Company's Attorney Date

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

Form 1: CONTRACTOR UTILIZATION PLAN FORM

Bidder/Proposer presents the following participants in this solicitation and any resulting contract.

Section 1 – PRIME CONTRACTOR		Type of Work to be Performed or Materials Supplied	Indicate if SBE/DBE (Y/N)		Percent of Contract Effort	Price
			SBE	DBE		
Name of Business	_____					
Tax ID No.	_____					
Business Address	_____					
Telephone No.	_____					
Contact Person	_____					
Title	_____					
Email Address	_____					
Section 2 – SUBCONTRACTORS		Type of Work to be Performed or Materials Supplied	Indicate if SBE/DBE (Y/N)		Percent of Contract Effort	Price
			SBE	DBE		
Name of Business	_____					
Tax ID No.	_____					
Business Address	_____					
Telephone No.	_____					
Contact Person	_____					
Title	_____					
Email Address	_____					
Name of Business	_____					
Tax ID No.	_____					
Business Address	_____					
Telephone No.	_____					
Contact Person	_____					
Title	_____					
Email Address	_____					

Bidder/Proposer presents the following participants in this solicitation and any resulting contract.

Section 3 – SUPPLIERS – MANUFACTURERS 100%		Counts for 100% toward small business goal when purchased from small business manufacturer (see Instructions to Bidders/Proposers).				
		Type of Work to be Performed or Materials Supplied	Indicate if SBE/DBE (Y/N)		Percent of Contract Effort (100%)	Price
			SBE	DBE		
Name of Business	_____					
Tax ID No.	_____					
Business Address	_____					
Telephone No.	_____					
Contact Person	_____					
Title	_____					
Email Address	_____					
Name of Business	_____					
Tax ID No.	_____					
Business Address	_____					
Telephone No.	_____					
Contact Person	_____					
Title	_____					
Email Address	_____					
Name of Business	_____					
Tax ID No.	_____					
Business Address	_____					
Telephone No.	_____					
Contact Person	_____					
Title	_____					
Email Address	_____					

Bidder/Proposer presents the following participants in this solicitation and any resulting contract.

Section 4 – SUPPLIERS – DEALERS 60%		Counts for 60% toward small business goal when purchased from small business regular dealer (see Instructions to Bidders/Proposers).					
		Type of Work to be Performed or Materials Supplied	Indicate if SBE/DBE (Y/N)		Percent of Contract Effort		Price
			SBE	DBE	100%	60%	
Name of Business _____ Tax ID No. _____ Business Address _____ Telephone No. _____ Contact Person _____ Title _____ Email Address _____					100% Value (%):	100% Value (\$):	
					60% Value (%):	60% Value (\$):	
Name of Business _____ Tax ID No. _____ Business Address _____ Telephone No. _____ Contact Person _____ Title _____ Email Address _____					100% Value (%):	100% Value (\$):	
					60% Value (%):	60% Value (\$):	

TOTAL AMOUNT OF BID/PROPOSAL

% SBE/DBE
Participation

PRIME: \$ _____	_____ %	_____ %
SUBCONTRACTORS: \$ _____	_____ %	_____ %
SUPPLIERS-MANUFACTURERS: \$ _____	_____ %	_____ %
SUPPLIERS-DEALERS: \$ _____	_____ %	_____ %
TOTAL BID/PROPOSAL AMOUNT: \$ _____	_____ %	_____ %

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

Submitted By: _____
 Signature of Owner/Officer of Business (Date)

Business Name: _____

Address: _____

Telephone/Email: _____

Form 2: BUSINESS ASSURANCE STATEMENT

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

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

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

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

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

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

Signature: _____

Title: _____

Date of Signing: _____

Firm or Corporation: _____

Address: _____

Telephone Number: _____

Form 3: SUBCONTRACTOR/SUPPLIER LETTER OF INTENTPLEASE SUBMIT SEPARATE FORMS FOR **EACH SUBCONTRACTOR/SUPPLIER**

For use by submitters to identify subcontractors and suppliers.

Solicitation No.: _____

Project Title: _____

Prime Contractor: _____

Subcontractor/Supplier: _____Small Business Yes ☐ No ☐Disadvantaged Business: Yes ☐ No ☐

Contact Name: _____

Address: _____

Phone: _____ Fax: _____

Period of Performance: _____

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

Signature of Subcontractor/Supplier_____
Title_____
Signature of Prime Contractor_____
Title

Form 4: CONTRACTOR UTILIZATION PLAN PLEDGE

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

Pledge of Prompt Payments

I pledge to pay all Subcontractors within five (5) business days after receiving payment from METRO for amounts previously invoiced for work performed or materials furnished under the Contract. I understand METRO may withhold payment if Subcontractors are not paid within five (5) business days of receipt of payment.

Signature: _____

Title: _____

Date: _____

Pledge of Disputed Invoice Notification

I pledge to notify Subcontractors, in writing, within five (5) business days of either receiving a disputed invoice from the Subcontractor or receiving notice from METRO of a disputed invoice, to resolve the disputed issue in a timely manner and to pay Subcontractors within five (5) business days of receiving payment from METRO.

Signature: _____

Title: _____

Date: _____

METRO's Non-discrimination Mandate

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

Signature: _____

Title: _____

Date: _____

(FOR CONSTRUCTION CONTRACTS)

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

Signature: _____

Title: _____

Date: _____

8 EXHIBIT G: BUY AMERICA CERTIFICATE

The bidder/contractor hereby certifies that it will meet the requirements of 49 U.S.C. 5323 (j)(1), and the applicable regulations in 49 C.F.R. Part 661.5.

Name of Bidder/Contractor: _____

Date of Signing: _____

Signature: _____

Title: _____

OR

The bidder/contractor hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323 (j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Name of Bidder/Contractor: _____

Date of Signing: _____

Signature: _____

Title: _____

9 EXHIBIT H: SPECIAL SCHEDULE REQUIREMENTS**9.1. SUMMARY**

- 9.1.1. This Section includes the administrative and procedural requirements for schedules and reports required for proper performance of the Work.
- 9.1.2. A Construction Schedule shall be prepared and submitted by the CMAR for approval of the METRO Project Manager prior to the CMAR commencing with any construction activities.

9.2. REQUIREMENTS

- 9.2.1. The CMAR shall prepare and maintain a Construction Schedule in accordance with the requirements of this Section. The requirement for a Construction Schedule is included to:
- Assure adequate planning and execution of the Work by the CMAR.
 - Assure coordination of the Work of the CMAR with other contractors, subcontractors and suppliers.
 - Incorporate proper coordination of the Work between Owner and the airlines/tenants.
 - Assist the CMAR and the METRO Project Manager in evaluating:
 - Contract performance relative to the Milestones included in the Project Schedule as referenced in Exhibit A1.
 - Monthly progress
 - Proposed Contract modifications
- 9.2.2. The Construction Schedule shall include:
- Detailed Critical Path Method (CPM) diagram of all Project activities, including procurement and delivery of major deliverables or field equipment, and subcontractor schedules.
 - Work Breakdown Structure (WBS) as defined by the Project's Scope of Work
 - Respective WBS assignment for each Activity
 - Summary Bar Chart (Gantt Chart)
 - Resource & cost loading. The schedule cost loading must include the following:
 - Budgeted Cost
 - Cost to Date
 - (S-Curve) graphical report including Contract amount line, Baseline curve, Milestone markers, Work-in-Progress, ETC Curve, EAC line.
 - The schedule resource loading must include identification of SBE/DBE contractors based on the contract commitment and as approved by METRO.
 - Budgeted Cost associated with the SBE/DBE resource must be provided.
 - Planned cash flows based on early and late activity dates. Bi-weekly graphical reporting of Earned Value Cost actual cashflow vs. baseline plan.
 - Responsibility Code by Company
- 9.2.3. The CMAR shall provide a Construction Schedule suitable for planning, scheduling and reporting the Work to be performed under the Contract. The Construction Schedule shall be developed using METRO's approved project planning software, Oracle-Primavera P6 (current version) as updated by Oracle (Primavera) throughout the Project. Other Primavera P6 versions that are fully compatible with the current version, or other schedule software, may be acceptable if approved by the METRO Project Manager.

The principles and definitions of terms herein are set forth in the Project Management Institute (PMI) publications, "A Guide to the Project Management Body of Knowledge (PMBOK) 5th Edition" (ISBN: 978-1-933589-67-9), "Practice Standard for Scheduling" (ISBN: 978-1-93069984-7) and "Practice Standard for Work Breakdown Structures, Second edition" (ISBN: 978-1-933890-13-5). In the event of conflicts, the provisions of these articles shall govern.

Acceptance of the planning software and version by the METRO Project Manager shall be used for the Baseline Schedule, Construction Schedule, and any updates throughout the Project, unless a new planning software version is approved by the METRO Project Manager.

- 9.2.4. The Construction Schedule shall be resource & cost loaded at the WBS Level if the period of Work from the Notice to Proceed (NTP) to Substantial Completion exceeds 12 months, or if the Contract Amount exceeds \$2.0 Million, or upon written notice by the METRO Project Manager based on necessity to evaluate the Construction Schedule performance regardless of whether the above limits apply.
- Cost can be loaded as either a fixed sum non labor resource or a price per unit labor/material resource as appropriate and agreed upon by the METRO Project Manager.
 - The cost shall be broken down to align with the WBS level and loaded to match the Contract Items or Schedule of Values (SOV) breakdown/milestone payments, as appropriate, for the Contract.
 - A Mobilization- Payment activity shall be loaded across a Level of Effort (LOE) activity and invoiced as required. Also, a discreet Mobilization task (non-LOE) shall be represented in the schedule as appropriate that reflects the contractor's mobilization period.
 - Period Cost and Cost to Date shall be coordinated between consecutive Payment Applications and the

- construction activity progress.
5. Cumulative amount of cost loaded Work activities shall equal total Contract Amount.
 6. Change Orders, including changes that are addressed using one or more Allowances, shall be added to the Construction Schedule, and Cost Loaded with corresponding cost, activity description, and logic. An updated CPM Diagram, Gantt Chart and S-Curve must be submitted with all Change Order requests and will include the impact of each request.
 7. All schedules must include the SBE/DBE resource based on the contractual commitment and as approved by METRO and must include the associated cost.
 8. The CMAR shall include additional cost breakdown or information requested by the METRO Project Manager at no additional cost.
- 9.2.5. The Construction Schedule shall, at a minimum, adhere to industry standards for scheduling of activities maximum durations, use of open-ended activities, the percentage of logic types, the use of constraints and their type, and the use of activity leads and lags, etc.
- 9.2.6. The CMAR shall use the following Planning Schedule Logic:
1. Calculate Start-to-Start lag from Early Start.
 2. Calculate the schedule using the Retained Logic scheduling option.
 3. Define Critical Activities as; Total Float less than or equal to zero.
 4. Show Open-Ends as Non-Critical.
 5. Calculate Total Float as Late Finish – Early Finish.
 6. Calendar for scheduling shall be seven (7) days/week with no holidays considered. This should include contractual weather days.
 7. Blackout dates should be loaded as separate activities that constrict only affected tasks. They shall not be loaded as a separate calendar.
 8. The use of Terminal Float or Buffering Activities within the Construction Schedule shall not constitute Ownership of that Float by the CMAR.
- 9.2.7. The CMAR shall use assign Activity Assignments to the following:
1. Duration type is Fixed Duration and Units.
 2. Activity % Complete Type should be as Physical.
 3. Activity Type should be Task Dependent for “working” activities.
- 9.2.8. The CMAR shall use the following Project Calculation and Settings:
1. Link Actual to Date and Actual this Period.
 2. Link Budget and Estimate to Completion (ETC) for non-progressed activities.
- 9.2.9. Schedule Detail shall be broken down such that the Activity Duration is no longer than fourteen (14) Calendar Days.
- 9.2.10. Activity Descriptions shall be unique and follow the naming convention of “LOCATION–VERB NOUN”. That is: a common Location ID followed by an action verb (i.e., DEMO, INSTALL, SET, etc.), followed by the item name (noun) requiring action.
- 9.2.11. Summary Bar Chart (Gantt Chart)
1. The Summary Bar Chart shall be based on the activity durations and logic indicated in the CPM Diagram area of the schedule.
 2. The CMAR and the METRO Project Manager shall jointly select Summary Level activities.
 3. Each Summary Level activity shall include:
 - a. A concise description of the Work represented by the activity
 - b. A Time Bar indicating planned/actual Activity Start and Activity Finish dates and actual Cumulative Percent Complete at the end of each reporting period.
 - c. A status line as of the end of the reporting period. (Data Date)
 - d. Major procurement items required to support the summary activity duration.
 4. The Summary Bar Chart shall display all Contract milestones.
 5. Contract Time extensions for abnormal weather will be granted in accordance with subsection 1.9. Contract Time extensions granted for abnormal weather are not compensable. Any abnormal weather event must impact critical path work to be considered for Contract Time extensions.
- 9.2.12. The CMAR shall not use the following types of logic relationships:
1. Negative lags
 2. Positive lag in excess of ten (10) workdays
 3. Start-to-Finish relationships
 4. Open ends - Only the first activity will have no predecessor and only the last activity will have no successor.
 5. Constraints - The CMAR may use a limited number of constraints. An appropriate number of constraints is at the sole discretion of METRO and will be established during Baseline Schedule submission/acceptance.

9.3. SCHEDULE REPRESENTATIVE

- 9.3.1. Within seven (7) Calendar Days after receipt of the NTP, the CMAR shall designate in writing a schedule representative in the CMAR's organization who shall be responsible for coordinating with the METRO Project Manager during preparation and maintenance of the Schedule.
- 9.3.2. The CMAR's schedule representative shall have complete authority to act for the CMAR in fulfilling the Schedule requirements of the Contract, and if such authority is interrupted during the Contract, it shall be obtained in writing by the METRO Project Manager. This schedule representative cannot be replaced without the approval of the METRO Project Manager.

9.4. BASELINE SCHEDULE

- 9.4.1. Within fourteen (14) Calendar Days after receipt of the NTP, the CMAR shall submit their Baseline Schedule.
- 9.4.2. The CMAR and major Subcontractors shall meet with the METRO Project Manager immediately after the issuance of the NTP to jointly agree on guidelines, WBS, level of detail and summaries to be used in developing the Baseline Schedule. The CMAR must prepare a Baseline Schedule for this meeting showing in detail the activities to be accomplished during the entire Project. The Baseline Schedule will become the final Baseline Schedule upon approval of the METRO Project Manager and shall not be revised for the remainder of the Project.
- 9.4.3. The Baseline Schedule needs to include reasonable operational, seasonal, economic, weather, facility or manpower restrictions required for sequencing of Work.
- 9.4.4. The CMAR shall be responsible for assuring all work sequences are logical and the Baseline Schedule shows a coordinated plan for complete performance of the Work. Failure of the CMAR to include any element of work required for performance of the Contract in the Baseline Schedule shall not excuse the CMAR from completing all Work within the Contract Time.
- 9.4.5. The Baseline Schedule shall comply with the various limits imposed by the Contract Documents and by any contractually specified intermediate milestone dates and completion dates.
- 9.4.6. The degree of detail shall be to the satisfaction of the METRO Project Manager and shall be sufficient to identify:
 1. The Work Breakdown Structure of the Project.
 2. Contract Milestones and phasing.
 3. The types of work to be performed by subcontractor and labor trades involved including the respective quantities and durations required for timely prosecution of stated work.
 4. The SBE/DBE contractors based on the contract commitment as approved by METRO.
 5. Submittal review, procurement, fabrication, delivery, installation and testing of major materials and equipment.
 6. Access and availability to work areas.
 7. Manpower, material, space, and equipment constraints.
 8. Delivery of Owner-furnished equipment as applicable.
 9. Interfaces and dependencies with preceding, concurrent, and following contractors.
 10. Cash flow curves showing the planned cash flow at each Payment Application including the cumulative cash flow for the Contract.
- 9.4.7. The CMAR shall submit the Baseline Schedule to the METRO Project Manager and/or upload the Baseline Schedule into the CMAR or the Owner's database as directed by the METRO Project Manager.

9.5. ROLLING THREE WEEK LOOK AHEAD SCHEDULES

- 9.5.1. A Rolling Three Week Look Ahead Schedule shall be submitted weekly and shall be the basis of the weekly Progress Meetings.
- 9.5.2. The Rolling Three Week Look Ahead Schedule shall be the actual detailed work plan used by the CMAR in meeting the Project Schedule and Milestones.
- 9.5.3. The basis of the Rolling Three Week Look Ahead Schedule shall be the updated Construction Schedule.
- 9.5.4. The Rolling Three Week Look Ahead Schedule shall display at minimum:
 1. Activity ID & Description.
 2. Planned Activity Expected Duration and representative Dates.
 3. Physical Percent Complete.
 4. Activities or data for the previous week, current week, and the next two (2) following weeks.
 5. Indicator for Action Items that require resolution before execution of the Activity can occur.
 6. Indicator of all Critical Path activities with Total Float.
 7. Main/Immediate Milestones Status (Plan/Forecast).
 8. Any additional information the CMAR wishes to include information to assist in the organization and understanding of the selected Activities.

- 9.5.5. The CMAR shall prepare a written narrative status report of the project progress and key forecasted activity starts or completions or any anticipated issues to accompany the Rolling Three Week Look Ahead Schedule. The reports shall be submitted to the Project Manager as part of the weekly CMAR meetings. Written status reports shall include but are not limited to:

1. Status of major WBS elements.
2. Progress made on critical activities indicated on the Construction Schedule.
3. Explanations for any lack of work on critical path activities planned to be performed during last week and a recovery plan of how the project will be brought back on schedule.
4. Explanations for any proposed schedule changes, including changes to logic or to activity durations.
5. Status of major material and equipment procurement.
6. Any delays encountered or expected during reporting period and upcoming reporting periods. Delays involving D/S/M/WBE contractors should be specifically addressed.
7. Any changes in the planned early and late cash flow curves.

9.6. MONTHLY PROJECT STATUS REPORTING AND UPDATING

- 9.6.1. After the Baseline Schedule is approved, the Construction Schedule shall be updated monthly until Final Completion. Entering of actual progress made through the end of the reporting period, including actual dates activities started and/or completed, the percentage of work completed, Payment Application amounts, and estimated remaining duration for each activity in progress will be subject to approval of the METRO Project Manager. If requested by the METRO Project Manager, the CMAR shall participate in pre-update conferences to verify progress and review modifications to the Construction Schedule prior to the formal submittal.

- 9.6.2. In case of disagreements concerning actual progress to date, the METRO Project Manager's determination shall govern.

- 9.6.3. The CMAR shall update the Construction Schedule to reflect period and cumulative progress and reflect any approved schedule revisions.

- 9.6.4. The updated Construction Schedule shall be submitted and entered into METRO's database within three (3) Calendar Days of the Construction Schedule status date, and with the corresponding Payment Application and early/late/actual cash flow curves, and shall include the following:

1. A PDF file (.pdf) of the complete Construction Schedule sorted Early Start, Total Float, then by Remaining Duration and shall identify the following:
 - a. Activity Identification
 - b. Activity Description
 - c. Original Duration
 - d. Remaining Duration (based on an estimate of the actual days remaining to complete the activity and not the quantity survey percent complete)
 - e. BL Start Date or Actual Start Date
 - f. BL Finish Date or Actual Finish Date
 - g. Total Float
 - h. Variance from BL (baseline)
2. If required by the METRO Project Manager, a PDF of the 90-day Look Ahead grouped by WBS Sorted by Early Start, Total Float, then by Remaining Duration.
3. If required by the METRO Project Manager, a PDF of the 90-day Look Ahead Grouped by Responsibility Code (with page breaks), Sorted by Early Start, Total Float, then by Remaining Duration.
4. A copy of the CMAR's updated Primavera P6 .xer file, unless other METRO Project Manager approved software is being used, and then the data shall be transmitted electronically in a format compatible with the current version of Primavera.
5. A narrative report:
 - a. The CMAR shall explain all progress made during the period.
 - b. Status of critical Project components (percent complete, amount of time ahead or behind schedule) and an explanation of Corrective Actions taken or proposed to bring the Project back on schedule if delays have occurred.
 - c. The CMAR shall include a schedule analysis along with calculations. The following is a minimum analysis to be reported:
 - i. Earned Value at the Project Summary Level
 - ii. EV to Pay Application Request Variance
 - iii. Cash Flow Variance
 - iv. Estimated at Completion (EAC)
 - v. Estimate to Completion (ETC)
 - vi. Current and projected schedule Variance
 - vii. Cost Variance
 - d. Updates for the forthcoming report period.
 - e. Status of major material and equipment procurement.
 - f. Mitigation measures on all negative variances.
 - g. Delaying factors / problem areas, current and anticipated.

- h. Identify known current and or potential risks and detail mitigation options for each.
- i. Identify and provide explanations for all schedule changes, including changes to logic or to activity durations.
- j. Explanations for any lack of work on Critical Path activities planned to be performed during the last period.
- k. Identify any changes to the Critical Path and the drivers for them.
- l. Report indicating actual versus planned resource loading for each trade and each activity.
- m. Any variances related to D/S/M/WBE contractors should be specifically addressed.
- n. The CMAR may include any other information pertinent to status of project.
- o. The CMAR shall include additional status information requested by the METRO Project Manager at no additional cost.

9.6.5. Status reports, and the information contained therein, shall not be construed as claims, notice of claims, notice of delay, or requests for changes or compensation. Refer to the requirements in the General Provisions and Special Provisions of the Contract to address these matters.

9.6.6. If the CMAR's update of the Construction Schedule reflects, or METRO Project Manager determines, that the CMAR is at least ten percent (10%) or fifteen (15) or more Calendar Days behind the approved Baseline Schedule for any of the Project interim or completion milestones, then the CMAR shall submit a Recovery Schedule. The METRO Project Manager may also request Bi-Weekly (every other week) schedule updates where this condition exists on a project.

A Recovery Schedule shall be submitted separate from the update of the Construction Schedule within seven (7) Calendar Days of identification of a recovery condition or upon receipt of a written request from the METRO Project Manager.

9.7. SCHEDULE REVIEW AND APPROVAL

9.7.1. The METRO Project Manager and the CMAR shall meet within five (5) Working Days of receipt of the Baseline Schedule for joint review of the proposed Baseline Schedule. The CMAR shall revise any areas which, in the opinion of the METRO Project Manager, conflict with either the intent of this Section or the timely completion of the Project.

9.7.2. If the CMAR fails to define any element of work activity or logic currently designed and the METRO Project Manager review does not detect this omission or error, such omission or error shall be corrected by the CMAR with the Baseline Schedule or the next update to the Construction Schedule.

9.7.3. The CMAR shall revise the Baseline Schedule in accordance with agreements reached during the joint review meeting of the Baseline Schedule. The final Baseline Schedule shall be submitted in the same form and detail as the Baseline Schedule.

9.7.4. Approval of the Baseline Schedule will be a condition precedent to any Progress Payment under the Contract.

- 1. All or part of any Progress Payment may be withheld for work performed prior to the approval of the Baseline Schedule. Approval of the Baseline Schedule will not be unreasonably withheld.
- 2. All or part of any Progress Payment may be withheld for work performed during the subsequent progress periods without acceptance of the respective update to the Construction Schedule. Acceptance of any update to the Construction Schedule will not be unreasonably withheld.
- 3. Acceptance of approval of the Baseline Schedule by the METRO Project Manager does not relieve the CMAR of any of its responsibility for the accuracy or feasibility of the Baseline Schedule; however, to the extent that the approved Baseline Schedule is reasonable, it shall become a part of this Contract and defines the obligations of both the CMAR and METRO to achieve a timely contract completion.
- 4. If the approved Baseline Schedule indicates the CMAR's Finish Date will be prior to Final Completion, the CMAR and METRO may execute a Change Order adjusting the Final Completion to coincide with the CMAR's planned Finish Date at no expense to METRO.

9.8. CONSTRUCTION SCHEDULE REVISIONS

9.8.1. The update to the Construction Schedule to reflect Actual Progress to Date shall not be considered a revision of the Construction Schedule. All schedule revisions must follow the process prescribed for Contract changes in the General Provisions.

9.8.2. The CMAR shall revise the Construction Schedule when one or more of the following conditions occur:

- 1. When a change or delay significantly affects any specified intermediate milestone dates or completion dates.
- 2. When the CMAR elects to change any sequence of activities affecting the Critical Path or to significantly change the previously approved Baseline Schedule logic.
- 3. When the CMAR has received written approval from BDDD to add, remove or replace a D/S/M/WBE CMAR.
- 4. When, in the opinion of the METRO Project Manager, the Construction Schedule and supporting analysis is no longer representative for planning and evaluation of the Work.

9.8.3. Submit any revision to the Construction Schedule in the same form and detail as the approved Baseline Schedule.

9.8.4. The METRO Project Manager must approve any revision to the Construction Schedule.

9.9. TIME IMPACT ANALYSIS FOR CONTRACT MODIFICATIONS, DELAYS, AND TIME EXTENSIONS

- 9.9.1. When changes to the Contract are initiated or delays are experienced, the CMAR shall submit to the METRO Project Manager a written Time Impact Analysis (TIA) illustrating the influence of each change or delay on any specified intermediate Milestone and the current projected completion date.
1. TIA must use an updated and approved schedule within 30 days of the delay event.
 2. The CMAR, as required by the General Provisions and Special Provisions of the Contract, shall notify the METRO Project Manager of a change that may impact an intermediate Milestone or Final Completion.
 3. Calendar for Time Impact shall be seven (7) days/week with no holidays considered.
 4. Each TIA shall include a fragmentary network (fragment) indicating all necessary logic, duration of impact, D/S/M/WBE resources affected, and demonstrate how the CMAR proposes to incorporate the change or delay into the current approved Construction Schedule.
 5. The event times used in the TIA shall be those included in the latest update of the detailed progress schedule or as adjusted by mutual agreement to reflect project status at the time the delay occurred, or notification of the change was issued.
 6. The TIA should include any additional supporting evidence that the METRO Project Manager deems necessary.
 7. A .pdf copy of the TIA shall be submitted and entered into METRO's document control system or as otherwise directed by the METRO Project Manager.
 8. A Primavera P6 .xer of the Construction Schedule representing the impact calculations shall be submitted to the METRO Project Manager.
 9. A narrative in the same form and detail as the Construction Schedule update identifying all steps taken to calculate the impact and Recovery Schedule, shall be submitted to the METRO Project Manager for review and acceptance.
 10. Upon agreement by the CMAR and the METRO Project Manager, the influence of changes and delays shall be incorporated into the next update of the Construction Schedule.
 11. Where the METRO Project Manager has not completed a determination of any Contract Time extension, or the METRO Project Manager and CMAR are unable to agree as to the Contract Time extension due, the CMAR shall reflect that amount of time extension in the update to the Construction Schedule as the METRO Project Manager may determine to be appropriate for such interim purpose. It is understood and agreed that any such interim determination shall not be binding upon either party for any other purpose and that, after the METRO Project Manager has determined any Contract Time extension, the CMAR shall revise the update(s) to the Construction Schedule prepared thereafter in accordance with the final determination.
 12. It is understood and agreed that schedule Float time is not for the exclusive use of either METRO or the CMAR. Extensions of Contract Time for performance under any and all of the provisions of this Contract will be granted only to the extent that equitable time adjustments for the activity or activities affected exceed the Total Float along the channels involved at the time a delay occurred or notification of a change was issued. It is expressly agreed and understood that the CMAR shall not be entitled to any compensation or damages on account of potential delays which can be avoided by re-sequencing activity times or logic used to sequester the available Float.
 13. TIA related to a Contract Time extension and/or changed work shall be incorporated into and attached to the applicable Contract Change Order.

9.10. RESPONSIBILITY FOR COMPLETION

- 9.10.1. The CMAR shall furnish sufficient forces, offices, facilities, and equipment, and shall work such hours including night shift and overtime operations, as necessary to ensure the prosecution of the Work. If, in the opinion of the METRO Project Manager, the CMAR, due to its own action, falls behind in meeting the Construction Schedule, the CMAR shall take such steps as may be necessary to improve its progress, and the METRO Project Manager may require the CMAR to increase the hours of work, the number of shifts, the amount of supervision, overtime operations and/or the amount of construction plant and equipment without additional cost to METRO. The provisions of this Section shall not be construed as prohibiting work on Saturdays, Sundays, and/or holidays, if the CMAR so elects and gives reasonable notice to the METRO Project Manager.
- 9.10.2. The CMAR may improve its progress by performing sequential activities concurrently, by performing activities more quickly than planned, or by revising the logic within the Construction Schedule to reflect a work around sequence. The CMAR may make minor logic changes, which are required to reflect actual work as it is performed, pertaining to out-of-sequence work. The minor logic changes shall be included in the schedule narrative and incorporated into the Construction Schedule in the approved format.

10 EXHIBIT I: WORK AUTHORIZATION FORM

Rev. 11-14-17



Page 1 of 1

WORK AUTHORIZATION

Receipt of this Work Authorization Modification, approved and authorized by METRO, authorizes you to proceed with the subject services.

1. Consultant / Contractor: Contract No.: Oracle contract # if appl. / SAP contract #
 Firm name Shopping Cart No.:
 Full address Work Authorization No.: WA xxx, PO #xxxx
 City, State, Zip Date of Issue: xxxx
2. Consultant's Key Personnel: Name, title phone email
3. WA xxx Amount: NTE \$ 4. Small Business Goal: xxx%
5. Scope of Services: Descript
 Descript con't, if needed
 See Attachment A
6. Period of Performance: xxxxxx - xxxxxx
7. Place of Performance: Consultant's Office and/or METRO's Offices at _____ and xxxxxxxx
8. METRO Project Manager: xxxxx xxxxx / xxxxx xxxxx email: xxxxxxxx.xxxxxx@ridemetro.org
 to monitor, inspect and accept the services performed pursuant to this Work Authorization
9. Contract Administrator: xxxxx xxxxx / 713 xxx xxxxx email: xxxxxxxx.xxxxxx@ridemetro.org
10. Payment: All payments shall be based on actual hours worked at the rates stipulated in the Price Schedule of the base contract, No. 701XXXXXXX, and in made in accordance with the contract clause entitled 'INVOICING AND PAYMENT.'

11. ☒ indicates 'yes': Federally funded? ☐ Certified payroll required? ☐ Payment and performance bonds required? ☐

ACCEPTED FOR CONSULTANT BY:

APPROVED AND AUTHORIZED BY METRO By:

Signature: _____
 Name: _____
 (Print or Type) _____
 Title: _____
 Date: _____

Signature: _____
 Name: _____
 (Print or Type) _____
 Title: Contracting Officer
 Date: _____

12. WA xxx Activity:

Contract #700000000 (060000000)		
Contract NTE Amount		\$1,250,000.00
WA/WA Mod	#	\$
WA 1		\$ 106,000.00
WA 2		\$ 60,127.00
WA 3		\$ 23,647.00
WA 3 Mod 1		\$ 957.00
WA 4		\$ 75,260.00
WA 5		\$ 395.00
WA 6		\$ 6,444.69
WA 6 Mod 1	711700220	\$ 1,344.69
WA 6 Mod 2	711700221	\$ 3,537.36
WA 7		\$ 108,776.00
WA 8		\$ 22,518.00
WA 8 Mod 1	711700222	\$ 9,238.00
WA 9	7117002967	\$ 48,002.00
WA 10	7117002980	\$ 28,113.00
WA 10 Mod 1	7117002980	\$ 22,444.00
WA 11	7117003008	\$ 14,666.00
WA 12	7117003056	\$ 3,769.00
WA 13	7118000159	\$ 32,713.00
Total WA/WA Mods		\$ 1,196,937.99
Contract Balance		\$ 53,062.01

13. Attachments:

- A: Scope
 B: Drawings xxxxx