

NOTICE

**THIS CONTRACT CANNOT BE UTILIZED AS A
COOPERATIVE CONTRACT**



**CONTRACT 200489
(SOQ 305624)
GENERAL AND RAILROAD ENGINEERING CONSULTING SERVICES**

CONTRACTOR: HNTB Corporation
701 Brazos Street, Suite 450
Austin, TX 78701

Phone: (512) 447-5590
E-mail: mdippel@hntb.com

AWARD DATE: February 24, 2020

CONTRACT TERM: February 24, 2020 through February 23, 2021

PRICE: The total contract amount shall be determined by the cumulative total of the task orders issued. The total amount of all task orders shall not exceed \$900,000 for five (5) contracts awarded for this service under SOQ 305624.

DBE GOAL: 8.04%

PROJECT MANAGER: King Kaul, P.E.
Telephone # (512) 389-7296
Email Address king.kaul@capmetro.org

CONTRACTS ADMINISTRATOR: Kirk Perry, C.P.S.M.
Telephone # (512) 389-7528
Email Address kirk.perry@capmetro.org

PROCUREMENT DEPARTMENT
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
2910 E. 5th STREET
AUSTIN, TEXAS 78702

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(SOQ 305624)
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CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
AUSTIN, TEXAS

AWARD/CONTRACT

1. SOLICITATION NO: 305624	2. CONTRACT NO.: 200489	3. EFFECTIVE DATE: Date of Contracting Officer's Signature
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4. CONTRACTS ADMINISTRATOR	
NAME: Kirk Perry, C.P.S.M.	PHONE: (512) 389-7528
5. SHIP TO ADDRESS: Capital Metro 2910 East 5 th Street Austin, Texas 78702	6. DELIVERY TERMS: FOB Destination
8. CONTRACTOR NAME & ADDRESS: HNTB CORPORATION 701 BRAZOS ST. AUSTIN, TX 78701 PHONE: (512) 447-5590 EMAIL: MDIPPEL@HNTB.COM	7. DISCOUNTS FOR PROMPT PAYMENT: None
9. REMITTANCE ADDRESS: (If different from Item 8) PO BOX 802741 KANSAS CITY, MO 64180-2741	
10. DBE GOAL: 8.04%	

CONTRACT EXECUTION

CAUTION: A false statement in any bid or proposal submitted to CMTA may be a criminal offense in violation of Section 37.10 of the Texas Penal Code.

NEGOTIATED AGREEMENT: (Contractor is required to sign below and return an original document to the Contracting Officer within five (5) calendar days of receipt.)

Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified below and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this Award/Contract, (b) the solicitation, as amended, and (c), such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein.

SIGNATURE OF CONTRACTOR:

Name/Title: Michelle R. Dippel, Vice President Signature:  Date: 3 / 6 / 2020

AWARD: Items listed below are changes from the original offer and solicitation as submitted.

This Award/Contract Form may be executed in multiple originals, and an executed facsimile shall have the same force and effect as an original document.

ALTERATIONS IN CONTRACT:

1. Refer to Exhibit A-1 Revised-1, Pricing Schedule, dated 1/17/20 which is incorporated into the contract.

ACCEPTED AS TO: Exhibit A-1 Revised-1, Pricing Schedule, All Items Specified in Section 7A Base Year 1 for HNTB Corporation, dated January 17, 2020, and for subcontractors: ADS System Safety Consulting, CTC Inc, Encotech Engineering Consultants, K Friese & Associates, LTK Engineering Services, McGray & McGray Land Surveyors, MWM Design Group, P.E. Structural Consultants, Sunland Group, Terracon Consultants, The Rios Group.

The total contract amount shall be determined by the cumulative total of the task orders issued. The total amount of all task orders shall not exceed \$900,000 for all five (5) contracts awarded for this service under SOQ 305624.

SIGNATURE OF CONTRACTING OFFICER:

Typed Name: Muhammad Abdullah, CTCM, C.P.M.

Signature: 

Date: 3/9/2020

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

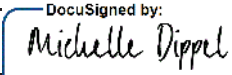
EXHIBIT A-1 - Revised-1

SCHEDULE

SOQ 305624

THE OFFEROR IS REQUIRED TO SIGN AND DATE EACH PAGE OF THIS SCHEDULE

1. **IDENTIFICATION OF OFFEROR AND SIGNATURE OF AUTHORIZED AGENT**

Company Name (Printed)	HNTB Corporation		
Address	701 Brasos St		
City, State, Zip	Austin, TX, 78701		
Phone, Fax, Email	(512)-447-5590	(512)-447-5329	mdippel@hntb.com
The undersigned agrees, if this offer is accepted within the period specified, to furnish any or all supplies and/or services specified in the Schedule at the prices offered therein.			
Authorized Agent Name and Title (Printed)	Michelle Dippel - Vice President		
Signature and Date			1/17/2020

2. **ACKNOWLEDGEMENT OF AMENDMENTS**

The offeror acknowledges receipt of the following amendment(s) to this solicitation (give number and date of each).

Amendment #	Date	Amendment #	Date

3. **PROMPT PAYMENT DISCOUNT**

# of Days		Percentage	%
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Note, payment terms are specified in Exhibit E, Contractual Terms and Conditions.

4. **DBE GOAL (TO BE COMPLETED UPON AWARD BY CAPITAL METRO)**

The DBE participation commitment for this contract is the following percentage of the total contract:

	%
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5. **AUTHORITY'S ACCEPTANCE (TO BE COMPLETED UPON AWARD BY CAPITAL METRO)**

The Authority hereby accepts this offer.

Authorized Agent Name and Title (Printed)	
Signature and Date	
Accepted as to:	

The remainder of Exhibit A – Pricing Schedule has been redacted.

For further information regarding Exhibit A, you may:

- Reach out to the Contractor directly via the Contractor contact details provided on the cover page of this contract.

OR

- Submit a public information request directly to PIR@capmetro.org.

For more information regarding the Public Information Act and submitting public information requests, follow this link to our website: <https://www.capmetro.org/legal/>

EXHIBIT B
REPRESENTATIONS AND CERTIFICATIONS
(FEDERALLY ASSISTED SUPPLY/SERVICE/CONSTRUCTION CONTRACTS)
MUST BE RETURNED WITH THE OFFER

1. TYPE OF BUSINESS

(a) The offeror operates as (mark one):

- An individual
- A partnership
- A sole proprietor
- A corporation
- Another entity _____

(b) If incorporated, under the laws of the State of:

Delaware

2. PARENT COMPANY AND IDENTIFYING DATA

(a) The offeror (mark one):

- is
- is not

owned or controlled by a parent company. A parent company is one that owns or controls the activities and basic business policies of the offeror. To own the offering company means that the parent company must own more than fifty percent (50%) of the voting rights in that company.

(b) A company may control an offeror as a parent even though not meeting the requirements for such ownership if the company is able to formulate, determine, or veto basic policy decisions of the offeror through the use of dominate minority voting rights, use of proxy voting, or otherwise.

(c) If not owned or controlled by a parent company, the offeror shall insert its own EIN (Employer's Identification Number) below:

N/A

(d) If the offeror is owned or controlled by a parent company, it shall enter the name, main office and EIN number of the parent company, below:

HNTB Holdings, Ltd.
715 Kirk Drive
Kansas City, MO 64105-1310
[REDACTED]

3. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

(a) The offeror (and all joint venture members, if the offer is submitted by a joint venture) certifies that in connection with this solicitation:

(1) the prices offered have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition, with any other offeror or with any other competitor;

(2) unless otherwise required by law, the prices offered have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to opening of bids in the case of an invitation for bids, or prior to contract award in the case of a request for proposals, directly or indirectly to any other offeror or to any competitor; and

(3) no attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory:

(1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; or

(i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision Michelle Dippel [insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) of this provision have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision.

(c) If the offeror deletes or modifies paragraph (a)(2) of this provision, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

4. DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

(a) In accordance with the provisions of 2 C.F.R. (Code of Federal Regulations), part 180, the offeror certifies to the best of the offeror's knowledge and belief, that it and its principals:

(1) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(2) have not within a three (3) year period preceding this offer been convicted of or had a civil judgment rendered against them for the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in (a)(2) above; and

(4) have not within a three (3) year period preceding this offer had one or more public transactions (Federal, State, or local) terminated for cause or default.

(b) Where the offeror is unable to certify to any of the statements above, the offeror shall attach a full explanation to this offer.

(c) For any subcontract at any tier expected to equal or exceed \$25,000:

(1) In accordance with the provisions of 2 C.F.R. part 180, the prospective lower tier subcontractor certifies, by submission of this offer, that neither it 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.

(2) Where the prospective lower tier participant is unable to certify to the statement, above, an explanation shall be attached to the offer.

(3) This certification (specified in paragraphs (c)(1) and (c)(2), above, shall be included in all applicable subcontracts and a copy kept on file by the Prime Contractor. The Prime Contractor shall be required to furnish copies of the certifications to the Authority upon request.

5. COMMUNICATIONS

(a) All oral and written communications with the Authority regarding this solicitation shall be exclusively with, or on the subjects and with the persons approved by, the persons identified in this solicitation. Discussions with any other person not specified could result in disclosure of proprietary or other competitive sensitive information or otherwise create the appearance of impropriety or unfair competition and, thereby, compromise the integrity of the Authority's procurement system. If competition cannot be resolved through normal communication channels, the Authority's protest procedures shall be used for actual or prospective competitors claiming any impropriety in connection with this solicitation.

(b) By submission of this offer, the offeror certifies that it has not, and will not prior to contract award, communicate orally or in writing with any Authority employee or other representative of the Authority (including Board Members, the Authority's contractors or consultants) regarding this solicitation, except as described below:

Individual's Name	Date/Subject of Communication
N/A	

(Attach continuation form, if necessary.)

6. CONTINGENT FEE

(a) Except for full-time, bona fide employees working solely for the offeror, the offeror represents as part of its offer that it (mark one):

- has
- has not

employed or retained any company or persons to solicit or obtain this contract, and (mark one):

- has
- has not

paid or agreed to pay any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) The offeror agrees to provide information relating to (a) above, when any item is answered affirmatively.

7. CODE OF ETHICS

(a) Statement of Purpose

The brand and reputation of Capital Metro is determined in large part by the actions or ethics of representatives of the agency. Capital Metro is committed to a strong ethical culture and to ethical behavior by all individuals serving Capital Metro as employees, members of the Board of Directors or volunteers. Individuals serving Capital Metro will conduct business with honesty and integrity. We will make decisions and take actions that are in the best interest of the people we serve and that are consistent with our mission, vision and this policy. The Code of Ethics (the "Code") documents Capital Metro's Standards of Ethical Conduct and policies for Ethical Business Transactions. Compliance with the Code will help protect Capital Metro's reputation for honesty and integrity. The Code attempts to provide clear principles for Capital Metro's expectations for behavior in conducting Capital Metro business. We have a duty to read, understand and comply with the letter and spirit of the Code and Capital Metro policies. You are encouraged to inquire if any aspect of the Code needs clarification.

(b) Applicability

The Code applies to Capital Metro employees, contractors, potential contractors, Board Members and citizen advisory committee members. Violation of the Code of Ethics may result in discipline up to and including termination or removal from the Board of Directors.

(c) Standards of Ethical Conduct

The public must have confidence in our integrity as a public agency and we will act at all times to preserve the trust of the community and protect Capital Metro's reputation. To demonstrate our integrity and commitment to ethical conduct we will:

- (1) Continuously exhibit a desire to serve the public and display a helpful, respectful manner.
- (2) Exhibit and embody a culture of safety in our operations.
- (3) Understand, respect and obey all applicable laws, regulations and Capital Metro policies and procedures both in letter and spirit.
- (4) Exercise sound judgment to determine when to seek advice from legal counsel, the Ethics Officer or others.
- (5) Treat each other with honesty, dignity and respect and will not discriminate in our actions toward others.
- (6) Continuously strive for improvement in our work and be accountable for our actions.
- (7) Transact Capital Metro business effectively and efficiently and act in good faith to protect the Authority's assets from waste, abuse, theft or damage.
- (8) Be good stewards of Capital Metro's reputation and will not make any representation in public or private, orally or in writing, that states, or appears to state, an official position of Capital Metro unless authorized to do so.
- (9) Report all material facts known when reporting on work projects, which if not revealed, could either conceal unlawful or improper practices or prevent informed decisions from being made.
- (10) Be fair, impartial and ethical in our business dealings and will not use our authority to unfairly or illegally influence the decisions of other employees or Board members.
- (11) Ensure that our personal or business activities, relationships and other interests do not conflict or appear to conflict with the interests of Capital Metro and disclose any potential conflicts.

(12) Encourage ethical behavior and report all known unethical or wrongful conduct to the Capital Metro Ethics Officer or the Board Ethics Officer.

(d) Roles and Responsibilities

It is everyone's responsibility to understand and comply with the Code of Ethics and the law. Lack of knowledge or understanding of the Code will not be considered. If you have a question about the Code of Ethics, ask.

It is the responsibility of Capital Metro management to model appropriate conduct at all times and promote an ethical culture. Seek guidance if you are uncertain what to do.

It is Capital Metro's responsibility to provide a system of reporting and access to guidance when an employee wishes to report a suspected violation and to seek counseling, and the normal chain of command cannot, for whatever reason, be utilized. If you need to report something or seek guidance outside the normal chain of command, Capital Metro provides the following resources:

(1) Anonymous Fraud Hotline – Internal Audit

(2) Anonymous Online Ethics Reporting System

(3) Contact the Capital Metro Ethics Officer, Vice-President of Internal Audit, the EEO Officer or Director of Human Resources

(4) Safety Hotline

The Capital Metro Ethics Officer is the Chief Counsel. The Ethics Officer is responsible for the interpretation and implementation of the Code and any questions about the interpretation of the Code should be directed to the Ethics Officer.

(e) Ethical Business Transactions

Section 1. Impartiality and Official Position

(1) A Substantial Interest is defined by Tex. Loc. Govt. Code, § 171.002. An official or a person related to the official in the first degree by consanguinity or affinity has a Substantial Interest in:

(i) A business entity if the person owns ten percent (10%) or more of the voting stock or shares of the business entity or owns either 10% or more or \$15,000 or more of the fair market value of the business entity OR funds received by the person from the business entity exceed 10% of the person's gross income for the previous year; or

(ii) Real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.

Capital Metro will not enter into a contract with a business in which a Board Member or employee or a Family Member of a Board Member or employee as defined in Section 8 has a Substantial Interest except in case of emergency as defined in the Acquisition Policy PRC-100 or the business is the only available source for essential goods and services or property.

(2) No Board Member or employee shall:

(i) Act as a surety for a business that has work, business or a contract with Capital Metro or act as a surety on any official bond required of an officer of Capital Metro.

(ii) Represent for compensation, advise or appear on behalf of any person or firm concerning any contract or transaction or in any proceeding involving Capital Metro's interests.

(iii) Use his or her official position or employment, or Capital Metro's facilities, equipment or supplies to obtain or attempt to obtain private gain or advantage.

(iv) Use his or her official position or employment to unfairly influence other Board members or employees to perform illegal, immoral, or discreditable acts or do anything that would violate Capital Metro policies.

(v) Use Capital Metro's resources, including employees, facilities, equipment, and supplies in political campaign activities.

(vi) Participate in a contract for a contractor or first-tier subcontractor with Capital Metro for a period of one (1) year after leaving employment on any contract with Capital Metro.

(vii) Participate for the life of the contract in a contract for a contractor or first-tier subcontractor with Capital Metro if the Board Member or employee participated in the recommendation, bid, proposal or solicitation of the Capital Metro contract or procurement.

Section 2. Employment and Representation

A Board Member or employee must disclose to his or her supervisor, appropriate Capital Metro staff or the Board Chair any discussions of future employment with any business which has, or the Board Member or employee should reasonably foresee is likely to have, any interest in a transaction upon which the Board Member or employee may or must act or make a recommendation subsequent to such discussion. The Board Member or employee shall take no further action on matters regarding the potential future employer.

A Board Member or employee shall not solicit or accept other employment to be performed or compensation to be received while still a Board Member or employee, if the employment or compensation could reasonably be expected to impair independence in judgment or performance of their duties.

A Board Member or employee with authority to appoint or hire employees shall not exercise such authority in favor of an individual who is related within the first degree, within the second degree by affinity or within the third degree by consanguinity as defined by the Capital Metro Nepotism Policy in accordance with Tex. Govt. Code, Ch. 573.

Section 3. Gifts

It is critical to keep an arms-length relationship with the entities and vendors Capital Metro does business with in order to prevent the appearance of impropriety, undue influence or favoritism.

No Board Member or employee shall:

(1) Solicit, accept or agree to accept any benefit or item of monetary value as consideration for the Board Member's or employee's decision, vote, opinion, recommendation or other exercise of discretion as a public servant. [Tex. Penal Code §36.02(c)]

(2) Solicit, accept or agree to accept any benefit or item of monetary value as consideration for a violation of any law or duty. [Tex. Penal Code §36.02(a)(1)]

(3) Solicit, accept or agree to accept any benefit or item of monetary value from a person the Board Member or employee knows is interested in or likely to become interested in any Capital Metro contract or transaction if the benefit or item of monetary value could reasonably be inferred as intended to influence the Board Member or employee. [Tex. Penal Code §36.08(d)]

(4) Receive or accept any gift, favor or item of monetary value from a contractor or potential contractor of Capital Metro or from any individual or entity that could reasonably be inferred as intended to influence the Board Member or employee.

Exception: Consistent with state law governing public servants, a gift does not include a benefit or item of monetary value with a value of less than \$50, excluding cash or negotiable instruments, unless it can reasonably be inferred

that the item was intended to influence the Board Member or employee. A department may adopt more restrictive provisions if there is a demonstrated and documented business need. [Tex. Penal Code § 36.10(a)(6)]

Exception: A gift or other benefit conferred, independent of the Board Member's or employee's relationship with Capital Metro, that is not given or received with the intent to influence the Board Member or employee in the performance of his or her official duties is not a violation of this policy. The Capital Metro Ethics Officer or Board Ethics Officer must be consulted for a determination as to whether a potential gift falls within this exception.

Exception: Food, lodging, or transportation that is provided as consideration for legitimate services rendered by the Board Member or employee related to his or her official duties is not a violation of this policy.

If you are uncertain about a gift, seek guidance from the Ethics Officer.

Section 4. Business Meals and Functions

Board Members and employees may accept invitations for free, reasonable meals in the course of conducting Capital Metro's business or while attending a seminar or conference in connection with Capital Metro business as long as there is not an active or impending solicitation in which the inviting contractor or party may participate and attendance at the event or meal does not create an appearance that the invitation was intended to influence the Board Member or employee.

When attending such events, it is important to remember that you are representing Capital Metro and if you chose to drink alcohol, you must do so responsibly. Drinking irresponsibly may lead to poor judgment and actions that may violate the Code or other Capital Metro policies and may damage the reputation of Capital Metro in the community and the industry.

Section 5. Confidential Information

It is everyone's responsibility to safeguard Capital Metro's nonpublic and confidential information.

No Board Member or employee shall:

- (1) Disclose, use or allow others to use nonpublic or confidential information that Capital Metro has not made public unless it is necessary and part of their job duties and then only pursuant to a nondisclosure agreement approved by legal counsel or with consultation and permission of legal counsel.
- (2) Communicate details of any active Capital Metro procurement or solicitation or other contract opportunity to any contractor, potential contractor or individual not authorized to receive information regarding the active procurement or contract opportunity.

Section 6. Financial Accountability and Record Keeping

Capital Metro's financial records and reports should be accurate, timely, and in accordance with applicable laws and accounting rules and principles. Our records must reflect all components of a transaction in an honest and forthright manner. These records reflect the results of Capital Metro's operations and our stewardship of public funds.

A Board Member or employee shall:

- (1) Not falsify a document or distort the true nature of a transaction.
- (2) Properly disclose risks and potential liabilities to appropriate Capital Metro staff.
- (3) Cooperate with audits of financial records.
- (4) Ensure that all transactions are supported by accurate documentation.
- (5) Ensure that all reports made to government authorities are full, fair, accurate and timely.

- (6) Ensure all accruals and estimates are based on documentation and good faith judgment.

Section 7. Conflict of Interest

Employees and Board Members are expected to deal at arms-length in any transaction on behalf of Capital Metro and avoid and disclose actual conflicts of interest under the law and the Code and any circumstance which could impart the appearance of a conflict of interest. A conflict of interest exists when a Board Member or employee is in a position in which any official act or action taken by them is, may be, or appears to be influenced by considerations of personal gain rather than the general public trust.

Conflict of Interest [Tex. Loc. Govt. Code, Ch. 171 & 176, § 2252.908]

No Board Member or employee shall participate in a matter involving a business, contract or real property transaction in which the Board Member or employee has a Substantial Interest if it is reasonably foreseeable that an action on the matter would confer a special economic benefit on the business, contract or real property that is distinguishable from its effect on the public. [Tex. Loc. Govt. Code, § 171.004]

Disclosure

A Board Member or employee must disclose a Substantial Interest in a business, contract, or real property that would confer a benefit by their vote or decision. The Board Member or employee may not participate in the consideration of the matter subject to the vote or decision. Prior to the vote or decision, a Board Member shall file an affidavit citing the nature and extent of his or her interest with the Board Vice Chair or Ethics Officer. [Tex. Loc. Govt. Code, § 171.004]

A Board Member or employee may choose not to participate in a vote or decision based on an appearance of a conflict of interest and may file an affidavit documenting their recusal.

Section 8. Disclosure of Certain Relationships [Tex. Loc. Govt. Code, Ch. 176]

Definitions

(1) A Local Government Officer is defined by Tex. Loc. Govt. Code § 176.001(4). A Local Government Officer is:

- (i) A member of the Board of Directors;
- (ii) The President/CEO; or

(iii) A third-party agent of Capital Metro, including an employee, who exercises discretion in the planning, recommending, selecting or contracting of a vendor.

(2) A Family Member is a person related within the first degree by consanguinity or the second degree by affinity as defined by Tex. Govt. Code, Ch. 573.

(3) A Family Relationship is a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity as defined by Tex. Govt. Code, Ch. 573.

(4) A Local Government Officer must file a Conflicts Disclosure Statement (FORM CIS) if:

(i) The person or certain Family Members received at least \$2,500 in taxable income (other than investment income) from a vendor or potential vendor in the last twelve (12) months through an employment or other business relationship;

(ii) The person or certain Family Members received gifts from a vendor or potential vendor with an aggregate value greater than \$100 in the last 12 months; or

(iii) The vendor (or an employee of the vendor) has a Family Relationship with the Local Government Officer.

(5) A vendor doing business with Capital Metro or seeking to do business with Capital Metro is required to file a completed questionnaire (FORM CIQ) disclosing the vendor's affiliations or business relationship with any Board Member or local government officer or his or her Family Member.

Section 9. Duty to Report and Prohibition on Retaliation

Board Members and employees have a duty to promptly report any violation or possible violation of this Code of Ethics, as well as any actual or potential violation of laws, regulations, or policies and procedures to the hotline, the Capital Metro Ethics Officer or the Board Ethics Officer.

Any employee who reports a violation will be treated with dignity and respect and will not be subjected to any form of retaliation for reporting truthfully and in good faith. Any retaliation is a violation of the Code of Ethics and may also be a violation of the law, and as such, could subject both the individual offender and Capital Metro to legal liability.

Section 10. Penalties for Violation of the Code of Ethics

In addition to turning over evidence of misconduct to the proper law enforcement agency when appropriate, the following penalties may be enforced:

(1) If a Board Member does not comply with the requirements of this policy, the Board member may be subject to censure or removal from the Board in accordance with Section 451.511 of the Texas Transportation Code.

(2) If an employee does not comply with the requirements of this policy, the employee shall be subject to appropriate disciplinary action up to and including termination.

(3) Any individual or business entity contracting or attempting to contract with Capital Metro which offers, confers or agrees to confer any benefit as consideration for a Board Member's or employee's decision, opinion, recommendation, vote or other exercise of discretion as a public servant in exchange for the Board Member's or employee's having exercised his official powers or performed his official duties, or which attempts to communicate with a Board Member or Capital Metro employee regarding details of a procurement or other contract opportunity in violation of Section 5, or which participates in the violation of any provision of this Policy may have its existing Capital Metro contracts terminated and may be excluded from future business with Capital Metro for a period of time as determined appropriate by the President/CEO.

(4) Any individual who makes a false statement in a complaint or during an investigation of a complaint with regard to a matter that is a subject of this policy is in violation of this Code of Ethics and is subject to its penalties. In addition, Capital Metro may pursue any and all available legal and equitable remedies against the person making the false statement or complaint.

Section 11. Miscellaneous Provisions

(1) This Policy shall be construed liberally to effectuate its purposes and policies and to supplement such existing laws as they may relate to the conduct of Board Members and employees.

(2) Within sixty (60) days of the effective date for the adoption of this Code each Board Member and employee of Capital Metro will receive a copy of the Code and sign a statement acknowledging that they have read, understand and will comply with Capital Metro's Code of Ethics. New Board Members and employees will receive a copy of the Code and are required to sign this statement when they begin office or at the time of initial employment.

(3) Board Members and employees shall participate in regular training related to ethical conduct, this Code of Ethics and related laws and policies.

8. PREVIOUS CONTRACTS AND COMPLIANCE REPORTS

(a) The offeror represents as part of its offer that it (mark one):

- has
- has not

participated in a previous contract or subcontract subject either to the Equal Opportunity clause of this solicitation, the clause originally contained in Section 301, Part 2 of Executive Order Number 11114;

and it (mark one):

- has
- has not

filed all required compliance reports.

9. AFFIRMATIVE ACTION COMPLIANCE

(a) The offeror represents as part of its offer that it has a workforce of (indicate below the number of employees including temporary, full-time, or part-time employees):

4,524

(b) The offeror:

has developed an Affirmative Action Plan at each establish as required by the rules and regulations of the Secretary of Labor (41 C.F.R. parts 60-1 and 60-2) and **has on file**. The offeror will submit the Affirmative Action Plan to the Authority within ten (10) days of the date of the Notice of Award (NOA).

has not developed an Affirmative Action Plan at each establish as required by the rules and regulations of the Secretary of Labor (41 C.F.R. parts 60-1 and 60-2) and **does not have on file**. The offeror will submit the Affirmative Action Plan to the Authority within one hundred and twenty (120) days of the date of the Notice to Proceed (NTP).

(c) The offeror:

- has
- has not

previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

10. DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOALS

The goal established for this solicitation must be met or the offeror must submit clear evidence of a “good faith effort” along with the offeror’s completed Schedule C of Subcontractor Participation form (listing all proposed subcontractors, DBE and non-DBE) and an executed Intent to Perform as a DBE Subcontractor form for each DBE subcontractor listed on the Schedule C as part of the proposal or sealed bid. By submission of this offer, the offeror certifies that it will comply with the provisions of Exhibit D attached to this solicitation entitled “Disadvantaged Business Enterprise Program” and will meet the goal as established in any ensuing contract.

11. CLEAN AIR AND WATER CERTIFICATION

Applicable if the offer exceeds \$100,000, or the Authority believes that orders under an indefinite contract in any year will exceed \$100,000 or a facility to be used has been the subject of a conviction under the Air Act [42 U.S.C. §

7413(c)(1)] or the Water Act [33 U.S.C. § 1319(c)] and is listed by the Environmental Protection Agency (EPA) as a violating facility, and the acquisition is not otherwise exempt.

By submission of this offer, the offeror certifies that:

(a) any facility to be used in the performance of this proposed contract (mark one):

- is
 is not

listed on the EPA List of Violating Facilities;

(b) it will immediately notify the Authority, before award, of the receipt of any communication from the EPA Administrator, or a designee of the EPA, indicating that any facility which it proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and

(c) it will include a certification substantially the same as this certification, including this paragraph (c), in every subcontract not otherwise exempt by law.

12. CERTIFICATION OF NON-SEGREGATED FACILITIES

(a) By the submission of this offer, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control, where segregated facilities are maintained.

(b) The offeror agrees that a breach of this certification is a violation of the Equal Opportunity Clause in Exhibit E of the contract.

(c) Definitions: For the purpose of this Certification of Non-Segregated Facilities, the following definitions shall apply:

(1) "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin, because of written or oral policies or employee custom. The term does not include separate or single-user restrooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(2) "gender identity" refers to one's internal sense of one's own gender; it may or may not correspond to the sex assigned to a person at birth and may or may not be made visible to others.

(3) "sexual orientation" refers to an individual's physical, romantic, and/or emotional attraction to people of the same and/or opposite gender; examples of sexual orientations include "straight" (or heterosexual), lesbian, gay, and bisexual.

(d) It further certifies that (except where it has obtained identical certifications from proposed subcontracts for specific time periods) it will:

(1) obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity provision in Exhibit E of the contract; and

(2) retain such certifications in its files.

13. CERTIFICATION OF RESTRICTIONS ON LOBBYING

This Certification is applicable if the offer exceeds \$100,000.

(a) By submission of this offer, the offeror certifies to the best of the offeror's knowledge or belief that no Federal appropriated funds have been paid, or will be paid, by or on behalf of the undersigned, 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 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.

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

(d) This certification is a material representation of fact upon which reliance was 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.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 or not more than \$100,000 for each such failure.

14. TEXAS ETHICS COMMISSION CERTIFICATION

In accordance with Section 2252.908, Texas Government Code, upon request of the Authority, the selected contractor may be required to electronically submit a "Certificate of Interested Parties" with the Texas Ethics Commission in the form required by the Texas Ethics Commission, and furnish the Authority with the original signed and notarized document prior to the time the Authority signs the contract. The form can be found at www.ethics.state.tx.us. Questions regarding the form should be directed to the Texas Ethics Commission.

15. CERTIFICATION REGARDING ISRAEL

As applicable and in accordance with Section 2270.002 of the Texas Government Code, the Contractor certifies that it does not boycott Israel and will not boycott Israel during the term of this Contract.

16. CERTIFICATION REGARDING FOREIGN TERRORIST ORGANIZATIONS

Contractor certifies and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

17. CERTIFICATION OF PRIME CONTRACTOR PARTICIPATION

(a) The Prime Contractor shall perform no less than thirty percent (**30%**) of the work with his or her own organization. The on-site production of materials produced by other than the Prime Contractor's forces shall be considered as being subcontracted.

(b) The organization of the specifications into divisions, sections, and articles, and the arrangement and titles of project drawings shall not control the Prime Contractor in dividing the work among subcontractors or in establishing the extent of work to be performed by any trade.

(c) The offeror hereby certifies that the **Schedule C of Subcontractor Participation** form submitted with the Exhibit D, Disadvantaged Business Enterprise (DBE) portion of this offer represents no more than seventy percent (**70%**) of the work will be done by subcontractors.

18. SIGNATURE BLOCK FOR ALL REPRESENTATIONS AND CERTIFICATIONS


- (a) These representations and certifications concern a material representation of fact upon which reliance will be placed in awarding a contract. If it is later determined that the offeror knowingly rendered an erroneous or false certification, in addition to all other remedies the Authority may have, the Authority may terminate the contract for default and/or recommend that the offeror be debarred or suspended from doing business with the Authority in the future.
- (b) The offeror shall provide immediate written notice to the Authority if, at any time prior to contract award, the offeror learns that the offeror's certification was, or a subsequent communication makes, the certification erroneous.
- (c) Offerors must set forth full, accurate and complete information as required by this solicitation (including this attachment). Failure of an offeror to do so may render the offer nonresponsive.
- (d) I understand that a false statement on this certification may be grounds for rejection of this submittal or termination of the awarded contract.
- (e) A false statement in any offer submitted to the Authority may be a criminal offense in violation of Section 37.10 of the Texas Penal Code. In addition, under 18 U.S.C. §. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to five (5) years, or both.

Name of Offeror:

HNTB Corporation

Type/Print Name of Signatory:

Michelle Dippel

Signature: 

Date:

October 28, 2019

EXHIBIT D
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
DBE Federal Funds

It is the policy of the Authority and the Department of Transportation that Disadvantaged Business Enterprises (DBEs) as defined in 49 C.F.R. part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this contract. It is also the policy of the Authority to (1) ensure nondiscrimination in the award and administration of DOT-assisted contracts; (3) ensure that the DBE program is narrowly tailored in accordance with applicable law; (4) ensure that only firms that fully meet the 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE's; (5) help remove barriers to the participation of DBE's in DOT assisted contracts and procurement activities; and, (7) assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

Consequently, the DBE requirements of 49 C.F.R. part 26 apply to this contract. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The requirements of 49 C.F.R. part 26, and the Authority's DOT approved Disadvantaged Business Enterprise (DBE) program are incorporated in this contract by reference.

1. DEFINITIONS

(a) Disadvantaged business enterprise or DBE means a for-profit small business concern (1) that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(b) Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act P.L. 112-239 and Small Business Administration regulations implementing it (13 C.F.R. part 121) that also does not exceed the cap on average annual gross receipts specified in 13 C.F.R. Section 121.402.

(c) Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is: (1) any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis; (2) any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(1) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(2) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(3) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(4) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(5) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(6) Women;

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(7) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

2. CONTRACTOR ASSURANCE

As required by Federal law, the Contractor makes the following assurance:

“The contractor [sub recipient or subcontractor] shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 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 the Authority [recipient] deems appropriate, which may include, but is not limited to: (1) withholding monthly (or periodic payments); (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the contractor from future bidding as non-responsible.”

The Contractor agrees to include the above clause in each subcontract associated with this contract. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

3. SUBMISSION OF DBE FORMS

(a) The contractor shall submit with its response to the solicitation a completed Schedule C of Subcontractor Participation form (listing all proposed subcontractors, DBE and non-DBE) and an executed Intent to Perform as a DBE Subcontractor form for each DBE subcontractor listed on the Schedule C. As required in Section 5 of this Exhibit, adequate good faith effort documentation (if necessary) must be submitted at this same time. If the contractor does not submit this information by the time the response is due, Capital Metro may deem the contractor non-responsive and such decision is non-appealable. Instead, the contractor may follow the Authority's protest procedure set forth in the Authority's Procurement Policy and Procedures Manual.

(b) The listing of a DBE by contractor shall constitute a representation by the contractor to the Authority that it believes such DBE firm to be technically and financially qualified and available to perform the work. It shall also represent a commitment by the contractor that if it is awarded the contract it will enter into a subcontract with such DBE (provided that the DBE is certified as provided herein) for the work described and at the price set forth in both the Schedule C of Subcontractor Participation and the Intent to Perform as a DBE Subcontractor forms. If the price changes after the form has been submitted but prior to award of the contract, the contractor will immediately notify the Authority's Contracting Officer of the changed amount and the reason(s) for the change.

(c) In the event that the contractor wishes to modify its Schedule C of Subcontractor Participation after its offer is submitted and/or a contract awarded, the contractor must notify the Authority in writing and request approval of the modification. This will include any changes to items of work, material, services or DBE firms which differ from those identified on the Schedule C of Subcontractor Participation on file. The contractor must cooperate in supplying the Authority with additional information with respect to the requested modification. No changes may be effected without the Authority's prior written approval.

4. CREDIT TOWARDS GOALS

(a) No credit toward meeting DBE goals will be allowed unless the DBE is determined to be eligible by the Authority's Office of Diversity. The contractor is strongly encouraged to contact the Authority's Office of Diversity well in advance of the date set for submission of offers in order to enable review of the proposed DBEs eligibility to participate in the Authority's DBE Program. The dollar value of work performed under a contract with a firm after it has ceased to be certified cannot count toward a contract goal. Participation of a DBE subcontractor cannot count toward the contractor's DBE achievements until the amount being counted has been paid to the DBE.

(b) Only expenditures to DBEs that perform a Commercially Useful Function may be counted towards goals. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved; and it furnishes the supervision, labor, and equipment necessary to perform its work. To perform a commercially useful function, the

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DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. If a DBE does not perform or exercise responsibility for at least thirty (30%) percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it is not performing a commercially useful function.

(c) The contractor may count only the value of the work actually performed by the DBE toward DBE goals. Count the entire amount of that portion of a contract that is performed by a DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate). Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

(d) When a DBE performs as a participant in a joint venture, the Contractor may count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

(e) The contractor may credit towards the DBE goal the full expenditures for materials and supplies provided that the DBE is a manufacturer. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications. (also, produces materials from raw materials, or substantially alters materials before resale).

(f) The contractor may credit towards the DBE goal only sixty (60%) percent of the total dollar cost for material and supplies purchased from DBEs that are regular dealers and not manufacturers. A regular dealer is an established 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 specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the person both owns and operates distribution equipment for the products. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.

(g) The Contractor may count toward its DBE goals the following expenditures to DBE firms that are not manufacturers or regular dealers.

(1) The fees or commissions charged for bona fide services such as professional, technical, consultant, or managerial services and assistance in the procurement of essential personnel, facilities, equipment materials or supplies required for performance of the contract, provided that the fee is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(2) The fees charges for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in, the materials and supplies.

(3) The fees charged for providing any bonds or insurance specifically required for the performance of the contract.

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(4) The fees charged for assistance in the procurement of the materials and supplies provided that the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

(h) If the contractor is a DBE and wishes to count its participation on the project towards the goal, it is required to perform that portion with its own work force.

5. DEMONSTRATION OF GOOD FAITH EFFORT

(a) If the contractor does not meet the DBE goals, it shall nevertheless be eligible for award of the contract if it can demonstrate to the satisfaction of the Authority that it has made a good faith effort to meet the DBE goals. In evaluating a contractor's good faith effort submission, the Authority will only consider those documented efforts that occurred prior to receipt of competitive sealed bids (IFB) or competitive sealed proposals (RFP).

(1) Possible subcontracting opportunities include, but are not limited to:

Industry	NAICS Code
Engineering Services	541330
Architectural (except landscape) Services	541310
Surveying and Mapping Services (except Geophysical)	541370
Industrial Design Consulting Services	541420

(2) The DBE goal for this solicitation is 8%.

(b) In the event that a firm submitted by the contractor is not able to become certified by one of the certifying agencies under the Texas Unified Certification Program (see Section 6), the contractor will be notified and given an opportunity to substitute that firm with another DBE firm. The Contractor will be given a deadline to accomplish the substitution. In the event the contractor is unable to contract with another substitute DBE firm, the good faith efforts that contractor made in attempting to contract with the substitute DBE firm must be documented to the Authority's Office of Diversity. Documentation submitted in accordance with this subparagraph is the only exception to the requirements in subparagraph (a) above pertaining to the good faith efforts that the Authority will consider in determining whether the contractor shall be otherwise eligible for award of the contract.

(c) In making a determination that the contractor has made a good faith effort to meet the DBE goals, the Authority shall consider among other things it deems relevant, the criteria set forth below. Additionally, in determining whether the contractor has made good faith efforts, the Authority will take into account the performance of other bidders in meeting the contract goal. The Contractor shall furnish as part of its DBE utilization information provided under this Section 5 such specific documentation concerning the steps it has taken to obtain DBE participation, with a consideration of, by way of illustration and not limitation the following:

(1) Whether the contractor solicited through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

(2) Whether the contractor selected portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

(3) Whether the contractor provided interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

(4) Whether the contractor negotiated in good faith with interested DBEs. It is the contractor's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work

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or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work. A contractor using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a contractor's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the contractor of the responsibility to make good faith efforts. A contractor is not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

(5) Whether the contractor rejected DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

(6) Whether the contractor made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

(7) Whether the contractor made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

(8) Whether the contractor effectively used the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

(d) In determining whether the contractor has demonstrated good faith, the Authority will look not only at the different kinds of efforts that the contractor has made, but also the quantity and intensity of those efforts. Efforts that are mere pro forma are not good faith efforts to meet the goals (even if they are sincerely motivated) if, given all relevant circumstances, the contractor's efforts could not reasonably be expected to produce a level of DBE participation sufficient to meet the goals.

(e) If the contractor does not meet the DBE goal or make adequate good faith efforts to do so, the Authority will so notify the contractor in writing. The contractor may appeal the decision within five (5) days of the date of the notice of decision by filing a written appeal for reconsideration. As part of this appeal, the contractor has the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The reconsideration will be made by the DBE appeals officer, an individual who did not take part in the original determination that the contractor failed to meet the goal or make adequate good faith efforts to do so. The contractor will have the opportunity to meet with the DBE appeals officer to discuss the issue of whether it meet the goal or made adequate good faith efforts to do so. The result of the reconsideration process is final and not administratively appealable to the Department of Transportation.

6. CERTIFICATION OF DBEs

(a) The Authority is a participating entity under the Texas Unified Certification Program (TUCP). This means that the Authority will accept certifications from any of the certifying agencies that have agreed to perform the certification of DBEs within the state of Texas under the Texas Unified Certification Program (TUCP). The participating agencies are:

- **Texas Department of Transportation**
- **North Central Texas Regional Certification Agency**
- **South Central Texas Regional Certification Agency**
- **City of Houston**
- **City of Austin**

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- **Corpus Christi Regional Transportation Authority**

(b) The City of Austin will serve as the certifying agency for the Austin region, which includes the counties of Bastrop, Caldwell, Hays, Travis and Williamson County. All prospective DBEs must submit appropriate forms, available through the City of Austin Certification Department, to prove actual ownership and control by DBEs. All such firms shall cooperate in supplying additional information as requested by the City of Austin DBE Certification Department, which will determine the certification of eligible DBEs. Blank forms may be obtained by contacting the City of Austin Certification Department, 4201 Ed Bluestein Blvd., Austin, TX 78721, (512) 974-7645, fax: (512) 974-7609. Contractors may also contact the Authority at (512) 389-7441 or officeofdiversity@capmetro.org to obtain information.

(c) In the event the Authority determines that a firm identified by the contractor as a potential DBE does not qualify as a DBE, the contractor shall be informed and will be provided with an opportunity to substitute firms meeting the certifying agency's DBE eligibility criteria for the Authority's consideration.

(d) Only certified DBEs may participate in Authority contracts in such capacities. Information concerning DBEs currently certified can be obtained by contacting the Authority's Office of Diversity. Contractors may access the DBE directory at <https://txdot.txdotcms.com/>.

(e) **If a Contractor proposes using a DBE not currently certified with any of the other recipients in the Texas Unified Certification Program (TUCP), the DBE Application must be approved by the City of Austin Certification Department no later than the date and time established for the receipt of proposals.** Any extensions to the due date by amendment to the solicitation shall automatically extend the due date of the application. If contractor proposes using a DBE from another state, the firm must produce evidence that it is DBE certified in the state in which the business is headquartered.

7. DBE PROGRAM REQUIREMENTS

(a) The Contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed in Schedule C of Subcontractor Participation form unless the contractor obtains the prior written consent of the Authority upon a showing of good cause as established by 49 C.F.R. Section 26.53 (f)(3). Contractor will not be entitled to payment for any work or materials unless it is supplied by the listed DBE.

(b) Unless such consent is obtained, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

(c) At no time will the contractor invoice the Authority for amounts pertaining to subcontractors terminated or substituted without prior approval of the Authority.

8. TERMINATION OR REPLACEMENT OF DBE SUBCONTRACTORS

(a) The contractor must notify the Authority's Office of Diversity immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation thereof.

(b) The contractor may not terminate a listed DBE subcontractor (or approved substitute), replace a subcontractor previously listed, permit a subcontract to be assigned or transferred, or allow that portion of the work to be performed by anyone other than the listed subcontractor, without the prior written consent of the Authority. For termination of a SBE subcontractor, prior written consent will only be provided where there is a "good cause" for termination as established by 49 C.F.R. Section 26.53(f)(3). This includes, but is not limited to, instances in which a contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

(c) Before transmitting to the Authority its request to terminate, the contractor must give the DBE subcontractor notice of its intent to terminate. A copy of this notice must be provided to the Authority prior to consideration of the request to terminate. The DBE subcontractor shall have five (5) days to respond to the contractor's notice and advise the Authority the reasons, if any, why it objects to the proposed termination. If required in a particular case as a matter of public necessity (e.g., safety), the response period can be shorter than five (5) days.

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(d) When a DBE subcontractor is terminated, the Authority will require the contractor to make good faith efforts to replace a DBE subcontractor that is terminated with another certified DBE, to the extent needed to meet the contract goal. These good faith efforts shall be directed at finding another certified DBE to perform at least the same amount of work under the contract as the DBE that was terminated. Documentation of good faith efforts must be maintained and provided to the Authority.

(e) Any DBE that has been approved by Capital Metro to be replaced has the right to appeal the decision directly to Authority's DBE Officer. Appeals should be sent to:

DBE Officer
Capital Metropolitan Transportation Authority
Office of Diversity
2910 E. 5th Street
Austin, TX 78702

If the DBE Officer concurs with the prime contractor, the DBE may use the "Administrative Reconsideration" process noted in Paragraph 5(e) and submit an appeal to the Agency's reconsideration official.

(f) If the contractor fails or refuses to comply with the requirements of this Section 8 in the time specified, the Authority will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor fails still fails to comply, the Authority may institute a termination for default proceeding under Exhibit E.

(g) When a DBE is terminated or fails to complete its work on the contract for any reason, the contractor shall make good faith efforts to find another DBE contractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent need to meet the DBE goal for this procurement.

9. SUBCONTRACTS

(a) Upon request, contractor shall furnish the Authority with all subcontracts associated with this contract.

(b) The contractor shall ensure that all subcontracts or an agreement with the DBE's to supply labor or materials require that the subcontract and all lower-tier subcontractors be performed in accordance with 49 C.F.R. part 26.

10. PAYMENT DOCUMENTATION

For every month that the contractor gets paid under the contract the contractor shall complete and submit a Vendor Payment Report in a form approved by the in accordance with submittal instructions provided by the Authority. As provided elsewhere in this contract, the Authority may withhold all or part of any progress payment otherwise due the contractor if the contractor fails to submit the Vendor Payment Report Form and make prompt payment to its subcontractors, suppliers and laborers.

11. PROMPT PAYMENT OF SUBCONTRACTORS

(a) The contractor agrees to pay each subcontractor under this contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the contractor receives from the Authority. The contractor further agrees to return retainage payments to each subcontractor within ten (10) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval from the Authority.

(b) Failure by the contractor to pay subcontractors within ten (10) days as provided in subparagraph (a) and/or failure to submit appropriate certification of subcontractor payment will be considered in the review of contractor's performance of the contract and may result in the withholding of payment to the contractor.

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

(c) The contractor agrees to include the above clauses in each subcontract associated with this contract. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

12. PAYMENT DISPUTES

If a payment dispute arises between the contractor and any subcontractor or supplier related to this contract, the contractor shall provide a written response to the subcontractor or supplier, with a copy to the Contracting Officer, specifically addressing any disputed amounts. The contractor should resolve all disputed invoices at the earliest time to avoid a delay in the submission of required subcontractor/supplier payment certifications that 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 subcontractor or supplier certification. The Contracting Officer will not mediate the dispute between the contractor and any subcontractor or supplier in the resolution of disputed invoices. At no time will the contractor invoice the Authority for amounts in dispute without prior notification to the Contracting Officer.

13. SANCTIONS FOR NONCOMPLIANCE WITH THE AUTHORITY'S DBE PROGRAM REQUIREMENTS

Failure by the contractor to carry out the Authority's DBE Program Requirements is a material breach of the contract, which may result in the termination of this contract or such other remedy, as the Authority deems appropriate, which may include, but is not limited to: (1) withholding monthly (or periodic payments); (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the contractor from future bidding as non-responsible. The willful making of false statements or providing incorrect information will be referred for appropriate legal action.

14. BANKS AND FINANCIAL INSTITUTIONS

The contractor is encouraged to utilize the services of disadvantaged, minority and woman-owned banks and financial institutions.

CAPITAL METRO
Schedule C of Subcontractor Participation

Instructions: The Offeror shall complete this form by listing 1) Names of all proposed subcontractors. 2) Contact information, 3) Description of work to be performed/product to be provided, 4) Status as a DBE or non-DBE, 5) Ethnic Code of firm, 6) Age of the firm, 7) Annual gross receipts of the firm, 8) % or \$ amount of Total Contract. Those subcontractors which are listed on this form as DBEs must have current certification as a DBE with a participating TUCP certifying agency (see Exhibit D paragraph 6). The DBE certification must be complete by the time the proposals are submitted. Additionally, those subcontractors which are listed on this form as DBEs must complete an Intent to Perform as a DBE Subcontractor agreeing to the information listed here.

Name of Prime Contractor (Offeror): HNTB Corporation

Project Name: General Engineering & Railroad Engineering Consulting Services

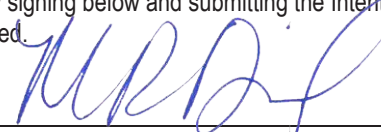
SOQ Number: 305624

Ethnic Code: **A)** African-American Male **B)** African American Female **C)** Asian- Indian Male **D)**Asian- Indian Female **E)** Asian –Pacific Male **G)** Asian-Pacific Female **H)** Hispanic Male **I)** Hispanic Female **J)** Native American Male **K)** Native American Female **L)** White Female **M)** Other

1) Name of Subcontractor	2) Address, Telephone # of DBE Firm (Including name of contact person)	3) Description of Work, Services Provided. Where applicable, specify "supply" or "install" or both.	4) DBE or non-DBE	5) Ethnic Code	6) Age of Firm	7) Annual Gross Receipts	8) DBE % or \$ amount of Total Contract
ADS System Safety Consulting, LLC	20 South Charles St., Suite 1103, Baltimore, MD 21201 Kahlil Allen, (240) 882-1126	Supply safety and security engineering	DBE	A	8 yrs	\$4.5M	0.01-1%
CTC, Inc.	9601 Camp Bowie West, Fort Worth, TX 76116 Kurt Anderson - COO, (817) 886-8215	Supply rail signal and pre-emption design services	non-DBE	N/A	12 yrs	\$12.1M	0.01-1%
Encotech Engineering Consultants, Inc.	8500 Bluffstone Cove, Suite B103, Austin, TX 78759 Ali Khataw, PE, (512) 338-1101	Supply structural, mechanical, electrical and plumbing (MEP), commissioning, and third-party QA services	non-DBE	N/A	29 yrs	\$5.2M	0.01-1%
K Friese & Associates, Inc.	1120 S. Capital of Texas Highway, Suite 100, Austin, TX 78746 Joseph Cantalupo, AICP, (512) 338-1704	Supply drainage and civil engineering services	DBE	L	16 yrs	\$12.7M	3-4%
LTK Engineering Services	100 W. Butler Ave., Ambler, PA 19002 Michael Tagaras, VP, (215) 542-0700	Supply PTC, rail vehicle engineering, train performance simulations, communications and systems support staff	non-DBE	N/A	98 yrs	\$70M	0.01-1%
McGray & McGray Land Surveyors, Inc.	3301 Hancock Dr., Suite 6, Austin, TX 78731 Chris Conrad, RPLS, VP, (512) 451-8591	Supply surveying	DBE	L	38 yrs	\$6.7M	0.01-1%
MWM DesignGroup	305 East Huntland Dr., Suite 200, Austin, TX 78752 Julia Harrod, PE, F.NSPE, (512) 453-0767	Supply civil engineering and permitting services	DBE	L	39 yrs	\$5.2M	3-4%
P.E. Structural Consultants, Inc.	8436 Spicewood Springs Rd, Austin, TX 78759 Lisa Carter Powell, PE (512) 250-5200	Supply structural engineering services	DBE	L	27 yrs	\$3.5M	2-3%

This schedule must be completed as instructed above and include every subcontractor proposed on this project.

The undersigned will enter into a formal agreement with DBE contractors for work listed in this schedule upon execution of a contract with Capital Metro. The contractor agrees to the terms of this schedule by signing below and submitting the Intent to Perform as completed by the DBE subcontractors. The contractor also certifies that no more than 70% of the work for this project will be subcontracted.



Signature of Authorized Representative of Offeror

November 6, 2019

Date Signed

As instructed by the Q&A 3 document, HNTB has provided estimated ranges of participation by our subcontractors. Actual percentages may vary based on task orders authorized by Capital Metro. HNTB confirms our commitment to meeting or exceeding the contract DBE goal of 8%.

CAPITAL METRO
Schedule C of Subcontractor Participation

Instructions: The Offeror shall complete this form by listing 1) Names of all proposed subcontractors. 2) Contact information, 3) Description of work to be performed/product to be provided, 4) Status as a DBE or non-DBE, 5) Ethnic Code of firm, 6) Age of the firm, 7) Annual gross receipts of the firm, 8) % or \$ amount of Total Contract. Those subcontractors which are listed on this form as DBEs must have current certification as a DBE with a participating TUCP certifying agency (see Exhibit D paragraph 6). The DBE certification must be complete by the time the proposals are submitted. Additionally, those subcontractors which are listed on this form as DBEs must complete an Intent to Perform as a DBE Subcontractor agreeing to the information listed here.

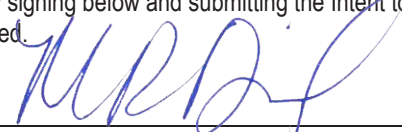
Name of Prime Contractor (Offeror): HNTB Corporation
Project Name: General Engineering & Railroad Engineering Consulting Services
SOQ Number: 305624

Ethnic Code: **A)** African-American Male **B)** African American Female **C)** Asian- Indian Male **D)**Asian- Indian Female **E)** Asian –Pacific Male **G)** Asian-Pacific Female **H)** Hispanic Male **I)** Hispanic Female **J)** Native American Male **K)** Native American Female **L)** White Female **M)** Other

1) Name of Subcontractor	2) Address, Telephone # of DBE Firm (Including name of contact person)	3) Description of Work, Services Provided. Where applicable, specify "supply" or "Install" or both.	4) DBE or non-DBE	5) Ethnic Code	6) Age of Firm	7) Annual Gross Receipts	8) DBE % or \$ amount of Total Contract
The Rios Group, Inc.	575 Round Rock West Dr., Suite K400, Round Rock, TX 78681 Travis Isaacson, (817) 345-7500	Supply SUE	DBE	I	7 yrs	\$8.9M	0.01-1%
Sunland Group	1812 Centre Creek Dr., Suite 350, Austin, TX 78754 Brandy Waters, PE, (512) 494-0208	Supply cost estimating	DBE	L	34 yrs	\$4.8M	0.01-1%
Terracon Consultants, Inc.	5307 Industrial Oaks Blvd., Suite 160, Austin, TX 78735 James Bierschwale, PE, (512) 442-1181	Supply geotechnical engineering services	non-DBE	N/A	54 yrs	\$752M	0.01-1%

This schedule must be completed as instructed above and include every subcontractor proposed on this project.

The undersigned will enter into a formal agreement with DBE contractors for work listed in this schedule upon execution of a contract with Capital Metro. The contractor agrees to the terms of this schedule by signing below and submitting the Intent to Perform as completed by the DBE subcontractors. The contractor also certifies that no more than 70% of the work for this project will be subcontracted.



Signature of Authorized Representative of Offeror

November 6, 2019

Date Signed

As instructed by the Q&A 3 document, HNTB has provided estimated ranges of participation by our subcontractors. Actual percentages may vary based on task orders authorized by Capital Metro. HNTB confirms our commitment to meeting or exceeding the contract DBE goal of 8%.

EXHIBIT E-Revised-2
CONTRACTUAL TERMS AND CONDITIONS
(TASK ORDER SERVICES CONTRACT)

1. DEFINITIONS

- (a) "Applicable Anti-Corruption and Bribery Laws" means international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements currently in effect and as they become effective relating in any way to the Contractor's provision of goods and/or services to Authority, including without limitation "FCPA" or any applicable laws and regulations, including in the jurisdiction in which the Contractor operates and/or manufactures goods for the Authority, relating to anti-corruption and bribery.
- (b) "Authority," "Capital Metro," "Cap Metro," "CMTA" means Capital Metropolitan Transportation Authority.
- (c) "Change Order" means a written order to the Contractor signed by the Contracting Officer, issued after execution of the Contract, authorizing a change in the term or scope of the Contract.
- (d) "Contract" or "Contract Documents" means this written agreement between the parties comprised of all the documents listed in the Table of Contents, Change Orders and/or Contract Modifications that may be entered into by the parties.
- (e) "Contract Award Date" means the date of the Contract award notice, which may take the form of a purchase order, signed Contract or Notice of Award, issued by the Authority.
- (f) "Contract Modification" means any changes in the terms or provisions of the Contract which are reduced to writing and fully executed by both parties.
- (g) "Contract Sum" means the total compensation payable to the Contractor for performing the work as originally contracted for or as subsequently adjusted by Contract Modification.
- (h) "Contract Term" means period of performance set forth in the paragraph entitled "Term" contained in Exhibit E.
- (i) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and finding on behalf of the Authority. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (j) "Contractor" means the entity that has assumed the legal obligation to perform the Services as identified in the Contract.
- (k) "Days" means calendar days. In computing any period of time established under this Contract, the day of the event from which the designated period of time begins to run shall not be included, but the last day shall be included unless it is a Saturday, Sunday, or Federal or State of Texas holiday, in which event the period shall run to the end of the next business day.
- (l) "FAR" means the Federal Acquisition Regulations codified in 48 C.F.R. Title 48.
- (m) "FCPA" means the United States Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq., as amended.
- (n) "Force Majeure Event" means strikes, lockouts, or other industrial disputes; explosions, epidemics, civil disturbances, acts of domestic or foreign terrorism, wars within the continental United States, riots or insurrections; embargos, natural disasters, including but not limited to landslides, earthquakes, floods or washouts; interruptions by government or court orders; declarations of emergencies by applicable federal, state or local authorities; and present or future orders of any regulatory body having proper jurisdiction.
- (o) "FTA" means the Federal Transit Administration.

- (p) "Fully Burdened Hourly Labor Rate" means an hourly rate that includes all salary, overhead costs, general and administrative expenses, and profit.
- (q) "Intellectual Property Rights" means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights, and any derivative works thereto; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
- (r) "Manufacturing Materials" mean any completed or partially completed supplies and materials, parts, dies, jigs, fixtures, plans, drawings, information, and contract rights specifically produced or specially acquired by the Contractor for the performance of the Contract.
- (s) "Notice of Award" means formal notice of award of the Contract to the Contractor issued by the Contracting Officer.
- (t) "Notice to Proceed" means written authorization for the Contractor to start the Services.
- (u) "Project Manager" means the designated individual to act on behalf of the Authority, to monitor and certify the technical progress of the Contractor's Services under the terms of this Contract.
- (v) "Proposal" means the offer of the proposer, submitted on the prescribed form, stating prices for performing the work described in the Scope of Services.
- (w) "Services" means the services to be performed by the Contractor under this Contract, and includes services performed, workmanship, and supplies furnished or utilized in the performance of the Services.
- (x) "Subcontract" means the contract between the Contractor and its Subcontractors.
- (y) "Subcontractor" means subcontractors of any tier.
- (z) "Task Order" means a request for Services issued under this Contract.
- (aa) "Works" means any tangible or intangible items or things that have been or will be prepared, created, maintained, serviced, developed, incorporated, provided or obtained by the Contractor (or such third parties as the Contractor may be permitted to engage) at any time following the effective date of the Contract, for or on behalf of the Authority under the Contract, including but not limited to any (i) works of authorship (such as literary works, musical works, dramatic works, choreographic works, pictorial, graphic and sculptural works, motion pictures and other audiovisual works, sound recordings and architectural works, which includes but is not limited to manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer software, scripts, object code, source code or other programming code, HTML code, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, and (vii) all other goods, services or deliverables to be provided to the Authority under the Contract.

2. CONTRACT TYPE

- (a) This is an indefinite quantity, indefinite delivery (IDIQ) type Contract for services with multiple pricing arrangements available for use in pricing individual Task Orders available to The Authority. The work required on the reference contract will be placed through the issuance of task orders. Due to the variety of services required under the contract and the circumstances that affect their duration, the Authority anticipates using a variety of task orders at the Contracting Officer's (CO) discretion consistent with the guidelines provided in Part 16 of the Federal Acquisition

Regulations (FAR) to include Firm Fixed-Price (FFP), Cost-Plus-Fixed-Fee (CPFF) Completion and Cost-Plus-Fixed-Fee (CPFF).

(b) This IDIQ Contract is subject to the following minimum/maximum paragraph:

(1) Minimum order. The Authority will order a cumulative minimum total of \$10,000 for the lifecycle of all contracts (for all awardees combined).

(2) Maximum order. The maximum value of the contract(s) is \$20,000,000 **(for all awardees combined)**. The ordering procedures to issue task orders are addressed under Section 6, "Process for Awarding Task Orders-Two Step Method" and Section 7 "Ordering and Pricing Limitations" in this Exhibit E. The total maximum quantity of all supplies and services under the Basic Contract (for all awardees combined) shall not exceed \$20,000,000. The sum of all task orders awarded will be tracked by the Authority to ensure they do not exceed the total maximum value.

(c) There is no limit to the number of orders that may be placed under this Contract. However, each Task Order shall not exceed \$150,000 under any circumstances without prior written approval from the Capital Metro Contracting Officer. Failure to have the prior written approval of the Capital Metro Contracting Officer will make that Task Order null and void and the Authority will not be responsible for any or all cost incurred by the Contractor for non-compliance of this paragraph.

(d) When the Authority requires supplies or Services covered by this Contract in an amount of less than \$3,000.00, the Authority is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or Services under the Contract.

(e) There is no guaranteed Contract Sum for the Contract, except for the minimum order specified in (b)(1) of this paragraph.

3. TERM

The term of the Contract shall be twelve (12) months from the Contract Notice of Award. No work shall be performed under this Contract prior to issuance of a written Task Order.

4. OPTION TO EXTEND CONTRACT TERM

The Authority shall have the unilateral right and option to extend the Contract for up to six (6) option periods for a twelve (12) month duration each at the option prices set forth in Exhibit A - Pricing Schedule upon written notice to Contractor.

5. ADDITIONAL OPTION TO EXTEND CONTRACT PERFORMANCE

If the options granted in Paragraph 4 have been exercised in their entirety, the Authority shall have the unilateral right and option to require continued performance of any Services within the limits and rates specified in the Contract. This option may be exercised more than once, but the extension of performance hereunder shall not exceed a total of 6 months. The Authority may exercise the option by written notice to the Contractor.

6. PROCESS FOR AWARDING TASK ORDERS – TWO STEP METHOD

The Authority will ensure that each contractor has a fair opportunity for award of Task Orders in accordance with the following procedures:

(a) Prior to awarding a task order, the Authority will determine evaluation criteria for that task order and will request a technical proposal from all contractors.

(b) The technical proposals will be evaluated by a small team of evaluators using the pre-determined evaluation criteria.

(c) The firm which is deemed most qualified will be requested to submit a price proposal and negotiations will be conducted with that firm if needed.

- (d) In the event the Authority is unable to reach an agreement with the most qualified firm, negotiations with that firm will be terminated and a price proposal will be requested from the next most qualified firm.
- (e) The process will continue until the Authority reaches an agreement. The task order will then be awarded.
- (f) The Contractor is not required to submit a price proposal for every request for proposals. However, failure to respond to a reasonable number of proposals during the Contract Term may result in the Authority not exercising its option to extend the Contract.

7. ORDERING AND PRICING LIMITATIONS

- (a) Work to be performed under this Contract shall be ordered through issuance of written Task Orders. There is no limitation to the number of Task Orders issued under this Contract.
- (b) Prior to issuance of a written Task Order the Authority shall provide notification to the Contractor of the supplies or Services required by the Task Order, which shall include a required date to submit pricing for this task.
- (c) The Contractor shall return a complete and itemized cost breakdown, inclusive of labor hours, material/travel/other reimbursable costs, etc., and a timeline with milestones for the completion of work within the time stated in the request. Failure to timely respond may result in award of the Task Order to the next contractor in rotation, if applicable. Fully Burdened Labor Hour Rates shall be those specified in the Contract. If the Authority does not agree with the proposed labor disciplines, number of labor hours, material/travel/other costs or timelines, the Authority reserves the right to negotiate with the Contractor so as to arrive at a final agreement for the task. Following final agreement, a written Task Order may be issued.
- (d) Services under this Contract shall commence upon the issuance of each fully executed Task Order. Completion of all requirements under each and every Task Order shall correlate to an expeditious prosecution of the milestones that are not dependent upon factors beyond the direct control of the Contractor.
- (e) The Authority will reimburse actual travel expenses up to the not to exceed amount provided detailed travel expense records are provided with copies of receipts. The Authority will not pay travel expenses for local travel within the Austin metropolitan area, and all air fare cannot be reimbursed at a rate higher than coach fare. Fair and reasonable car rental rates are deemed to be \$50 per day. Any travel conducted pursuant to this Contract shall not be billed in excess of the maximum per diem rates for lodging and meals as established by the U.S. General Services Administration. First and Last Day of travel is limited to seventy-five percent (75%) of meals and incidental expenses. Please see GSA Domestic Per Diem Rates at <http://www.gsa.gov/portal/category/100120>.
- (f) Reimbursable expenses are limited to direct pass-through of all fees paid. All material/travel/other reimbursable costs (including Subcontractor costs) shall be reimbursed to the Contractor by task and at actual cost with no administrative or other mark-ups (including Subcontractor costs). In no event may the total of these costs by task exceed the total in the Task Order. In the event the Contractor believes material/other costs will be exceeded, the Contractor shall immediately notify the Authority and submit a revised estimate for these costs by task. The Contractor shall not proceed with work in excess of that described in the written Task Order unless the Task Order is modified in writing by the Authority.
- (g) Proposals must represent a complete cost projection, including Fully Burdened Hourly Labor Rates by job classification, reimbursable expenses, and other activities associated with the proposed Task Order. All Subcontractor costs must also be included and shall not be singled out as separate tasks in of themselves.
- (h) Written Task Orders shall contain a complete description of the work, an itemization of the estimated material/travel and other costs and the fixed labor fee agreed to by the parties.
- (i) Labor hours shall not be billed as reimbursable expenses.
- (j) No payment for costs incurred prior to issuance of a written Task Order shall be payable to the Contractor.

(k) Any order issued during the effective period of this Contract and not completed within that period shall be completed by the Contractor within the time specified in the order, except that no Task Order shall be issued if the performance period in the Task Order would extend more than one hundred twenty (120) days past the Contract completion date. The Contract shall govern the Contractor's and the Authority's rights and obligations with respect to that order to the same extent as if the order was completed during the Contract's effective period.

8. INVOICING AND PAYMENT

(a) Invoices may be submitted once per month for work completed and accepted by the Authority, or if indicated in the Task Order, upon completion of milestones, electronically to:

AP_invoices@capmetro.org

or via mail marked "Original" to the attention of:

Accounts Payable
CMTA
P.O. Box 6308
Austin, Texas 78762-6308

(b) Payment shall be made within the time period allowed by law through the Texas Prompt Payment Act - Texas Government Code 2251.021(b). A prompt payment discount may be taken if offered and determined to be advantageous by the Authority.

(c) The Contractor shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made on partial deliveries accepted by the Authority when the amount due on such deliveries so warrants; or, when requested by the Contractor, payment for accepted partial deliveries shall be made whenever such payment would equal or exceed either \$1,000 or 50% of the total amount of this Contract.

(d) For each billing cycle, whether monthly or milestone, the Contractor shall provide detailed individual invoices for each Task Order with a Summary of Invoices. The required format is shown in Exhibit E-2, Invoicing Requirements.

(1) Summary of Invoices shall include the Contract number, summaries of all Task Orders issued against the Contract whether open or closed, invoice number, Capital Metro Project Manager name, Task Order number, project description, Task Order authorized amount, percent of Task Order complete, percent of invoicing complete, previous amount billed, current amount due and the Task Order balance. In the case that a Task Order is one hundred percent (100%) complete, but invoicing is less than one hundred percent (100%) complete, an itemization of the outstanding invoices shall be included.

(2) Individual Task Order Invoices shall include the Contract number, purchase order number, invoice number, Task Order number, project description, and for each staff position assigned to the Task Order: title and contracted fully-burdened rate. Each title line shall include a breakdown of hours, cost and percent of total for the Task Order contractual amount, previously billed, current invoice and total. Reimbursable expenses shall be itemized by Task Order contractual amount and must be accompanied by supporting documentation.

(3) The final invoice for Task Order Services will include a fixed price adjustment line if the total invoiced for Services is not equal to the contractual Task Order total for Services. This adjustment could be positive or negative to bring the actual invoice equal to the Task Order contractual amount. The Task Orders are negotiated fixed price for Services; Capital Metro will not pay greater than the fixed price unless a scope change is ordered.

(4) Reimbursable expenses will not exceed the reimbursable expenses authorized by the Task Order and are subject to the terms specified in the paragraph entitled "Process for Awarding Task Orders."

(e) In the event an overpayment is made to the Contractor under this Contract or the Authority discovers that the Authority has paid any invoices or charges not authorized under this Contract, the Authority may offset the amount

of such overpayment or unauthorized charges against any indebtedness owed by the Authority to the Contractor, whether arising under this Contract or otherwise, including withholding payment of an invoice, in whole or in part, or the Authority may deduct such amounts from future invoices. If an overpayment is made to the Contractor which cannot be offset under this Contract, the Contractor shall remit the full overpayment amount to the Authority within thirty (30) calendar days of the date of the written notice of such overpayment or such other period as the Authority may agree. The Authority reserves the right to withhold payment of an invoice, in whole or in part, or deduct the overpayment from future invoices to recoup the overpayment.

9. INSURANCE

(a) The Contractor shall furnish proof of Capital Metro-stipulated insurance requirements specified below. All insurance policies shall be primary and non-contributing with any other valid and collectible insurance or self-insurance available to the Authority and shall contain a contract waiver of subrogation in favor of the Authority. The Contractor shall furnish to the Authority certificate(s) of insurance evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Prior to the expiration of a certificate of insurance, a new certificate of insurance shall be furnished to the Authority showing continued coverage. Each policy shall be endorsed to provide thirty (30) days written notice of cancellation or non-renewal to the Authority and the Authority shall be named as an Additional Insured under each policy **except** Professional Liability insurance if required by this Contract. All insurance policies shall be written by reputable insurance company or companies acceptable to the Authority with a current Best's Insurance Guide Rating of A+ and Class XIII or better. All insurance companies shall be authorized to transact business in the State of Texas. The Contractor shall notify the Authority in writing of any material alteration of such policies, including any change in the retroactive date in any "claims-made" policy or substantial reduction of aggregate limits, if such limits apply or cancellation thereof at least thirty (30) days prior thereto. The below requirements only represent the minimum coverage acceptable to the Authority and these requirements are not intended to represent the maximum risk or the maximum liability of the Contractor. The Contractor shall be responsible for setting its own insurance requirements, if any, for the kind and amounts of insurance to be carried by its Subcontractors in excess of the insurance required by the Authority.

The Contractor shall carry and pay the premiums for insurance of the types and in the amounts stated below.

CAPITAL METRO MINIMUM COVERAGE REQUIREMENTS

(1) **Commercial General Liability Insurance** Coverage with limits of not less than One Million and No/100 Dollars (\$1,000,000) Combined Single Limit of Liability for Bodily Injury and Property Damage including Products Liability.

(2) **Automobile Liability Insurance** covering all owned, hired and non-owned automobiles used in connection with work with limits of not less than One Million and No/100 Dollars (\$1,000,000) Combined Single Limit of Liability for Bodily Injury and Property Damage.

(3) **Statutory Workers' Compensation** coverage in the State of Texas. Employers Liability Insurance with minimum limits of liability of One Million Dollars and No/100 Dollars (\$1,000,000).

(4) **Professional Liability Insurance** covering negligent acts, errors and omissions arising from the Contractor's work to pay damages for which the Contractor may become legally obligated. Minimum limits of liability shall be not less than One Million Dollars and No/100 Dollars (\$1,000,000) on an annual aggregate basis.

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

(c) The Contractor, and all of its insurers shall, in regard to the above stated insurance, agree to waive all rights of recovery or subrogation against the Authority, its directors, officers, employees, agents, successors and assigns, and the Authority's insurance companies arising out of any claims for injury(ies) or damages resulting from the Services performed by or on behalf of the Contractor under this Contract and/or use of any Authority premises or equipment under this Contract.

(d) Each insurance policy shall contain the following endorsements: PRIMARY AND NON-CONTIBUTORY INSURANCE and WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS, which shall be evidenced on the Certificate of Insurance. The General Liability insurance shall include contractual endorsement(s) which acknowledge all indemnification requirements under the Agreement. All required endorsements shall be evidenced on the Certificate of Insurance, which shall be evidenced on the Certificate of Insurance. Proof that insurance coverage exists shall be furnished to the Authority by way of a Certificate of Insurance before any part of the Contract work is started.

(e) If any insurance coverage required to be provided by the Contractor is canceled, terminated, or modified so that the required insurance coverages are no longer in full force and effect, the Authority may terminate this Contract or obtain insurance coverages equal to the required coverage, the full cost of which will be the responsibility of the Contractor and shall be deducted from any payment due the Contractor.

(f) If any part of the Contract is sublet, the Contractor shall be liable for its Subcontractor's insurance coverages of the types and in the amounts stated above and shall furnish the Authority with copies of such Certificates of Insurance. No delay in the Services caused by the Contractor's enforcement of its Subcontractor's insurance requirements shall be excusable delay in the Contract. In the event a Subcontractor is unable to furnish insurance in the limits required under the Contract, the Contractor shall endorse the Subcontractor as an ADDITIONAL INSURED on the Contractor's policies.

(g) All insurance required to be maintained or provided by the Contractor shall be with companies and through policies approved by The Authority. The Authority reserves the right to inspect in person, prior to the commencement of the Contract Services, all of the Contractor's insurance policy required under this Contract. Contractor will not provide a copy of its insurance policies, but if under necessary circumstances, the policies may be made available for review on Contractor's premises with sufficient advanced notice. Redacted information shall not be coverage nor contract related.

(h) The Contractor must furnish proof of the required insurance within five (5) days of the award of the Contract. Certificate of Insurance must indicate the Contract number and description. The insurance certificate should be furnished to the attention of the Contracting Officer.

(i) The Contractor and its lower tier Subcontractors are required to cooperate with the Authority and report all potential claims (workers' compensation, general liability and automobile liability) pertaining to this Contract to the Authority's Risk Management Department at (512) 389-7549 within two (2) days of the incident.

10. PERFORMANCE OF SERVICES BY THE CONTRACTOR

Except as otherwise provided herein, the Contractor shall perform no less than thirty percent (30%) of the Services with its own organization. If, during the progress of Services hereunder, the Contractor requests a reduction in such performance percentage and the Authority determines that it would be to the Authority's advantage, the percentage of the Services required to be performed by the Contractor may be reduced; provided, written approval of such reduction is obtained by the Contractor from the Authority.

11. REMOVAL OF ASSIGNED PERSONNEL

The Authority may require, in writing, that the Contractor remove from the Services any employee or Subcontractor of the Contractor that the Authority deems inappropriate for the assignment.

12. REPRESENTATIONS AND WARRANTIES

The Contractor represents and warrants to the Authority, that the Services shall be performed (1) with the professional skill and care ordinarily provided by, as applicable, competent engineers or architects practicing under the same or similar circumstances and professional license; and (2) as expeditiously as is prudent considering the ordinary professional skill and care of, as applicable, a competent engineer or architect. If any breach of the representations and warranties is discovered by the Authority during the process of the work or within one year after acceptance of the work by the Authority, the Contractor shall again cause the nonconforming or inadequate work to be properly

performed at the Contractor's sole expense and shall reimburse for costs directly incurred by the Authority as a result of reliance by the Authority on Services failing to comply with the representations and warranties.

13. INDEPENDENT CONTRACTOR

The Contractor's relationship to the Authority in the performance of this Contract is that of an independent contractor. The personnel performing Services under this Contract shall at all times be under the Contractor's exclusive direction and control and shall be employees of the Contractor and not employees of the Authority. The Contractor shall be fully liable for all acts and omissions of its employees, subcontractors, and their suppliers and shall be specifically responsible for sufficient supervision and inspection to assure compliance in every respect with Contract requirements. There shall be no contractual relationship between any Subcontractor or supplier of the Contractor and the Authority by virtue of this Contract. The Contractor shall pay wages, salaries and other amounts due its employees in connection with this Contract and shall be responsible for all reports and obligations respecting them, such as Social Security, income tax withholding, unemployment compensation, workers' compensation and similar matters.

14. COMPOSITION OF CONTRACTOR

If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

15. SUBCONTRACTORS AND OUTSIDE CONSULTANTS

Any Subcontractors and outside associates or consultants required by the Contractor in connection with the Services covered by the Contract will be limited to such individuals or firms as were specifically identified and agreed to by the Authority in connection with the award of this Contract. Any substitution in such Subcontractors, associates, or consultants will be subject to the prior approval of the Authority.

16. EQUITABLE ADJUSTMENTS

(a) Any requests for equitable adjustments under any provision shall be governed by the following provisions:

(1) Upon written request, the Contractor shall submit a proposal, in accordance with the requirements and limitations set forth in this paragraph, for Services involving contemplated changes covered by the request. The proposal shall be submitted within the time limit indicated in the request for any extension of such time limit as may be subsequently granted. The Contractor's written statement of the monetary extent of a claim for equitable adjustment shall be submitted in the following form:

(i) Proposals totaling \$5,000 or less shall be submitted in the form of a lump sum proposal with supporting information to clearly relate elements of cost with specific items of Services involved to the satisfaction of the Contracting Officer, or his/her authorized representative.

(ii) For proposals in excess of \$5,000, the claim for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the Contract.

(b) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this Contract.

17. PERSONNEL ASSIGNMENTS

(a) The Contractor shall perform the Services in an orderly and workmanlike manner, and shall utilize persons skilled and qualified for the performance of the Services. The Authority will have the right to review the experience of each person assigned to perform the Services and approve personnel assignments, including those to be performed by Subcontractors,

(b) The Contractor certifies that the Contractor, and each Subcontractor, have established a criminal history background policy that complies with guidance issued by the U.S. Equal Employment Opportunity Commission and that the Contractor and each Subcontractor conducts criminal history checks on its assigned personnel in accordance

with such policy to identify, hire and assign personnel to work on this Contract whose criminal backgrounds are appropriate for the Services being performed, considering the risk and liability to the Contractor and the Authority. The Authority reserves the right to require the Contractor and any Subcontractor to disclose any criminal or military criminal convictions of assigned personnel and the right to disapprove the use of assigned personnel with criminal or military convictions.

(c) At the commencement of the Contract, the Contractor shall provide a list of candidates to be used to provide the Services and shall certify that a criminal history background check has been completed on each candidate within the preceding 6-month period. Thereafter during the Term, the Contractor shall submit quarterly report containing a list of all persons (including Subcontractors) assigned to perform Services under the Contract and a certification that each named person has undergone a criminal background check as required by this Contract. The Authority shall have the right to audit the Contractor's records for compliance with the provisions of this Section. Criminal background checks shall include the following:

- (1) **State Criminal History:** The Contractor shall research criminal history, including driving records (where applicable), covering all jurisdictions within the state, including local counties and municipalities.
- (2) **Out of State Criminal History:** The Contractor shall research criminal history, including state driving records (where applicable), for all 50 states.
- (3) **National Sex Offender Registry**
- (4) **Military Discharge:** For any candidates that have served in the military, the Contractor shall review the DD Form 214 "Certificate of Release or Discharge from Active Duty" (Long Form).

*Matters identified on the Long Form as military discipline will be considered in accordance with the corresponding crime listed below with respect to classification, severity and time elapsed.

The Contractor shall disclose to the Authority the type of arrests with pending dispositions and convictions for crimes according to the classification of offense and the timetable below:

Offense Type	Action Required
Crimes Against the Person (other than sex crimes)	
Felony	Submit to Capital Metro for review if less than 10 years from date of release from confinement
Class A or B Misdemeanor	Submit to Capital Metro for review if less than 7 years from date of conviction
Class C Misdemeanor	Submit to Capital Metro for review if less than 5 years from date of conviction
Crimes Against the Person - Sex Crimes/Registered Sex Offenders	
ALL	Submit to Capital Metro for review
Crimes Against Property	
Felony	Submit to Capital Metro for review if less than 10 years from date of release from confinement
Moral Crimes, including, but not limited to: Drug Crimes, Prostitution, Bigamy, Illegal Gambling, Child Pornography	
Felony	Submit to Capital Metro for review if less than 10 years from date of release from confinement
Class A or B Misdemeanor	Submit to Capital Metro for review if less than 7 years from date of conviction
Class C Misdemeanor	Submit to Capital Metro for review if less than 5 years from date of conviction

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Driving Offenses	
Class A or B Misdemeanor, DWI/DUI or other "serious driving offense"	Disqualified if less than 7 years from date of conviction or deferred adjudication. Submit to Capital Metro for review if between 7-10 years since conviction or deferred adjudication or more than 2 convictions in a lifetime
Class C Misdemeanor Moving Violations	Disqualified from driving if more than 2 moving violations in the past 5 years (Any more than one driving safety course taken for a moving violation that appears on a five (5) year record will be treated as a moving violation and will count against the employee)

The Contractor may not assign an employee to provide Services if the employee has any conviction in the applicable categories listed above, unless an exception is granted by the Authority in accordance with subparagraph (d).

(d) The Contractor may request the Authority perform an individual assessment of a candidate with a criminal conviction meeting one of the above categories. In conducting an individual assessment, the Authority's review will include, but not be limited to, the following factors:

- (1) The nature and gravity of the offense or conduct;
- (2) The degree of harm caused by the offense or conduct;
- (3) The time that has elapsed since the conviction or completion of probation or jail time;
- (4) The nature of the job sought, including the job duties, environment and level of supervision;
- (5) Any incorrect criminal history;
- (6) Wrongful identification of the person;
- (7) The facts and circumstances surrounding the offense or conduct;
- (8) The number of offenses for which the candidate was convicted;
- (9) The subsequent conviction for another relevant offense;
- (10) The age of the person at the time of conviction or completion of probation or jail time;
- (11) Evidence that the person performed the same type of work, post-conviction, with the same or different employer, with no known incidents of criminal conduct;
- (12) The length and consistency of employment history before and after the conviction in a similar field as the current position sought;
- (13) Rehabilitation efforts, e.g., education, treatment, training;
- (14) Employment or character references and any other information regarding fitness for the particular position;
- (15) Whether the person is bonded or licensed under any federal, state or local program or any licensing authority;
- (16) The person's statement of the circumstances surrounding the offense and conviction and relevant factors is consistent with publicly available record related to the crime and conviction; and
- (17) Any other factors deemed relevant in the consideration of a particular assessment.

At the time a request is made for an individual assessment, the Contractor must include the following documentation:

- the candidate's application/resume;
- a copy of the criminal conviction history, including those tried in a military tribunal;
- available court information related to the conviction;
- any publicly available information related to the offense and conviction;
- a statement from the candidate addressing any/all factors set forth above and explaining why the person is qualified for the assignment notwithstanding the conviction; and
- a statement from the candidate explaining why the person is an acceptable risk for the work to be performed by the candidate.

The Authority will provide a written decision to the Contractor within five (5) working days of receipt of all required documentation from the Contractor.

(e) The Contractor will conduct new criminal history background checks on all assigned personnel every two (2) years during the Contract to ensure the preceding criterion are still met by the assigned personnel and notify the Authority if an employee has a subsequent arrest with pending disposition or conviction (or change in driving record, as applicable) that requires further review by the Authority using the criterion set forth above. The Authority reserves the right to request that the assigned individual be removed from performing work under this Contract.

18. BADGES AND ACCESS CONTROL DEVICES

(a) The Contractor and each of the Contractor's employees, as well as each Subcontractor of any tier and any workers working on behalf of Subcontractor, shall be required to wear a Capital Metro Contractor Photo Identification Badge ("badge") at all times while on the Authority's premises. The badge will be provided by Capital Metro. If any badge holder loses or misplaces his or her badge, the Contractor shall immediately notify the Project Manager upon discovery. The Contractor will be charged a \$50.00 replacement fee for each lost or misplaced badge, which fee shall be deducted any amounts due and owing to the Contractor or if the Contract is terminated upon demand by the Authority. The Contractor shall return all badges provided when any badge holder is no longer working on the Contract, and all badges shall be returned upon completion of the Contract. In the event the Contractor fails to do so, the Contractor will pay a \$50.00 per badge fee deducted from any amounts due and owing to the Contractor or if the Contract is terminated upon demand by the Authority. All badges should be returned to the Project Manager. All requests for new and replacement badges must be submitted in writing to the Project Manager. The misuse of a badge may result in termination of the Contract.

(b) Access Control Devices will be issued to employees of the Contractor and to each Subcontractor of any tier and any worker working on behalf of Subcontractor as necessary to perform the Contract. Access Control Devices are not transferable between the Contractor employees or workers working on behalf of the Subcontractor. The Contractor employees and workers on behalf of the Subcontractor are prohibited from loaning Access Control Devices or providing access to an unauthorized person into restricted areas without prior arrangements with the Project Manager. All requests for new and replacement Access Control Devices must be submitted in writing to the Project Manager. Lost Access Control Devices must be reported to the Project Manager immediately upon discovery. All Access Control Devices should be returned to the Project Manager. The misuse of an Access Control Device(s) may result in termination of the Contract. The Contractor shall return all Access Control Devices once an assigned employee or worker is no longer working on the Contract or upon termination of the Contract. In the event the Contractor fails to do so, then the Contractor shall be responsible for the replacement cost of an Access Control Device which shall be deducted from any amounts due and owing to the Contractor or payable on demand if the Contract has terminated. The replacement cost will be calculated at current market value to include labor and materials.

(c) The provisions of this paragraph survive termination of the Contract.

19. CHANGES

(a) Offerors are expected to examine the Schedule, Solicitation Instructions and Conditions, Contractual Terms and Conditions, all drawings, specifications, the Statement of Work, and all other provisions of, and exhibits to, the solicitation, whether incorporated by reference or otherwise, prior to the submission of offers. Failure to do so shall be at the offeror's risk.

(b) The Authority may, at any time, by a **mutually agreed upon** written order, make changes within the general scope of the Contract in the Services to be performed. If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of any Services under this Contract, whether or not changed by any order, an equitable adjustment shall be made and the Contract shall be modified in writing accordingly. Any claim of the Contractor for adjustment under this paragraph must be asserted in writing within thirty (30) days from the date of receipt by the Contractor of the notification of change unless the Contracting Officer grants a further period of time before the date of final payment under the Contract.

(c) No Services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Authority.

20. TERMINATION FOR DEFAULT

(a) The Authority may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this Contract in either one of the following circumstances:

(1) if the Contractor fails to perform the Services within the time specified herein or any extension thereof;
or

(2) if the Contractor fails to perform any of the other provisions of this Contract and does not cure such failure within a period of ten (10) days (or such longer period as the Authority may authorize in writing) after receipt of notice from the Authority specifying such failure.

(b) In the event the Authority terminates this Contract in whole or in part as provided in paragraph (a) of this paragraph, the Authority may procure, upon such terms and in such manner as the Authority may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Authority for any excess costs for such similar supplies or services; provided, that the Contractor shall continue the performance of this Contract to the extent, if any, it has not been terminated under the provisions of this paragraph.

(c) Except with respect to the defaults of Subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to Force Majeure Events; provided, however, in every case the failure to must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a Subcontractor and if such default arises out of causes beyond the control of both the Contractor and Subcontractor and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(d) If this Contract is terminated as provided in subparagraph (a), the Authority, in addition to any other rights provided in this subparagraph, may require the Contractor to transfer title and deliver to the Authority in the manner and to the extent directed by the Authority any Manufacturing Materials as the Contractor has specifically produced or specifically acquired for the performance of such part of this Contract as has been terminated; and the Contractor shall, upon direction of the Authority, protect and preserve property in possession of the Contractor in which the Authority has an interest. Payment for completed Manufacturing Materials delivered to and accepted by the Authority shall be at the Contract price. The Authority may withhold from amounts otherwise due the Contractor for such completed Manufacturing Materials such sum as the Authority determines to be necessary to protect the Authority against loss because of outstanding liens or claims of former lien holders.

(e) If, after notice of termination of this Contract under the provisions of this paragraph, it is determined by the Authority that the Contractor was not in default or that the default was excusable under the provisions of this paragraph, the rights and obligations of the parties shall be those provided in the paragraph entitled "Termination for Convenience" contained in this Exhibit E.

(f) The rights and remedies of the Authority provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

21. TERMINATION FOR CONVENIENCE

(a) The Authority may, whenever the interests of the Authority so require, terminate this Contract, in whole or in part, for the convenience of the Authority. The Authority shall give written notice of the termination to the Contractor specifying the part of the Contract terminated and when termination becomes effective.

(b) The Contractor shall incur no further obligations in connection with the terminated orders, and, on the date set forth in the notice of termination, the Contractor will stop providing Services to the extent specified. The Contractor also shall terminate outstanding orders and Subcontracts as they relate to the terminated order. The Contractor shall settle the liabilities and claims arising out of the termination of Subcontracts and orders connected with the terminated orders. The Authority may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or Subcontracts to the Authority. The Contractor must still complete any orders not terminated by the notice of termination and may incur such obligations as are necessary to do so.

(c) The Authority may require the Contractor to transfer title and deliver to the Authority in the manner and to the extent directed by the Authority: (1) any completed supplies; and (2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "Manufacturing Materials") as the Contractor has specifically produced or specially acquired for the performance of the terminated part of this Contract. The Contractor shall, upon direction of the Authority, protect and preserve property in the possession of the Contractor in which the Authority has an interest. If the Authority does not exercise this right, the Contractor shall use its best efforts to sell such supplies and Manufacturing Materials.

(d) The Authority shall pay the Contractor the following amounts:

(1) Contract prices for supplies accepted under the Contract;

(2) costs incurred in preparing to perform and performing the terminated portion of the Services plus a fair and reasonable profit on such portion of the Services (such profit shall not include anticipatory profit or consequential damages), less amounts paid or to be paid for accepted supplies; provided, however, that if it appears that the Contractor would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included, and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(3) costs of settling and paying claims arising out of the termination of Subcontracts (these costs must not include costs paid in accordance with subparagraph (2) of this paragraph); and

(4) the reasonable settlement costs of the Contractor and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination and settlement of Subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract.

(5) The total sum to be paid the Contractor under this paragraph shall not exceed the total Contract Sum plus the reasonable settlement costs of the Contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and Manufacturing Materials under this paragraph, and the Contract price of orders not terminated.

22. CONTRACTOR CERTIFICATION

The Contractor certifies that the fees in this Contract have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

23. INTELLECTUAL PROPERTY PROVISIONS

(a) As between the Contractor and the Authority, the Works and Intellectual Property Rights therein are and shall be owned exclusively by Capital Metro, and not the Contractor. The Contractor specifically agrees that all Works shall be considered "works made for hire" and that the Works shall, upon creation, be owned exclusively by the Authority. To the extent that the Works, under applicable law, may not be considered works made for hire, the Contractor hereby agrees that this Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to the Authority all right, title and interest in and to all worldwide ownership rights in the Works, and all Intellectual Property Rights in the Works, without the necessity of any further consideration, and the Authority shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Works.

(b) The Contractor, upon request and without further consideration, shall perform any acts that may be deemed necessary or desirable by the Authority to evidence more fully the transfer of ownership of all Works to the Authority to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by the Authority. In the event the Authority shall be unable for any reason to obtain the Contractor's signature on any document necessary for any purpose set forth in the foregoing sentence, the Contractor hereby irrevocably designates and appoints the Authority and its duly authorized officers and agents as the Contractor's agent and the Contractor's attorney-in-fact to act for and in the Contractor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by the Contractor.

(c) to the extent that any pre-existing rights and/or third-party rights or limitations are embodied, contained, reserved or reflected in the Works, the Contractor shall either:

(1) grant to the Authority the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to:

(i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such pre-existing rights and any derivative works thereof in connection with the sale, offering for sale, marketing, advertising, and promotion of the Authority's goods and services, and in all forms of media, media channels and/or publicity that may now exist or hereafter be created or developed, including but not limited to television, radio, print, Internet, and social media (e.g., Facebook, Twitter, YouTube, etc.) and

(ii) authorize others to do any or all of the foregoing, or

(2) to the extent permitted by law where the obtaining of worldwide rights is not reasonably practical or feasible, provide written notice to the Authority of such pre-existing or third-party rights or limitations, request the Authority's approval of such pre-existing or third-party rights, obtain a limited right and license to use such pre-existing or third-party rights on such terms as may be reasonably negotiated, and obtain the Authority's written approval of such pre-existing or third-party rights and the limited use of same. The Contractor shall provide the Authority with documentation indicating a third party's written approval for the Contractor to use any pre-existing or third-party rights that may be embodied, contained, reserved or reflected in the Works. **THE CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD THE AUTHORITY HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, REGULATORY PROCEEDINGS AND/OR CAUSES OF ACTION, AND ALL LOSSES, DAMAGES, AND COSTS (INCLUDING ATTORNEYS' FEES AND SETTLEMENT COSTS) ARISING FROM OR RELATING TO, DIRECTLY OR INDIRECTLY, ANY CLAIM OR ASSERTION BY ANY THIRD PARTY THAT THE WORKS INFRINGE ANY THIRD-PARTY RIGHTS.** The foregoing indemnity obligation shall not apply to instances in which the Authority either:

(i) exceeded the scope of the limited license that was previously obtained by the Contractor and agreed to by the Authority, or

(ii) obtained information or materials, independent of the Contractor's involvement or creation, and provided such information or materials to the Contractor for inclusion in the Works, and such information or materials were included by the Contractor, in an unaltered and unmodified fashion, in the Works.

(d) to the extent permitted by law, the Contractor hereby warrants and represents to the Authority that individuals or characters appearing or depicted in any advertisement, marketing, promotion, publicity or media, of any type or form that may now exist or hereafter be created or developed by or on behalf of the Contractor for the use by or benefit of the Authority, have provided their written consent for the use, reproduction, display, performance, and distribution of, and/or preparation of derivative works to, their persona or personality rights, including name, biographical information, picture, portrait, likeness, performance, voice and/or identity ("Personality Rights"), and have been compensated for such Personality Rights, if appropriate. If such permission has been obtained for a limited time, the Contractor shall be responsible for any costs associated with claims resulting from such use, etc., of the Personality Rights after the expiration of those time limits. **THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE AUTHORITY HARMLESS FROM ANY CLAIMS, INCLUDING BUT NOT LIMITED TO CLAIMS FOR INVASION OF PRIVACY, INFRINGEMENT OF THE RIGHT OF PUBLICITY, LIBEL, UNFAIR COMPETITION, FALSE ADVERTISING, INTENTIONAL OR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS, COPYRIGHT OR TRADEMARK INFRINGEMENT, AND/OR CLAIMS FOR ATTORNEY'S FEES, RESULTING FROM SUCH USE, ETC., OF THE PERSONALITY RIGHTS.**

(e) The Contractor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Works which the Contractor may now have or which may accrue to the Contractor's benefit under U.S. or foreign copyright laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Works and the right to object to any modification, translation or use of the Works, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

(f) The Contract is intended to protect the Authority's proprietary rights pertaining to the Works, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to the Authority's business. Therefore, the Contractor acknowledges and stipulates that a court of competent jurisdiction should immediately enjoin any material breach of the intellectual property and confidentiality provisions of this Contract, upon a request by the Authority, without requiring proof of irreparable injury as same should be presumed.

(g) Upon the request of the Authority, but in any event upon termination of this Contract, the Contractor shall surrender to the Authority all documents and things pertaining to the Works, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by the Contractor or furnished by the Authority to the Contractor, including all materials embodying the Works, any Authority confidential information, or Intellectual Property Rights, regardless of whether complete or incomplete. This paragraph is intended to apply to all Works made or compiled by the Contractor, as well as to all documents and things furnished to the Contractor by the Authority or by anyone else that pertains to the Works.

24. STANDARDS OF PERFORMANCE

(a) The Contractor shall perform the Services hereunder in compliance with all applicable federal, state, and local laws and regulations. The Contractor shall use only licensed personnel to perform Services required by law to be performed by such personnel.

(b) The Contractor will perform the Services: (1) with the professional skill and care ordinarily provided by, as applicable, competent engineers or architects practicing under the same or similar circumstances and professional li-cense; and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect, as applicable.

25. INSPECTIONS AND APPROVALS

(a) All Services performed by the Contractor or its Subcontractors or consultants shall be subject to the inspection and approval of the Authority at all times, but such approval shall not relieve the Contractor of responsibility for the

proper performance of the Services. The Contractor shall provide sufficient, safe, and proper facilities at all times for such inspection of the Services and shall furnish all information concerning the Services and give the Authority or its representatives free access at all reasonable times to the facilities where the Services are performed.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Authority covering the services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Authority during Contract performance and for as long afterwards and the Contract requires.

(c) The Authority has the right to inspect and test all Services called for by this Contract, to the extent practicable, at all times and places during the term of the Contract. The Authority shall perform inspections and tests in a manner that will not unduly delay the Services.

(d) If any of the Services do not conform with Contract requirements, the Authority may require the Contractor to perform the Services again in conformity with the Contract requirements, at no increase in the Contract Sum; **unless such non-conformity is due to factors outside of control of Contractor subcontractors or other agents of Contractor and without the fault or negligence of the Contractor.** When the defects in Services cannot be corrected by performance, the Authority may (1) require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements and (2) reduce the Contract Sum to reflect the reduced value of the Services performed.

(e) If the Contractor fails promptly to perform the Services again or to take the necessary action to ensure future performance in conformity with Contract requirements, the Authority may (1) by contract or otherwise, perform the Services and charge to the Contractor any cost incurred by the Authority that is directly related to the performance of such service or (2) terminate the Contract for default.

26. SUSPENSION OF SERVICES

(a) The Authority may order the Contractor in writing to suspend all or any part of the Services for such period of time as the Authority determines to be appropriate for the convenience of the Authority.

(b) If the performance of all or any part of the Services is, for an unreasonable period of time, suspended or delayed by an act of the Authority in the administration of this Contract, or by the Authority's failure to act within the time specified in this Contract (or, if no time is specified, within a reasonable time), an adjustment shall be made for any increase in cost of performance of this Contract (excluding profit) necessarily caused by such unreasonable suspension or delay, and the Contract modified in writing accordingly. However, no adjustment shall be made under this paragraph for any suspension or delay to the extent (1) that performance would have been suspended or delayed by any other cause, including the fault or negligence of the Contractor, or (2) for which an equitable adjustment is provided for or excluded under any other provision of this Contract.

(c) No claim under this paragraph shall be allowed (1) for any costs incurred more than twenty (20) days before the Contractor shall have notified the Authority in writing of the act or failure to act involved (but this requirement shall not apply to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension or delay, but not later than the date of final payment. No part of any claim based on the provisions of this paragraph shall be allowed if not supported by adequate evidence showing that the cost would not have been incurred but for a delay within the provisions of this paragraph.

27. PAYMENT TO SUBCONTRACTORS

(a) Payments by contractors to subcontractors associated with Authority contracts are subject to the time periods established in the Texas Prompt Payment Act, Tex. Gov't Code § 2251.

(b) A false certification to the Authority under the provisions of the paragraph entitled "Invoicing and Payment" hereof may be a criminal offense in violation of Tex. Penal Code § 10.

28. FEDERAL, STATE AND LOCAL TAXES

The Contract Sum includes all applicable federal, state, and local taxes and duties. The Authority is exempt from taxes imposed by the State of Texas and local sales and use taxes under Texas Tax Code § 151.309, and any such taxes included on any invoice received by the Authority shall be deducted from the amount of the invoice for purposes of payment. The Contractor may claim exemption from payment of applicable State taxes by complying with such procedures as may be prescribed by the State Comptroller of Public Accounts. The Contractor bears sole and total responsibility for obtaining information pertaining to such exemption.

29. EQUAL OPPORTUNITY

During the performance of this Contract, the Contractor agrees that it will, in good faith, afford equal opportunity required by applicable federal, state, or local law to all employees and applicants for employment without regard to race, color, religion, sex, national origin, disability or any other characteristic protected by federal, state or local law.

30. CONFLICT OF INTEREST

(a) Reference is made to Exhibit B, Representations and Certifications, Code of Ethics, which is incorporated herein and made a part of this Contract. Capitalized terms used in this paragraph and not otherwise defined shall have the meanings as described to them in the Code of Ethics.

(b) The Contractor represents that no Employee has a Substantial Interest in the Contractor or this Contract, which Substantial Interest would create or give rise to a Conflict of Interest. The Contractor further represents that no person who has a Substantial Interest in the Contractor and is or has been employed by the Authority for a period of two (2) years prior to the date of this Contract has or will (1) participate, for the Contractor, in a recommendation, bid, proposal or solicitation on any Authority contract, procurement or personnel administration matter, or (2) receive any pecuniary benefit from the award of this Contract through an ownership of a Substantial Interest (as that term is defined in Paragraph II, subparagraphs (1) and (3) of the Code of Ethics) in a business entity or real property.

(c) The Contractor agrees to ensure that the Code of Ethics is not violated as a result of the Contractor's activities in connection with this Contract. The Contractor agrees to immediately inform the Authority if it becomes aware of the existence of any such Substantial Interest or Conflict of Interest, or the existence of any violation of the Code of Ethics arising out of or in connection with this Contract.

(d) The Authority may, in its sole discretion, require the Contractor to cause an immediate divestiture of such Substantial Interest or elimination of such Conflict of Interest, and failure of the Contractor to so comply shall render this Contract voidable by the Authority. Any willful violation of these provisions, creation of a Substantial Interest or existence of a Conflict of Interest with the express or implied knowledge of the Contractor shall render this Contract voidable by the Authority.

(e) In accordance with paragraph 176.006, Texas Local Government Code, "vendor" is required to file a conflict of interest questionnaire within seven business days of becoming aware of a conflict of interest under Texas law. The conflict of interest questionnaire can be obtained from the Texas Ethics Commission at www.ethics.state.tx.us. The questionnaire shall be sent to the Authority's Contract Administrator.

31. GRATUITIES

The Authority may cancel this Contract, without liability to the Contractor, if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any agent or representative to any Authority official or employee with a view toward securing favorable treatment with respect to the performance of this Contract. In the event this Contract is canceled by the Authority pursuant to this provision, the Authority shall be entitled, in addition to any other rights and remedies, to recover from the Contractor a sum equal in amount to the cost incurred by the Contractor in providing such gratuities.

paragraph, the Authority shall have the right to terminate this Contract without liability and/or have recourse to any other remedy it may have at law or in equity.

32. PUBLICATIONS

All published material and written reports submitted under this Contract must be originally developed material unless otherwise specifically provided in the Contract document. When material, not originally developed, is included in a report, it shall have the source identified. This provision is applicable when the material is in a verbatim or extensive paraphrased format.

33. REQUEST FOR INFORMATION

(a) The Contractor shall not provide information generated or otherwise obtained in the performance of its responsibilities under this Contract to any party other than the Authority and its authorized agents except as otherwise provided by this Contract or after obtaining the prior written permission of the Authority.

(b) This Contract, all data and other information developed pursuant to this Contract shall be subject to the Texas Public Information Act. The Authority shall comply with all aspects of the Texas Public Information Act.

(c) The Contractor is instructed that any requests for information regarding this Contract shall be referred to the Authority.

34. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

(a) All documentation related to or prepared in connection with any proposal, including the contents of any proposal contracts, responses, inquiries, correspondence, and all other material submitted in connection with the proposal shall become the property of the Authority upon receipt.

(b) All documents, reports, data, graphics and other materials produced under this Contract shall become the sole possession of the Authority upon receipt and payment, subject only to the Contractor's professional obligation to maintain copies of its work product.

35. LIMITATION OF LIABILITY

In no event shall the Authority or its officers, directors, agents or employees be liable in contract or tort, to the Contractor or its Subcontractors for special, indirect, incidental or consequential damages, resulting from the Authority's performance, nonperformance, or delay in performance of its obligations under this Contract, or the Authority's termination of the Contract with or without cause, or the Authority's suspension of the Services. This limitation of liability shall not apply to intentional tort or fraud. The Contractor shall include similar liability provisions in all its Subcontracts.

36. LAWS, STATUTES AND OTHER GOVERNMENTAL REQUIREMENTS

The Contractor agrees that it shall be in compliance with all laws, statutes, and other governmental provisions, regulations or standards prevailing during the term of this Contract.

37. CLAIMS

In the event that any claim, demand, suit, or other action is made or brought by any person, firm, corporation, or other entity against the Contractor arising out of this Contract, the Contractor shall give written notice thereof, to the Authority within three (3) working days after being notified of such claim, demand, suit, or action. Such notice shall state the date and hour of notification of any such claim, demand, suit, or other action; the name and address of the person, firm, corporation, or other entity making such claim or instituting or threatening to institute any type of action or proceeding; the basis of such claim, action, or proceeding; and the name of any person against whom such claim is being made or threatened. Such written notice shall be delivered either personally or by mail and shall be directly sent to the attention of the President/CEO, Capital Metropolitan Transportation Authority, 2910 East 5th Street, Austin, Texas 78702.

38. LICENSES AND PERMITS

The Contractor shall, without additional expense to the Authority, be responsible for obtaining any necessary licenses, permits, and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to the performance of work or to the products or Services to be provided under this Contract including, but not limited to, any laws or regulations requiring the use of licensed Subcontractors to perform parts of the work.

39. NOTICE OF LABOR DISPUTES

(a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor immediately shall give notice, including all relevant information, to the Authority.

(b) The Contractor agrees to insert the substance of this paragraph, including this subparagraph (b), in any Subcontract under which a labor dispute may delay the timely performance of this Contract; except that each Subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor shall immediately notify the next higher tier Subcontractor or the Contractor, as the case may be, of all relevant information concerning the dispute.

40. PUBLICITY RELEASES

All publicity releases or releases of reports, papers, articles, maps, or other documents in any way concerning this Contract or the Services hereunder which the Contractor or any of its Subcontractors desires to make for the purposes of publication in whole or in part, shall be subject to approval by the Authority prior to release.

41. INDEMNIFICATION

(a) THE CONTRACTOR WILL INDEMNIFY, DEFEND AND HOLD THE AUTHORITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND REPRESENTATIVES (THE AUTHORITY AND EACH SUCH PERSON OR ENTITY IS AN "INDEMNIFIED PARTY") HARMLESS FROM AND AGAINST AND PAY ANY AND ALL DAMAGES (AS DEFINED HEREIN) DIRECTLY OR INDIRECTLY CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY THE CONTRACTOR OR THE CONTRACTOR'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE CONTRACTOR EXERCISES CONTROL.

(b) "ACTION" MEANS ANY ACTION, APPEAL, PETITION, PLEA, CHARGE, COMPLAINT, CLAIM, SUIT, DEMAND, LITIGATION, MEDIATION, HEARING, INQUIRY, INVESTIGATION OR SIMILAR EVENT, OCCURRENCE OR PROCEEDING.

(c) "DAMAGES" MEANS ALL DIRECT OR INDIRECT DAMAGES, LOSSES, LIABILITIES, DEFICIENCIES, SETTLEMENTS, CLAIMS, AWARDS, INTEREST, PENALTIES, JUDGMENTS, FINES, OR OTHER COSTS OR EXPENSES OF ANY KIND OR NATURE WHATSOEVER, WHETHER KNOWN OR UNKNOWN, CONTINGENT OR VESTED, MATURED OR UNMATURED, AND WHETHER OR NOT RESULTING FROM THIRD-PARTY CLAIMS, INCLUDING COSTS (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, OTHER PROFESSIONAL ADVISORS AND EXPERT WITNESSES) RELATED TO ANY INVESTIGATION, ACTION, SUIT, ARBITRATION, APPEAL, CLAIM, DEMAND, INQUIRY, COMPLAINT, MEDIATION, INVESTIGATION OR SIMILAR EVENT, OCCURRENCE OR PROCEEDING.

(d) "THREATENED" MEANS A DEMAND OR STATEMENT HAS BEEN MADE (ORALLY OR IN WRITING) OR A NOTICE HAS BEEN GIVEN (ORALLY OR IN WRITING), OR ANY OTHER EVENT HAS OCCURRED OR ANY OTHER CIRCUMSTANCES EXIST THAT WOULD LEAD A PRUDENT PERSON OR ENTITY TO CONCLUDE THAT AN ACTION OR OTHER MATTER IS LIKELY TO BE ASSERTED, COMMENCED, TAKEN OR OTHERWISE PURSUED IN THE FUTURE.

(e) IF ANY ACTION IS COMMENCED OR THREATENED THAT MAY GIVE RISE TO A CLAIM FOR INDEMNIFICATION (A "CLAIM") BY ANY INDEMNIFIED PARTY AGAINST THE CONTRACTOR, THEN SUCH INDEMNIFICATION SHALL BE LIMITED TO THE AMOUNT OF SUCH CLAIM.

FIED PARTY WILL PROMPTLY GIVE NOTICE TO THE CONTRACTOR AFTER SUCH INDEMNIFIED PARTY BECOMES AWARE OF SUCH CLAIM. FAILURE TO NOTIFY THE CONTRACTOR WILL NOT RELIEVE THE CONTRACTOR OF ANY LIABILITY THAT IT MAY HAVE TO THE INDEMNIFIED PARTY, EXCEPT TO THE EXTENT THAT THE DEFENSE OF SUCH ACTION IS MATERIALLY AND IRREVOCABLY PREJUDICED BY THE INDEMNIFIED PARTY'S FAILURE TO GIVE SUCH NOTICE. TO THE EXTENT THAT CONTRACTOR'S GENERAL LIABILITY POLICY (UNDER WHICH THE CONTRACTOR WILL NAME THE INDEMNIFIED PARTY AS AN ADDITIONAL INSURED) PROVIDES FOR THE DEFENSE OF SUCH ACTION, THE CONTRACTOR WILL ASSUME AND THEREAFTER DILIGENTLY AND CONTINUOUSLY CONDUCT THE DEFENSE WITH COUNSEL THAT IS SATISFACTORY TO THE INDEMNIFIED PARTY. THE INDEMNIFIED PARTY WILL HAVE THE RIGHT, AT ITS OWN EXPENSE, TO PARTICIPATE IN THE DEFENSE OF AN ACTION WITHOUT RELIEVING THE CONTRACTOR OF ANY OBLIGATION DESCRIBED ABOVE. IN NO EVENT WILL THE CONTRACTOR APPROVE THE ENTRY OF ANY JUDGMENT OR ENTER INTO ANY SETTLEMENT WITH RESPECT TO ANY ACTION WITHOUT THE INDEMNIFIED PARTY'S PRIOR WRITTEN APPROVAL, WHICH WILL NOT BE UNREASONABLY WITHHELD. UNTIL THE CONTRACTOR ASSUMES THE DILIGENT DEFENSE OF AN ACTION, THE INDEMNIFIED PARTY MAY DEFEND AGAINST THE ACTION IN ANY MANNER THE INDEMNIFIED PARTY REASONABLY DEEMS APPROPRIATE. UPON CONCLUSION OF AN ACTION EITHER THROUGH SETTLEMENT OR BY THE ISSUANCE OF AN ARBITRATION AWARD, JUDGMENT OR OTHER FINAL DETERMINATION OF LIABILITY, CONTRACTOR SHALL PROMPTLY REIMBURSE INDEMNITEES FOR A PROPORTIONATE SHARE OF INDEMNITEES' DEFENSE ATTORNEY'S FEES, INVESTIGATION COSTS, COURT OR ARBITRATION COSTS AND EXPENSES INCURRED IN DEFENDING THE ACTION IN AN AMOUNT PROPORTIONATE TO THE PERCENTAGE OF LIABILITY ALLOCATED TO THE CONTRACTOR IN SUCH SETTLEMENT AGREEMENT, ARBITRATION AWARD, JUDGEMENT OR OTHER FINAL DETERMINATION OF LIABILITY.

(f) THE INDEMNIFICATION OBLIGATIONS AND RIGHTS PROVIDED FOR IN THIS CONTRACT DO NOT REQUIRE (AND SHALL NOT BE CONSTRUED AS REQUIRING) THE CONTRACTOR TO INDEMNIFY, HOLD HARMLESS, OR DEFEND ANY INDEMNIFIED PARTY (OR ANY THIRD PARTY) AGAINST ANY ACTION OR CLAIM (OR THREATENED ACTION OR CLAIM) CAUSED BY THE NEGLIGENCE OR FAULT, THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR THE BREACH OF CONTRACT OF ANY INDEMNIFIED PARTY, ITS AGENTS OR EMPLOYEES, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF ANY INDEMNIFIED PARTY, OTHER THAN THE CONTRACTOR OR ITS AGENTS, EMPLOYEES, OR SUBCONTRACTORS OF ANY TIER.

(g) THIS PARAGRAPH WILL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS CONTRACT.

42. RECORD RETENTION; ACCESS TO RECORDS AND REPORTS

(a) The Contractor will retain, and will require its Subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the Contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, Subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.

(b) If this is a cost-reimbursement, incentive, time and materials, labor hour, or price determinable Contract, or any combination thereof, the Contractor shall maintain, and the Authority and its representatives shall have the right to examine, all books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this Contract.

(c) If the Contractor submitted certified cost or pricing data in connection with the pricing of this Contract or if the Contractor's cost of performance is relevant to any change or modification to this Contract, the Authority and its representatives shall have the right to examine all books, records, documents, and other data of the Contractor related to the negotiation, pricing, or performance of such Contract, change, or modification for the purpose of evaluating the costs incurred and the accuracy, completeness, and currency of the cost or pricing data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the costs incurred and the cost or pricing data submitted, along with the computations and projections used therein.

- (d) The Contractor shall maintain all books, records, accounts and reports required under this paragraph for a period of at 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- (e) The Contractor agrees to provide sufficient access to the Authority and its contractors to inspect and audit records and information related to performance of this Contract as reasonably may be required.
- (f) The Contractor agrees to permit the Authority and its contractors access to the sites of performance under this Contract as reasonably may be required.
- (g) If an audit pursuant to this paragraph reveals that the Authority has paid any invoices or charges not authorized under this Contract, the Authority may offset or recoup such amounts against any indebtedness owed by it to the Contractor, whether arising under this Contract or otherwise, over a period of time equivalent to the time period over which such invoices or charges accrued.
- (h) This paragraph will survive any termination or expiration of this Contract.

43. EXCUSABLE DELAYS

- (a) Except for defaults of Subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this Contract under its terms if the failure arises from Force Majeure Events. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the performance of the Services.
- (b) If the failure to perform is caused by the failure of a Subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and Subcontractor and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless:
- (1) the subcontracted supplies or Services were obtainable from other sources;
 - (2) the Authority ordered the Contractor in writing to obtain these Services from the other source; and
 - (3) the Contractor failed to comply reasonably with this order.
- (c) Upon the request of the Contractor, the Authority shall ascertain the facts and extent of the failure. If the Authority determines that any failure to perform results from one or more of the causes above, the delivery schedule or period of performance shall be revised, subject to the rights of the Authority under this Contract.

44. LOSS OR DAMAGE TO PROPERTY

The Contractor shall be responsible for any loss or damage to property including money securities, merchandise, fixtures and equipment belonging to the Authority or to any other individual or organization, if any such loss or damage was caused by the Contractor or any Subcontractor at any tier, or any employee thereof, while such employee is on the premises of the Authority as an employee of the Contractor or Subcontractor.

45. CONTRACTOR CONTACT/AUTHORITY DESIGNEE

The Contractor shall provide the Authority with a telephone number to ensure immediate communication with a person (not a recording) anytime during Contract performance. Similarly, the Authority shall designate an Authority representative who shall be similarly available to the Contractor.

46. QUALITY ASSURANCE

A periodic review of the Contractor's scheduled work may be performed by the Authority. If work is deemed incomplete **or unacceptable in any way and not in accordance with this Agreement**, the Authority will determine the cause and require the Contractor to take corrective measures in accordance with the terms of the Contract.

47. INTERPRETATION OF CONTRACT – DISPUTES

All questions concerning interpretation or clarification of this Contract or the acceptable fulfillment of this Contract by the Contractor shall be immediately submitted in writing to the Authority's Contracting Officer for determination. All determinations, instructions, and clarifications of the Contracting Officer shall be final and conclusive unless the Contractor files with the Capital Metro President/CEO within two (2) weeks after the Authority notifies the Contractor of any such determination, instruction or clarification, a written protest, stating in detail the basis of the protest. The President/CEO shall consider the protest and notify the Contractor within two (2) weeks of the protest filing of his or her final decision. The President/CEO's decisions shall be conclusive subject to judicial review. Notwithstanding any disagreement the Contractor may have with the decisions of the President/CEO, the Contractor shall proceed with the Services in accordance with the determinations, instructions, and clarifications of the President/CEO. The Contractor shall be solely responsible for requesting instructions or interpretations and liable for any cost or expenses arising from its failure to do so. The Contractor's failure to protest the Contracting Officer's determinations, instructions, or clarifications within the two-week period shall constitute a waiver by the Contractor of all of its rights to further protest.

48. TOBACCO-FREE WORKPLACE

- (a) Tobacco products include cigarettes, cigars, pipes, snuff, snus, chewing tobacco, smokeless tobacco, dipping tobacco and any other non-FDA approved nicotine delivery device.
- (b) The tobacco-free workplace policy refers to all Capital Metro owned or leased property. Note that this includes all buildings, facilities, work areas, maintenance facilities, parking areas and all Authority owned vehicles.
- (c) Tobacco use is not permitted at any time on the Work Site or Capital Metro owned or leased property, including personal vehicles parked in Capital Metro parking lots.
- (d) Littering of tobacco-related products on the grounds or parking lots is also prohibited.

49. ORDER OF PRECEDENCE

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

- 1. Exhibit A – Schedule
- 2. Exhibit E-Revised-2 – Contractual Terms and Conditions
- 3. Exhibit E-1 – Addendum to Contractual Terms and Conditions, Federally-Assisted
- 4. Exhibit E-1a – Special Provisions - Cost Reimbursement Task Orders
- 5. Exhibit F – Scope of Services
- 6. Exhibit B – Representations and Certifications
- 7. Exhibit D – Disadvantaged Business Enterprise Program/SBE
- 8. Other provisions or attachments to the Contract

50. ANTI-CORRUPTION AND BRIBERY LAWS

The Contractor shall comply with all Applicable Anti-Corruption and Bribery Laws. The Contractor represents and warrants that it has not and shall not violate or cause the Authority to violate any such Anti-Corruption and Bribery Laws. The Contractor further represents and warrants that, in connection with supplies or services provided to the Authority or with any other business transaction involving the Authority, it shall not pay, offer, promise, or authorize the payment or transfer of anything of value, directly or indirectly to: (a) any government official or employee (including employees of government owned or controlled companies or public international organizations) or to any political party, party official, or candidate for public office or (b) any other person or entity if such payments or transfers would violate applicable laws, including Applicable Anti-Corruption and Bribery Laws. Notwithstanding anything to the contrary herein contained, the Authority may withhold payments under this Contract, and terminate this Contract immediately by way of written notice to the Contractor, if it believes, in good faith, that the Contractor has violated or caused the Authority to

violate the Applicable Anti-Corruption and Bribery Laws. The Authority shall not be liable to the Contractor for any claim, losses, or damages related to its decision to exercise its rights under this provision.

51. ORGANIZATIONAL CONFLICT OF INTEREST (OCI)

(a) This Contract may task the Contractor to prepare or assist in preparing work statements that directly, predictably and without delay are used in future competitive acquisitions. The parties recognize that by the Contractor providing this support a potential conflict of interest arises as defined by FAR 9.5.

(b) For the purposes of this paragraph, the term "Contractor" means the Contractor, its subsidiaries and affiliates, joint ventures involving the Contractor, any entity with which the Contractor may hereafter merge or affiliate and any other successor or assignee of the Contractor.

(c) The Contractor acknowledges the full force and effect of this paragraph. It agrees to be bound by its terms and conditions and understands that violation of this paragraph may, in the judgment of the Contracting Officer, be cause for Termination for Default. The Contractor also acknowledges that this does not represent the sole and exclusive remedy available to the Authority in the event the Contractor breaches this or any other Organizational Conflict of Interest paragraph.

52. MISCELLANEOUS

(a) This Contract does not intend to, and nothing contained in this Contract shall create any partnership, joint venture or other equity type agreement between the Authority and the Contractor.

(b) All notices, statements, demands, requests, consents or approvals required under this Contract or by law by either party to the other shall be in writing and may be given or served by depositing same in the United States mail, postage paid, registered or certified and addressed to the party to be notified, with return receipt requested; by personally delivering same to such party; an agent of such party; or by overnight courier service, postage paid and addressed to the party to be notified; or by e-mail with delivery confirmation. Notice deposited in the U.S. mail in the manner hereinabove described shall be effective upon such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified.

If to the Contractor: As set forth in Exhibit B to this Contract

If to the Authority: Capital Metropolitan Transportation Authority
Attn: Director of Procurement
2910 E. 5th Street
Austin, Texas 78702

Address for notice can be changed by written notice to the other party.

(c) In the event the Authority finds it necessary to employ legal counsel to enforce its rights under this Contract, or to bring an action at law, or other proceeding against the Contractor to enforce any of the terms, covenants or conditions herein, the Contractor shall pay to the Authority its reasonable attorneys' fees and expenses, regardless of whether suit is filed.

(d) If any term or provision of this Contract or any portion of a term or provision hereof or the application thereof to any person or circumstance shall, to any extent, be void, invalid or unenforceable, the remainder of this Contract will remain in full force and effect unless removal of such invalid terms or provisions destroys the legitimate purpose of the Contract in which event the Contract will be terminated.

(e) This Contract represents the entire agreement between the parties concerning the subject matter of this Contract and supersedes any and all prior or contemporaneous oral or written statements, agreements, correspondence, quotations and negotiations. In executing this Contract, the parties do not rely upon any statement, promise, or representation not expressed herein. This Contract may not be changed except by the mutual written agreement of the parties.

- (f) A facsimile signature shall be deemed an original signature for all purposes. For purposes of this paragraph, the phrase "facsimile signature" includes without limitation, an image of an original signature.
- (g) Whenever used herein, the term "including" shall be deemed to be followed by the words "without limitation." Words used in the singular number shall include the plural, and vice-versa, and any gender shall be deemed to include each other gender. All Exhibits attached to this Contract are incorporated herein by reference.
- (h) All rights and remedies provided in this Contract are cumulative and not exclusive of any other rights or remedies that may be available to the Authority, whether provided by law, equity, statute, or otherwise. The election of any one or more remedies the Authority will not constitute a waiver of the right to pursue other available remedies.
- (i) The Contractor shall not assign the whole or any part of this Contract or any monies due hereunder without the prior written consent of the Contracting Officer. No assignment shall relieve the Contractor from any of its obligations hereunder. Any attempted assignment, transfer or other conveyance in violation of the foregoing shall be null and void.
- (j) The failure of the Authority to insist upon strict adherence to any term of this Contract on any occasion shall not be considered a waiver or deprive the Authority thereafter to insist upon strict adherence to that term or other terms of this Contract. Furthermore, the Authority is a governmental entity and nothing contained in this Contract shall be deemed a waiver of any rights, remedies or privileges available by law.
- (k) This Contract shall be governed by and construed in accordance with the laws of the State of Texas. Any dispute arising with respect to this Contract shall be resolved in the state or federal courts of the State of Texas, sitting in Travis County, Texas and the Contractor expressly consents to the personal jurisdiction of these courts.
- (l) This Contract is subject to the Texas Public Information Act, Tex. Gov't Code, Chapter 552.
- (m) The Contractor represents, warrants and covenants that: (a) it has the requisite power and authority to execute, deliver and perform its obligations under this Contract; and (b) it is in compliance with all applicable laws related to such performance.
- (n) The person signing on behalf of the Contractor represents for himself or herself and the Contractor that he or she is duly authorized to execute this Contract.
- (o) No term or provision of this Contract is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation for a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.
- (p) Capital Metro is a governmental entity and nothing in this Contract shall be deemed a waiver of any rights or privileges under the law.
- (q) Funding for this Contract after the current fiscal year is subject to revenue availability and appropriation of funds in the annual budget approved by the Authority's Board of Directors.
- (r) Time is of the essence for all delivery, performance, submittal, and completion dates in this Contract.

53. DRUG AND ALCOHOL TESTING PROGRAM

- (a) The Authority and its contractors and subcontractors are required to comply with the requirements of 49 C.F.R. Part 219 with no exceptions. The Contractor has established and implemented, or agrees to establish and implement, and cause its applicable subcontractors to establish and implement, a drug and alcohol testing program for regulated employees (including volunteers, employees and probationary employees) whose duties include inspection, construction, maintenance or repair of roadway track; bridges, roadway, signal and communications systems, electric traction systems, roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a tack and flagmen and watchmen/lookouts ("Part 219 employees") that complies with 49 C.F.R. Part 219, produce any documentation necessary to establish its compliance with Part 219, and permit any authorized representative of the United States Department of Transportation or the Federal Railroad Administration ("FRA") and the Authority to

inspect the facilities and records associated with the implementation and operation of the drug and alcohol testing program as required under 49 C.F.R. Part 219, including the review of the testing process.

(b) **Prior to the performance of any work under the Contract by any Part 219 employees on or after June 12, 2017**, the Contractor shall furnish the Authority, and cause each Subcontractor that provides Part 219 employees to perform work under the Contract to furnish the Authority, with copies of all supporting compliance documentation including but not limited to the following:

- (1) A copy of the Contractor's 49 C.F.R. Part 219 Railroad Contractor Compliance Plan.
- (2) A copy of the Federal Railroad Administration's acceptance letter for 49 C.F.R. Part 219 Railroad Contractor Compliance Plan.
- (3) A certified list of the Contractor's Part 219 grandfathered employees (June 12, 2017).
- (4) A certified list of employees who are currently regulated by 49 C.F.R. Part 219 Railroad Contractor Compliance Plan Part 219.
- (5) Copies of the employees DOT 40-25 previous employer drug and alcohol record covered by 49 C.F.R. Part 219 Railroad Contractor Compliance Plan.
- (6) Updated list of the Contractor's employees when an employee status has changed or employee becomes ineligible, along with an updated certification required in subparagraph (4).
- (7) Rule G Observations when requested by the Authority.
- (8) Management Information System Report (MIS) each six (6) months.

Access to the work site will be prohibited to employees not named in the certified list required by subparagraphs (4) and (6).

(c) Upon notice to the Contractor, Capital Metro may require the Contractor and any Subcontractor providing Part 219 employees to use a third-party compliance provider to track the Contractor's Part 219 compliance. If the Contractor or any of its Subcontractors fails to utilize such required compliance provider or an approved equivalent as required, then the Authority may suspend the Contractor's performance under this Contract and/or pursue default remedies under this Contract. The Authority reserves the right to change the required third-party compliance provider upon notice to the Contractor. In the event that Capital Metro requires the Contractor to use a third-party compliance service, any costs of the required service will be reimbursed by Capital Metro provided the Contractor follows the following reimbursement procedure: the Contractor shall provide the estimated costs of the compliance service within fourteen (14) calendar days following Capital Metro's notice to the Contractor of the adoption of a third-party compliance provider requirement and the Contractor shall not incur any costs until a subsequent Contract Modification is fully executed.

(d) The Contractor shall provide the Authority with a list of the names of any subcontractors performing Part 219 services, along with a certified list of the employees assigned by the Subcontractor to perform work under the Contract, at least ten (10) calendar days prior to the time a Subcontractor or its Part 219 employees enters the work site. The Contractor and each Subcontractor shall be solely responsible for their compliance with 49 C.F.R. Part 219.

(e) The Contractor shall include the substance of subparagraph (a)-(e) of this paragraph, in each applicable Subcontract under this Contract.

(f) If the Authority discovers that the Contractor or any of its Subcontractors are not in compliance with the requirements of 49 C.F.R. Part 219, the Authority may suspend the Contractor's performance under this Contract and/or pursue default remedies under this Contract.

55. FUNDING AVAILABILITY

Funding after the current fiscal year of any contract resulting from this solicitation is subject to revenue availability and appropriation of funds in the annual budget approved by the Authority's Board of Directors.

**EXHIBIT E-1A
SPECIAL PROVISIONS FOR COST
REIMBURSEMENT TASK ORDERS**

1. DEFINITIONS:

DIRECT LABOR

The term “direct labor” is defined as the technical, management, and support staff required to complete tasking on a project, along with appropriate load factors, and exclusive of any profit or fee.

LOADING FACTORS

The loading factors are those defined in the Contractor’s forward pricing rates, and include such items as overhead, fringe, general and administration (G&A), or any relevant cost as described in the contract.

CEILING RATES

The term “Ceiling Rates” represents the maximum direct labor rates to be proposed and/or billed under this Contract. These ceiling direct labor rates apply to proposals for cost-reimbursable orders and for fixed-price orders. The ceiling rate shall anticipate the maximum technical expertise needed over the life of the contract and is not necessarily bound by current personnel. The Contractor will not be paid any sum more than the ceiling price or obligated amount, whichever is less as determined on the award document at the Task Order Level.

2. ACCOUNTING SYSTEM REVIEWS

A Prime Contractor is not eligible to receive a Base Contract or a CPFF (Term or Completion) Task Order award unless its accounting system has been reviewed by a Government audit agency, nongovernment auditor or an independent, third party accounting firm that has certified the accounting system for compliance with the same standards set forth in SF1408, Pre-award Survey of Prospective Contractor Accounting System and FAR Part 31 and determined by the Contracting Officer to be adequate for determining costs under a cost reimbursement contract. The Contracting Officer relies on information provided by a Government audit agency (such as the DCAA) to determine the adequacy of a Contractor’s accounting system.

An adequate accounting system is a system that provides for the proper segregation, identification, accumulation, and allocation of direct and indirect costs for government procurements. In accordance with FAR part 16.301-3, In accordance with FAR part 42.302, the contractor’s accounting system shall be adequate during the entire period of contract performance.

The adequacy of the Contractor’s accounting system and its associated internal control system, as well as contractor compliance with the Cost Accounting Standards (CAS). Also, consent or contract award will not be given for a subcontractor unless that subcontractor’s accounting system has been reviewed by a Government audit agency, non-government auditor or an independent, third party accounting firm that has certified the accounting system for compliance with the same standards set forth in SF1408, Pre- award Survey of Prospective Contractor Accounting System and FAR Part 31 and determined by the CO to be adequate for determining costs under a cost reimbursement contract.

After award, the Contractor shall notify the CO in writing if there is any change in the status of its approved accounting system and provide the reason(s) for the change. Documentation required to be submitted for CO consent shall be submitted in accordance with FAR Part 44, Subcontracting Policies and Procedures.

3. COST ACCOUNTING

Cost Reimbursement is defined under FAR Subpart 16.3, Cost-Reimbursement Contracts. FAR Part 30, Cost Accounting Standards Administration, and FAR Part 31, Contract Cost Principles and Procedures, shall apply to all cost reimbursement task orders. The Contractor shall have an accounting system that follows Generally Accepted Accounting Principles (GAAP) and IAW FAR 16.301 for accumulating and billing costs on government contracts, the Contractor must establish and maintain throughout the life of the contract a cost accounting system which complies with (GAAP) and Cost Accounting Standards (CAS).

The Contractor shall have and maintain an adequate accounting system that will permit timely development of all necessary cost data in the form required by the proposed contract type. The Contractor may be required to submit a cost proposal with supporting information for each cost element, including, but not limited to, direct labor, fringe benefits, overhead, general and administrative (G&A) expenses, facilities capital cost of money, other direct costs, and fee consistent with their cost accounting system, provisional billing rates, forward pricing rate agreements, and/or CAS.

NOTE: Please be advised that if the Contractor does not have an accounting system that is sufficient for determining costs applicable to the contract or order IAW FAR16.301-3, and for accumulating and segregating costs, it will not be eligible to receive a contract award.

All Cost Reimbursement Task Orders will be priced in accordance with approved DCAA (or FAR Part 31) rates. Direct and indirect cost rates will be established at the base contract IDIQ level. The Contractor will provide complete supporting schedules identifying all applicable direct and indirect rate estimates. Contractors with approved DCAA rates should submit their most recent provisional indirect billing and actual rates for both direct and indirect rates. Contractors without audited rates shall propose indirect rates in accordance with FAR Part 31. See Paragraph 2, Accounting System Reviews above.

The Contractor will not be paid any sum more than the ceiling price or obligated amount, whichever is less as determined on the award document at the Task Order Level. In accordance with FAR 32.704, CPFF Task Orders may be incrementally funded. Incrementally funded modifications will contain a provision substantially as follows: Pursuant to the Limitation of Funds Clause (FAR 52.232-22), the total amount allotted to this task order is \$TBD* and it is estimated that this amount is sufficient for performance through \$TBD*.

Funding for the services as outlined in the individual Task Order, may be incrementally funded as required on each individual Task Order and subsequent modifications in accordance with the ordering terms and conditions described in Exhibit E, Contractual Terms and Conditions. In no event, however, shall the Contractor be authorized to incur costs under an individual Task Order more than the total funds obligated against that Task Order. (* To be filled in on the Task Order level at time of award).

4. COST PLUS FIXED FEE

Applicable labor rates for each Task Order issued under this contract will be as follows. If a discipline is not listed in EXHIBIT A, SCHEDULE and is required for a specific task order, that labor rate shall be negotiated before the award of that task order. The labor rates provided by the Contractor and determined fair and reasonable by the Authority are legally binding and will be the maximum rates at the task order level; however, lower rates may be offered at the task order level. For Cost-Plus-Fixed-Fee the Contractor will use the most recent DCAA/DCMA approved forward pricing rates or Certified Public Accountant (CPA) established cost pools in accordance with FAR Part 31 for Overhead, G&A, and other indirect costs. The Contractor shall have an accounting system that follows Generally Accepted Accounting Principles (GAAP). This base contract and subsequent task orders are subject to audit.

The amount to be paid to the Contractor shall not exceed the hourly rates for disciplines listed in EXHIBIT A, SCHEDULE. The Contractor shall furnish personnel with the necessary education, training and/or relevant experience, as specified in the contract and task orders to be issued. Task order proposals must justify proposed rates to the satisfaction of the Contracting Officer (CO).

The Contracting Officer determines which other direct costs are allowable, allocable, and fair and reasonable in accordance with the applicable federal cost principles (i.e., FAR 31.2). For those other direct costs the CO authorizes, Contractors are allowed to recover applicable indirect costs on these costs, if doing so is part of the Contractor's usual accounting procedures, consistent with the applicable cost principles and as prescribed in the contract. Due to variations in workload, the Contracting Officer reserves the right to move unused contract value among CLINs. This decision is entirely within the discretion of the Authority.

5. ALLOWABLE COST AND PAYMENT

(a) *Invoicing.*

(1) Capital Metro will make payments to the Contractor when requested as work progresses, but not more often than once per month, in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) Subpart 31.2 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(2) See Exhibit E, Contractual Terms and Conditions, Paragraph 8, INVOICING AND PAYMENT.

(b) *Reimbursing costs.*

(1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only --

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for --

(A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made —

(1) In accordance with the terms and conditions of a subcontract or invoice; and

(2) Ordinarily within 30 days of the submission of the Contractor's payment request to the Authority;

(B) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;

(C) Direct labor;

(D) Direct travel;

(E) Other direct in-house costs; and

(F) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Capital Metro contracts; and

(iii) The amount of financing payments that have been paid by cash, check or other form of payment to subcontractors.

(2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless—

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's indirect costs for payment purposes).

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.

(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Authority shall be disregarded for purposes of cost-reimbursement under this clause.

(c) *Small business concerns.* A small business concern may receive more frequent payments than monthly

(d) *Final indirect cost rates.*

(1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Capital Metro representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(iii) An adequate indirect cost rate proposal shall include the following data unless otherwise specified by the cognizant Federal agency official:

(A) Summary of all claimed indirect expense rates, including pool, base, and calculated indirect rate.

(B) *General and Administrative expenses (final indirect cost pool).* Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts).

(C) *Overhead expenses (final indirect cost pool).* Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) for each final indirect cost pool.

(D) *Occupancy expenses (intermediate indirect cost pool).* Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) and expense reallocation to final indirect cost pools.

(E) Claimed allocation bases, by element of cost, used to distribute indirect costs.

- (F) Facilities capital cost of money factors computation.
 - (G) Reconciliation of books of account (*i.e.*, General Ledger) and claimed direct costs by major cost element.
 - (H) Schedule of direct costs by contract and subcontract and indirect expense applied at claimed rates, as well as a subsidiary schedule of Government participation percentages in each of the allocation base amounts.
 - (I) Schedule of cumulative direct and indirect costs claimed and billed by contract and subcontract.
 - (J) *Subcontract information*. Listing of subcontracts awarded to companies for which the contractor is the prime or upper-tier contractor (include prime and subcontract numbers; subcontract value and award type; amount claimed during the fiscal year; and the subcontractor name, address, and point of contact information).
 - (K) Summary of each time-and-materials and labor-hour contract information, including labor categories, labor rates, hours, and amounts; direct materials; other direct costs; and, indirect expense applied at claimed rates.
 - (L) Reconciliation of total payroll per IRS form 941 to total labor costs distribution.
 - (M) Listing of decisions/agreements/approvals and description of accounting/organizational changes.
 - (N) Certificate of final indirect costs (see 52.242-4, Certification of Final Indirect Costs).
 - (O) Contract closing information for contracts physically completed in this fiscal year (include contract number, period of performance, contract ceiling amounts, contract fee computations, level of effort, and indicate if the contract is ready to close).
- (2) The following supplemental information is not required to determine if a proposal is adequate, but may be required during the audit process:
- (A) Comparative analysis of indirect expense pools detailed by account to prior fiscal year and budgetary data.
 - (B) General organizational information and limitation on allowability of compensation for certain contractor personnel. See 31.205-6(p). Additional salary reference information is available at <https://www.whitehouse.gov/wpcontent/uploads/2017/11/ContractorCompensationCapContractsAwardedBeforeJune24.pdf> and <https://www.whitehouse.gov/wpcontent/uploads/2017/11/ContractorCompensationCapContractsAwardedafterJune24.pdf>.
 - (C) Identification of prime contracts under which the contractor performs as a subcontractor.
 - (D) Description of accounting system (excludes contractors required to submit a CAS Disclosure Statement or contractors where the description of the accounting system has not changed from the previous year's submission).
 - (E) Procedures for identifying and excluding unallowable costs from the costs claimed and billed (excludes contractors where the procedures have not changed from the previous year's submission).
 - (F) Certified financial statements and other financial data (*e.g.*, trial balance, compilation, review, etc).

(G) Management letter from outside CPAs concerning any internal control weaknesses.

(H) Actions that have been and/or will be implemented to correct the weaknesses described in the management letter from subparagraph (G) of this section.

(I) List of all internal audit reports issued since the last disclosure of internal audit reports to the Authority.

(J) Annual internal audit plan of scheduled audits to be performed in the fiscal year when the final indirect cost rate submission is made.

(K) Federal and State income tax returns.

(L) Securities and Exchange Commission 10-K annual report.

(M) Minutes from board of directors' meetings.

(N) Listing of delay claims and termination claims submitted which contain costs relating to the subject fiscal year.

(O) Contract briefings, which generally include a synopsis of all pertinent contract provisions, such as: Contract type, contract amount, product or service(s) to be provided, contract performance period, rate ceilings, advance approval requirements, pre-contract cost allowability limitations, and billing limitations.

(v) The Contractor shall update the billings on all contracts to reflect the final settled rates and update the schedule of cumulative direct and indirect costs claimed and billed, as required in paragraph (d)(2)(iii)(I) of this sections, within 60 days after settlement of final indirect cost rates.

(3) The Contractor and the appropriate Capital Metro representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify

(i) the agreed-upon final annual indirect cost rates,

(ii) the bases to which the rates apply,

(iii) the periods for which the rates apply,

(iv) any specific indirect cost items treated as direct costs in the settlement, and

(v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates.

The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates. The completion invoice or voucher shall include settled subcontract amounts and rates. The prime contractor is responsible for settling subcontractor amounts and rates

included in the completion invoice or voucher and providing status of subcontractor audits to the contracting officer upon request.

(i) If the Contractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Contracting Officer may--

- (A) Determine the amounts due to the Contractor under the contract; and
- (B) Record this determination in a unilateral modification to the contract.

(ii) This determination constitutes the final decision of the Contracting Officer in accordance with the Disputes clause.

(e) *Billing rates.* Until final annual indirect cost rates are established for any period, the Authority shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates --

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(f) *Quick-closeout procedures.* Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

(g) *Audit.* At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be --

- (1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs; or
- (2) Adjusted for prior overpayments or underpayments.

(h) *Final payment.*

(1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (d)(5) of this clause, and upon the Contractor's compliance with all terms of this contract, the Authority shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Contractor shall pay to the Authority any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Authority. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver --

(i) An assignment to the Authority, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Authority under this contract; and

(ii) A release discharging the Authority, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except --

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Authority against patent liability.

6. FIXED FEE

(a) Capital Metro shall pay the Contractor for performing this contract the fixed fee specified in the Schedule.

(b) Payment of the fixed fee shall be made as specified in the Schedule; provided that the Contracting Officer withholds a reserve not to exceed 15 percent of the total fixed fee or \$100,000, whichever is less, to protect Capital Metro's interest. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of an adequate certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

(c) PAYMENT OF FIXED FEE (TERM (LOE) and COMPLETION)

The Authority will issue task orders which will include one of two methods by which the Contractor can earn fixed fee. Requests for provisional fee payment must be based on and be consistent with the information stated in the contract or task order award document. However, the request for payment of fixed fee must be submitted separately.

(1) For Term (LOE) -type task orders,

PAYMENT OF FEES(S) (TERM- LEVEL OF EFFORT: For purposes of this contract, "fee" means "fixed fee" in cost-plus-fixed-fee type contracts for level of effort type contracts. Capital Metro shall make payments to the Contractor, subject to and in accordance with sub-paragraphs (a) and (b) above as applicable, and in accordance with the contract. Such payments shall be submitted by and payable to the Contractor pursuant to the clause of this contract entitled "ALLOWABLE COST AND PAYMENT" in Paragraph 5 of this Exhibit 1A, subject to the withholding terms and conditions of the "FIXED FEE" as applicable, and shall be paid at the labor rate(s) specified in the contract under Exhibit A, Schedule for hours performed and invoiced. Total fee(s) paid to the Contractor shall not exceed the fee amount(s) set forth in this contract/task order. In no event, shall Capital Metro be required to pay the Contractor any amount in excess of the funds obligated under this contract/task order.

(1) For Completion-type task order

The Contractor's fixed fee is tied to the accomplishment of the deliverables outlined in Exhibit F and as stipulated in each Task Order. Capital Metro may make provisional fee payments subject to sub-paragraph (a) and (b) above on the basis of the work completed, as determined by the CO with concurrence with the COR/ACOR. For the consideration set forth in the contract/task order, the Contractor must provide the deliverables and outputs as described in Exhibit F, and comply with contract requirements. Upon successful achievement of the deliverable, the Contractor must provide evidence of the achievement to the COR/ACOR and the CO. Upon acceptance by Capital Metro and receipt of approval from the CO, the Contractor may submit an invoice for the amount of the fee associated with the deliverable as deemed approved. If performance is considered satisfactory, The Contractor shall be required to complete the specified end

product (e.g., a final report or working system) within the estimated cost as a condition for payment of the fixed fee as proposed. In the event the work cannot be completed within the estimated cost, Capital Metro may require more effort without any increase in fee, provided the Authority increases the estimated cost. If Capital Metro chooses not to increase the estimated cost, the fixed fee payable will be based on the CO's determination of the completion of work as specified with the end product(s)/deliverables. In no event, shall Capital Metro be required to pay the Contractor any amount in excess of the funds obligated under this contract/task order. See Deliverable Chart as listed in each task order.

7. THE CONTRACT

Cost Principles and Procedures in the Federal Acquisition Regulations (FAR) PART 31 shall be used to determine the allowable and allocable cost for Cost Reimbursement, Time and Materials, and Labor Hours Task Orders as applicable.

This part contains cost principles and procedures for –

- (a) The pricing of contracts, subcontracts, and modifications to contracts and subcontracts whenever cost analysis is performed (see FAR [15.404-1](#));
- (b) The determination, negotiation, or allowance of costs when required by a contract clause; and
- (c) Definitions.

As used in part 31 of the FAR--

“Accrued benefit cost method” means an actuarial cost method under which units of benefit are assigned to each cost accounting period and are valued as they accrue; *i.e.*, based on the services performed by each employee in the period involved. The measure of normal cost under this method for each cost accounting period is the present value of the units of benefit deemed to be credited to employees for service in that period. The measure of the actuarial accrued liability at a plan's inception date is the present value of the units of benefit credited to employees for service prior to that date. (This method is also known as the unit credit cost method without salary projection.)

“Accumulating costs” means collecting cost data in an organized manner, such as through a system of accounts.

“Actual cash value” means the cost of replacing damaged property with other property of like kind and quality in the physical condition of the property immediately before the damage.

“Actual costs” means (except for [Subpart 31.6](#)) amounts determined on the basis of costs incurred, as distinguished from forecasted costs. Actual costs include standard costs properly adjusted for applicable variances.

“Actuarial accrued liability” means pension cost attributable, under the actuarial cost method in use, to years prior to the current period considered by a particular actuarial valuation. As of such date, the actuarial accrued liability represents the excess of the present value of future benefits and administrative expenses over the present value of future normal costs for all plan participants and beneficiaries. The excess of the actuarial accrued liability over the actuarial value of the assets of a pension plan is the unfunded actuarial liability. The excess of the actuarial value of the assets of a pension plan over the actuarial accrued liability is an actuarial surplus and is treated as a negative unfunded actuarial liability.

“Actuarial assumption” means an estimate of future conditions affecting pension cost; *e.g.*, mortality rate, employee turnover, compensation levels, earnings on pension plan assets, and changes in values of pension plan assets.

“Actuarial cost method” means a technique that uses actuarial assumptions to measure the present value of future pension benefits and pension plan administrative expenses, and that assigns the cost of such benefits and expenses to cost accounting periods. The actuarial cost method includes the asset valuation method used to determine the actuarial value of the assets of a pension plan.

“Actuarial gain and loss” means the effect on pension cost resulting from differences between actuarial assumptions and actual experience.

“Actuarial valuation” means the determination, as of a specified date, of the normal cost, actuarial accrued liability, actuarial value of the assets of a pension plan, and other relevant values for the pension plan.

“Allocate” means to assign an item of cost, or a group of items of cost, to one or more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

“Compensated personal absence” means any absence from work for reasons such as illness, vacation, holidays, jury duty, military training, or personal activities for which an employer pays compensation directly to an employee in accordance with a plan or custom of the employer.

“Compensation for personal services” means all remuneration paid currently or accrued, in whatever form and whether paid immediately or deferred, for services rendered by employees to the contractor.

“Cost input” means the cost, except general and administrative (G&A) expenses, which for contract costing purposes is allocable to the production of goods and services during a cost accounting period.

“Cost objective” means (except for [Subpart 31.6](#)) a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

“Deferred compensation” means an award made by an employer to compensate an employee in a future cost accounting period or periods for services rendered in one or more cost accounting periods before the date of the receipt of compensation by the employee. This definition shall not include the amount of year end accruals for salaries, wages, or bonuses that are to be paid within a reasonable period of time after the end of a cost accounting period.

“Defined-benefit pension plan” means a pension plan in which the benefits to be paid, or the basis for determining such benefits, are established in advance and the contributions are intended to provide the stated benefits.

“Defined-contribution pension plan” means a pension plan in which the contributions to be made are established in advance and the benefits are determined thereby.

“Directly associated cost” means any cost which is generated solely as a result of the incurrence of another cost, and which would not have been incurred had the other cost not been incurred.

“Estimating costs” means the process of forecasting a future result in terms of cost, based upon information available at the time.

“Expressly unallowable cost” means a particular item or type of cost which, under the express provisions of an applicable law, regulation, or contract, is specifically named and stated to be unallowable.

“Final cost objective” means a cost objective that has allocated to it both direct and indirect costs and, in the contractor’s accumulation system, is one of the final accumulation points.

“Fiscal year” means the accounting period for which annual financial statements are regularly prepared, generally a period of 12 months, 52 weeks, or 53 weeks.

“Funded pension cost” means the portion of pension cost for a current or prior cost accounting period that has been paid to a funding agency.

“Home office” means an office responsible for directing or managing two or more, but not necessarily all, segments of an organization. It typically establishes policy for, and provides guidance to, the segments in their operations. It usually

performs management, supervisory, or administrative functions, and may also perform service functions in support of the operations of the various segments. An organization which has intermediate levels, such as groups, may have several home offices which report to a common home office. An intermediate organization may be both a segment and a home office.

“Immediate-gain actuarial cost method” means any of the several actuarial cost methods under which actuarial gains and losses are included as part of the unfunded actuarial liability of the pension plan, rather than as part of the normal cost of the plan.

“Independent research and development (IR&D) cost” means the cost of effort which is neither sponsored by a grant, nor required in performing a contract, and which falls within any of the following four areas --

- (a) Basic research,
- (b) Applied research,
- (c) Development, and
- (d) Systems and other concept formulation studies.

“Indirect cost pools” means (except for [Subparts 31.3](#) and [31.6](#)) groupings of incurred costs identified with two or more cost objectives but not identified specifically with any final cost objective.

“Insurance administration expenses” means the contractor’s costs of administering an insurance program; e.g., the costs of operating an insurance or risk-management department, processing claims, actuarial fees, and service fees paid to insurance companies, trustees, or technical consultants.

“Intangible capital asset” means an asset that has no physical substance, has more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the benefits it yields.

“Job” means a homogeneous cluster of work tasks, the completion of which serves an enduring purpose for the organization. Taken as a whole, the collection of tasks, duties, and responsibilities constitutes the assignment for one or more individuals whose work is of the same nature and is performed at the same skill/responsibility level -- as opposed to a position, which is a collection of tasks assigned to a specific individual. Within a job, there may be pay categories which are dependent on the degree of supervision required by the employee while performing assigned tasks which are performed by all persons with the same job.

“Job class of employees” means employees performing in positions within the same job.

“Labor cost at standard” means a preestablished measure of the labor element of cost, computed by multiplying labor-rate standard by labor-time standard.

“Labor market” means a place where individuals exchange their labor for compensation. Labor markets are identified and defined by a combination of the following factors --

- (1) Geography,
- (2) Education and/or technical background required,
- (3) Experience required by the job,
- (4) Licensing or certification requirements,

- (5) Occupational membership, and
- (6) Industry.

“Labor-rate standard” means a preestablished measure, expressed in monetary terms, of the price of labor.

“Labor-time standard” means a preestablished measure, expressed in temporal terms, of the quantity of labor.

“Material cost at standard” means a preestablished measure of the material elements of cost, computed by multiplying material-price standard by material-quantity standard.

“Material-price standard” means a preestablished measure, expressed in monetary terms, of the price of material.

“Material-quantity standard” means a preestablished measure, expressed in physical terms, of the quantity of material.

“Moving average cost” means an inventory costing method under which an average unit cost is computed after each acquisition by adding the cost of the newly acquired units to the cost of the units of inventory on hand and dividing this figure by the new total number of units.

“Nonqualified pension plan” means any pension plan other than a qualified pension plan as defined in this part.

“Normal cost” means the annual cost attributable, under the actuarial cost method in use, to current and future years as of a particular valuation date excluding any payment in respect of an unfunded actuarial liability.

“Original complement of low-cost equipment” means a group of items acquired for the initial outfitting of a tangible capital asset or an operational unit, or a new addition to either. The items in the group individually cost less than the minimum amount established by the contractor for capitalization for the classes of assets acquired but in the aggregate they represent a material investment. The group, as a complement, is expected to be held for continued service beyond the current period. Initial outfitting of the unit is completed when the unit is ready and available for normal operations.

“Pay-as-you-go cost method” means a method of recognizing pension cost only when benefits are paid to retired employees or their beneficiaries.

“Pension plan” means a deferred compensation plan established and maintained by one or more employers to provide systematically for the payment of benefits to plan participants after their retirements; provided, that the benefits are paid for life or are payable for life at the option of the employees. Additional benefits such as permanent and total disability and death payments, and survivorship payments to beneficiaries of deceased employees, may be an integral part of a pension plan.

“Pension plan participant” means any employee or former employee of an employer or any member or former member of an employee organization, who is or may become eligible to receive a benefit from a pension plan which covers employees of such employer or members of such organization who have satisfied the plan’s participation requirements, or whose beneficiaries are receiving or may be eligible to receive any such benefit. A participant whose employment status with the employer has not been terminated is an active participant of the employer’s pension plan.

“Profit center” means (except for [Subparts 31.3](#) and [31.6](#)) the smallest organizationally independent segment of a company charged by management with profit and loss responsibilities.

“Projected benefit cost method” means either—

- (1) Any of the several actuarial cost methods that distribute the estimated total cost of all the employees’ prospective benefits over a period of years, usually their working careers; or

- (2) A modification of the accrued benefit cost method that considers projected compensation levels.

“Proposal” means any offer or other submission used as a basis for pricing a contract, contract modification, or termination settlement or for securing payments thereunder.

“Qualified pension plan” means a pension plan comprising a definite written program communicated to and for the exclusive benefit of employees that meets the criteria deemed essential by the Internal Revenue Service as set forth in the Internal Revenue Code for preferential tax treatment regarding contributions, investments, and distributions. Any other plan is a nonqualified pension plan.

“Self-insurance charge” means a cost which represents the projected average loss under a self-insurance plan.

“Service life” means the period of usefulness of a tangible capital asset (or group of assets) to its current owner. The period may be expressed in units of time or output. The estimated service life of a tangible capital asset (or group of assets) is a current forecast of its service life and is the period over which depreciation cost is to be assigned.

“Spread-gain actuarial cost method” means any of the several projected benefit actuarial cost methods under which actuarial gains and losses are included as part of the current and future normal costs of the pension plan.

“Standard cost” means any cost computed with the use of preestablished measures.

“Tangible capital asset” means an asset that has physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the services it yields.

“Termination of employment gain or loss” means an actuarial gain or loss resulting from the difference between the assumed and actual rates at which pension plan participants separate from employment for reasons other than retirement, disability, or death.

“Variance” means the difference between a preestablished measure and an actual measure.

“Weighted average cost” means an inventory costing method under which an average unit cost is computed periodically by dividing the sum of the cost of beginning inventory plus the cost of acquisitions by the total number of units included in these two categories.

“Welfare benefit fund” means a trust or organization which receives and accumulates assets to be used either for the payment of postretirement benefits, or for the purchase of such benefits, provided such accumulated assets form a part of a postretirement benefit plan.

8. FIXED-PRICE CONTRACTS (FAR 31.102)

The applicable subparts of Part 31 shall be used in the pricing of fixed-price contracts, subcontracts, and modifications to contracts and subcontracts whenever

- (a) cost analysis is performed, or
- (b) a fixed-price contract clause requires the determination or negotiation of costs. However, application of cost principles to fixed-price contracts and subcontracts shall not be construed as a requirement to negotiate agreements on individual elements of cost in arriving at agreement on the total price. The final price accepted by the parties reflects agreement only on the total price. Further, notwithstanding the mandatory use of cost principles, the objective will continue to be to negotiate prices that are fair and reasonable, cost and other factors considered.

9. CONTRACTS WITH COMMERCIAL ORGANIZATIONS (FAR 31-103).

This category includes all contracts and contract modifications for supplies, services, or experimental, developmental, or research work negotiated with organizations other than educational institutions (see [31.104](#)), construction and architect-engineer contracts (see [31.105](#)), State and local governments (see [31.107](#)) and nonprofit organizations (see [31.108](#)) on the basis of cost.

(a) The cost principles and procedures in [Subpart 31.2](#) and agency supplements shall be used in pricing negotiated supply, service, experimental, developmental, and research contracts and contract modifications with commercial organizations whenever cost analysis is performed as required by [15.404-1](#).

(b) In addition, the contracting officer shall incorporate the cost principles and procedures in [Subpart 31.2](#) and agency supplements by reference in contracts with commercial organizations as the basis for --

(1) Determining reimbursable costs under --

(i) Cost-reimbursement contracts and cost-reimbursement subcontracts under these contracts performed by commercial organizations; and

(ii) The cost-reimbursement portion of time-and-materials contracts except when material is priced on a basis other than at cost (see [16.601\(c\)\(3\)](#));

(2) Negotiating indirect cost rates (see [Subpart 42.7](#));

(3) Proposing, negotiating, or determining costs under terminated contracts (see [49.103](#) and [49.113](#));

(4) Price revision of fixed-price incentive contracts (see [16.204](#) and [16.403](#));

(5) Price redetermination of price redetermination contracts (see [16.205](#) and [16.206](#)); and

(6) Pricing changes and other contract modifications.

10. CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS (FAR 31.105).

(a) This category includes all contracts and contract modifications negotiated on the basis of cost with organizations other than educational institutions (see [31.104](#)), State and local governments (see [31.107](#)), and nonprofit organizations except those exempted under OMB Uniform Guidance at 2 CFR part 200, appendix VIII (see [31.108](#)) for construction management or construction, alteration or repair of buildings, bridges, roads, or other kinds of real property. It also includes architect-engineer contracts related to construction projects. It does not include contracts for vessels, aircraft, or other kinds of personal property.

(b) Except as otherwise provided in (d) of this section, the cost principles and procedures in [Subpart 31.2](#) shall be used in the pricing of contracts and contract modifications in this category if cost analysis is performed as required by [15.404-1\(c\)](#).

(c) In addition, the contracting officer shall incorporate the cost principles and procedures in [Subpart 31.2](#) (as modified by (d) below) by reference in contracts in this category as the basis for --

(1) Determining reimbursable costs under cost-reimbursement contracts, including cost-reimbursement subcontracts thereunder;

(2) Negotiating indirect cost rates;

- (3) Proposing, negotiating, or determining costs under terminated contracts;
- (4) Price revision of fixed-price incentive contracts; and
- (5) Pricing changes and other contract modifications.

(d) Except as otherwise provided in this paragraph (d), the allowability of costs for construction and architect-engineer contracts shall be determined in accordance with [Subpart 31.2](#).

(1) Because of widely varying factors such as the nature, size, duration, and location of the construction project, advance agreements as set forth in [31.109](#), for such items as home office overhead, partners' compensation, employment of consultants, and equipment usage costs, are particularly important in construction and architect-engineer contracts. When appropriate, they serve to express the parties' understanding and avoid possible subsequent disputes or disallowances.

(2) "Construction equipment," as used in this section, means equipment (including marine equipment) in sound workable condition, either owned or controlled by the contractor or the subcontractor at any tier, or obtained from a commercial rental source, and furnished for use under Government contracts.

(i) Allowable ownership and operating costs shall be determined as follows:

(A) Actual cost data shall be used when such data can be determined for both ownership and operations costs for each piece of equipment, or groups of similar serial or series equipment, from the contractor's accounting records. When such costs cannot be so determined, the contracting agency may specify the use of a particular schedule of predetermined rates or any part thereof to determine ownership and operating costs of construction equipment (see subdivisions (d)(2)(i)(B) and (C) of this section). However, costs otherwise unallowable under this part shall not become allowable through the use of any schedule (see [31.109\(c\)](#)). For example, schedules need to be adjusted for Government contract costing purposes if they are based on replacement cost, include unallowable interest costs, or use improper cost of money rates or computations. Contracting officers should review the computations and factors included within the specified schedule and ensure that unallowable or unacceptably computed factors are not allowed in cost submissions.

(B) Predetermined schedules of construction equipment use rates (e.g., the Construction Equipment Ownership and Operating Expense Schedule, published by the U.S. Army Corps of Engineers, industry sponsored construction equipment cost guides, or commercially published schedules of construction equipment use cost) provide average ownership and operating rates for construction equipment. The allowance for operating costs may include costs for such items as fuel, filters, oil, and grease; servicing, repairs, and maintenance; and tire wear and repair. Costs of labor, mobilization, demobilization, overhead, and profit are generally not reflected in schedules, and separate consideration may be necessary.

(C) When a schedule of predetermined use rates for construction equipment is used to determine direct costs, all costs of equipment that are included in the cost allowances provided by the schedule shall be identified and eliminated from the contractor's other direct and indirect costs charged to the contract. If the contractor's accounting system provides for site or home office overhead allocations, all costs which are included in the equipment allowances may need to be included in any cost input base before computing the contractor's overhead rate. In periods of suspension of work pursuant to a contract clause, the allowance for equipment ownership shall not exceed an amount for standby cost as determined by the schedule or contract provision.

(i) Reasonable costs of renting construction equipment are allowable (but see paragraph (C) of this subsection).

(A) Costs, such as maintenance and minor or running repairs incident to operating such rented equipment, that are not included in the rental rate are allowable.

(B) Costs incident to major repair and overhaul of rental equipment are unallowable.

(C) The allowability of charges for construction equipment rented from any division, subsidiary, or organization under common control, will be determined in accordance with [31.205-36\(b\)\(3\)](#).

(3) Costs incurred at the job site incident to performing the work, such as the cost of superintendence, timekeeping and clerical work, engineering, utility costs, supplies, material handling, restoration and cleanup, etc., are allowable as direct or indirect costs, provided the accounting practice used is in accordance with the contractor's established and consistently followed cost accounting practices for all work.

(4) Rental and any other costs, less any applicable credits incurred in acquiring the temporary use of land, structures, and facilities are allowable. Costs, less any applicable credits, incurred in constructing or fabricating structures and facilities of a temporary nature are allowable.

11. ADVANCE AGREEMENTS (FAR 31.109)

(a) The extent of allowability of the costs covered in this part applies broadly to many accounting systems in varying contract situations. Thus, the reasonableness, the allocability and the allowability under the specific cost principles at [Subparts 31.2, 31.3, 31.6, and 31.7](#) of certain costs may be difficult to determine. To avoid possible subsequent disallowance or dispute based on unreasonableness, unallocability or unallowability under the specific cost principles at [Subparts 31.2, 31.3, 31.6, and 31.7](#), contracting officers and contractors should seek advance agreement on the treatment of special or unusual costs and on statistical sampling methodologies at [31.201-6\(c\)](#). However, an advance agreement is not an absolute requirement and the absence of an advance agreement on any cost will not, in itself, affect the reasonableness, allocability or the allowability under the specific cost principles at [Subparts 31.2, 31.3, 31.6, and 31.7](#) of that cost.

(b) Advance agreements may be negotiated either before or during a contract but should be negotiated before incurrence of the costs involved. The agreements must be in writing, executed by both contracting parties, and incorporated into applicable current and future contracts. An advance agreement shall contain a statement of its applicability and duration.

(c) The contracting officer is not authorized by this [31.109](#) to agree to a treatment of costs inconsistent with this part. For example, an advance agreement may not provide that, notwithstanding [31.205-20](#), interest is allowable.

(d) Advance agreements may be negotiated with a particular contractor for a single contract, a group of contracts, or all the contracts of a contracting office, an agency, or several agencies.

(e) The cognizant administrative contracting officer (ACO), or other contracting officer established in Part 42, shall negotiate advance agreements except that an advance agreement affecting only one contract, or class of contracts from a single contracting office, shall be negotiated by a contracting officer in the contracting office, or an ACO when delegated by the contracting officer. When the negotiation authority is delegated, the ACO shall coordinate the proposed agreement with the contracting officer before executing the advance agreement.

(f) Before negotiating an advance agreement, the Authority's negotiator shall --

(1) Determine if other contracting offices inside the agency or in other agencies have a significant unliquidated dollar balance in contracts with the same contractor;

(2) Inform any such office or agency of the matters under consideration for negotiation; and

(3) As appropriate, invite the office or agency and the responsible audit agency to participate in pre-negotiation discussions and/or in the subsequent negotiations.

(g) Upon completion of the negotiation, the sponsor shall prepare and distribute to other interested agencies and offices, including the audit agency, copies of the executed agreement and a memorandum providing the information specified in [15.406-3](#), Price negotiation memorandum, as applicable.

(h) Examples for which advance agreements may be particularly important are --

(1) Compensation for personal services, including but not limited to allowances for off-site pay, incentive pay, location allowances, hardship pay, cost of living differential, and termination of defined benefit pension plans;

(2) Use charges for fully depreciated assets;

(3) Deferred maintenance costs;

(4) Precontract costs;

(5) Independent research and development and bid and proposal costs;

(6) Royalties and other costs for use of patents;

(7) Selling and distribution costs;

(8) Travel and relocation costs, as related to special or mass personnel movements, as related to travel via contractor-owned, -leased, or -chartered aircraft; or as related to maximum per diem rates;

(9) Costs of idle facilities and idle capacity;

(10) Severance pay to employees on support service contracts;

(11) Plant reconversion;

(12) Professional services (e.g., legal, accounting, and engineering);

(13) General and administrative costs (e.g., corporate, division, or branch allocations) attributable to the general management, supervision, and conduct of the contractor's business as a whole. These costs are particularly significant in construction, job-site, architect-engineer, facilities, and Government-owned contractor operated (GOCO) plant contracts (see [31.203\(h\)](#));

(14) Costs of construction plant and equipment (see [31.105\(d\)](#));

(15) Costs of public relations and advertising; and

(16) Statistical sampling methods (see [31.201-6\(c\)\(4\)](#)).

12. INDIRECT COST RATE CERTIFICATION AND PENALTIES ON UNALLOWABLE COSTS. (FAR 31-110)

(a) Certain contracts require certification of the indirect cost rates proposed for final payment purposes. See [42.703-2](#) for administrative procedures regarding the certification provisions and the related contract clause prescription.

(b) If unallowable costs are included in final indirect cost settlement proposals, penalties may be assessed. See [42.709](#) for administrative procedures regarding the penalty assessment provisions and the related contract clause prescription.

13. CONTRACTS WITH COMMERCIAL ORGANIZATIONS (FAR 31.2)

(a) Composition of Total Cost.

(1) The total cost, including standard costs properly adjusted for applicable variances, of a contract is the sum of the direct and indirect costs allocable to the contract, incurred or to be incurred, plus any allocable cost of money pursuant to [31.205-10](#), less any allocable credits. In ascertaining what constitutes a cost, any generally accepted method of determining or estimating costs that is equitable and is consistently applied may be used.

(2) While the total cost of a contract includes all costs properly allocable to the contract, the allowable costs to the Authority are limited to those allocable costs which are allowable pursuant to Part 31 and applicable agency supplements.

14. DETERMINING ALLOWABILITY. (FAR 31.201-2)

(a) A cost is allowable only when the cost complies with all of the following requirements:

(1) Reasonableness.

(2) Allocability.

(3) Standards promulgated by the CAS Board, if applicable; otherwise, generally accepted accounting principles and practices appropriate to the circumstances.

(4) Terms of the contract.

(5) Any limitations set forth in this subpart.

(b) Certain cost principles in this subpart incorporate the measurement, assignment, and allocability rules of selected CAS and limit the allowability of costs to the amounts determined using the criteria in those selected standards. Only those CAS or portions of standards specifically made applicable by the cost principles in this subpart are mandatory unless the contract is CAS-covered (see Part 30). Business units that are not otherwise subject to these standards under a CAS clause are subject to the selected standards only for the purpose of determining allowability of costs on Government contracts. Including the selected standards in the cost principles does not subject the business unit to any other CAS rules and regulations. The applicability of the CAS rules and regulations is determined by the CAS clause, if any, in the contract and the requirements of the standards themselves.

(c) When contractor accounting practices are inconsistent with this [Subpart 31.2](#), costs resulting from such inconsistent practices in excess of the amount that would have resulted from using practices consistent with this subpart are unallowable.

(d) A contractor is responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with applicable cost principles in this subpart and agency supplements. The contracting officer may disallow all or part of a claimed cost that is inadequately supported.

15. DETERMINING REASONABLENESS. (FAR 31.201-3)

(a) A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. Reasonableness of specific costs must be examined with particular care in connection with firms or their separate divisions that may not be subject to effective competitive restraints. No presumption of reasonableness shall be attached to the incurrence of costs by a contractor. If an initial review of the facts results in a challenge of a specific cost by the contracting officer or the contracting officer's representative, the burden of proof shall be upon the contractor to establish that such cost is reasonable.

- (b) What is reasonable depends upon a variety of considerations and circumstances, including --
- (1) Whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the contractor's business or the contract performance;
 - (2) Generally accepted sound business practices, arm's-length bargaining, and Federal and State laws and regulations;
 - (3) The contractor's responsibilities to the Authority, other customers, the owners of the business, employees, and the public at large; and
 - (4) Any significant deviations from the contractor's established practices.

16. DETERMINING ALLOCABILITY. (FAR 31.201-4)

A cost is allocable if it is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a Government contract if it --

- (a) Is incurred specifically for the contract;
- (b) Benefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received; or
- (c) Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

17. CREDITS. (FAR 31.201-5)

The applicable portion of any income, rebate, allowance, or other credit relating to any allowable cost and received by or accruing to the contractor shall be credited to the Authority either as a cost reduction or by cash refund. See 31.205-6(j)(3) for rules governing refund or credit to the Authority associated with pension adjustments and asset reversions.

18. ACCOUNTING FOR UNALLOWABLE COSTS. (FAR 31.201-6)

- (a) Costs that are expressly unallowable or mutually agreed to be unallowable, including mutually agreed to be unallowable directly associated costs, shall be identified and excluded from any billing, claim, or proposal applicable to a Government contract. A directly associated cost is any cost that is generated solely as a result of incurring another cost, and that would not have been incurred had the other cost not been incurred. When an unallowable cost is incurred, its directly associated costs are also unallowable.
- (b) Costs that specifically become designated as unallowable or as unallowable directly associated costs of unallowable costs as a result of a written decision furnished by a contracting officer shall be identified if included in or used in computing any billing, claim, or proposal applicable to a Government contract. This identification requirement applies also to any costs incurred for the same purpose under like circumstances as the costs specifically identified as unallowable under either this paragraph or paragraph (a) above.
- (c)
 - (1) The practices for accounting for and presentation of unallowable costs must be those described in 48 CFR 9904.405, Accounting for Unallowable Costs.

(2) Statistical sampling is an acceptable practice for contractors to follow in accounting for and presenting unallowable costs provided the following criteria in paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this subsection are met:

(i) The statistical sampling results in an unbiased sample that is a reasonable representation of the sampling universe.

(ii) Any large dollar value or high risk transaction is separately reviewed for unallowable costs and excluded from the sampling process.

(iii) The statistical sampling permits audit verification.

(3) For any indirect cost in the selected sample that is subject to the penalty provisions at [42.709](#), the amount projected to the sampling universe from that sampled cost is also subject to the same penalty provisions.

(4) Use of statistical sampling methods for identifying and segregating unallowable costs should be the subject of an advance agreement under the provisions of [31.109](#) between the contractor and the cognizant administrative contracting officer or Federal official. The advance agreement should specify the basic characteristics of the sampling process. The cognizant administrative contracting officer or Federal official shall request input from the cognizant auditor before entering into any such agreements.

(5) In the absence of an advance agreement, if an initial review of the facts results in a challenge of the statistical sampling methods by the contracting officer or the contracting officer's representative, the burden of proof shall be on the contractor to establish that such a method meets the criteria in paragraph (c)(2) of this subsection.

(d) If a directly associated cost is included in a cost pool that is allocated over a base that includes the unallowable cost with which it is associated, the directly associated cost shall remain in the cost pool. Since the unallowable costs will attract their allocable share of costs from the cost pool, no further action is required to assure disallowance of the directly associated costs. In all other cases, the directly associated costs, if material in amount, must be purged from the cost pool as unallowable costs.

(1) In determining the materiality of a directly associated cost, consideration should be given to the significance of --

(i) The actual dollar amount,

(ii) The cumulative effect of all directly associated costs in a cost pool, and

(iii) The ultimate effect on the cost of Government contracts.

(2) Salary expenses of employees who participate in activities that generate unallowable costs shall be treated as directly associated costs to the extent of the time spent on the proscribed activity, provided the costs are material in accordance with subparagraph (e)(1) above (except when such salary expenses are, themselves, unallowable). The time spent in proscribed activities should be compared to total time spent on company activities to determine if the costs are material. Time spent by employees outside the normal working hours should not be considered except when it is evident that an employee engages so frequently in company activities during periods outside normal working hours as to indicate that such activities are a part of the employee's regular duties.

(3) When a selected item of cost under [31.205](#) provides that directly associated costs be unallowable, such directly associated costs are unallowable only if determined to be material in amount in accordance with the criteria provided in paragraphs (e)(1) and (e)(2) of this section, except in those situations where allowance of any of the directly associated costs involved would be considered to be contrary to public policy.

19. CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS. (FAR 31.201-7)

Specific principles and procedures for evaluating and determining costs in connection with contracts and subcontracts for construction, and architect-engineer contracts related to construction projects, are in 31.105. The applicability of these principles and procedures is set forth in 31.000 and 31.100.

20. DIRECT COSTS. (FAR 31.202)

(a) No final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose in like circumstances have been included in any indirect cost pool to be allocated to that or any other final cost objective. Direct costs of the contract shall be charged directly to the contract. All costs specifically identified with other final cost objectives of the contractor are direct costs of those cost objectives and are not to be charged to the contract directly or indirectly.

(b) For reasons of practicality, the contractor may treat any direct cost of a minor dollar amount as an indirect cost if the accounting treatment --

- (1) Is consistently applied to all final cost objectives; and
- (2) Produces substantially the same results as treating the cost as a direct cost.

21. INDIRECT COSTS. (FAR 31.203)

(a) For contracts subject to full CAS coverage, allocation of indirect costs shall be based on the applicable provisions. For all other contracts, the applicable CAS provisions in paragraphs (b) through (h) of this section apply.

(b) After direct costs have been determined and charged directly to the contract or other work, indirect costs are those remaining to be allocated to intermediate or two or more final cost objectives. No final cost objective shall have allocated to it as an indirect cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost objective.

(c) The contractor shall accumulate indirect costs by logical cost groupings with due consideration of the reasons for incurring such costs. The contractor shall determine each grouping so as to permit use of an allocation base that is common to all cost objectives to which the grouping is to be allocated. The base selected shall allocate the grouping on the basis of the benefits accruing to intermediate and final cost objectives. When substantially the same results can be achieved through less precise methods, the number and composition of cost groupings should be governed by practical considerations and should not unduly complicate the allocation.

(d) Once an appropriate base for allocating indirect costs has been accepted, the contractor shall not fragment the base by removing individual elements. All items properly includable in an indirect cost base shall bear a pro rata share of indirect costs irrespective of their acceptance as Government contract costs. For example, when a cost input base is used for the allocation of G&A costs, the contractor shall include in the base all items that would properly be part of the cost input base, whether allowable or unallowable, and these items shall bear their pro rata share of G&A costs.

(e) The method of allocating indirect costs may require revision when there is a significant change in the nature of the business, the extent of subcontracting, fixed-asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances.

(f) Separate cost groupings for costs allocable to offsite locations may be necessary to permit equitable distribution of costs on the basis of the benefits accruing to the several cost objectives.

(g) A base period for allocating indirect costs is the cost accounting period during which such costs are incurred and accumulated for allocation to work performed in that period.

(1) For contracts subject to full or modified CAS coverage, the contractor shall follow the criteria and guidance in 48 CFR 9904.406 for selecting the cost accounting periods to be used in allocating indirect costs.

(2) For contracts other than those subject to paragraph (g)(1) of this section, the base period for allocating indirect costs shall be the contractor's fiscal year used for financial reporting purposes in accordance with generally accepted accounting principles. The fiscal year will normally be 12 months, but a different period may be appropriate (e.g., when a change in fiscal year occurs due to a business combination or other circumstances).

(h) Special care should be exercised in applying the principles of paragraphs (c), (d), and (e) of this section when Government-owned contractor-operated (GOCO) plants are involved. The distribution of corporate, division or branch office G&A expenses to such plants operating with little or no dependence on corporate administrative activities may require more precise cost groupings, detailed accounts screening, and carefully developed distribution bases.

(i) Indirect costs that meet the definition of "excessive pass-through charge" in [52.215-23](#), are unallowable.

22. APPLICATION OF PRINCIPLES AND PROCEDURES. (FAR 31.204)

(a) Costs are allowable to the extent they are reasonable, allocable, and determined to be allowable under [31.201](#), [31.202](#), [31.203](#), and [31.205](#). These criteria apply to all of the selected items that follow, even if particular guidance is provided for certain items for emphasis or clarity.

(1) For the following subcontract types, costs incurred as reimbursement or payments to a subcontractor are allowable to the extent the reimbursements or payments are for costs incurred by the subcontractor that are consistent with this part:

(i) Costs-reimbursement.

(ii) Fixed-price incentive.

(iii) Price redeterminable (*i.e.*, firm-fixed-price contracts with prospective price redetermination and fixed ceiling-price contracts with retroactive price redetermination).

(2) The requirements of paragraph (b)(1) of this section apply to any tier above the first firm-fixed-price subcontract or fixed-price subcontract with economic price adjustment provisions.

(b) Costs incurred as payments under firm-fixed-price subcontracts or fixed-price subcontracts with economic price adjustment provisions or modifications thereto, for which subcontract cost analysis was performed are allowable if the price was negotiated in accordance with [31.102](#).

(c) Section [31.205](#) does not cover every element of cost. Failure to include any item of cost does not imply that it is either allowable or unallowable. The determination of allowability shall be based on the principles and standards in this subpart and the treatment of similar or related selected items. When more than one subsection in [31.205](#) is relevant to a contractor cost, the cost shall be apportioned among the applicable subsections, and the determination of allowability of each portion shall be based on the guidance contained in the applicable subsection. When a cost, to which more than one subsection in [31.205](#) is relevant, cannot be apportioned, the determination of allowability shall be based on the guidance contained in the subsection that most specifically deals with, or best captures the essential nature of, the cost at issue.

23. PUBLIC RELATIONS AND ADVERTISING COSTS. (FAR 31.205-1)

(a) "Public relations" means all functions and activities dedicated to --

(1) Maintaining, protecting, and enhancing the image of a concern or its products; or

(2) Maintaining or promoting reciprocal understanding and favorable relations with the public at large, or any segment of the public. The term public relations includes activities associated with areas such as advertising, customer relations, etc.

(b) "Advertising" means the use of media to promote the sale of products or services and to accomplish the activities referred to in paragraph (d) of this subsection, regardless of the medium employed, when the advertiser has control over the form and content of what will appear, the media in which it will appear, and when it will appear. Advertising media include but are not limited to conventions, exhibits, free goods, samples, magazines, newspapers, trade papers, direct mail, dealer cards, window displays, outdoor advertising, radio, and television.

(c) Public relations and advertising costs include the costs of media time and space, purchased services performed by outside organizations, as well as the applicable portion of salaries, travel, and fringe benefits of employees engaged in the functions and activities identified in paragraphs (a) and (b) of this subsection.

(d) The only allowable advertising costs are those that are --

(1) Specifically required by contract, or that arise from requirements of Government contracts and that are exclusively for --

- (i) Acquiring scarce items for contract performance; or
- (ii) Disposing of scrap or surplus materials acquired for contract performance.

(2) Costs of activities to promote sales of products normally sold to the U.S. Government, including trade shows, which contain a significant effort to promote exports from the United States. Such costs are allowable, notwithstanding paragraphs (f)(1), (f)(3), (f)(4)(ii), and (f)(5) of this subsection. However, such costs do not include the costs of memorabilia (e.g., models, gifts, and souvenirs), alcoholic beverages, entertainment, and physical facilities that are primarily used for entertainment rather than product promotion; or

(3) Allowable in accordance with [31.205-34](#).

(e) Allowable public relations costs include the following:

(1) Costs specifically required by contract.

(2) Costs of --

- (i) Responding to inquiries on company policies and activities;
- (ii) Communicating with the public, press, stockholders, creditors, and customers; and

(iii) Conducting general liaison with news media and Government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern such as notice of contract awards, plant closings or openings, employee layoffs or rehires, financial information, etc.

(3) Costs of participation in community service activities (e.g., blood bank drives, charity drives, savings bond drives, disaster assistance, etc.) (But see paragraph (f)(8) of this section.)

(4) Costs of plant tours and open houses (but see subparagraph (f)(5) of this subsection).

(5) Costs of keel laying, ship launching, commissioning, and roll-out ceremonies, to the extent specifically provided for by contract.

(f) Unallowable public relations and advertising costs include the following:

(1) All public relations and advertising costs, other than those specified in paragraphs (d) and (e) of this subsection, whose primary purpose is to promote the sale of products or services by stimulating interest in a product or product line (except for those costs made allowable under [31.205-38\(b\)\(5\)](#)), or by disseminating messages calling favorable attention to the contractor for purposes of enhancing the company image to sell the company's products or services.

(2) All costs of trade shows and other special events which do not contain a significant effort to promote the export sales of products normally sold to the U.S. Government.

(3) Costs of sponsoring meetings, conventions, symposia, seminars, and other special events when the principal purpose of the event is other than dissemination of technical information or stimulation of production.

(4) Costs of ceremonies such as --

(i) Corporate celebrations and

(ii) New product announcements.

(5) Costs of promotional material, motion pictures, videotapes, brochures, handouts, magazines, and other media that are designed to call favorable attention to the contractor and its activities.

(6) Costs of souvenirs, models, imprinted clothing, buttons, and other mementos provided to customers or the public.

(7) Costs of memberships in civic and community organizations.

(8) Costs associated with the donation of excess food to nonprofit organizations in accordance with the Federal Food Donation Act of 2008 (42 U.S.C. 1792, see FAR [subpart 26.4](#)).

24. BAD DEBTS. (FAR 31.205-3)

Bad debts, including actual or estimated losses arising from uncollectible accounts receivable due from customers and other claims, and any directly associated costs such as collection costs, and legal costs are unallowable.

25. BONDING COSTS. (FAR 31.205-4)

(a) Bonding costs arise when the Authority requires assurance against financial loss to itself or others by reason of the act or default of the contractor. They arise also in instances where the contractor requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

(b) Costs of bonding required pursuant to the terms of the contract are allowable.

(c) Costs of bonding required by the contractor in the general conduct of its business are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

26. COMPENSATION FOR PERSONAL SERVICES. (FAR 31.205-6)

(a) *General.* Compensation for personal services is allowable subject to the following general criteria and additional requirements contained in other parts of this cost principle:

(1) Compensation for personal services must be for work performed by the employee in the current year and must not represent a retroactive adjustment of prior years' salaries or wages (but see paragraphs (g), (h), (j), (k), (m), and (o) of this subsection).

(2) The total compensation for individual employees or job classes of employees must be reasonable for the work performed; however, specific restrictions on individual compensation elements apply when prescribed.

(3) The compensation must be based upon and conform to the terms and conditions of the contractor's established compensation plan or practice followed so consistently as to imply, in effect, an agreement to make the payment.

(4) No presumption of allowability will exist where the contractor introduces major revisions of existing compensation plans or new plans and the contractor has not provided the cognizant ACO, either before implementation or within a reasonable period after it, an opportunity to review the allowability of the changes.

(5) Costs that are unallowable under other paragraphs of this [Subpart 31.2](#) are not allowable under this subsection [31.205-6](#) solely on the basis that they constitute compensation for personal services.

(6)

(i) Compensation costs for certain individuals give rise to the need for special consideration. Such individuals include:

(A) Owners of closely held corporations, members of limited liability companies, partners, sole proprietors, or members of their immediate families; and

(B) Persons who are contractually committed to acquire a substantial financial interest in the contractor's enterprise.

(ii) For these individuals, compensation must—

(A) Be reasonable for the personal services rendered; and

(B) Not be a distribution of profits (which is not an allowable contract cost).

(iii) For owners of closely held companies, compensation in excess of the costs that are deductible as compensation under the Internal Revenue Code (26 U.S.C.) and regulations under it is unallowable.

(b) Reasonableness—

(1) *Compensation pursuant to labor-management agreements.* If costs of compensation established under "arm's length" labor-management agreements negotiated under the terms of the Federal Labor Relations Act or similar state statutes are otherwise allowable, the costs are reasonable unless, as applied to work in performing Government contracts, the costs are unwarranted by the character and circumstances of the work or discriminatory against the Government. The application of the provisions of a labor-management agreement designed to apply to a given set of circumstances and conditions of employment (e.g., work involving extremely hazardous activities or work not requiring recurrent use of overtime) is unwarranted when applied to a Government contract involving significantly different circumstances and conditions of employment (e.g., work involving less hazardous activities or work continually requiring use of overtime). It is discriminatory against the Government if it results in employee compensation (in whatever form or name) in excess of that being paid for similar non-Government work under comparable circumstances.

(2) *Compensation not covered by labor-management agreements.* Compensation for each employee or job class of employees must be reasonable for the work performed. Compensation is reasonable if the aggregate of each measurable and allowable element sums to a reasonable total. In determining the reasonableness of total

compensation, consider only allowable individual elements of compensation. In addition to the provisions of [31.201-3](#), in testing the reasonableness of compensation for particular employees or job classes of employees, consider factors determined to be relevant by the contracting officer. Factors that may be relevant include, but are not limited to, conformity with compensation practices of other firms—

- (i) Of the same size;
- (ii) In the same industry;
- (iii) In the same geographic area; and
- (iv) Engaged in similar non-government work under comparable circumstances.

(c) [Reserved]

(d) *Form of payment.*

(1) Compensation for personal services includes compensation paid or to be paid in the future to employees in the form of—

- (i) Cash;
- (ii) Corporate securities, such as stocks, bonds, and other financial instruments (see paragraph (d)(2) of this subsection regarding valuation); or
- (iii) Other assets, products, or services.

(2) When compensation is paid with securities of the contractor or of an affiliate, the following additional restrictions apply:

- (i) Valuation placed on the securities shall be the fair market value on the first date the number of shares awarded is known, determined upon the most objective basis available.
- (ii) Accruals for the cost of securities before issuing the securities to the employees are subject to adjustment according to the possibilities that the employees will not receive the securities and that their interest in the accruals will be forfeited.

(e) *Income tax differential pay.*

(1) Differential allowances for additional income taxes resulting from foreign assignments are allowable.

(2) Differential allowances for additional income taxes resulting from domestic assignments are unallowable. (However, payments for increased employee income or Federal Insurance Contributions Act taxes incident to allowable reimbursed relocation costs are allowable under [31.205-35\(a\)\(10\)](#).)

(f) *Bonuses and incentive compensation.*

(1) Bonuses, and incentive compensation are allowable provided the—

- (i) Awards are paid or accrued under an agreement entered into in good faith between the contractor and the employees before the services are rendered or pursuant to an established plan or policy followed by the contractor so consistently as to imply, in effect, an agreement to make such payment; and

(ii) Basis for the award is supported.

(2) When the bonus and incentive compensation payments are deferred, the costs are subject to the requirements of paragraphs (f)(1) and (k) of this subsection.

(g) *Severance pay.*

(1) Severance pay is a payment in addition to regular salaries and wages by contractors to workers whose employment is being involuntarily terminated. Payments for early retirement incentive plans are covered in subparagraph (j)(6) of this subsection.

(2) Severance pay is allowable only to the extent that, in each case, it is required by—

(i) Law

(ii) Employer-employee agreement.

(iii) Established policy that constitutes, in effect, an implied agreement on the contractor's part; or

(iv) Circumstances of the particular employment.

(3) Payments made in the event of employment with a replacement contractor where continuity of employment with credit for prior length of service is preserved under substantially equal conditions of employment, or continued employment by the contractor at another facility, subsidiary, affiliate, or parent company of the contractor are not severance pay and are unallowable.

(4) Actual normal turnover severance payments shall be allocated to all work performed in the contractor's plant. However, if the contractor uses the accrual method to account for normal turnover severance payments, that method will be acceptable if the amount of the accrual is—

(i) Reasonable in light of payments actually made for normal severances over a representative past period; and

(ii) Allocated to all work performed in the contractor's plant.

(5) Abnormal or mass severance pay is of such a conjectural nature that accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, the government will consider allowability on a case-by-case basis.

(6) Under 10 U.S.C 2324(e)(1)(M) and 41 U.S.C. 4304(a)(13), the costs of severance payments to foreign nationals employed under a service contract performed outside the United States are unallowable to the extent that such payments exceed amounts typically paid to employees providing similar services in the same industry in the United States. Further, under 10 U.S.C 2324(e)(1)(N) and 41 U.S.C. 4304(a)(14), all such costs of severance payments that are otherwise allowable are unallowable if the termination of employment of the foreign national is the result of the closing of, or the curtailment of activities at, a United States facility in that country at the request of the government of the government of that country; this does not apply if the closing of a facility or curtailment of activities is made pursuant to a status-of-forces or other country-to-country agreement entered into with the government of that country before November 29, 1989. 10 U.S.C 2324(e)(3) and 41 U.S.C. 4304(b) permit the head of the agency to waive these cost allowability limitations under certain circumstances (see [37.113](#) and the solicitation provision at [52.237-8](#)).

(h) *Backpay.* Backpay is a retroactive adjustment of prior years' salaries or wages. Backpay is unallowable except as follows:

(1) Payments to employees resulting from underpaid work actually performed are allowable, if required by a negotiated settlement, order, or court decree.

(2) Payments to union employees for the difference in their past and current wage rates for working without a contract or labor agreement during labor management negotiation are allowable:

(3) Payments to nonunion employees based upon results of union agreement negotiation are allowable only if--

(i) A formal agreement or understanding exists between management and the employees concerning these payments, or

(ii) An established policy or practice exists and is followed by the contractor so consistently as to imply, in effect, an agreement to make such payments.

(i) Compensation based on changes in the prices of corporate securities or corporate security ownership, such as stock options, stock appreciation rights, phantom stock plans, and junior stock conversions.

(1) Any compensation which is calculated, or valued, based on changes in the price of corporate securities is unallowable.

(2) Any compensation represented by dividend payments or which is calculated based on dividend payments is unallowable.

(3) If a contractor pays an employee in lieu of the employee receiving or exercising a right, option, or benefit which would have been unallowable under this paragraph (i), such payments are also unallowable.

(j) *Pension costs.*

(1) Pension plans are normally segregated into two types of plans: defined-benefit and defined-contribution pension plans. The contractor shall measure, assign, and allocate the costs of all defined-benefit pension plans and the costs of all defined-contribution pension plans in compliance with 48 CFR 9904.412—Cost Accounting Standard for Composition and Measurement of Pension Cost, and 48 CFR 9904.413—Adjustment and Allocation of Pension Cost. Pension costs are allowable subject to the referenced standards and the cost limitations and exclusions set forth in paragraph (j)(1)(i) and in paragraphs (j)(2) through (j)(6) of this subsection.

(i) Except for nonqualified pension plans using the pay-as-you-go cost method, to be allowable in the current year, the contractor shall fund pension costs by the time set for filing of the Federal income tax return or any extension. Pension costs assigned to the current year, but not funded by the tax return time, are not be allowable in any subsequent year. For nonqualified pension plans using the pay-as-you-go method, to be allowable in the current year, the contractor shall allocate pension costs in the cost accounting period that the pension costs are assigned.

(ii) Pension payments must be paid pursuant to an agreement entered into in good faith between the contractor and employees before the work or services are performed and to the terms and conditions of the established plan. The cost of changes in pension plans are not allowable if the changes are discriminatory to the Government or are not intended to be applied consistently for all employees under similar circumstances in the future.

(iii) Except as provided for early retirement benefits in subparagraph (j)(6) of this subsection, one-time-only pension supplements not available to all participants of the basic plan are not allowable as pension costs, unless the supplemental benefits represent a separate pension plan and the benefits are payable for life at the option of the employee.

(iv) Increases in payments to previously retired plan participants covering cost-of-living adjustments are allowable if paid in accordance with a policy or practice consistently followed.

(2) *Defined- benefit pension plans.* The cost limitations and exclusions pertaining to defined-benefit plans are as follows:

(k)

(A) Except for nonqualified pension plans, pension costs (see 48 CFR 9904.412-40(a)(1)) assigned to the current accounting period, but not funded during it, are not allowable in subsequent years (except that a payment made to a fund by the time set for filing the Federal income tax return or any extension thereof is considered to have been made during such taxable year). However, any portion of pension cost computed for a cost accounting period, that exceeds the amount required to be funded pursuant to a waiver granted under the provisions of the Employee Retirement Income Security Act of 1974 (ERISA), will be allowable in those future accounting periods in which the funding of such excess amounts occurs (see 48 CFR 9904.412-50(c)(5)).

(B) For nonqualified pension plans, except those using the pay-as-you-go cost method, allowable costs are limited to the amount allocable in accordance with 48 CFR 9904.412-50(d)(2).

(C) For nonqualified pension plans using the pay-as-you-go cost method, allowable costs are limited to the amounts allocable in accordance with 48 CFR 9904.412-50(d)(3).

(ii) Any amount funded in excess of the pension cost assigned to a cost accounting period is not allowable and shall be accounted for as set forth at 48 CFR 9904.412-50(a)(4). The excess amount is allowable in the future period to which it is assigned, to the extent it is not otherwise unallowable.

(iii) Increased pension costs are unallowable if the increase is caused by a delay in funding beyond 30 days after each quarter of the year to which they are assignable. If a composite rate is used for allocating pension costs between the segments of a company and if, because of differences in the timing of the funding by the segments, an inequity exists, allowable pension costs for each segment will be limited to that particular segment's calculation of pension costs as provided for in 48 CFR 9904.413-50(c). The contractor shall make determinations of unallowable costs in accordance with the actuarial method used in calculating pension costs.

(iv) The contracting officer will consider the allowability of the cost of indemnifying the Pension Benefit Guaranty Corporation (PBGC) under ERISA Section 4062 or 4064 arising from terminating an employee deferred compensation plan on a case-by-case basis; provided that if insurance was required by the PBGC under ERISA section 4023, it was so obtained and the indemnification payment is not recoverable under the insurance. Consideration under the foregoing circumstances will be primarily for the purpose of appraising the extent to which the indemnification payment is allocable to work. If a beneficial or other equitable relationship exists, the Authority will participate, despite the requirements of [31.205-19\(c\)\(3\)](#) and (d)(3), in the indemnification payment to the extent of its fair share.

(v) Increased pension costs resulting from the withdrawal of assets from a pension fund and transfer to another employee benefit plan fund, or transfer of assets to another account within the same fund, are unallowable except to the extent authorized by an advance agreement. If the withdrawal of assets from a pension fund is a plan termination under ERISA, the provisions of paragraph (j)(3) of this subsection apply. The advance agreement shall--

(A) State the amount of the Authority's equitable share in the gross amount withdrawn or transferred; and

(B) Provide that the Authority receives a credit equal to the amount of the Authority's equitable share of the gross withdrawal or transfer.

(3) *Pension adjustments and asset reversions.*

(i) For segment closings, pension plan terminations, or curtailment of benefits, the amount adjustment shall be—

(A) For contracts and subcontracts that are subject to full coverage under the Cost Accounting Standards (CAS) Board rules and regulations, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12); and

(B) For contracts and subcontracts that are not subject to full coverage under the CAS, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) is the sum of the pension plan costs allocated to all non-CAS-covered contracts and subcontracts that are subject to [Subpart 31.2](#) or for which certified cost or pricing data were submitted.

(ii) For all other situations where assets revert to the contractor, or such assets are constructively received by it for any reason, the contractor shall, at the Authority's option, make a refund or give a credit to the Authority for its equitable share of the gross amount withdrawn. The Authority's equitable share shall reflect the Authority's participation in pension costs through those contracts for which certified cost or pricing data were submitted or that are subject to [Subpart 31.2](#). Excise taxes on pension plan asset reversions or withdrawals under this paragraph (j)(3)(ii) are unallowable in accordance with [31.205-41\(b\)\(6\)](#).

(4) *Defined-contribution pension plans.* In addition to defined-contribution pension plans, this paragraph also covers profit sharing, savings plans, and other such plans, provided the plans fall within the definition of a pension plan at [31.001](#).

(i) Allowable pension cost is limited to the net contribution required to be made for a cost accounting period after taking into account dividends and other credits, where applicable. However, any portion of pension cost computed for a cost accounting period that exceeds the amount required to be funded pursuant to a waiver granted under the provisions of ERISA will be allowable in those future accounting periods in which the funding of such excess amounts occurs (see 48 CFR 9904.412-50(c)(5)).

(ii) The provisions of paragraphs (j)(2)(ii) and (iv) of this subsection apply to defined-contribution plans.

(5) *Pension plans using the pay-as-you-go cost method.* When using the pay-as-you-go cost method, the contractor shall measure, assign, and allocate the cost of pension plans in accordance with 48 CFR 9904.412 and 9904.413. Pension costs for a pension plan using the pay-as-you-go cost method are allowable to the extent they are not otherwise unallowable.

(6) *Early retirement incentives.* An early retirement incentive plan is an incentive given to an employee to retire early. For contract costing purposes, costs of early retirement incentives are allowable subject to the pension cost criteria in contained in paragraphs (j)(2)(i) through (iv) of this subsection provided--

(i) The contractor measures, assigns, and allocates the costs in accordance with the contractor's accounting practices for pension costs;

(ii) The incentives are in accordance with the terms and conditions of an early retirement incentive plan;

(iii) The contractor applies the plan only to active employees. The cost of extending the plan to employees who retired or were terminated before the adoption of the plan is unallowable; and

(iv) The present value of the total incentives given to any employee in excess of the amount of the employee's annual salary for the previous fiscal year before the employee's retirement is unallowable. The contractor shall compute the present value in accordance with its accounting practices for pension costs. The contractor shall account for any unallowable costs in accordance with 48 CFR 9904.412-50(a)(2).

(k) *Deferred compensation other than pensions.* The costs of deferred compensation awards are allowable subject to the following limitations:

(1) The costs shall be measured, assigned and allocated in accordance with 48 CFR 9904.415, Accounting for the Cost of Deferred Compensation.

(2) The costs of deferred compensation awards are unallowable if the awards are made in periods subsequent to the period when the work being remunerated was performed.

(l) *Compensation incidental to business acquisitions. The following costs are unallowable:*

(1) Payments to employees under agreements in which they receive special compensation, in excess of the contractor's normal severance pay practice, if their employment terminates following a change in the management control over, or ownership of, the contractor or a substantial portion of its assets.

(2) Payments to employees under plans introduced in connection with a change (whether actual or prospective) in the management control over, or ownership of, the contractor or a substantial portion of its assets in which those employees receive special compensation, which is contingent upon the employee remaining with the contractor for a specified period of time.

(m) *Fringe benefits.*

(1) Fringe benefits are allowances and services provided by the contractor to its employees as compensation in addition to regular wages and salaries. Fringe benefits include, but are not limited to, the cost of vacations, sick leave, holidays, military leave, employee insurance, and supplemental unemployment benefit plans. Except as provided otherwise in [Subpart 31.2](#), the costs of fringe benefits are allowable to the extent that they are reasonable and are required by law, employer-employee agreement, or an established policy of the contractor.

(2) That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable regardless of whether the cost is reported as taxable income to the employees (see [31.205-46\(d\)](#)).

(n) *Employee rebate and purchase discount plans.* Rebates and purchase discounts, in whatever form, granted to employees on products or services produced by the contractor or affiliates are unallowable.

(o) *Postretirement benefits other than pensions (PRB).*

(1) PRB covers all benefits, other than cash benefits and life insurance benefits paid by pension plans, provided to employees, their beneficiaries, and covered dependents during the period following the employees' retirement. Benefits encompassed include, but are not limited to, postretirement health care; life insurance provided outside a pension plan; and other welfare benefits such as tuition assistance, day care, legal services, and housing subsidies provided after retirement.

(2) To be allowable, PRB costs shall be incurred pursuant to law, employer-employee agreement, or an established policy of the contractor, and shall comply with paragraphs (o)(2)(i), (ii), or (iii) of this subsection.

(i) *Pay-as-you-go.* PRB costs are not accrued during the working lives of employees. Costs are assigned to the period in which—

(A) Benefits are actually provided; or

(B) The costs are paid to an insurer, provider, or other recipient for current year benefits or premiums.

(ii) *Terminal funding.* PRB costs are not accrued during the working lives of the employees.

(A) Terminal funding occurs when the entire PRB liability is paid in a lump sum upon the termination of employees (or upon conversion to such a terminal-funded plan) to an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees.

(B) Terminal funded costs shall be amortized over a period of 15 years.

(iii) *Accrual basis.* PRB costs are accrued during the working lives of employees. Accrued PRB costs shall comply with the following:

(A) Be measured and assigned in accordance with one of the following two methods described under paragraphs (o)(2)(iii)(A)(1) or (o)(2)(iii)(A)(2) of this subsection:

(1) *Generally accepted accounting principles.* However, transitions from the pay-as-you-go method to the accrual accounting method must be handled according to paragraphs (o)(2)(iii)(A)(1)(i) through (iii) of this subsection.

(i) In the year of transition from the pay-as-you-go method to accrual accounting for purposes of Government contract cost accounting, the transition obligation shall be the excess of the accumulated PRB obligation over the fair value of plan assets determined in accordance with subparagraph (o)(2)(iii)(E) of this subsection; the fair value must be reduced by the prepayment credit as determined in accordance with subparagraph (o)(2)(iii)(F) of this subsection.

(ii) PRB cost attributable to the transition obligation assigned to the current year that is in excess of the amount assignable to accounting periods on the basis of a straight line amortization of the transition obligation over the average remaining working lives of active employees covered by the PRB plan or a 20-year period, whichever period is longer, is unallowable. However, if the plan is comprised of inactive participants only, the PRB cost attributable to the transition obligation assigned to the current year that is in excess of the amount assignable to accounting periods on a straight line amortization of the transition obligation over the average future life expectancy of the participants is unallowable.

(iii) For a plan that transitioned from pay-as-you-go to accrual accounting for Government contract cost accounting prior to July 22, 2013, the unallowable amount of PRB cost attributable to the transition obligation amortization shall continue to be based on the cost principle in effect at the time of the transition until the original transition obligation schedule is fully amortized.

(2) *Contributions to a welfare benefit fund determined in accordance with applicable Internal Revenue Code.* Allowable PRB costs based on such contributions shall—

(i) Be measured using reasonable actuarial assumptions, which shall include a health care inflation assumption unless prohibited by the Internal Revenue Code provision governing welfare benefit funds;

(ii) Be assigned to accounting periods on the basis of the average working lives of active employees covered by the PRB plan or a 15 year period, whichever period is longer. However, if the plan is comprised of inactive participants only, the cost shall be spread over the average future life expectancy of the participants; and

(iii) Exclude Federal income taxes, whether incurred by the fund or the contractor (including any increase in PRB costs associated with such taxes), unless the fund holding the plan assets is tax-exempt under the provisions of 26 USC 501(c).

(B) Be paid to an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The assets shall be segregated in the trust, or otherwise effectively restricted, so that they cannot be used by the employer for other purposes.

(C) Be calculated in accordance with generally accepted actuarial principles and practices as promulgated by the Actuarial Standards Board.

(D) Eliminate from costs of current and future periods the accumulated value of any prior period costs that were unallowable in accordance with paragraph (o)(3) of this section, adjusted for interest under paragraph (o)(4) of this section.

(E) Calculate the unfunded actuarial liability (unfunded accumulated postretirement benefit obligation) using the market (fair) value of assets that have been accumulated by the funding costs assigned to prior periods for contract accounting purposes.

(F) Recognize as a prepayment credit the market (fair) value of assets that were accumulated by deposits or contributions that were not used to fund costs assigned to previous periods for contract accounting purposes.

(G) Comply with the following when changing from one accrual accounting method to another: the contractor shall—

(1) Treat the change in the unfunded actuarial liability (unfunded accumulated postretirement benefit obligation as a gain or loss; and

(2) Present an analysis demonstrating that all costs assigned to prior periods have been accounted for in accordance with paragraphs (o)(2)(iii)(D), (E), and (F) of this section to ensure that no duplicate recovery of costs exists. Any duplicate recovery of costs due to the change from one method to another is unallowable. The analysis and new accrual accounting method may be a subject appropriate for an advance agreement in accordance with [31.109](#).

(3) To be allowable, PRB costs must be funded by the time set for filing the Federal income tax return or any extension thereof, or paid to an insurer, provider, or other recipient by the time set for filing the Federal income tax return or extension thereof. PRB costs assigned to the current year, but not funded, paid or otherwise liquidated by the tax return due date as extended are not allowable in any subsequent year.

(4) Increased PRB costs caused by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable.

(5) The Authority shall receive an equitable share of any amount of previously funded PRB costs which revert or inure to the contractor. Such equitable share shall reflect the Authority's previous participation in PRB costs through those contracts for which certified cost or pricing data were required or which were subject to [Subpart 31.2](#).

(p) *Limitation on allowability of compensation.*

Table 31-1--Employee Compensation Limits

Contract award date	Applicable agencies	Covered employees	31.205-6
Before June 24, 2014	Executive Agencies Other than DoD, NASA and Coast Guard	Senior Executive	(p)(2)
Before December 31, 2011	DoD, NASA, and Coast Guard	Senior Executive	(p)(2)
On/after December 31, 2011 and before June 24, 2014	DoD, NASA, and Coast Guard	All Employees	(p)(3)
On/after June 24, 2014	All Executive Agencies	All Employees	(p)(4)

(1) Definitions. As used in this paragraph (p)--

(i) Compensation means the total amount of wages, salary, bonuses, deferred compensation (see paragraph (k) of this subsection), and employer contributions to defined contribution pension plans (see paragraphs (j)(4) and (q) of this subsection), for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in the contractor's cost accounting records for the fiscal year.

(ii) Senior executive means--

(A) Prior to January 2, 1999--

(1) The Chief Executive Officer (CEO) or any individual acting in a similar capacity at the contractor's headquarters;

(2) The four most highly compensated employees in management positions at the contractor's headquarters, other than the CEO; and

(3) If the contractor has intermediate home offices or segments that report directly to the contractor's headquarters, the five most highly compensated employees in management positions at each such intermediate home office or segment.

(B) Effective January 2, 1999, the five most highly compensated employees in management positions at each home office and each segment of the contractor, whether or not the home office or segment reports directly to the contractor's headquarters.

(iii) Fiscal year means the fiscal year established by the contractor for accounting purposes.

(iv) Contractor's headquarters means the highest organizational level from which executive compensation costs are allocated to Government contracts.

(2) Senior executive compensation limit for contracts awarded before June 24, 2014—

(i) Applicability. This paragraph (p)(2) applies to the following:

(A) To all executive agencies, other than DoD, NASA and the Coast Guard, for contracts awarded before June 24, 2014;

(B) To DoD, NASA, and the Coast Guard for contracts awarded before December 31, 2011;

(ii) Costs incurred after January 1, 1998, for the compensation of a senior executive in excess of the benchmark compensation amount determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy (OFPP), under 41 U.S.C. 1127 as in effect prior to June 24, 2014, are unallowable (10 U.S.C. 2324(e)(1)(P) and 41 U.S.C. 4304(a)(16), as in effect prior to June 24, 2014). This limitation is the sole statutory limitation on allowable senior executive compensation costs incurred after January 1, 1998, under contracts awarded before June 24, 2014, and applies whether or not the affected contracts were previously subject to a statutory limitation on such costs. (Note that pursuant to section 804 of Pub. L. 105-261, the definition of "senior executive" in paragraph (p)(1) of this section has been changed for compensation costs incurred after January 1, 1999.) See <https://www.whitehouse.gov/wpcontent/uploads/2017/11/ContractorCompensationCapContractsAwardedBeforeJune24.pdf>.

(3) All employee compensation limit for contracts awarded before June 24, 2014.

(i) Applicability. This paragraph (p)(3) applies to DOD, NASA, and the Coast Guard for contracts awarded on or after December 31, 2011, and before June 24, 2014.

(ii) Costs incurred after January 1, 2012, for the compensation of any contractor employee in excess of the benchmark compensation amount, determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy (OFPP) under 41 U.S.C. 1127 as in effect prior to June 24, 2014 are unallowable (10 U.S.C. 2324(e)(1)(P) as in effect prior to June 24, 2014.) This limitation is the sole statutory limitation on allowable employee compensation costs incurred after January 1, 2012, under contracts awarded on or after December 31, 2011 and before June 24, 2014. (Note that pursuant to section 803 of Pub. L. 112-81, 10 U.S.C. 2324, Allowable costs under defense contracts, was amended by striking "senior executives" and inserting "any contractor employee", making unallowable the excess compensation costs incurred after January 1, 2012, under affected contracts.) See <https://www.whitehouse.gov/wp-content/uploads/2017/11/ContractorCompensationCapContractsAwardedBeforeJune24.pdf>.

(4) All employee compensation limit for contracts awarded on or after June 24, 2014.

(i) Applicability. This paragraph (p)(4) applies to all executive agency contracts awarded on or after June 24, 2014, and any subcontracts thereunder.

(ii) Costs incurred on or after June 24, 2014, for the compensation of all employees in excess of the benchmark compensation amount determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy (OFPP) are unallowable under 10 U.S.C. 2324(e)(1)(P) and 41 U.S.C. 4304(a)(16), as in effect on or after June 24, 2014, pursuant to section 702 of Public Law 113-67. This limitation is the sole statutory limitation on allowable employee compensation costs incurred on or after June 24, 2014, under contracts awarded on or after June 24, 2014. See <https://www.whitehouse.gov/wp-content/uploads/2017/11/ContractorCompensationCapContractsAwardedafterJune24.pdf>.

(iii) Exceptions. An agency head may establish one or more narrowly targeted exceptions for scientists, engineers, or other specialists upon a determination that such exceptions are needed to ensure that the executive agency has continued access to needed skills and capabilities. In making such a determination, the agency shall consider, at a minimum, for each contractor employee in a narrowly targeted excepted position--

(A) The amount of taxpayer funded compensation to be received by each employee; and

(B) The duties and services performed by each employee.

(q) *Employee stock ownership plans (ESOP).*

(1) An ESOP is a stock bonus plan designed to invest primarily in the stock of the employer corporation. The contractor's contributions to an Employee Stock Ownership Trust (ESOT) may be in the form of cash, stock, or property.

(2) Costs of ESOP's are allowable subject to the following conditions:

(i) The contractor measures, assigns, and allocates costs in accordance with 48 CFR 9904.415.

(ii) Contributions by the contractor in any one year that exceed the deductibility limits of the Internal Revenue Code for that year are unallowable.

(iii) When the contribution is in the form of stock, the value of the stock contribution is limited to the fair market value of the stock on the date that title is effectively transferred to the trust.

(iv) When the contribution is in the form of cash—

(A) Stock purchases by the ESOT in excess of fair market value are unallowable; and

(B) When stock purchases are in excess of fair market value, the contractor shall credit the amount of the excess to the same indirect cost pools that were charged for the ESOP contributions in the year in which the stock purchase occurs. However, when the trust purchases the stock with borrowed funds which will be repaid over a period of years by cash contributions from the contractor to the trust, the contractor shall credit the excess price over fair market value to the indirect cost pools pro rata over the period of years during which the contractor contributes the cash used by the trust to repay the loan.

(v) When the fair market value of unissued stock or stock of a closely held corporation is not readily determinable, the valuation will be made on a case-by-case basis taking into consideration the guidelines for valuation used by the IRS.

27. CONTINGENCIES. (FAR 31.205-7)

(a) “Contingency,” as used in this subpart, means a possible future event or condition arising from presently known or unknown causes, the outcome of which is indeterminable at the present time.

(b) Costs for contingencies are generally unallowable for historical costing purposes because such costing deals with costs incurred and recorded on the contractor’s books. However, in some cases, as for example, terminations, a contingency factor may be recognized when it is applicable to a past period to give recognition to minor unsettled factors in the interest of expediting settlement.

(c) In connection with estimates of future costs, contingencies fall into two categories:

(1) Those that may arise from presently known and existing conditions, the effects of which are foreseeable within reasonable limits of accuracy; e.g., anticipated costs of rejects and defective work. Contingencies of this category are to be included in the estimates of future costs so as to provide the best estimate of performance cost.

(2) Those that may arise from presently known or unknown conditions, the effect of which cannot be measured so precisely as to provide equitable results to the contractor and to the Authority; e.g., results of pending litigation. Contingencies of this category are to be excluded from cost estimates under the several items of cost, but should be disclosed separately (including the basis upon which the contingency is computed) to facilitate the negotiation of appropriate contractual coverage. (See, for example, [31.205-6\(g\)](#), and [31.205-19](#).)

28. CONTRIBUTIONS OR DONATIONS. (FAR 31.205-8)

Contributions or donations, including cash, property and services, regardless of recipient, are unallowable, except as provided in [31.205-1\(e\)\(3\)](#).

29. COST OF MONEY. (FAR 31.205-10)

(a) *General.* Cost of money--

(1) Is an imputed cost that is not a form of interest on borrowings (see [31.205-20](#));

(2) Is an “incurred cost” for cost-reimbursement purposes under applicable cost-reimbursement contracts and for progress payment purposes under fixed-price contracts; and

(3) Refers to—

(i) Facilities capital cost of money (48 CFR 9904.414); and

(ii) Cost of money as an element of the cost of capital assets under construction (48 CFR 9904.417).

(b) Cost of money is allowable, provided--

(1) It is measured, assigned, and allocated to contracts in accordance with 48 CFR 9904.414 or measured and added to the cost of capital assets under construction in accordance with 48 CFR 9904.417, as applicable;

(2) The requirements of [31.205-52](#), which limit the allowability of cost of money, are followed; and

(3) The estimated facilities capital cost of money is specifically identified and proposed in cost proposals relating to the contract under which the cost is to be claimed.

(c) Actual interest cost in lieu of the calculated imputed cost of money is unallowable.

31.205-11 -- Depreciation.

(a) Depreciation on a contractor's plant, equipment, and other capital facilities is an allowable contract cost, subject to the limitations contained in this cost principle. For tangible personal property, only estimated residual values that exceed 10 percent of the capitalized cost of the asset need be used in establishing depreciable costs. Where either the declining balance method of depreciation or the class life asset depreciation range system is used, the residual value need not be deducted from capitalized cost to determine depreciable costs. Depreciation cost that would significantly reduce the book value of a tangible capital asset below its residual value is unallowable.

(b) Contractors having contracts subject to 48 CFR 9904.409, Depreciation of Tangible Capital Assets, shall adhere to the requirement of that standard for all fully CAS-covered contracts and may elect to adopt the standard for all other contracts. All requirements of 48 CFR 9904.409 are applicable if the election is made, and contractors must continue to follow it until notification of final acceptance of all deliverable items on all open negotiated government contracts.

(c) For contracts to which 48 CFR 9904.409 is not applied, except as indicated in paragraphs (g) and (h) of this subsection, allowable depreciation shall not exceed the amount used for financial accounting purposes, and shall be determined in a manner consistent with the depreciation policies and procedures followed in the same segment on non-Government business.

(d) Depreciation, rental, or use charges are unallowable on property acquired from the Authority at no cost by the contractor or by any division, subsidiary, or affiliate of the contractor under common control.

(e) The depreciation on any item which meets the criteria for allowance at price under [31.205-26\(e\)](#) may be based on that price, provided the same policies and procedures are used for costing all business of the using division, subsidiary, or organization under common control.

(f) No depreciation or rental is allowed on property fully depreciated by the contractor or by any division, subsidiary, or affiliate of the contractor under common control. However, a reasonable charge for using fully depreciated property may be agreed upon and allowed (but, see [31.109\(h\)\(2\)](#)). In determining the charge, consideration shall be given to cost, total estimated useful life at the time of negotiations, effect of any increased maintenance charges or decreased efficiency due to age, and the amount of depreciation previously charged to Government contracts or subcontracts.

(g) Whether or not the contract is otherwise subject to CAS the following apply:

(1) The requirements of [31.205-52](#) shall be observed.

(2) In the event of a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances, allowable depreciation of the impaired assets is limited to the amounts that would have been allowed had the assets not been written down (see [31.205-16\(g\)](#)). However, this does not preclude a change in depreciation resulting from other causes such as permissible changes in estimates of service life, consumption of services, or residual value.

(3) In the event the contractor reacquires property involved in a sale and leaseback arrangement, allowable depreciation of reacquired property shall be based on the net book value of the asset as of the date the contractor originally became a lessee of the property in the sale and leaseback arrangement—

(A) Adjusted for any allowable gain or loss determined in accordance with [31.205-16\(b\)](#); and

(B) Less any amount of depreciation expense included in the calculation of the amount that would have been allowed had the contractor retained title under [31.205-11\(h\)\(1\)](#) and [31.205-36\(b\)\(2\)](#).

(ii) As used in this paragraph (g)(3), reacquired property is property that generated either any depreciation expense or any cost of money considered in the calculation of the limitations under [31.205-11\(h\)\(1\)](#) and [31.205-36\(b\)\(2\)](#) during the most recent accounting period prior to the date of reacquisition.

(h) A “capital lease,” as defined in Financial Accounting Standards Board’s Accounting Standards Codification (FASB ASC) 840, Leases, is subject to the requirements of this cost principle. (See [31.205-36](#) for Operating Leases.) FASB ASC 840 requires that capital leases be treated as purchased assets, *i.e.*, be capitalized, and the capitalized value of such assets be distributed over their useful lives as depreciation charges or over the leased life as amortization charges, as appropriate, except that--

(1) Lease costs under a sale and leaseback arrangement are allowable only up to the amount that would be allowed if the contractor retained title, computed based on the net book value of the asset on the date the contractor becomes a lessee of the property adjusted for any gain or loss recognized in accordance with [31.205-16\(b\)](#); and

(2) If it is determined that the terms of the capital lease have been significantly affected by the fact that the lessee and lessor are related, depreciation charges are not allowable in excess of those that would have occurred if the lease contained terms consistent with those found in a lease between unrelated parties.

30. ECONOMIC PLANNING COSTS. (FAR 31.205-12)

Economic planning costs are the costs of general long-range management planning that is concerned with the future overall development of the contractor’s business and that may take into account the eventual possibility of economic dislocations or fundamental alterations in those markets in which the contractor currently does business. Economic planning costs are allowable. Economic planning costs do not include organization or reorganization costs covered by [31.205-27](#). See [31.205-38](#) for market planning costs other than economic planning costs.

31. EMPLOYEE MORALE, HEALTH, WELFARE, FOOD SERVICE, AND DORMITORY COSTS AND CREDITS. (FAR 31.205-13)

(a) Aggregate costs incurred on activities designed to improve working conditions, employer-employee relations, employee morale, and employee performance (less income generated by these activities) are allowable, subject to the limitations contained in this subsection. Some examples of allowable activities are--

- (1) House publications;
- (2) Health clinics;
- (3) Wellness/fitness centers;
- (4) Employee counseling services; and

(5) Food and dormitory services, for the contractor’s employees at or near the contractor’s facilities. These services include—

(i) Operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations; and

(ii) Similar types of services.

(b) Costs of gifts are unallowable. (Gifts do not include awards for performance made pursuant to [31.205-6\(f\)](#) or awards made in recognition of employee achievements pursuant to an established contractor plan or policy.)

(c) Costs of recreation are unallowable, except for the costs of employees' participation in company sponsored sports teams or employee organizations designed to improve company loyalty, team work, or physical fitness.

(d)

(1) The allowability of food and dormitory losses are determined by the following factors:

(i) Losses from operating food and dormitory services are allowable only if the contractor's objective is to operate such services on a break-even basis.

(ii) Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to the accomplishment of the above objective in paragraph (d)(1)(i) of this subsection are not allowable, except as described in paragraph (d)(1)(iii) of this subsection.

(iii) A loss may be allowed to the extent that the contractor can demonstrate that unusual circumstances exist such that even with efficient management, operating the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. The following are examples of unusual circumstances:

(A) The contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available.

(B) The contractor's charged (but unproductive) labor costs would be excessive if the services provided were not available.

(C) If cessation or reduction of food or dormitory operations will not otherwise yield net cost savings.

(2) Costs of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

(e) When the contractor has an arrangement authorizing an employee association to provide or operate a service, such as vending machines in the contractor's plant, and retain the profits, such profits shall be treated in the same manner as if the contractor were providing the service (but see paragraph (f) of this subsection).

(f) Contributions by the contractor to an employee organization, including funds from vending machine receipts or similar sources, are allowable only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if directly incurred by the contractor.

32. ENTERTAINMENT COSTS. (FAR 31.205-14)

Costs of amusement, diversions, social activities, and any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are unallowable. Costs made specifically unallowable under this cost principle are not allowable under any other cost principle. Costs of membership in social, dining, or country clubs or other organizations having the same purposes are also unallowable, regardless of whether the cost is reported as taxable income to the employees.

33. FINES, PENALTIES, AND MISCHARGING COSTS. (FAR 31.205-15)

(a) Costs of fines and penalties resulting from violations of, or failure of the contractor to comply with, Federal, State, local, or foreign laws and regulations, are unallowable except when incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer.

(b) Costs incurred in connection with, or related to, the mischarging of costs on Government contracts are unallowable when the costs are caused by, or result from, alteration or destruction of records, or other false or improper charging or recording of costs. Such costs include those incurred to measure or otherwise determine the magnitude of the improper charging, and costs incurred to remedy or correct the mischarging, such as costs to rescreen and reconstruct records.

34. GAINS AND LOSSES ON DISPOSITION OR IMPAIRMENT OF DEPRECIABLE PROPERTY OR OTHER CAPITAL ASSETS. (FAR 31.205-16)

(a) Gains and losses from the sale, retirement, or other disposition (but see [31.205-19](#)) of depreciable property shall be included in the year in which they occur as credits or charges to the cost grouping(s) in which the depreciation or amortization applicable to those assets was included (but see paragraph (f) of this subsection). However, no gain or loss shall be recognized as a result of the transfer of assets in a business combination (see [31.205-52](#)).

(b) Notwithstanding the provisions in paragraph (c) of this subsection, when costs of depreciable property are subject to the sale and leaseback limitations in [31.205-11\(h\)\(1\)](#) or [31.205-36\(b\)\(2\)](#)—

(1) The gain or loss is the difference between the net amount realized and the undepreciated balance of the asset on the date the contractor becomes a lessee; and

(2) When the application of (b)(1) of this subsection results in a loss—

(i) The allowable portion of the loss is zero if the fair market value exceeds the undepreciated balance of the asset on the date the contractor becomes a lessee; and

(ii) The allowable portion of the loss is limited to the difference between the fair market value and the undepreciated balance of the asset on the date the contractor becomes a lessee if the fair market value is less than the undepreciated balance of the asset on the date the contractor becomes a lessee.

(c) Gains and losses on disposition of tangible capital assets, including those acquired under capital leases (see [31.205-11\(h\)](#)), shall be considered as adjustments of depreciation costs previously recognized. The gain or loss for each asset disposed of is the difference between the net amount realized, including insurance proceeds from involuntary conversions, and its undepreciated balance.

(d) The gain recognized for contract costing purposes shall be limited to the difference between the acquisition cost (or for assets acquired under a capital lease, the value at which the leased asset is capitalized) of the asset and its undepreciated balance (except see paragraphs (e)(2)(i) or (ii) of this subsection).

(e) Special considerations apply to an involuntary conversion which occurs when a contractor's property is destroyed by events over which the owner has no control, such as fire, windstorm, flood, accident, theft, etc., and an insurance award is recovered. The following govern involuntary conversions:

(1) When there is a cash award and the converted asset is not replaced, gain or loss shall be recognized in the period of disposition. The gain recognized for contract costing purposes shall be limited to the difference between the acquisition cost of the asset and its undepreciated balance.

(2) When the converted asset is replaced, the contractor shall either --

- (i) Adjust the depreciable basis of the new asset by the amount of the total realized gain or loss; or
 - (ii) Recognize the gain or loss in the period of disposition, in which case the Authority shall participate to the same extent as outlined in subparagraph (e)(1) of this subsection.
- (f) Gains and losses on the disposition of depreciable property shall not be recognized as a separate charge or credit when --
- (1) Gains and losses are processed through the depreciation reserve account and reflected in the depreciation allowable under [31.205-11](#); or
 - (2) The property is exchanged as part of the purchase price of a similar item, and the gain or loss is taken into consideration in the depreciation cost basis of the new item.
- (g) Gains and losses arising from mass or extraordinary sales, retirements, or other disposition other than through business combinations shall be considered on a case-by-case basis.
- (h) Gains and losses of any nature arising from the sale or exchange of capital assets other than depreciable property shall be excluded in computing contract costs.
- (i) With respect to long-lived tangible and identifiable intangible assets held for use, no loss shall be allowed for a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances (e.g., environmental damage, idle facilities arising from a declining business base, etc.). If depreciable property or other capital assets have been written down from carrying value to fair value due to impairments, gains or losses upon disposition shall be the amounts that would have been allowed had the assets not been written down.

35. IDLE FACILITIES AND IDLE CAPACITY COSTS. (FAR 31.205-17)

- (a) *Definitions.* As used in this subsection--

“Costs of idle facilities or idle capacity” means costs such as maintenance, repair, housing, rent, and other related costs; e.g., property taxes, insurance, and depreciation.

“Facilities” means plant or any portion thereof (including land integral to the operation), equipment, individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the contractor.

“Idle capacity” means the unused capacity of partially used facilities. It is the difference between that which a facility could achieve under 100 percent operating time on a one-shift basis, less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays, and the extent to which the facility was actually used to meet demands during the accounting period. A multiple-shift basis may be used in the calculation instead of a one-shift basis if it can be shown that this amount of usage could normally be expected for the type of facility involved.

“Idle facilities” means completely unused facilities that are excess to the contractor’s current needs.

- (b) The costs of idle facilities are unallowable unless the facilities --
- (1) Are necessary to meet fluctuations in workload; or
 - (2) Were necessary when acquired and are now idle because of changes in requirements, production economies, reorganization, termination, or other causes which could not have been reasonably foreseen. (Costs of idle facilities are allowable for a reasonable period, ordinarily not to exceed 1 year, depending upon the initiative taken to use, lease, or dispose of the idle facilities (but see [31.205-42](#))).

(c) Costs of idle capacity are costs of doing business and are a factor in the normal fluctuations of usage or overhead rates from period to period. Such costs are allowable provided the capacity is necessary or was originally reasonable and is not subject to reduction or elimination by subletting, renting, or sale, in accordance with sound business, economics, or security practices. Widespread idle capacity throughout an entire plant or among a group of assets having substantially the same function may be idle facilities.

(d) Any costs to be paid directly by the Authority for idle facilities or idle capacity reserved for defense mobilization production shall be the subject of a separate agreement.

36. INDEPENDENT RESEARCH AND DEVELOPMENT AND BID AND PROPOSAL COSTS. (FAR 31.205-18)

(a) *Definitions.* As used in this subsection--

“Applied research” means that effort which

- (1) normally follows basic research, but may not be severable from the related basic research,
- (2) attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques, and
- (3) attempts to advance the state of the art. Applied research does not include efforts whose principal aim is design, development, or test of specific items or services to be considered for sale; these efforts are within the definition of the term “development,” defined in this subsection.

“Basic research” (see [2.101](#)).

“Bid and proposal (B&P) costs” means the costs incurred in preparing, submitting, and supporting bids and proposals (whether or not solicited) on potential contracts. The term does not include the costs of effort sponsored by a grant or cooperative agreement, or required in the performance of a contract.

“Company” means all divisions, subsidiaries, and affiliates of the contractor under common control.

“Development” means the systematic use, under whatever name, of scientific and technical knowledge in the design, development, test, or evaluation of a potential new product or service (or of an improvement in an existing product or service) for the purpose of meeting specific performance requirements or objectives. Development includes the functions of design engineering, prototyping, and engineering testing. Development excludes--

- (1) Subcontracted technical effort which is for the sole purpose of developing an additional source for an existing product, or
- (2) Development effort for manufacturing or production materials, systems, processes, methods, equipment, tools, and techniques not intended for sale.

“Independent research and development (IR&D)” means a contractor’s IR&D cost that consists of projects falling within the four following areas:

- (1) basic research,
- (2) applied research,
- (3) development, and

(4) systems and other concept formulation studies. The term does not include the costs of effort sponsored by a grant or required in the performance of a contract. IR&D effort shall not include technical effort expended in developing and preparing technical data specifically to support submitting a bid or proposal.

“Systems and other concept formulation studies” means analyses and study efforts either related to specific IR&D efforts or directed toward identifying desirable new systems, equipment or components, or modifications and improvements to existing systems, equipment, or components.

(b) *Composition and allocation of costs.* The requirements of 48 CFR 9904.420, Accounting for independent research and development costs and bid and proposal costs, are incorporated in their entirety and shall apply as follows --

(1) *Fully-CAS-covered contracts.* Contracts that are fully-CAS-covered shall be subject to all requirements of 48 CFR 9904.420.

(2) *Modified. CAS-covered and non-CAS-covered contracts.* Contracts that are not CAS-covered or that contain terms or conditions requiring modified CAS coverage shall be subject to all requirements of 48 CFR 9904.420 except 48 CFR 9904.420-50(e)(2) and 48 CFR 9904.420-50(f)(2), which are not then applicable. However, non-CAS-covered or modified CAS-covered contracts awarded at a time the contractor has CAS-covered contracts requiring compliance with 48 CFR 9904.420, shall be subject to all the requirements of 48 CFR 9904.420. When the requirements of 48 CFR 9904.420-50(e)(2) and 48 CFR 9904.420-50(f)(2) are not applicable, the following apply:

(i) IR&D and B&P costs shall be allocated to final cost objectives on the same basis of allocation used for the G&A expense grouping of the profit center (see 31.001) in which the costs are incurred. However, when IR&D and B&P costs clearly benefit other profit centers or benefit the entire company, those costs shall be allocated through the G&A of the other profit centers or through the corporate G&A, as appropriate.

(ii) If allocations of IR&D or B&P through the G&A base do not provide equitable cost allocation, the contracting officer may approve use of a different base.

(c) *Allowability.* Except as provided in paragraphs (d) and (e) of this subsection, or as provided in agency regulations, costs for IR&D and B&P are allowable as indirect expenses on contracts to the extent that those costs are allocable and reasonable.

(d) *Deferred IR&D costs.*

(1) IR&D costs that were incurred in previous accounting periods are unallowable, except when a contractor has developed a specific product at its own risk in anticipation of recovering the development costs in the sale price of the product provided that --

(i) The total amount of IR&D costs applicable to the product can be identified;

(ii) The proration of such costs to sales of the product is reasonable;

(iii) The contractor had no Government business during the time that the costs were incurred or did not allocate IR&D costs to Government contracts except to prorate the cost of developing a specific product to the sales of that product; and

(iv) No costs of current IR&D programs are allocated to Government work except to prorate the costs of developing a specific product to the sales of that product.

(2) When deferred costs are recognized, the contract (except firm-fixed-price and fixed-price with economic price adjustment) will include a specific provision setting forth the amount of deferred IR&D costs that are allocable to the contract. The negotiation memorandum will state the circumstances pertaining to the case and the reason for accepting the deferred costs.

(e) *Cooperative arrangements.*

(1) IR&D costs may be incurred by contractors working jointly with one or more non-Federal entities pursuant to a cooperative arrangement (for example, joint ventures, limited partnerships, teaming arrangements, and collaboration and consortium arrangements). IR&D costs also may include costs contributed by contractors in performing cooperative research and development agreements, or similar arrangements, entered into under --

(i) Section 12 of the Stevenson-Wydler Technology Transfer Act of 1980 (15 U.S.C. 3710(a));

(ii) Sections 203(c)(5) and (6) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473(c) (5) and (6));

(iii) 10 U.S.C. 2371 for the Defense Advanced Research Projects Agency; or

(iv) Other equivalent authority.

(2) IR&D costs incurred by a contractor pursuant to these types of cooperative arrangements should be considered as allowable IR&D costs if the work performed would have been allowed as contractor IR&D had there been no cooperative arrangement.

(3) Costs incurred in preparing, submitting, and supporting offers on potential cooperative arrangements are allowable to the extent they are allocable, reasonable, and not otherwise unallowable.

37. INSURANCE AND INDEMNIFICATION. (FAR 31.205-19)

(a) Insurance by purchase or by self-insuring includes--

(1) Coverage the contractor is required to carry, or to have approved, under the terms of the contract; and

(2) Any other coverage the contractor maintains in connection with the general conduct of its business.

(b) For purposes of applying the provisions of this subsection, the Authority considers insurance provided by captive insurers (insurers owned by or under control of the contractor) as self-insurance, and charges for it shall comply with the provisions applicable to self-insurance costs in this subsection. However, if the captive insurer also sells insurance to the general public in substantial quantities and it can be demonstrated that the charge to the contractor is based on competitive market forces, the Authority will consider the insurance as purchased insurance.

(c) Whether or not the contract is subject to CAS, self-insurance charges are allowable subject to paragraph (e) of this subsection and the following limitations:

(1) The contractor shall measure, assign, and allocate costs in accordance with 48 CFR 9904.416, Accounting for Insurance Costs.

(2) The contractor shall comply with (48 CFR) part 28. However, approval of a contractor's insurance program in accordance with part 28 does not constitute a determination as to the allowability of the program's cost.

(3) If purchased insurance is available, any self-insurance charge plus insurance administration expenses in excess of the cost of comparable purchased insurance plus associated insurance administration expenses is unallowable.

(4) Self-insurance charges for risks of catastrophic losses are unallowable (see [28.308\(e\)](#)).

(d) Purchased insurance costs are allowable, subject to paragraph (e) of this subsection and the following limitations:

(1) For contracts subject to full CAS coverage, the contractor shall measure, assign, and allocate costs in accordance with 48 CFR 9904.416.

(2) For all contracts, premiums for insurance purchased from fronting insurance companies (insurance companies not related to the contractor but who reinsure with a captive insurer of the contractor) are unallowable to the extent they exceed the sum of—

(i) The amount that would have been allowed had the contractor insured directly with the captive insurer; and

(ii) Reasonable fronting company charges for services rendered.

(3) Actual losses are unallowable unless expressly provided for in the contract, except—

(i) Losses incurred under the nominal deductible provisions of purchased insurance, in keeping with sound business practice, are allowable; and

(ii) Minor losses, such as spoilage, breakage, and disappearance of small hand tools that occur in the ordinary course of business and that are not covered by insurance, are allowable.

(e) Self-insurance and purchased insurance costs are subject to the cost limitations in the following paragraphs:

(1) Costs of insurance required or approved pursuant to the contract are allowable.

(2) Costs of insurance maintained by the contractor in connection with the general conduct of its business are allowable subject to the following limitations:

(i) Types and extent of coverage shall follow sound business practice, and the rates and premiums shall be reasonable.

(ii) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of profit.

(iii) The cost of property insurance premiums for insurance coverage in excess of the acquisition cost of the insured assets is allowable only when the contractor has a formal written policy assuring that in the event the insured property is involuntarily converted, the new asset shall be valued at the book value of the replaced asset plus or minus adjustments for differences between insurance proceeds and actual replacement cost. If the contractor does not have such a formal written policy, the cost of premiums for insurance coverage in excess of the acquisition cost of the insured asset is unallowable.

(iv) Costs of insurance for the risk of loss of Authority property are allowable to the extent that—

(A) The contractor is liable for such loss;

(B) The contracting officer has not revoked the Authority's assumption of risk (see [45.104\(b\)](#)); and

(C) Such insurance does not cover loss of Authority property that results from willful misconduct or lack of good faith on the part of any of the contractor's managerial personnel (as described in FAR [52.245-1\(h\)\(1\)\(ii\)](#)).

(v) Costs of insurance on the lives of officers, partners, proprietors, or employees are allowable only to the extent that the insurance represents additional compensation (see [31.205-6](#)).

(3) The cost of insurance to protect the contractor against the costs of correcting its own defects in materials and workmanship is unallowable. However, insurance costs to cover fortuitous or casualty losses resulting from defects in materials or workmanship are allowable as a normal business expense.

(4) Premiums for retroactive or backdated insurance written to cover losses that have occurred and are known are unallowable.

(5) The Authority is obligated to indemnify the contractor only to the extent authorized by law, as expressly provided for in the contract, except as provided in paragraph (d)(3) of this subsection.

(6) Late premium payment charges related to employee deferred compensation plan insurance incurred pursuant to section 4007 (29 U.S.C. 1307) or section 4023 (29 U.S.C. 1323) of the Employee Retirement Income Security Act of 1974 are unallowable.

38. INTEREST AND OTHER FINANCIAL COSTS. (FAR 31.205-20)

Interest on borrowings (however represented), bond discounts, costs of financing and refinancing capital (net worth plus long-term liabilities), legal and professional fees paid in connection with preparing prospectuses, costs of preparing and issuing stock rights are unallowable (but see 31.205-28). However, interest assessed by State or local taxing authorities under the conditions specified in 31.205-41(a)(3) is allowable.

39. LABOR RELATIONS COSTS. (FAR 31.205-21)

(a) Costs incurred in maintaining satisfactory relations between the contractor and its employees (other than those made unallowable in paragraph (b) of this section), including costs of shop stewards, labor management committees, employee publications, and other related activities, are allowable.

(b) As required by Executive Order 13494, Economy in Government Contracting, costs of any activities undertaken to persuade employees, of any entity, to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively through representatives of the employees' own choosing are unallowable. Examples of unallowable costs under this paragraph include, but are not limited to, the costs of--

- (1) Preparing and distributing materials;
- (2) Hiring or consulting legal counsel or consultants;
- (3) Meetings (including paying the salaries of the attendees at meetings held for this purpose); and
- (4) Planning or conducting activities by managers, supervisors, or union representatives during work hours.

40. LOBBYING AND POLITICAL ACTIVITY COSTS. (FAR 31.205-22)

(a) Costs associated with the following activities are unallowable:

(1) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure, through in kind or cash contributions, endorsements, publicity, or similar activities;

(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

(3) Any attempt to influence --

- (i) The introduction of Federal, state, or local legislation, or

(ii) The enactment or modification of any pending Federal, state, or local legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enrolled legislation;

(4) Any attempt to influence

(i) The introduction of Federal, state, or local legislation, or

(ii) The enactment or modification of any pending Federal, state, or local legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign;

(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable activities; or

(6) Costs incurred in attempting to improperly influence (see [3.401](#)), either directly or indirectly, an employee or officer of the Executive branch of the Federal Government to give consideration to or act regarding a regulatory or contract matter.

(b) The following activities are excepted from the coverage of (a) of this section:

(1) Providing a technical and factual presentation of information on a topic directly related to the performance of a contract through hearing testimony, statements or letters to the Congress or a state legislature, or subdivision, member, or cognizant staff member thereof, in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient member, legislative body or subdivision, or a cognizant staff member thereof; provided such information is readily obtainable and can be readily put in deliverable form; and further provided that costs under this section for transportation, lodging or meals are unallowable unless incurred for the purpose of offering testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearing.

(2) Any lobbying made unallowable by paragraph (a)(3) of this subsection to influence state or local legislation in order to directly reduce contract cost, or to avoid material impairment of the contractor's authority to perform the contract.

(3) Any activity specifically authorized by statute to be undertaken with funds from the contract.

(c) When a contractor seeks reimbursement for indirect costs, total lobbying costs shall be separately identified in the indirect cost rate proposal, and thereafter treated as other unallowable activity costs.

(d) Contractors shall maintain adequate records to demonstrate that the certification of costs as being allowable or unallowable (see [42.703-2](#)) pursuant to this subsection complies with the requirements of this subsection.

(e) Existing procedures should be utilized to resolve in advance any significant questions or disagreements concerning the interpretation or application of this subsection.

41. LOSSES ON OTHER CONTRACTS. (FAR 31.205-23)

An excess of costs over income under any other contract (including the contractor's contributed portion under cost-sharing contracts) is unallowable.

42. MANUFACTURING AND PRODUCTION ENGINEERING COSTS. (FAR 31.205-25)

(a) The costs of manufacturing and production engineering effort as described in (1) through (4) of this paragraph are all allowable:

(1) Developing and deploying new or improved materials, systems, processes, methods, equipment, tools and techniques that are or are expected to be used in producing products or services;

(2) Developing and deploying pilot production lines;

(3) Improving current production functions, such as plant layout, production scheduling and control, methods and job analysis, equipment capabilities and capacities, inspection techniques, and tooling analysis (including tooling design and application improvements); and

(4) Material and manufacturing producibility analysis for production suitability and to optimize manufacturing processes, methods, and techniques.

(b) This cost principle does not cover --

(1) Basic and applied research effort (as defined in 31.205-18(a)) related to new technology, materials, systems, processes, methods, equipment, tools and techniques. Such technical effort is governed by 31.205-18, Independent research and development and bid and proposal costs; and

(2) Development effort for manufacturing or production materials, systems, processes, methods, equipment, tools, and techniques that are intended for sale is also governed by 31.205-18.

(c) Where manufacturing or production development costs are capitalized or required to be capitalized under the contractor's capitalization policies, allowable cost will be determined in accordance with the requirements of 31.205-11, Depreciation.

43. MATERIAL COSTS. (FAR 31.205-26)

(a) Material costs include the costs of such items as raw materials, parts, sub-assemblies, components, and manufacturing supplies, whether purchased or manufactured by the contractor, and may include such collateral items as inbound transportation and in-transit insurance. In computing material costs, consider reasonable overruns, spoilage, or defective work (unless otherwise provided in any contract provision relating to inspecting and correcting defective work).

(b) The contractor shall--

(1) Adjust the costs of material for income and other credits, including available trade discounts, refunds, rebates, allowances, and cash discounts, and credits for scrap, salvage, and material returned to vendors; and

(2) Credit such income and other credits either directly to the cost of the material or allocate such income and other credits as a credit to indirect costs. When the contractor can demonstrate that failure to take cash discounts was reasonable, the contractor does not need to credit lost discounts.

(c) Reasonable adjustments arising from differences between periodic physical inventories and book inventories may be included in arriving at costs; provided, such adjustments relate to the period of contract performance.

(d) When materials are purchased specifically for and are identifiable solely with performance under a contract, the actual purchase cost of those materials should be charged to the contract. If material is issued from stores, any generally recognized method of pricing such material is acceptable if that method is consistently applied and the results are equitable.

(e) Allowance for all materials, supplies, and services that are sold or transferred between any divisions, subdivisions, subsidiaries, or affiliates of the contractor under a common control shall be on the basis of cost incurred in accordance with this subpart. However, allowance may be price when--

(1) It is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary, or affiliate of the contractor under a common control; and

(2) The item being transferred qualifies for an exception under 15.403-1(b) and the contracting officer has not determined the price to be unreasonable.

(f) When a commercial item under paragraph (e) of this subsection is transferred at a price based on a catalog or market price, the contractor--

(1) Should adjust the price to reflect the quantities being acquired; and

(2) May adjust the price to reflect the actual cost of any modifications necessary because of contract requirements.

44. ORGANIZATION COSTS. (FAR 31.205-27)

(a) Except as provided in paragraph (b) of this subsection, expenditures in connection with

(1) planning or executing the organization or reorganization of the corporate structure of a business, including mergers and acquisitions,

(2) resisting or planning to resist the reorganization of the corporate structure of a business or a change in the controlling interest in the ownership of a business, and

(3) raising capital (net worth plus long-term liabilities), are unallowable. Such expenditures include but are not limited to incorporation fees and costs of attorneys, accountants, brokers, promoters and organizers, management consultants and investment counselors, whether or not employees of the contractor. Unallowable "reorganization" costs include the cost of any change in the contractor's financial structure, excluding administrative costs of short-term borrowings for working capital, resulting in alterations in the rights and interests of security holders, whether or not additional capital is raised.

(b) The cost of activities primarily intended to provide compensation will not be considered organizational costs subject to this subsection, but will be governed by 31.205-6. These activities include acquiring stock for --

(1) Executive bonuses,

(2) Employee savings plans, and

(3) Employee stock ownership plans.

45. OTHER BUSINESS EXPENSES. (FAR 31.205-28)

The following types of recurring costs are allowable:

(a) Registry and transfer charges resulting from changes in ownership of securities issued by the contractor.

(b) Cost of shareholders' meetings.

- (c) Normal proxy solicitations.
- (d) Preparing and publishing reports to shareholders.
- (e) Preparing and submitting required reports and forms to taxing and other regulatory bodies.
- (f) Incidental costs of directors' and committee meetings.
- (g) Other similar costs.

46. PLANT PROTECTION COSTS. (FAR 31.205-29)

Costs of items such as --

- (a) Wages, uniforms, and equipment of personnel engaged in plant protection,
- (b) Depreciation on plant protection capital assets, and
- (c) Necessary expenses to comply with military requirements, are allowable.

47. PATENT COSTS. (FAR 31.205-30)

(a) The following patent costs are allowable to the extent that they are incurred as requirements of a Government contract (but see 31.205-33):

- (1) Costs of preparing invention disclosures, reports, and other documents.
 - (2) Costs for searching the art to the extent necessary to make the invention disclosures.
 - (3) Other costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is to be conveyed to the Government.
- (b) General counseling services relating to patent matters, such as advice on patent laws, regulations, clauses, and employee agreements, are allowable (but see 31.205-33).
- (c) Other than those for general counseling services, patent costs not required by the contract are unallowable. (See also 31.205-37.)

48. PLANT RECONVERSION COSTS. (FAR 31.205-31)

Plant reconversion costs are those incurred in restoring or rehabilitating the contractor's facilities to approximately the same condition existing immediately before the start of the Government contract, fair wear and tear excepted. Reconversion costs are unallowable except for the cost of removing Government property and the restoration or rehabilitation costs caused by such removal. However, in special circumstances where equity so dictates, additional costs may be allowed to the extent agreed upon before costs are incurred. Care should be exercised to avoid duplication through allowance as contingencies, additional profit or fee, or in other contracts.

49. PRECONTRACT COSTS. (FAR 31.205-32)

Precontract costs means costs incurred before the effective date of the contract directly pursuant to the negotiation and in anticipation of the contract award when such incurrence is necessary to comply with the proposed contract delivery schedule. These costs are allowable to the extent that they would have been allowable if incurred after the date of the contract (see 31.109).

50. PROFESSIONAL AND CONSULTANT SERVICE COSTS. (FAR 31.205-33)

(a) *Definition.* "Professional and consultant services", as used in this subpart, means those services rendered by persons who are members of a particular profession or possess a special skill and who are not officers or employees of the contractor. Examples include those services acquired by contractors or subcontractors in order to enhance their legal, economic, financial, or technical positions. Professional and consultant services are generally acquired to obtain information, advice, opinions, alternatives, conclusions, recommendations, training, or direct assistance, such as studies, analyses, evaluations, liaison with Government officials, or other forms of representation.

(b) Costs of professional and consultant services are allowable subject to this paragraph and paragraphs (c) through (f) of this subsection when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government (but see 31.205-30 and 31.205-47).

(c) Costs of professional and consultant services performed under any of the following circumstances are unallowable:

(1) Services to improperly obtain, distribute, or use information or data protected by law or regulation (e.g., 52.215-1(e), Restriction on Disclosure and Use of Data).

(2) Services that are intended to improperly influence the contents of solicitations, the evaluation of proposals or quotations, or the selection of sources for contract award, whether award is by the Government, or by a prime contractor or subcontractor.

(3) Any other services obtained, performed, or otherwise resulting in violation of any statute or regulation prohibiting improper business practices or conflicts of interest.

(4) Services performed which are not consistent with the purpose and scope of the services contracted for or otherwise agreed to.

(d) In determining the allowability of costs (including retainer fees) in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the contracting officer shall consider the following factors, among others:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the contractor's capability in the particular area.

(3) The past pattern of acquiring such services and their costs, particularly in the years prior to the award of Government contracts.

(4) The impact of Government contracts on the contractor's business.

(5) Whether the proportion of Government work to the contractor's total business is such as to influence the contractor in favor of incurring the cost, particularly when the services rendered are not of a continuing nature and have little relationship to work under Government contracts.

(6) Whether the service can be performed more economically by employment rather than by contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fee charged, especially on non-Government contracts.

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, termination provisions).

- (e) Retainer fees, to be allowable, must be supported by evidence that --
- (1) The services covered by the retainer agreement are necessary and customary;
 - (2) The level of past services justifies the amount of the retainer fees (if no services were rendered, fees are not automatically unallowable);
 - (3) The retainer fee is reasonable in comparison with maintaining an in-house capability to perform the covered services, when factors such as cost and level of expertise are considered; and
 - (4) The actual services performed are documented in accordance with paragraph (f) of this subsection.
- (f) Fees for services rendered are allowable only when supported by evidence of the nature and scope of the service furnished. (See also 31.205-38(c).) However, retainer agreements generally are not based on specific statements of work. Evidence necessary to determine that work performed is proper and does not violate law or regulation shall include --
- (1) Details of all agreements (e.g., work requirements, rate of compensation, and nature and amount of other expenses, if any) with the individuals or organizations providing the services and details of actual services performed;
 - (2) Invoices or billings submitted by consultants, including sufficient detail as to the time expended and nature of the actual services provided; and
 - (3) Consultants' work products and related documents, such as trip reports indicating persons visited and subjects discussed, minutes of meetings, and collateral memoranda and reports.

51. RECRUITMENT COSTS. (FAR 31.205-34)

- (a) Subject to paragraph (b) of this subsection, the following costs are allowable:
- (1) Costs of help-wanted advertising.
 - (2) Costs of operating an employment office needed to secure and maintain an adequate labor force.
 - (3) Costs of operating an aptitude and educational testing program.
 - (4) Travel costs of employees engaged in recruiting personnel.
 - (5) Travel costs of applicants for interviews.
 - (6) Costs for employment agencies, not in excess of standard commercial rates.
- (b) Help-wanted advertising costs are unallowable if the advertising --
- (1) Does not describe specific positions or classes of positions;
 - (2) Includes material that is not relevant for recruitment purposes, such as extensive illustrations or descriptions of the company's products or capabilities;

52. RELOCATION COSTS. (FAR 31.205-35)

(a) Relocation costs are costs incident to the permanent change of assigned work location (for a period of 12 months or more) of an existing employee or upon recruitment of a new employee. The following types of relocation costs are allowable as noted, subject to paragraphs (b) and (f) of this subsection:

(1) Cost of travel of the employee and members of the immediate family (see 31.205-46) and transportation of the household and personal effects to the new location.

(2) Cost of finding a new home, such as advance trips by employee or the spouse, or both, to locate living quarters, and temporary lodging during the transition period for the employee and members of the employee's immediate family.

(3) Closing costs incident to the disposition of the actual residence owned by the employee when notified of the transfer (*i.e.*, brokerage fees, legal fees, appraisal fees, points, finance charges), except that these costs, when added to the costs described in paragraph (a)(4) of this subsection shall not exceed 14 percent of the sales price of the property sold.

(4) Continuing costs of ownership of the vacant former actual residence being sold, such as maintenance of building and grounds (exclusive of fixing up expenses), utilities, taxes, property insurance, and mortgage interest, after the settlement date or lease date of a new permanent residence, except that these costs, when added to the costs described in paragraph (a)(3) of this subsection, shall not exceed 14 percent of the sales price of the property sold.

(5) Other necessary and reasonable expenses normally incident to relocation, such as disconnecting and connecting household appliances; automobile registration; driver's license and use taxes; cutting and fitting rugs, draperies, and curtains; forfeited utility fees and deposits; and purchase of insurance against damage to or loss of personal property while in transit.

(6) Costs incident to acquiring a home in the new work location, except that --

(i) These costs are not allowable for existing employees or newly recruited employees who were not homeowners before the relocation; and

(ii) The total costs shall not exceed 5 percent of the purchase price of the new home.

(7) Mortgage interest differential payments, except that these costs are not allowable for existing or newly recruited employees who, before the relocation, were not homeowners and the total payments are limited to an amount determined as follows:

(i) The difference between the mortgage interest rates of the old and new residences times the current balance of the old mortgage times 3 years.

(ii) When mortgage differential payments are made on a lump-sum basis and the employee leaves or is transferred again in less than 3 years, the amount initially recognized shall be proportionately adjusted to reflect payments only for the actual time of the relocation.

(8) Rental differential payments covering situations where relocated employees retain ownership of a vacated home in the old location and rent at the new location. The rented quarters at the new location must be comparable to those vacated, and the allowable differential payments may not exceed the actual rental costs for the new home, less the fair market rent for the vacated home times 3 years.

(9) Costs of canceling an unexpired lease.

(10) Payments for increased employee income or Federal Insurance Contributions Act (26 U.S.C. chapter 21) taxes incident to allowable reimbursed relocation costs.

(11) Payments for spouse employment assistance.

(b) The costs described in paragraph (a) of this subsection must also meet the following criteria to be considered allowable:

(1) The move must be for the benefit of the employer.

(2) Reimbursement must be in accordance with an established policy or practice that is consistently followed by the employer and is designed to motivate employees to relocate promptly and economically.

(3) The costs must not be otherwise unallowable under Subpart 31.2.

(4) Amounts to be reimbursed shall not exceed the employee's actual expenses, except as provided for in paragraphs (b)(5) and (b)(6) of this subsection.

(5) For miscellaneous costs of the type discussed in paragraph (a)(5) of this subsection, a lump-sum amount, not to exceed \$5,000, may be allowed in lieu of actual costs.

(6)

(i) Reimbursement on a lump-sum basis may be allowed for any of the following relocation costs when adequately supported by data on the individual elements (*e.g.*, transportation, lodging, and meals) comprising the build-up of the lump-sum amount to be paid based on the circumstances of the particular employees' relocation:

(A) Costs of finding a new home, as discussed in paragraph (a)(2) of this subsection.

(B) Costs of travel to the new location, as discussed in paragraph (a)(1) of this subsection (but not costs for the transportation of household goods).

(C) Costs of temporary lodging, as discussed in paragraph (a)(2) of this subsection.

(ii) When reimbursement on a lump-sum basis is used, any adjustments to reflect actual costs are unallowable.

(c) The following types of costs are unallowable:

(1) Loss on sale of a home

(2) Costs incident to acquiring a home in the new location as follows:

(i) Real estate brokers' fees and commissions.

(ii) Costs of litigation.

(iii) Real and personal property insurance against damage or loss of property.

(iv) Mortgage life insurance.

(v) Owner's title policy insurance when such insurance was not previously carried by the employee on the old residence (However, the cost of a mortgage title policy is allowable.)

(vi) Property taxes and operating or maintenance costs.

(3) Continuing mortgage principal payments on a residence being sold.

(4) Costs incident to furnishing equity or nonequity loans to employees or making arrangements with lenders for employees to obtain lower-than-market rate mortgage loans.

(d) If relocation costs for an employee have been allowed either as an allocable indirect or direct cost, and the employee resigns within 12 months for reasons within the employee's control, the contractor shall refund or credit the relocation costs to the Government.

(e) Subject to the requirements of paragraphs (a) through (d) of this section, the costs of family movements and of personnel movements of a special or mass nature are allowable. The cost, however, should be assigned on the basis of work (contracts) or time period benefited.

(f) Relocation costs (both outgoing and return) of employees who are hired for performance on specific contracts or long-term field projects are allowable if --

(1) The term of employment is 12 months or more;

(2) The employment agreement specifically limits the duration of employment to the time spent on the contract or field project for which the employee is hired;

(3) The employment agreement provides for return relocation to the employee's permanent and principal home immediately prior to the outgoing relocation, or other location of equal or lesser cost; and

(4) The relocation costs are determined under the rules of paragraphs (a) through (d) of this section. However, the costs to return employees, who are released from employment upon completion of field assignments pursuant to their employment agreements, are not subject to the refund or credit requirement of paragraph (d).

53. RENTAL COSTS. (FAR 31.205-36)

(a) This subsection is applicable to the cost of renting or leasing real or personal property, acquired under "operating leases" as defined in Financial Accounting Standards Board's Accounting Standards Codification (FASB ASC) 840, Leases. (See 31.205-11 for Capital Leases.)

(b) The following costs are allowable:

(1) Rental costs under operating leases, to the extent that the rates are reasonable at the time of the lease decision, after consideration of --

(i) Rental costs of comparable property, if any;

(ii) Market conditions in the area;

(iii) The type, life expectancy, condition, and value of the property leased;

(iv) Alternatives available; and

(v) Other provisions of the agreement.

(2) Rental costs under a sale and leaseback arrangement only up to the amount the contractor would be allowed if the contractor retained title, computed based on the net book value of the asset on the date the contractor becomes a lessee of the property adjusted for any gain or loss recognized in accordance with 31.205-16(b).

(3) Charges in the nature of rent for property between any divisions, subsidiaries, or organizations under common control, to the extent that they do not exceed the normal costs of ownership, such as depreciation, taxes, insurance, facilities capital cost of money, and maintenance (excluding interest or other unallowable costs pursuant to Part 31), provided that no part of such costs shall duplicate any other allowed cost. Rental cost of personal property leased from any division, subsidiary, or affiliate of the contractor under common control, that has an established practice of leasing the same or similar property to unaffiliated lessees shall be allowed in accordance with subparagraph (b)(1) of this section.

(c) The allowability of rental costs under unexpired leases in connection with terminations is treated in 31.205-42(e).

54. ROYALTIES AND OTHER COSTS FOR USE OF PATENTS. (FAR 31.205-37)

(a) Royalties on a patent or amortization of the cost of purchasing a patent or patent rights necessary for the proper performance of the contract and applicable to contract products or processes are allowable unless --

- (1) The Government has a license or the right to a free use of the patent;
- (2) The patent has been adjudicated to be invalid, or has been administratively determined to be invalid;
- (3) The patent is considered to be unenforceable; or
- (4) The patent is expired.

(b) Care should be exercised in determining reasonableness when the royalties may have been arrived at as a result of less-than-arm's-length bargaining; e.g., royalties --

- (1) Paid to persons, including corporations, affiliated with the contractor;
- (2) Paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Government contract would be awarded; or
- (3) Paid under an agreement entered into after the contract award.

(c) In any case involving a patent formerly owned by the contractor, the royalty amount allowed should not exceed the cost which would have been allowed had the contractor retained title.

(d) See 31.109 regarding advance agreements.

55. SELLING COSTS. (FAR 31.205-38)

(a) "Selling" is a generic term encompassing all efforts to market the contractor's products or services, some of which are covered specifically in other subsections of 31.205. The costs of any selling efforts other than those addressed in this cost principle are unallowable.

(b) Selling activity includes the following broad categories:

(1) *Advertising*. Advertising is defined at 31.205-1(b), and advertising costs are subject to the allowability provisions of 31.205-1(d) and (f).

(2) *Corporate image enhancement.* Corporate image enhancement activities, including broadly targeted sales efforts, other than advertising, are included within the definition of public relations at 31.205-1 (a), and the costs of such efforts are subject to the allowability provisions at 31.205-1 (e) and (f).

(3) *Bid and proposal costs.* Bid proposal costs are defined at 31.205-18 and are subject to the allowability provisions of that subsection.

(4) *Market planning.* Market planning involves market research and analysis and general management planning concerned with development of the contractor's business. Long-range market planning costs are subject to the allowability provisions of 31.205-12. Other market planning costs are allowable.

(5) *Direct selling.* Direct selling efforts are those acts or actions to induce particular customers to purchase particular products or services of the contractor. Direct selling is characterized by person-to-person contact and includes such efforts as familiarizing a potential customer with the contractor's products or services, conditions of sale, service capabilities, etc. It also includes negotiation, liaison between customer and contractor personnel, technical and consulting efforts, and individual demonstrations, and any other efforts having as their purpose the application or adaptation of the contractor's products or services for a particular customer's use. The cost of direct selling efforts is allowable.

(c) Notwithstanding any other provision of this subsection, sellers' or agents' compensation, fees, commissions, percentages, retainer or brokerage fees, whether or not contingent upon the award of contracts, are allowable only when paid to bona fide employees or established commercial or selling agencies maintained by the contractor for the purpose of securing business.

56. SERVICE AND WARRANTY COSTS. (FAR 31.205-39)

Service and warranty costs include those arising from fulfillment of any contractual obligation of a contractor to provide services such as installation, training, correcting defects in the products, replacing defective parts, and making refunds in the case of inadequate performance. When not inconsistent with the terms of the contract, service and warranty costs are allowable. However, care should be exercised to avoid duplication of the allowance as an element of both estimated product cost and risk.

57. SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT COSTS. (FAR 31.205-40)

(a) The terms "special tooling" and "special test equipment" are defined in 2.101(b).

(b) The cost of special tooling and special test equipment used in performing one or more Government contracts is allowable and shall be allocated to the specific Government contract or contracts for which acquired, except that the cost of --

(1) Items acquired by the contractor before the effective date of the contract (or replacement of such items), whether or not altered or adapted for use in performing the contract, and

(2) Items which the contract schedule specifically excludes, shall be allowable only as depreciation or amortization.

(c) When items are disqualified as special tooling or special test equipment because with relatively minor expense they can be made suitable for general purpose use and have a value as such commensurate with their value as special tooling or special test equipment, the cost of adapting the items for use under the contract and the cost of returning them to their prior configuration are allowable.

58. TAXES. (FAR 31.205-41)

(a) The following types of costs are allowable:

(1) Federal, State, and local taxes (see Part 29), except as otherwise provided in paragraph (b) of this section that are required to be and are paid or accrued in accordance with generally accepted accounting principles. Fines and penalties are not considered taxes.

(2) Taxes otherwise allowable under subparagraph (a)(1) of this section, but upon which a claim of illegality or erroneous assessment exists; provided the contractor, before paying such taxes --

(i) Promptly requests instructions from the contracting officer concerning such taxes; and

(ii) Takes all action directed by the contracting officer arising out of subparagraph (2)(i) of this section or an independent decision of the Government as to the existence of a claim of illegality or erroneous assessment, to --

(A) Determine the legality of the assessment or

(B) Secure a refund of such taxes.

(3) Pursuant to subparagraph (a)(2) of this section, the reasonable costs of any action taken by the contractor at the direction or with the concurrence of the contracting officer. Interest or penalties incurred by the contractor for non-payment of any tax at the direction of the contracting officer or by reason of the failure of the contracting officer to ensure timely direction after a prompt request.

(4) The Environmental Tax found at section 59A of the Internal Revenue Code, also called the "Superfund Tax."

(b) The following types of costs are not allowable:

(1) Federal income and excess profits taxes.

(2) Taxes in connection with financing, refinancing, refunding operations, or reorganizations (see 31.205-20 and 31.205-27).

(3) Taxes from which exemptions are available to the contractor directly, or available to the contractor based on an exemption afforded the Government, except when the contracting officer determines that the administrative burden incident to obtaining the exemption outweighs the corresponding benefits accruing to the Government. When partial exemption from a tax is attributable to Government contract activity, taxes charged to such work in excess of that amount resulting from application of the preferential treatment are unallowable. These provisions intend that tax preference attributable to Government contract activity be realized by the Government. The term "exemption" means freedom from taxation in whole or in part and includes a tax abatement or reduction resulting from mode of assessment, method of calculation, or otherwise.

(4) Special assessments on land that represent capital improvements.

(5) Taxes (including excises) on real or personal property, or on the value, use, possession or sale thereof, which is used solely in connection with work other than on Government contracts (see paragraph (c) of this section).

(6) Any excise tax in subtitle D, chapter 43 of the Internal Revenue Code of 1986, as amended. That chapter includes excise taxes imposed in connection with qualified pension plans, welfare plans, deferred compensation plans, or other similar types of plans.

(7) Income tax accruals designed to account for the tax effects of differences between taxable income and pretax income as reflected by the books of account and financial statements.

(8) Any tax imposed under 26 U.S.C. 5000C.

(c) Taxes on property (see subparagraph (b)(5) of this section) used solely in connection with either non-Government or Government work should be considered directly applicable to the respective category of work unless the amounts involved are insignificant or comparable results would otherwise be obtained; e.g., taxes on contractor-owned work-in-process which is used solely in connection with non-Government work should be allocated to such work; taxes on contractor-owned work-in-process inventory (and Government-owned work-in-process inventory when taxed) used solely in connection with Government work should be charged to such work. The cost of taxes incurred on property used in both Government and non-Government work shall be apportioned to all such work based upon the use of such property on the respective final cost objectives.

(d) Any taxes, interest, or penalties that were allowed as contract costs and are refunded to the contractor shall be credited or paid to the Government in the manner it directs. If a contractor or subcontractor obtains a foreign tax credit that reduces its U.S. Federal income tax because of the payment of any tax or duty allowed as contract costs, and if those costs were reimbursed by a foreign government, the amount of the reduction shall be paid to the Treasurer of the United States at the time the Federal income tax return is filed. However, any interest actually paid or credited to a contractor incident to a refund of tax, interest, or penalty shall be paid or credited to the Government only to the extent that such interest accrued over the period during which the contractor had been reimbursed by the Government for the taxes, interest, or penalties.

59. TERMINATION COSTS. (FAR 31.205-42)

Contract terminations generally give rise to the incurrence of costs or the need for special treatment of costs that would not have arisen had the contract not been terminated. The following cost principles peculiar to termination situations are to be used in conjunction with the other cost principles in Subpart 31.2:

(a) *Common items.* The costs of items reasonably usable on the contractor's other work shall not be allowable unless the contractor submits evidence that the items could not be retained at cost without sustaining a loss. The contracting officer should consider the contractor's plans and orders for current and planned production when determining if items can reasonably be used on other work of the contractor. Contemporaneous purchases of common items by the contractor shall be regarded as evidence that such items are reasonably usable on the contractor's other work. Any acceptance of common items as allocable to the terminated portion of the contract should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(b) *Costs continuing after termination* Despite all reasonable efforts by the contractor, costs which cannot be discontinued immediately after the effective date of termination are generally allowable. However, any costs continuing after the effective date of the termination due to the negligent or willful failure of the contractor to discontinue the costs shall be unallowable.

(c) *Initial costs.* Initial costs, including starting load and preparatory costs, are allowable as follows:

(1) Starting load costs not fully absorbed because of termination are nonrecurring labor, material, and related overhead costs incurred in the early part of production and result from factors such as --

- (i) Excessive spoilage due to inexperienced labor;
- (ii) Idle time and subnormal production due to testing and changing production methods;
- (iii) Training; and
- (iv) Lack of familiarity or experience with the product, materials, or manufacturing processes.

(2) Preparatory costs incurred in preparing to perform the terminated contract include such costs as those incurred for initial plant rearrangement and alterations, management and personnel organization, and production planning. They do not include special machinery and equipment and starting load costs.

(3) When initial costs are included in the settlement proposal as a direct charge, such costs shall not also be included in overhead. Initial costs attributable to only one contract shall not be allocated to other contracts.

(4) If initial costs are claimed and have not been segregated on the contractor's books, they shall be segregated for settlement purposes from cost reports and schedules reflecting that high unit cost incurred during the early stages of the contract.

(5) If the settlement proposal is on the inventory basis, initial costs should normally be allocated on the basis of total end items called for by the contract immediately before termination; however, if the contract includes end items of a diverse nature, some other equitable basis may be used, such as machine or labor hours.

(d) *Loss of useful value.* Loss of useful value of special tooling, and special machinery and equipment is generally allowable, provided --

(1) The special tooling, or special machinery and equipment is not reasonably capable of use in the other work of the contractor;

(2) The Government's interest is protected by transfer of title or by other means deemed appropriate by the contracting officer; and

(3) The loss of useful value for any one terminated contract is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the contract bears to the entire terminated contract and other Government contracts for which the special tooling, or special machinery and equipment was acquired.

(e) *Rental under unexpired leases.* Rental costs under unexpired leases, less the residual value of such leases, are generally allowable when shown to have been reasonably necessary for the performance of the terminated contract, if --

(1) The amount of rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and

(2) The contractor makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease.

(f) *Alterations of leased property.* The cost of alterations and reasonable restorations required by the lease may be allowed when the alterations were necessary for performing the contract.

(g) *Settlement expenses*

(1) Settlement expenses, including the following, are generally allowable:

(i) Accounting, legal, clerical, and similar costs reasonably necessary for --

(A) The preparation and presentation, including supporting data, of settlement claims to the contracting officer; and

(B) The termination and settlement of subcontracts.

(ii) Reasonable costs for the storage, transportation, protection, and disposition of property acquired or produced for the contract.

(iii) Indirect costs related to salary and wages incurred as settlement expenses in (i) and (ii); normally, such indirect costs shall be limited to payroll taxes, fringe benefits, occupancy costs, and immediate supervision costs.

(2) If settlement expenses are significant, a cost account or work order shall be established to separately identify and accumulate them.

(h) *Subcontractor claims.* Subcontractor claims, including the allocable portion of the claims common to the contract and to other work of the contractor, are generally allowable. An appropriate share of the contractor's indirect expense may be allocated to the amount of settlements with subcontractors; provided, that the amount allocated is reasonably proportionate to the relative benefits received and is otherwise consistent with 31.201-4 and 31.203(d). The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

60. TRADE, BUSINESS, TECHNICAL AND PROFESSIONAL ACTIVITY COSTS. (FAR 31.205-43)

The following types of costs are allowable:

(a) Memberships in trade, business, technical, and professional organizations.

(b) Subscriptions to trade, business, professional, or other technical periodicals.

(c) When the principal purpose of a meeting, convention, conference, symposium, or seminar is the dissemination of trade, business, technical or professional information or the stimulation of production or improved productivity --

(1) Costs of organizing, setting up, and sponsoring the meetings, conventions, symposia, etc., including rental of meeting facilities, transportation, subsistence, and incidental costs;

(2) Costs of attendance by contractor employees, including travel costs (see 31.205-46); and

(3) Costs of attendance by individuals who are not employees of the contractor, *provided --*

(i) Such costs are not also reimbursed to the individual by the employing company or organization, and

(ii) The individual's attendance is essential to achieve the purpose of the conference, meeting, convention, symposium, etc.

61. TRAINING AND EDUCATION COSTS. (FAR 31.205-44)

Costs of training and education that are related to the field in which the employee is working or may reasonably be expected to work are allowable, except as follows:

(a) Overtime compensation for training and education is unallowable.

(b) The cost of salaries for attending undergraduate level classes or part-time graduate level classes during working hours is unallowable, except when unusual circumstances do not permit attendance at such classes outside of regular working hours.

(c) Costs of tuition, fees, training materials and textbooks, subsistence, salary, and any other payments in connection with full-time graduate level education are unallowable for any portion of the program that exceeds two school years or the length of the degree program, whichever is less.

(d) Grants to educational or training institutions, including the donation of facilities or other properties, scholarships, and fellowships are considered contributions and are unallowable.

(e) Training or education costs for other than bona fide employees are unallowable, except that the costs incurred for educating employee dependents (primary and secondary level studies) when the employee is working in a foreign country where suitable public education is not available may be included in overseas differential pay.

(f) Contractor contributions to college savings plans for employee dependents are unallowable.

62. TRAVEL COSTS. (FAR 31.205-46)

(a) *Costs for transportation, lodging, meals, and incidental expenses.*

(1) Costs incurred by contractor personnel on official company business are allowable, subject to the limitations contained in this subsection. Costs for transportation may be based on mileage rates, actual costs incurred, or on a combination thereof, provided the method used results in a reasonable charge. Costs for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge.

(2) Except as provided in subparagraph (a)(3) of this subsection, costs incurred for lodging, meals, and incidental expenses (as defined in the regulations cited in (a)(2)(i) through (iii) of this section) shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in the --

(i) Federal Travel Regulations, prescribed by the General Services Administration, for travel in the contiguous United States, available on a subscription basis from the --

Superintendent of Documents
U.S. Government Publishing Office
Washington, DC 20402
Stock No. 922-002-00000-2;

(ii) Joint Travel Regulation, Volume 2, DoD Civilian Personnel, Appendix A, prescribed by the Department of Defense, for travel in Alaska, Hawaii, and outlying areas of the United States, available on a subscription basis from the --

Superintendent of Documents
U.S. Government Publishing Office
Washington, DC 20402
Stock No. 908-010-00000-1; or

(iii) Standardized Regulations (Government Civilians, Foreign Areas), Section 925, "Maximum Travel Per Diem Allowances for Foreign Areas," prescribed by the Department of State, for travel in areas not covered in (a)(2)(i) and (ii) of this subparagraph, available on a subscription basis from the --

Superintendent of Documents
U.S. Government Printing Office
Washington, DC 20402
Stock No. 744-008-00000-0.

(3) In special or unusual situations, actual costs in excess of the above-referenced maximum per diem rates are allowable provided that such amounts do not exceed the higher amounts authorized for Federal civilian employees as permitted in the regulations referenced in (a)(2)(i), (ii), or (iii) of this section. For such higher amounts to be allowable, all of the following conditions must be met:

(i) One of the conditions warranting approval of the actual expense method, as set forth in the regulations referenced in paragraph (a)(2)(i), (ii), or (iii) of this section, must exist.

(ii) A written justification for use of the higher amounts must be approved by an officer of the contractor's organization or designee to ensure that the authority is properly administered and controlled to prevent abuse.

(iii) If it becomes necessary to exercise the authority to use the higher actual expense method repetitively or on a continuing basis in a particular area, the contractor must obtain advance approval from the contracting officer.

(iv) Documentation to support actual costs incurred shall be in accordance with the contractor's established practices, subject to paragraph (a)(7) of this section, and provided that a receipt is required for each expenditure of \$75.00 or more. The approved justification required by paragraph (a)(3)(ii) of this section and, if applicable, paragraph (a)(3)(iii) of this section must be retained.

(4) Paragraphs (a)(2) and (a)(3) of this section do not incorporate the regulations cited in (a)(2)(i), (ii), and (iii) of this section in their entirety. Only the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and the regulatory coverage dealing with special or unusual situations are incorporated herein.

(5) An advance agreement (see 31.109) with respect to compliance with subparagraphs (a)(2) and (3) of this subsection may be useful and desirable.

(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection generally would not constitute a reasonable daily charge --

(i) When no lodging costs are incurred; and/or

(ii) On partial travel days (e.g., day of departure and return). Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the Federal Travel Regulation or Joint Travel Regulations, they must result in a reasonable charge.

(7) Costs shall be allowable only if the following information is documented --

(i) Date and place (city, town, or other similar designation) of the expenses;

(ii) Purpose of the trip; and

(iii) Name of person on trip and that person's title or relationship to the contractor.

(b) Airfare costs in excess of the lowest priced airfare available to the contractor during normal business hours are unallowable except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above standard airfare to be allowable, the applicable condition(s) set forth above must be documented and justified.

(c)

(1) "Cost of travel by contractor-owned, -leased, or -chartered aircraft," as used in this paragraph (c), includes the cost of lease, charter, operation (including personnel), maintenance, depreciation, insurance, and other related costs.

(2) The costs of travel by contractor-owned, -leased, or -chartered aircraft are limited to the allowable airfare described in paragraph (b) of this section for the flight destination unless travel by such aircraft is specifically required

by contract specification, term, or condition, or a higher amount is approved by the contracting officer. A higher amount may be agreed to when one or more of the circumstances for justifying higher than allowable airfare listed in paragraph (b) of this section are applicable, or when an advance agreement under subparagraph (c)(3) of this section has been executed. In all cases, travel by contractor-owned, -leased, or -chartered aircraft must be fully documented and justified. For each contractor-owned, -leased, or -chartered aircraft used for any business purpose which is charged or allocated, directly or indirectly, to a Government contract, the contractor must maintain and make available manifest/logs for all flights on such company aircraft. As a minimum, the manifest/log shall indicate --

- (i) Time, and points of departure;
- (ii) Destination, date, and time of arrival;
- (iii) Name of each passenger and relationship to the contractor;
- (iv) Authorization for trip; and
- (v) Purpose of trip.

(3) Where an advance agreement is proposed (see 31.109), consideration may be given to the following:

(i) Whether scheduled commercial airlines or other suitable, less costly, travel facilities are available at reasonable times, with reasonable frequency, and serve the required destinations conveniently.

(ii) Whether increased flexibility in scheduling results in time savings and more effective use of personnel that would outweigh additional travel costs.

(d) Costs of contractor-owned or -leased automobiles, as used in this paragraph, include the costs of lease, operation (including personnel), maintenance, depreciation, insurance, etc. These costs are allowable, if reasonable, to the extent that the automobiles are used for company business. That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is compensation for personal services and is unallowable as stated in 31.205-6(m)(2).

63. COSTS RELATED TO LEGAL AND OTHER PROCEEDINGS. (FAR 31.205-47)

(a) *Definitions.* As used in this subsection--

"Costs" include, but are not limited to, administrative and clerical expenses; the costs of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the contractor to assist it; costs of employees, officers, and directors; and any similar costs incurred before, during, and after commencement of a judicial or administrative proceeding which bears a direct relationship to the proceeding.

"Fraud" means—

- (1) Acts of fraud or corruption or attempts to defraud the Government or to corrupt its agents;
- (2) Acts which constitute a cause for debarment or suspension under 9.406-2(a) and 9.407-2(a); and
- (3) Acts which violate the False Claims Act, 31 U.S.C., sections 3729-3731, or 41 U.S.C. chapter 87, Kickbacks.

"Penalty" does not include restitution, reimbursement, or compensatory damages.

"Proceeding" includes an investigation.

(b) Costs incurred in connection with any proceeding brought by: A Federal, State, local, or foreign government for a violation of, or failure to comply with, law or regulation by the contractor (including its agents or employees) (41 U.S.C. 4310 and 10 U.S.C. 2324(k)); a contractor or subcontractor employee submitting a whistleblower complaint of reprisal in accordance with 41 U.S.C. 4712 or 10 U.S.C. 2409; or a third party in the name of the United States under the False Claims Act, 31 U.S.C. 3730, are unallowable if the result is--

(1) In a criminal proceeding, a conviction;

(2) In a civil or administrative proceeding, either a finding of contractor liability where the proceeding involves an allegation of fraud or similar misconduct; or imposition of a monetary penalty, or an order issued by the agency head to the contractor or subcontractor to take corrective action under 41 U.S.C. 4712 or 10 U.S.C. 2409, where the proceeding does not involve an allegation of fraud or similar misconduct;

(3) A final decision by an appropriate official of an executive agency to --

(i) Debar or suspend the contractor;

(ii) Rescind or void a contract; or

(iii) Terminate a contract for default by reason of a violation or failure to comply with a law or regulation.

(4) Disposition of the matter by consent or compromise if the proceeding could have led to any of the outcomes listed in subparagraphs (b)(1) through (3) of this subsection (but see paragraphs (c) and (d) of this subsection); or

(5) Not covered by subparagraphs (b)(1) through (4) of this subsection, but where the underlying alleged contractor misconduct was the same as that which led to a different proceeding whose costs are unallowable by reason of subparagraphs (b)(1) through (4) of this subsection.

(c)

(1) To the extent they are not otherwise unallowable, costs incurred in connection with any proceeding under paragraph (b) of this subsection commenced by the United States that is resolved by consent or compromise pursuant to an agreement entered into between the contractor and the United States, and which are unallowable solely because of paragraph (b) of this subsection, may be allowed to the extent specifically provided in such agreement.

(2)

(i) In the event of a settlement of any proceeding brought by a third party under the False Claims Act in which the United States did not intervene, reasonable costs incurred by the contractor in connection with such a proceeding, that are not otherwise unallowable by regulation or by separate agreement with the United States, may be allowed if the contracting officer, in consultation with his or her legal advisor determines that there was very little likelihood that the third party would have been successful on the merits.

(ii) In the event of disposition by consent or compromise of a proceeding brought by a whistleblower for alleged reprisal in accordance with 41 U.S.C. 4712 or 10 U.S.C. 2409, reasonable costs incurred by a contractor or subcontractor in connection with such a proceeding that are not otherwise unallowable by regulation or by agreement with the United States may be allowed if the contracting officer, in consultation with his or her legal advisor, determined that there was very little likelihood that the claimant would have been successful on the merits.

(d) To the extent that they are not otherwise unallowable, costs incurred in connection with any proceeding under paragraph (b) of this subsection commenced by a State, local, or foreign government may be allowable when the contracting officer (or other official specified in agency procedures) determines, that the costs were incurred either:

(1) As a direct result of a specific term or condition of a Federal contract; or

(2) As a result of compliance with specific written direction of the cognizant contracting officer.

(e) Costs incurred in connection with proceedings described in paragraph (b) of this subsection, but which are not made unallowable by that paragraph, may be allowable to the extent that:

(1) The costs are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;

(2) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and

(3) The percentage of costs allowed does not exceed the percentage determined to be appropriate considering the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. Such percentage shall not exceed 80 percent. Agreements reached under paragraph (c) of this subsection shall be subject to this limitation. If, however, an agreement described in paragraph (c)(1) of this subsection explicitly states the amount of otherwise allowable incurred legal fees and limits the allowable recovery to 80 percent or less of the stated legal fees, no additional limitation need be applied. The amount of reimbursement allowed for legal costs in connection with any proceeding described in paragraph (c)(2) of this subsection shall be determined by the cognizant contracting officer, but shall not exceed 80 percent of otherwise allowable legal costs incurred.

(f) Costs not covered elsewhere in this subsection are unallowable if incurred in connection with --

(1) Defense against Federal Government claims or appeals or the prosecution of claims or appeals against the Federal Government (see 2.101).

(2) Organization, reorganization, (including mergers and acquisitions) or resisting mergers and acquisitions (see also 31.205-27).

(3) Defense of antitrust suits.

(4) Defense of suits brought by employees or ex-employees of the contractor under section 2 of the Major Fraud Act of 1988 where the contractor was found liable or settled.

(5) Costs of legal, accounting, and consultant services and directly associated costs incurred in connection with the defense or prosecution of lawsuits or appeals between contractors arising from either --

(i) An agreement or contract concerning a teaming arrangement, a joint venture, or similar arrangement of shared interest; or

(ii) Dual sourcing, coproduction, or similar programs, are unallowable, except when

(A) Incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer, or

(B) When agreed to in writing by the contracting officer.

(6) Patent infringement litigation, unless otherwise provided for in the contract.

(7) Representation of, or assistance to, individuals, groups, or legal entities which the contractor is not legally bound to provide, arising from an action where the participant was convicted of violation of a law or regulation or was found liable in a civil or administrative proceeding.

(8) Protests of Federal Government solicitations or contract awards, or the defense against protests of such solicitations or contract awards, unless the costs of defending against a protest are incurred pursuant to a written request from the cognizant contracting officer.

(9) A congressional investigation or inquiry into an issue that is the subject matter of a proceeding resulting in a disposition as described in paragraphs (b)(1) through (5) of this section (see 10 U.S.C. 2324(e)(1)(Q)).

(g) Costs which may be unallowable under 31.205-47, including directly associated costs, shall be segregated and accounted for by the contractor separately. During the pendency of any proceeding covered by paragraph (b) and subparagraphs (f)(4) and (f)(7) of this subsection, the contracting officer shall generally withhold payment of such costs. However, if in the best interests of the Government, the contracting officer may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement by the contractor to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

64. RESEARCH AND DEVELOPMENT COSTS. (FAR 31.205-48)

“Research and development,” as used in this subsection, means the type of technical effort described in 31.205-18 but sponsored by a grant or required in the performance of a contract. When costs are incurred in excess of either the price of a contract or amount of a grant for research and development effort, the excess is unallowable under any other Government contract.

65. GOODWILL. (FAR 31.205-49)

Goodwill, an unidentifiable intangible asset, originates under the purchase method of accounting for a business combination when the price paid by the acquiring company exceeds the sum of the identifiable individual assets acquired less liabilities assumed, based upon their fair values. The excess is commonly referred to as goodwill. Goodwill may arise from the acquisition of a company as a whole or a portion thereof. Any costs for amortization, expensing, write-off, or write-down of goodwill (however represented) are unallowable.

66. COSTS OF ALCOHOLIC BEVERAGES. (FAR 31.205-51)

Costs of alcoholic beverages are unallowable.

67. ASSET VALUATIONS RESULTING FROM BUSINESS COMBINATIONS. (FAR 31.205-52)

(a) For tangible capital assets, when the purchase method of accounting for a business combination is used, whether or not the contract or subcontract is subject to CAS, the allowable depreciation and cost of money shall be based on the capitalized asset values measured and assigned in accordance with 48 CFR 9904.404-50(d), if allocable, reasonable, and not otherwise unallowable.

(b) For intangible capital assets, when the purchase method of accounting for a business combination is used, allowable amortization and cost of money shall be limited to the total of the amounts that would have been allowed had the combination not taken place.

**EXHIBIT E-2
INVOICING REQUIREMENTS**

SAMPLE Environmental Engineering Contract 12345

Date 1/31/2008

**SUMMARY OF INVOICES
SAMPLE DOCUMENT**

Date	Invoice #	Cap Metro Project Manager	Task Order	Description	Task Order Authorized Amount	Task % Complete	Invoice % Complete	Previous Amount Billed	Current Amount Due	Task Order Balance
		John Doe	1	Park and Ride ABC	\$ 3,700.00	100%	100%	\$ 3,700.00	\$ -	\$ -
		Pooja Kumar	2	Park and Ride DEF	\$ 5,980.00	100%	100%	\$ 5,980.00	\$ -	\$ -
1/31	1234	Jane Doe	3	Railstation TUV	\$ 16,260.00	33%	33%	\$ 2,500.00	\$ 2,350.00	\$11,410.00
1/31	6789	John Doe	4	Park and Ride WXY	\$ 47,523.00	100%	98%	\$ 44,277.00	\$ 3,050.00	\$ 196.00
					\$ 73,463.00			\$ 56,457.00	\$ 5,400.00	\$11,606.00

Task Order 100% / Invoicing Less than 100% Complete: Itemization of Outstanding Invoices

Task Order	Item Outstanding	Date to be Submitted	Amount
4	Invoice from Title Company Not Received Prior to Billing Cycle	2/28/2008	\$ 196.00

**EXHIBIT E-2
INVOICING REQUIREMENTS**

SAMPLE Engineering Contract 12345

Date 1/31/2008
Invoice # 1234

**INVOICE FOR TASK ORDER 3
SAMPLE DOCUMENT**

Project Description Rail Station TUV

Cap Metro Project Manager John Doe

Description	Rate	Task Order			Previously Billed			Current Invoice			Total	
		Hours	Fixed Cost	%	Hours	Billed	%	Hours	Invoice	%	Billed	%
Principal	\$ 175.00	12	\$ 2,100.00	13%	2	\$ 350.00	14%	2		0%	\$ 350.00	8%
Project Manager	\$ 150.00	30	\$ 4,500.00	28%	4	\$ 600.00	24%	5	\$ 750.00	35%	\$ 1,350.00	29%
Sr Engineer	\$ 135.00	15	\$ 2,025.00	13%	3	\$ 405.00	16%	1	\$ 135.00	6%	\$ 540.00	12%
Engineer	\$ 115.00	45	\$ 5,175.00	33%	7	\$ 805.00	33%	8	\$ 920.00	43%	\$ 1,725.00	37%
Sr Technician	\$ 50.00	40	\$ 2,000.00	13%	6	\$ 300.00	12%	7	\$ 350.00	16%	\$ 650.00	14%
Services Subtotal		142	\$ 15,800.00	100%	22	\$2,460.00	100%	23	\$ 2,155.00	100%	\$ 4,615.00	100%
Reimbursables:												
Courier Service			\$ 120.00						\$ 70.00		\$ 70.00	
Title Company Docs			\$ 340.00			\$ 40.00			\$ 125.00		\$ 165.00	
NTE Subtotal			\$ 460.00			\$ 40.00			\$ 195.00		\$ 235.00	
TOTAL			\$ 16,260.00			\$2,500.00			\$ 2,350.00		\$ 4,850.00	
									Due \$ 2,350.00			

Total Billed \$ 4,850.00
Balance on Task Order \$11,410.00

**EXHIBIT E-2
INVOICING REQUIREMENTS**

SAMPLE Environmental Engineering Contract **12345**

Date 1/31/2008
Invoice # 6789

**INVOICE FOR TASK ORDER 4
SAMPLE DOCUMENT**

Project Description

Park and Ride WXY

Cap Metro Project Manager **John Doe**

Description	Rate	Task Order			Previously Billed			Current Invoice			Total	
		Hours	Fixed Cost	%	Hours	Billed	%	Hours	Invoice	%	Billed	%
Principal	\$ 175.00	36	\$ 6,300.00	13%	30	\$ 5,250.00	12%	3		0%	\$ 5,250.00	11%
Project Manager	\$ 150.00	78	\$ 11,700.00	25%	70	\$ 10,500.00	24%	5	\$ 750.00	25%	\$ 11,250.00	24%
Sr Engineer	\$ 135.00	83	\$ 11,205.00	24%	83	\$ 11,205.00	25%	10	\$ 1,350.00	44%	\$ 12,555.00	27%
Engineer	\$ 115.00	110	\$ 12,650.00	27%	100	\$ 11,500.00	26%	-	\$ -	0%	\$ 11,500.00	24%
Sr Technician	\$ 50.00	108	\$ 5,400.00	11%	115	\$ 5,750.00	13%	-	\$ -	0%	\$ 5,750.00	12%
Fixed Price Adjustment*									\$ 950.00		\$ 950.00	
Services Subtotal		415	\$ 47,255.00	100%	398	\$ 44,205.00	100%	18	\$ 3,050.00	69%	\$ 47,255.00	98%
						\$ 47,255.00						
Reimbursables**:												
Courier Service			\$ 72.00			72			\$ -		\$ 72.00	
Title Company Docs			\$ 196.00			-			\$ -		\$ -	
NTE Subtotal			\$ 268.00			\$ 72.00			\$ -		\$ 72.00	
TOTAL			\$ 47,523.00			\$ 44,277.00			\$ 3,050.00		\$ 47,327.00	
									Due \$ 3,050.00			

Item Outstanding	Date to be Submitted	Amount
Title Company Invoice	2/28/2008	\$ 196.00

Total Billed \$ 47,327.00
Balance on Task Order \$ 196.00

*Fixed price adjustment would be negative figure if total invoiced exceeded fixed price; Task Orders are negotiated fixed price for services. Capital Metro will not pay greater than the fixed price unless a Scope Change is ordered.

EXHIBIT E-2
INVOICING REQUIREMENTS

**Reimbursable expenses will not exceed the reimbursable expenses authorized by the task order. Reimbursable costs (including subcontractor costs) shall be reimbursed to the Contractor by task and at actual cost with no administrative or other mark-ups (including subcontractor costs).

**EXHIBIT F
SCOPE OF SERVICES
GENERAL ENGINEERING AND RAILROAD ENGINEERING CONSULTING SERVICES**

CONTENTS OF EXHIBIT F

1. Introduction
2. Description
 - 2.1 Railroad Engineering
 - 2.2 Other Engineering / Architectural Services
3. Work Required
4. Deliverables
5. Responsibilities of the Contractor

1. INTRODUCTION

(a) The Contractor shall provide Capital Metropolitan Transportation Authority (“Capital Metro” or “The Authority”) with Engineering services including, but not limited to:

(i) Railroad infrastructure engineering, track systems, Positive Train Control, civil, bridge, structural, architectural, utilities, geotechnical, drainage, tunnel engineering, including Quality Assurance/Control (QA/QC) and permitting process, and other rail operational services;

(ii) Bus Infrastructure, civil, structural, architectural, utilities, drainage, traffic signal preemption, QA/QC and permitting process, and other bus operational services;

(iii) Bid Phase Services;

(iv) Design Support During Construction (DSDC);

(v) Program/Project Management Services; and

(vi) Condition assessment of facilities/assets for State of Good Repairs Program for any Authority owned rail and/or bus related facility, proposed facility, facility studies and/or evaluations, from time to time on an as-needed basis.

Each service need shall be contracted using contract task orders, each with a separate scope of work, fee, schedule, and deliverables.

(b) The Authority maintains separate task order Contracts for services of surveying, environmental engineering, geotechnical engineering, construction materials testing and jurisdictional services to supplement these engineering task orders.

(c) For some task orders, the Contractor will be one of a team of contractors comprising the project team reporting to the Authority’s project manager.

(d) When the language of an individual task order proposal conflicts with the requirements in this Contract, the Contract shall supersede the proposal unless the proposal specifically includes those conflicts in a list labeled as “Exclusions.”

(e) Capital Metro Services

(1) Transit Bus, MetroRapid, Paratransit and RideShare Services

Capital Metro’s largest operation includes more than 400 buses on 80 routes to 3,000 bus stops. Capital Metro’s fundamental bus service includes multiple-stop and express service, including the new MetroRapid premium service that radiates from neighborhoods into downtown, multiple-stop service that feeds into neighborhoods, major transfer

and park and ride centers and crosstown routes. Services include van and carpool coordination, special event shuttles, MetroAccess services for riders with disabilities and other services. Capital Metro contracts with third-party vendors for bus operation and maintenance services.

(2) University of Texas Shuttles

Capital Metro operates 19 dedicated routes to transport University of Texas students from concentrated student centers like Riverside Drive, Far West Boulevard and West Campus to UT's "40 Acres" and back. Capital Metro contracts with a third-party vendor for UT Shuttle bus operations and maintenance.

(3) Commuter and Excursion Passenger Rail Service

Capital Metro operates and maintains Diesel Multiple Unit (DMU) for commuter rail service, MetroRail, from Leander to downtown Austin under a centralized train control signal system dispatched from the North Maintenance and Operation facility. MetroRail utilizes the same track as the freight rail service. A third-party vendor operates and maintains the MetroRail system from Leander to Downtown area.

(4) Freight Rail Service

Capital Metro operates and maintains short line railroad freight service from Giddings to Llano currently using the services of a third-party vendor.

(i) Capital Metro Other Facilities

(1) Headquarters offices, bus maintenance facility and bus yard. Capital Metro is located at 2910 E. 5th St. at the corner of N. Pleasant Valley Road and E. 5th Street in East Austin.

(2) Additional Offices

- North Operations & Maintenance Facility, including rail maintenance, 9315 McNeil Road
- Administration Annex, 624 N. Pleasant Valley Road
- MetroAccess Paratransit Services, 509 Thompson Lane

(3) Park & Rides and Rail Stations

Park & Rides

- North Lamar Transit Center
- Oak Hill
- Tech Ridge
- Pavilion
- Great Hills
- Manor
- Jonestown
- Lago Vista
- Triangle
- Lakeline
- Leander
- Howard
- South Congress
- Elgin

MetroRail Stations:

- Downtown
- Plaza Saltillo
- MLK, Jr.
- Highland
- Crestview
- Kramer
- Howard
- Lakeline
- Leander

(j) Capital Metro Statistics

Service Area	Approximately 535 square miles
Bus Stops	Approximately 3,000
Communities	10 (includes Austin, Manor, San Leanna, Jonestown, Lago Vista, Leander, Point Venture, plus portions of Travis County Precinct 2 and Williamson County's Anderson Mill)
Freight Rail	Approximately 163 miles between Giddings and Llano Texas
Passenger Rail	Same rail line, 32 miles between downtown Austin and Leander.

2. DESCRIPTION

2.1. **RAILROAD ENGINEERING:** Consisting of track, bridge, tunnels, civil, structural, architectural, track drainage, wayside signal, grade crossing warning systems, E-ATC positive train control, train performance simulations, communication systems, data radio system, dispatch control systems, and other railroad related professional engineering design services for various projects along Capital Metro’s 163 mile railroad, including the 32 mile MetroRail line between Leander Station and Austin downtown Station.

(a) Track design may include, but is not limited to, sidings, mainline, tail track, spurs, continuously welded rail (CWR) and jointed rail, ballasted, sub-ballast, highway grade crossing surfaces, and drainage requirements for FRA track classes I – V, depending on location.

(b) Bridge design includes timber, steel, and concrete bridges, pipe and box culverts, overpasses, underpasses, slope stabilization, stream channelization and drainage ditches. Bridge projects may include, but are not limited to, developing long range repair, replacement, or rehabilitation strategies, as well as new bridge design which may include surveying, geotechnical, hydrology and hydraulic engineering related to streams and waterways that are bridged.

(c) Railroad signal engineering services may include, but are not limited to, railroad crossing warning signal projects for new road crossings, as well as modifications to existing crossings and quiet zones. Engineering of pre-emption solutions with roadway traffic signals train to wayside and wayside to train communication systems, E-ATC positive train control. Signal design may also include additions, modifications, and extensions to Capital Metro’s Centralized Train Control System such as adding signal aspects, block design.

(d) Other Railroad “systems”: Capital Metro Railroad Design requirements may include, but are not limited to, additions and modifications to its Dispatch Control System, station communication systems, other “systems” related to rail operations and rail right of way such as fiber optic communications, and station electronic signage may also require engineering services under this scope.

(e) Rail Maintenance Facilities: Engineering services may be required for the expansion, remodel, reconstruction, or addition to Capital Metro railroad/railcar maintenance facilities, as well as the engineering of new facilities. Services may include, but are not limited to, buildings, yard track, fueling, washing, and other related facilities.

(f) Rail Stations: Services may include, but are not limited to, MetroRail platform foundations, electrical, drainage, canopies, other utilities, signage, lighting, drop-off and pick up areas, park and ride facilities, wayfinding, and TVM shelters. Modifications or additions to rail existing stations, as well as design of new rail stations and new park & ride facilities.

(g) Rail Vehicle Engineering: Services may include, but are not limited to, car-borne E-ATC positive train control.

(h) Light Rail Transit: Light Rail Transit (LRT) Services may include feasibility studies and report, alternative analysis, preliminary engineering and final engineering (PS&E).

2.2. OTHER ENGINEERING AND ARCHITECTURAL SERVICES: Includes, but is not limited to, new transportation/transit facilities including administrative and maintenance buildings, any roadway or rail ROW construction, transit oriented developments, and any other multi-modal transit related facilities such as Park and Ride Lots, bus stops and amenities, and rail stations, transfer centers, neighborhood transfer centers, maintenance facilities, MetroRapid bus extensions, and other related facilities to Capital Metro's bus service and operations. Engineering design of paving, drainage, lighting, signage, station platforms and canopies may be required. Engineering disciplines may include, but are not limited to, civil, geotechnical, electrical, mechanical, and structural. Field topographic as well as boundary surveying may also be required. Architectural services may be required as a component of station or facility design.

(a) PROGRAM / PROJECT MANAGEMENT ASSISTANCE

In addition to design responsibilities, Capital Metro may require assistance in program and project management, including bid phase services, risk assessment and mitigation strategies, processing of documentation as well as project reporting. Field monitoring of construction activities may also be required. Personnel assigned to tasks related to this assistance should be well experienced in construction management.

(b) DESIGN-BUILD PROJECTS

As an alternative to design-bid-build Capital Metro may elect to implement design-build projects. The role of the General Engineering Consultant in these project methods would be limited to developing project requirements including advancing the engineering design to a sufficient stage whereby the project elements are adequately defined and determined. The General Engineering Consultant would continue to assist Capital Metro throughout the design-build project and therefore would be ineligible to participate in the design-build contract.

(c) STATE OF GOOD REPAIRS

Capital Metro may need assistance in carrying out condition assessment of the Facilities/Assets for implementation of State of Good Repairs program

(d) PLAN REVIEWS

Capital Metro receives Permit applications for allowing work for any construction projects planned in proximity or within Capital Metro's Railroad Right of Way. The permit applications require the project owners to submit design plans for review before the permit approved and issued. Task Orders may be issued for reviewing such design plans.

3. WORK REQUIRED

(a) The Contractor shall provide all the necessary and appropriate Engineering Design services for any or all of, but not limited to, the following project types:

- (1) site development or modifications;
- (2) Railroad mainline or siding track and bridge structures including overpasses and underpasses;
- (3) Railroad signaling systems, including CTC as well as road crossing signal design;
- (4) Wayside Station Communication Systems;
- (5) Associated Railroad infrastructure systems including dispatch control, electronic messaging, and positive train control, and others as may be required;
- (6) New MetroRail stations or additions to existing stations;
- (7) Bus Rapid Transit (BRT), Light Rail Transit (LRT) study and design;
- (8) New park and ride lot facilities, or additions to existing park and ride lots;
- (9) Utility studies as necessary, including SUE investigations;
- (10) new buildings, renovations or additions;
- (11) evaluation of existing or proposed facilities;

- (12) repairs or corrections to existing facilities; and/or
 - (13) design studies, analysis, evaluations, presentations and renderings.
- (b) Projects included in this Contract may be classified as:
- (1) new construction;
 - (2) renovations;
 - (3) additions; and/or
 - (4) repairs.
- (c) The Contractor shall provide services at any or all project phases including, but not limited to, feasibility studies/reports, programming, schematic design, preliminary design, final project design, construction repairs/rehabilitations, construction documents, bid phase services, design support during construction, assistance during closeout, occupancy and warranty.
- (d) The scope of this Contract shall primarily be for engineering services. However, architectural services, mechanical, plumbing and electrical engineering services and cost estimating, scheduling, and space planning, roofing consulting, CADD production, reproduction, and document coordination and control are also included in this Contract.
- (e) Individual task orders may also require additional expertise related to planning, design, construction and operation of transit and other facilities.
- (f) The Contractor shall closely communicate, integrate and coordinate services with other Authority Contractors when required.
- (g) Project documentation available to the Authority will be transmitted to the Contractor by the Authority's Project Manager. These might include, but are not limited to:
- (1) record documents;
 - (2) programming data and reports;
 - (3) feasibility studies;
 - (4) due diligence reports;
 - (5) photographs; and
 - (6) topographical, utility, geotechnical and other surveys.
- (h) The Contractor shall immediately notify the Authority of any requirements for additional project investigation or documentation necessary to provide the required scope of services.
- (i) When required, the Contractor shall provide the Authority with coordinated and appropriate design services including studies, drawings, models, renderings, outline specifications and estimates of probable cost.
- (j) All designs shall be appropriate for the project goals defined by the Authority's Project Manager.
- (k) When required, the Contractor shall prepare and coordinate complete construction documents suitable for pricing, permit approval, bidding and/or construction.
- (l) The scope of projects may include, but are not limited to, the following:
- (1) Site: bus stops, bus pull-off lanes, parking layouts, parking lots, structural repairs, site access/egress, drainage improvements, beautification of existing facilities, amenity enhancements, pavement striping, concrete walks, signage, landscaping, irrigation systems, security improvements, and passenger information and waiting areas;
 - (2) Building: space planning, building enclosures, structural systems, HVAC systems, fire alarms and fire sprinklers, lighting and power systems, security systems, access and egress, horizontal or vertical circulation, toilet or bath facilities, signage, out buildings, furniture, materials selection, finishes and color selection;
 - (3) General: facility and property inspection, analysis and/or evaluation, photographs, renderings and presentations, independent cost estimates, design studies, and ADA and code compliance.

(m) The Contractor shall submit documents necessary for permit review and approval as required by the reviewing authority.

(n) The Authority will pay all required permit and approval fees and may submit applications through its separate jurisdictional consultant.

(o) When required, the Contractor shall provide document control services to assist the Authority in obtaining bids from general and other construction contractors.

(p) When required, the Contractor shall provide some or all, but not limited to, the following construction administration services:

- (1) prepare any required addendums to the contract;
- (2) regular site inspection visits, and as further required by project status or event;
- (3) prepare reports of each site visit and deliver to the Authority's project manager;
- (4) attend meetings as called and chaired by project manager;
- (5) produce meeting minutes and distribute to all parties;
- (6) process and coordinate all permitting with the county, city and/or other appropriate authorities;
- (7) develop project submittal lists;
- (8) review and approve all submittals and shop drawings;
- (9) review and answer Requests for Information and provide appropriate responses;
- (10) review and propose change requests, and evaluate the fairness and reasonableness of submitted pricing;
- (11) regular review of general contractor's record documents for accuracy and completeness;
- (12) review and certify general contractor applications for payment;
- (13) review and advise on laboratory test results;
- (14) attend a pre-final inspection upon notification by the general contractor and issue a certificate of substantial completion of the Project Work with a comprehensive punch list of work items to be completed or corrected by the general contractor;
- (15) provide final record documents to the Authority's project manager upon completion of project incorporating the general contractor's red-lined data, signed and sealed by the Engineer of Record; and
- (16) attend the final inspection of the Project Work and confirm in writing to the Authority's project manager of completion and compliance with contract documents.

4. DELIVERABLES

(a) For each task order, a detailed scope of work will be provided to the Contractor to base the task proposal on. The task proposals (Technical and Financial) will be submitted within a specified time period.

Project Deliverables for each task order will be defined in the scope of required services. They may include, but are not limited to, the following:

- (1) milestone and detailed design and construction logistics schedules developed to match the Authority's overall program and overall service needs;
- (2) Plans Specifications and Estimate (PS&E), Engineer's Estimate or Independent Cost Analysis in Construction Specifications Institute (CSI) format;
- (3) feasibility reports;
- (4) due diligence reports;
- (5) program of project requirements and goals;
- (6) design narrative or report;
- (7) sketches and design presentations;

(8) construction documents including plans and specifications and estimate along with QA/QC certification; and/or

(9) construction administration documents.

(b) When required at project milestones, the Contractor shall provide the Authority's project manager with square foot, unit cost, or CSI format estimates of probable cost, and/or an Independent Cost Analysis or Engineer's Estimate as appropriate.

(c) Design documents shall be both appropriate to convey the design intent to the presentation audience and approvable by the project manager.

(d) When required, the Contractor shall prepare and coordinate all documents including, but not limited to, general project information, plans and profiles, calculations, site plans, floor plans, elevations, sections, details, notes, schedules and specifications. Contractor will be required to coordinate with the stakeholders and assist in public meetings.

(e) Provide to the Authority's Project Manager documents in the following forms including, but not limited to:

(1) complete original drawings and specifications with the contracting engineer's stamp and seal;

(2) three (3) sets of specification books (Project Manuals), size 8½ x11;

(3) three (3) blueline or blackline print sets of drawing sheets, size 24 x 36;

(4) three (3) sets of reduced size drawings (copies), size 11x17;

(5) three (3) Flash Drives each with copies of electronic files of all pages in the Project Manual (Microsoft Word 2010, drawings sheets (Microstation format or other as approved by the project manager).

(f) When required, the Contractor shall provide bid documents to the Authority's contract administrator in quantities specified in the task order as a reimbursable expense.

(g) All Construction Documents shall be complete, clear, coordinated and suitable for accurate pricing, consistent bidding, expeditious permit approval and/or efficient construction.

(h) When required, provide complete record documents including information from redlines of other documents provided by separate contractors or the Authority's project manager.

(i) Other related documents, reports and studies that may be required to expeditiously complete the project.

The following is intended as a good guide to the general nature of services that will be provided, but is not intended to be all inclusive as requirements may vary between task order scopes of work:

(j) Preliminary Engineering Report: The Contractor shall review previous environmental studies and underground utility records, conduct and analyze geo-technical information, conduct feasibility studies and prepare project feasibility reports. Following Capital Metro's authorization, the Contractor shall move forward with the design. More specifically the Contractor shall:

(1) Collect all available information concerning existing and proposed utility facilities in the project area, including but not limited to water, and wastewater pipelines, telephone, fiber optics, gas, electrical overhead & underground, drainage facilities and structures, traffic signal systems and petroleum products pipelines, etc.

(2) Conduct preliminary field surveys and determine any site constraints and special permitting requirements (federal, state, local) and environmental, including recent revisions to the Land Development Code.

(3) Review existing Capital Metro-provided information concerning the assigned projects including traffic volume counts and projections, as-built drawings (if available) and current conditions.

(4) Evaluate alternative options, alignments, as well as methods of materials and construction.

(5) Upon conclusion of the reviews, investigations and preliminary evaluations, prepare, present and publish details and a summarization of findings, solution options, cost estimates and a design and construction schedule for the project.

(k) Phase A - Design, Construction Documents Preparations: The Contractor shall conduct or otherwise acquire the necessary field surveys, geotechnical reports from Capital Metro and other relevant investigations for the final design. The Contractor shall prepare design and final contract documents consisting of detailed plans, specifications (utilizing Federal Railroad Administration (FRA), Federal Transportation Administration (FTA), American Railway Engineering and Maintenance-of-Way Association (AREMA), Manual on Uniform Traffic Control Devices (MUTCD), Texas Commission on Environmental Quality (TECQ), Texas Dept. of Transportation (TxDOT) and City of Austin standards, as applicable) and cost estimates. The Contractor shall furnish sub-consultant services as may be appropriate for the execution of the design and assist in applying for governing agencies approvals (City of Austin, TxDOT, TCEQ, Texas Dept. of Licensing & Regulation and others as applicable) and permits necessary for the construction of the project.

(i) Phase B – Bid Phase Services: The Contractor shall provide bid phase services and develop a construction scope of work, unit cost price schedule or lump sum schedule, detailed construction logistics and overall construction schedule for Capital Metro to advertise and solicit competitive bids for the construction of the project. An Engineer's estimate is also required.

(l) Phase C – Design Support During Construction (DSDC) and Construction Phase Services: The construction phase of the Engineering services, which may be provided by the Contractor, may include, but not limited to, the following:

(1) Review and approval of all submittals like shop drawings, Requests for Information (RFI), construction schedule, material data, and respond to RFIs from the Contractor within a specified time,

(2) Conduct periodic visits to the construction job site by the design professional engineer to generally review the progress and quality of the work being performed.

(3) Review pay applications or invoices from the general contractor for the completed work.

(3) Review change requests and provide a cost analysis for change order requests.

(4) Interpret plans, specifications and other contract documents as required to clarify or answer general contractor's questions about the contract documents.

(5) Attend periodic project meetings with the general contractor and the Authority.

(6) Preparation of as-built drawings of the completed facilities. (provide three record sets of plans and electronic files on CD's in the latest AutoCAD format or Microstation format as required)

(7) Assist the Authority in the contract close-out process as necessary.

5. RESPONSIBILITIES OF THE CONTRACTOR

(a) The Contractor shall have experience in transportation project feasibility studies, evaluations, analysis, preliminary design, design development, final design, preparing construction documents; design of all components/disciplines of railroad infrastructure, both freight as well as passenger modes, transit stations, transfer centers, park & ride facilities, traffic impact analysis, pavement design, bus stop accessibility improvements, curb ramps, sidewalks, drainage features and improvements, rail stations, roadway and rail Right-of-Way (ROW) construction.

(b) All professional engineering design services must be performed under the supervision and seal of an Engineer registered and licensed in the State of Texas.

(c) The Contractor must maintain current insurance required by this Contract.

(d) The Contractor must obtain Railroad Worker Protection training for its assigned employees when working on the Capital Metro railroad. Further, the Contractor must arrange for and include in its cost of work the charges for an EIC/RWIC (employee in charge/railroad worker in charge) from the Capital Metro railroad operator during the times

his employees are within the railroad protective zone. See ROW requirements at Capital Metro's website <http://www.capmetro.org/RailROW/>.

(e) The Contractor shall maintain an effective quality control system for all services provided in this Contract. The Contractor shall provide necessary staffing, policies and procedures required to identify, document and correct quality defects and deficiencies.