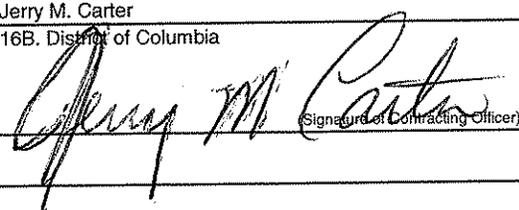


<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>			1. Contract Number DCKA-2011-R-0042	Page of Pages 1   137
2. Amendment/Modification Number 3	3. Effective Date See 16C	4. Requisition/Purchase Request No.		5. Solicitation Caption Design, Manufacture, Test & Delivery of Streetcar Vehicles
6. Issued By: Department of Transportation Office of Contracting and Procurement 2000 14th Street, NW 6th Floor Washington, DC 20009		7. Administered By (If other than line 6) Department of Public Works Office of Contracting and Procurement Reeves Center, 3rd Floor 2000 14th Street, NW Washington, DC 20009		
8. Name and Address of Contractor (No. Street, city, country, state and ZIP Code)			(X) 9A. Amendment of Solicitation No. DCKA-2011-R-0042	9B. Dated (See Item 11)
Code			10A. Modification of Contract/Order No.	
Facility			10B. Dated (See Item 13)	
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS				
<input checked="" type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers <input checked="" type="checkbox"/> is extended. <input type="checkbox"/> is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or fax which includes a reference to the solicitation and amendment number. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by letter or fax, provided each letter or telegram makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.				
12. Accounting and Appropriation Data (If Required)				
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14				
A. This change order is issued pursuant to: (Specify Authority)				
The changes set forth in Item 14 are made in the contract/order no. in item 10A.				
B. The above numbered contract/order is modified to reflect the administrative changes (such as changes in paying office, appropriation date, etc.) set forth in item 14, pursuant to the authority of 27 DCMR, Chapter 36, Section 3601.2.				
C. This supplemental agreement is entered into pursuant to authority of:				
D. Other (Specify type of modification and authority)				
E. IMPORTANT: Contractor <input checked="" type="checkbox"/> is not, <input type="checkbox"/> is required to sign this document and return _____ copies to the issuing office.				
14. Description of amendment/modification (Organized by UCF Section headings, including solicitation/contract subject matter where feasible.) A CONTRACT AMENDMENT IS NECESSARY TO MODIFY SPECIAL PROVISIONS (SP) AND OTHER ITEMS OF THE SOLICITATION AS FOLLOWS:  <b><u>RESPONSES TO REQUESTS FOR CLARIFICATION</u></b> SEE ATTACHED REQUEST FOR FURTHER CLARIFICATION AND THE APPROPRIATE RESPONSES.  <b><u>EXTENSION OF SUBMISSION DATE</u></b> PLEASE NOTE: THE DATE FOR SUBMISSION OF PROPOSALS HAS BEEN EXTENDED. THE NEW DATE TO SUBMIT PROPOSALS IS TUESDAY, FEBRUARY 1, 2011. THE TIME AND LOCATION TO SUBMIT PROPOSALS REMAINS UNCHANGED.				
Except as provided herein, all terms and conditions of the document referenced in Item (9A or 10A) remain unchanged and in full force and effect				
15A. Name and Title of Signer (Type or print)			16A. Name of Contracting Officer Jerry M. Carter	
15B. Name of Contractor		15C. Date Signed	16B. District of Columbia	
(Signature of person authorized to sign)			 (Signature of Contracting Officer)	
			16C. Date Signed 1/20/11	

Ref	Question	Answer
24	Reference: Page 98, M.5.2 Optional Performance Bond or Letter of Credit - Request for Clarification: Can contract options in the RFP be bonded separately? If this is the case will you require 25% bond on these exercised options?	The following language has been added to Article M.5.2: In the event that the District exercises Option(s) for additional Streetcars pursuant to this Contract, prior to receipt of any payment for Option Streetcars, Contractor shall be required to obtain an Performance Bond and/or LOC in accordance with all of the requirements set forth in Article M.5.2, except that the security shall be in the amount of fifty per cent (50%) of the Total Option Price and be effective from the date of exercise of the Option until the District authorizes payment for acceptance or conditional acceptance of the final Streetcar under that Option.
25	Reference: Page 98, M.5.2 Optional Performance Bond or Letter of Credit - Request for Clarification: The section states the contractor must “continuously maintain for the term of the Contract a Performance Bond”. Brookville would like to have clarified when the “Term of the Contract” is officially ended. - Explanation: The surety bonding industry generally will not write bonds for projects that exceed 3 years. IF the “Term of the Contract” is not over until all warranty is over (5 years for some items), this would well exceed the surety bonding industry’s length of 3 years. We ask that warranty of the 5 years not be included in the performance bond to allow the bond length to be kept within industry standard. -	Contractor may reduce the performance bond or letter of credit after acceptance of the delivered vehicle. See revised RFP section.
41	Section H: Section H.4.6 states that a Contracting Officer may waive certain District hiring requirements. However, it refers to an Article H.5.4 that is not a part of this Section. In addition, there are other hiring requirements in Section H that may not apply to Contractor’s located outside of the Washington Standard Metropolitan Area. - Please specify which District hiring requirements listed in Section H can be waived for Contractor’s that are located outside of the Washington Standard Metropolitan Area.	References in Section H. have been changed.
42	Section I: - Section I.4.5 provides that all data first produced in the performance of the contract is owned solely by the District. This clause could discourage many Contractors and Subcontractors from developing new data or technology that is beneficial to the District. - Would the District consider limiting this clause to a non-exclusive license or narrowing the clause with respect to the data included?	No change.

Ref	Question	Answer
43	Section J: In Section J the instructions are not clear with respect to whether all attachments in Section J are required to be submitted with the offer, or after the award. Please specify which attachments in Section J must be completed and submitted with the offer. - If any of the attachments in Section J are required to be completed and submitted with the offer, should they be included with the Technical proposal or Price proposal?	All forms referenced must be submitted with the Proposal.
44	Section J: Section J also includes several attachments that apply only to federally-funded projects. However, the RFP provides that federal funding is not being used for this project. - Please clarify whether federal funding is being used for this project and please specify which attachments in Section J apply to the contract.	All attachments referenced in Section J apply to this Contract. All forms must be completed and submitted with the Proposal.
45	Section J: Section J also includes J.1.5 – Way to Work Amendment Act of 2006, which states that all recipients of new contracts or government assistance shall pay affiliated employees and subcontractors who perform services under the contracts no less than the current living wage of \$12.50 per hour. - Please confirm that this law is in effect for this contract.	Yes, the Way to Work Amendment of 2006 is in effect.
46	Section L: - Section L.2 states that “one original and seven copies of the written proposals shall be submitted in two parts...” However, on the Solicitation, Offer and Award form distributed via email on January 4, it indicates that the original and two copies are to be submitted. - Please clarify how many copies offerers are to submit.	One original and seven (7) copies are to be submitted.
47	Section M: - Section M.5.1 states, “A performance bond or letter of credit shall be provided at the District’s option. If the District elects to exercise the option at Contract award, the successful Offeror shall provide the bond or letter of credit described below before NTP, at the price shown in the Schedule of Prices.” - Please clarify where the price of the bond, at the District’s option, should be identified as we do not see a line item where the price of a bond can be included in the Schedule of Prices.	Yes, added line item 4 in the Schedule of Prices in Section B.3.



**REQUEST FOR PROPOSALS (RFP)  
FOR SUPPLIES AND SERVICES**

**REQUEST FOR PROPOSAL (RFP)  
~~FOR TWO STREETCARS~~  
SOLICITATION NO.: DCKA-2011-R-0042**

**PROJECT TITLE: Design, Manufacture, Test and Delivery of Streetcar Vehicles**

<b>Rev</b>	<b>Date</b>	<b>Description of Changes</b>
<b>0</b>	<b>12/22/10</b>	<b>Initial Issue</b>

1. The District Department of Transportation is soliciting proposals from interested firms to design, manufacture, test, and deliver Streetcar vehicles to the District of Columbia, in quantities and at the location identified by the District, to provide safe, reliable service over the District's system for the life of each Streetcar vehicle.
2. In addition to the vehicle, the Offeror shall provide: Operations and Maintenance Manuals and Training, Spare Parts, and Warranty Support as specified.
3. Interested vendors desiring consideration for the Design, Manufacture, Test and Delivery of Streetcar Vehicles contract, should submit their Request for Proposals. The successful contractor will be selected based on the following evaluation criteria:
  - A. Technical Proposal
  - B. Schedule Proposal
  - C. Price Proposal
4. DDOT will make a selection in accordance with the provisions of Title 27 DCMR Chapter 16. The Contracting Officer in accordance with Title 27 DCMR Chapter 16 will make the final selection.
5. Proposals will be available for pick-up at the Frank D. Reeves Municipal Center, 2000 14<sup>th</sup> Street, NW, Office of Contracting and Procurement Bid Room, 3<sup>rd</sup> Floor, Washington, DC 20009.
6. Proposals must be delivered no later than 2:00 p.m. on Tuesday, February 1, 2011 to the Office of Contracting and Procurement Bid Room, 3<sup>rd</sup> Floor, (Bid Room), Washington, DC 20009.
7. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED:  
During the performance of the Contract, the Contractor and any of its subcontractors shall comply with Title VI of the Civil Rights Act of 1964, as amended. This Act provides that no person shall, on the grounds of race, color or national origin, be excluded from participation

**REQUEST FOR PROPOSALS (RFP)  
FOR SUPPLIES AND SERVICES**

in, or be denied the benefits of or be subject to discrimination in federally funded program and activities. See 42 U.S.C. §2000d *et seq.* This Contract is subject to all appropriate Federal Laws, including Title VI of the Civil Rights Act of 1964.

8. For further procurement information, contact Bernetha Armwood at (202) 671-1563. For technical information, contact Ralph Burns, Deputy Associate Director, Progressive Transportation Services Administration at (202) 369-7940.

**REQUEST FOR PROPOSALS (RFP)  
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**REQUEST FOR PROPOSALS (RFP)  
FOR SUPPLIES AND SERVICES**

**SECTION B: SUPPLIES OR SERVICES AND PRICE**

- B.1** The Government of the District of Columbia, Office of Contracting and Procurement, on behalf of the District Department of Transportation (the District) is seeking a contractor to design, manufacture, test, and deliver two streetcars to be used for revenue operations on the District’s right of way, as well as all necessary spare parts, training and manuals, and option streetcars, if such options are exercised.
- B.2** The Contract is a fixed price contract obligating the Contractor to perform all Work necessary to design, manufacture, test, and deliver two streetcars, as well as all necessary spare parts, training and manuals, and option streetcars, if such options are exercised. The Contractor will perform all Work as specified in this Request for Proposal within the Offeror-proposed Project Schedule and for the Price set forth in the Proposal.
- B.3** The Contractor shall provide a price/cost schedule in accordance with the schedule outlined below.

**SCHEDULE OF PRICES**

<b>I. BASE CONTRACT (REQUIRED)</b>				
<u>No.</u>	<u>Qty.</u>	<u>Description of Item</u>	<u>Unit Price</u>	<u>Total Price</u>
1	2	Streetcars	\$ _____	\$ _____
2		Spare Parts (Total from Schedule B)		\$ _____
3	25	HO Scale Models of the Streetcar (Ref TS 2.10)		\$ _____
<u>4</u>	<u>Lump Sum</u>	<u>Performance Bond (Ref M.5.1)</u>		<u>\$ _____</u>
<b>Total Base Contract Price</b>				<b>\$ _____</b>

**REQUEST FOR PROPOSALS (RFP)  
FOR SUPPLIES AND SERVICES**

**II. OPTION FOR ADDITIONAL STREETCARS (REQUIRED)**

Max

<u>No.</u>	<u>Qty.</u>	<u>Description of Item</u>	<u>Unit Price</u>
1	1 - 5	Streetcars, if ordered less than 12 months after NTP of base order or previous option order	\$_____
2	1 - 5	Streetcars, if ordered less than 24 months after NTP of base order or previous option order	\$_____

**REQUEST FOR PROPOSALS (RFP)  
FOR SUPPLIES AND SERVICES**

**SCHEDULE OF PRICES**

**SCHEDULE B  
VEHICLE SPARE PARTS**

<u>NUMBER</u>	<u>QUANTITY</u>	<u>DESCRIPTION OF ITEM</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
<b>CARBODY</b>				
1	1 each	Articulation diaphragm or bellow	\$	\$
2	1 each	Articulation removable exterior sheathing, mounting devices and hardware	\$	\$
3	1 each	Articulation torsional restraint device (if applicable)	\$	\$
4	1 each	Articulation arch assembly with centering devices (if applicable)	\$	\$
5	1 each	Articulation interior shrouding over bellows	\$	\$
6	1 each	Articulation mechanical joint assembly, complete	\$	\$
7	1 car set	Articulation mechanical joint and torsional restraint device replaceable parts (if applicable)	\$	\$
<b>OPERATOR'S CAB</b>				
1	1 each	Master controller, complete	\$	\$
2	1 car sets	All cab switches (except transfer and reverser switches), pushbuttons (except door control), displays, meters, gauges, indicating lamps, LED's, lenses, and audible alarms	\$	\$
3	1 each	Transfer switch assembly	\$	\$

**REQUEST FOR PROPOSALS (RFP)  
FOR SUPPLIES AND SERVICES**

**SCHEDULE OF PRICES**

**SCHEDULE B  
VEHICLE SPARE PARTS**

<u>NUMBER</u>	<u>QUANTITY</u>	<u>DESCRIPTION OF ITEM</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
<b>OPERATOR'S CAB (continued)</b>				
4	1 each	Reverser switch assembly	\$	\$
5	2 each	Wiper motor	\$	\$
6	5 each	Wiper motor arm	\$	\$
7	4 car sets	Wiper blades	\$	\$
8	1 each	Horn assembly	\$	\$
9	1 each	Bell assembly	\$	\$
10	2 each	Windshield washer pump	\$	\$
11	6 each	Windshield washer spray nozzle	\$	\$
12	1 each	Speedometer	\$	\$
<b>PASSENGER DOORS</b>				
1	1 car set	Door panel assembly, complete, including window, seats, sensitive edges, and push button switches	\$	\$
2	1 each	Door panel, lower linkage or track	\$	\$
3	2 each	Door operator linkages and mechanism, complete	\$	\$
4	2 each	Door and bridgeplate control PCBs or modules	\$	\$

**REQUEST FOR PROPOSALS (RFP)  
FOR SUPPLIES AND SERVICES**

**SCHEDULE OF PRICES**

**SCHEDULE B  
VEHICLE SPARE PARTS**

<u>NUMBER</u>	<u>QUANTITY</u>	<u>DESCRIPTION OF ITEM</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
<b>PASSENGER DOORS (continued)</b>				
5	1 car set	Sensitive edges	\$	\$
6	1 car set	Pressure wave switch	\$	\$
7	1 car set	Limit switches	\$	\$
8	1 each	Crew switch	\$	\$
9	2 each	Audible door closing warning indicator	\$	\$
10	1 each	Door operator electric motor	\$	\$
11	1 each	Control relays	\$	\$
12	2 each	Visual door closing warning indicator	\$	\$
13	2 each	Platform illumination light	\$	\$
14	1 each	Bridgeplate assembly, complete	\$	\$
15	1 car set	Passenger bridgeplate request pushbutton switches (interior and exterior)	\$	\$
16	1 each	Bridgeplate operator electric motor	\$	\$
<b>HEATING, VENTILATION AND AIR CONDITIONING</b>				
1	1 each	All heating elements (overhead & floor)	\$	\$
2	1 each	Air flow switches (all)	\$	\$
3	1 each	Thermostats and temperature sensors (all)	\$ <u>    </u>	\$

**REQUEST FOR PROPOSALS (RFP)  
FOR SUPPLIES AND SERVICES**

**SCHEDULE OF PRICES**

**SCHEDULE B  
VEHICLE SPARE PARTS**

<u>NUMBER</u>	<u>QUANTITY</u>	<u>DESCRIPTION OF ITEM</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
<b>HEATING, VENTILATION AND AIR CONDITIONING (continued)</b>				
4	1 each	Temperature control relays (all)	\$	\$
5	1 each	Heating/ventilation contactors, all	\$	\$
6	1 each	Compressor assembly, complete with motors	\$ <u>      </u>	\$
7	1 car set	Heat/ventilation control electronics including PCBs	\$	\$
8	1 car set	Fusible links and plugs (all)	\$	\$
9	4 each	Filter dryer cores	\$	\$
10	2 each	Crankcase heaters	\$	\$
11	2 each	Sight glasses	\$	\$
12	10 each	Service valve caps	\$	\$
13	1 car set	High pressure cutout switches	\$	\$
14	1 car set	Low pressure cutout switches	\$	\$
15	1 car set	Modulation cutout switches	\$	\$
16	1 car set	Resilient vibration isolation mounts (all)	\$	\$
17	12 car set	Fresh air and return air filters	\$	\$

**REQUEST FOR PROPOSALS (RFP)  
FOR SUPPLIES AND SERVICES**

**SCHEDULE OF PRICES**

**SCHEDULE B  
VEHICLE SPARE PARTS**

<u>NUMBER</u>	<u>QUANTITY</u>	<u>DESCRIPTION OF ITEM</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
<b>LIGHTING</b>				
1	1 car set	Fixtures for all incandescent interior and exterior lights and indicators (except cab console mounted items and door and bridgeplate indicators)	\$	\$
2	2 each	Fixtures for all fluorescent lights, complete	\$	\$
3	1 car set	Dc inverter ballast	\$	\$
4	1 car set	Ac ballast	\$	\$
5	1 car set	Incandescent and fluorescent lamps excluding head lamps	\$	\$
6	4 each	Head lamp (exclusive of fixture)	\$	\$
7	4 car sets	Lenses for all lights and indicators, interior and exterior (including cab console, mounted, door, and bridgeplate indicators)	\$	\$
<b>AUXILIARY ELECTRICAL EQUIPMENT</b>				
1	1 each	Pantograph assembly, complete	\$	\$
2	6 car sets	Pantograph shoe carbon insert set	\$	\$
3	1 car set	Pantograph mounting insulators	\$	\$
4	2 each	Lightning arrestor	\$	\$
5	1 car set	Battery, set complete	\$	\$

**REQUEST FOR PROPOSALS (RFP)  
FOR SUPPLIES AND SERVICES**

**SCHEDULE OF PRICES**

**SCHEDULE B  
VEHICLE SPARE PARTS**

<u>NUMBER</u>	<u>QUANTITY</u>	<u>DESCRIPTION OF ITEM</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
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**AUXILIARY ELECTRICAL EQUIPMENT (continued)**

6	1 each	Battery circuit breaker	\$	\$
7	1 car set	Control relays for pantograph, inverter & LVPS	\$=	\$
8	1 each	Inverter, complete	\$	\$
9	1 each	LVPS, complete (if separate)	\$	\$
10	1 each	Printed circuit cards, inverter & LVPS	\$	\$
11	1 each	Knife switch assembly, complete	\$	\$
12	1 each	Line filters with charging apparatus, all types	\$=	\$
13	1 car set	Ground brush assembly, complete	\$	\$
14	4 each set	Ground brushes, set per assembly	\$	\$
15	4 each set	Ground brush springs, set per assembly	\$	\$
16	2 each	Ground brush contact ring or plate	\$	\$
17	1 each	Car mounted shop power plug assembly, complete	\$	\$
18	4 each	Mating connector for car mounted shop power plug assembly, complete	\$	\$

**PROPULSION**

1	2 car set	Traction motor, complete with couplings	\$	\$
2	4 each	Traction motor electrical disconnect	\$	\$

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<b>PROPULSION (continued)</b>				
3	1 each	Propulsion Dc chopper or Ac inverter, complete, in enclosures	\$	\$
4	1 each	All propulsion control contactors (if provided, not included in Item 3)	\$	\$
5	1 each	Line switches (if not included in item 3)	\$	\$
6	4 car sets	Contactors tips, all	\$	\$
7	1 car set	Control relays and sensors, all (except speed sensors)	\$	\$
8	1 car set	All speed sensors for Propulsion and Braking Systems with associated cables and connectors	\$	\$
9	1 car set	Printed circuit cards, all	\$	\$
10	2 car sets	Fuses, all	\$	\$
11	1 each	Propulsion gearbox with axle coupling, complete	\$	\$
12	1 car set	Power semiconductor assemblies	\$	\$
13	10 car sets	Ventilation replaceable air filters (if applicable)	\$	\$
<b>TRUCK ASSEMBLY AND SUSPENSION</b>				
1	1 each	End truck, complete (ready to install under car)	\$	\$
2	1 car set	Primary springs	\$	\$

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<b>TRUCK ASSEMBLY AND SUSPENSION continued</b>				
3	1 car set	Secondary springs	\$	\$
4	1 car set	Load sensing device with associated connecting rod	\$	\$
5	2 each	Journal bearing, each type	\$	\$
6	1 car set	Shock absorbers, all	\$	\$
7	1 each	Wheel center, each type	\$	\$
8	4 each	Wheel tire, each type, including resilient mounting	\$	\$
9	1 each	Ball bearing slewing rings for end truck (if applicable)	\$	\$
10	1 car set	Suspension stops	\$	\$
11	1 car set	Pedestal tie bars (if applicable)	\$	\$
12	1 car set	Roll stabilizers, complete (if applicable)	\$	\$
13	1 car set	Radius rods with elastomeric elements and fasteners (if applicable)	\$	\$
14	2 sets	Height adjustment shims	\$	\$
<b>FRICITION BRAKE</b>				
1	1 car set	Brake discs	\$	\$
2	4 car sets	Brake pads with backing plates	\$	\$
3	1 each	Hydraulic pump, complete	\$	\$

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<b>FRICITION BRAKE (continued)</b>				
4	1 each	Sanding air compressor assembly, complete	\$	\$
5	1 each	Hydraulic pressure control unit (HPCU), complete	\$	\$
6	1 each	Friction brake, electronic control logic, complete	\$	\$
7	1 each	Printed circuit cards	\$	\$
8	1 each	All control relays and contactors for brake equipment	\$	\$
9	1 each	All manually controlled valves and cocks for brake equipment	\$	\$
10	4 each	Sanding air compressor air filters (if applicable)	\$	\$
11	1 car set	Brake system magnet valves and pressure switches, all (in addition to Item 1)	\$	\$
12	1 car set	Parking brake equipment, complete (equipment which is independent of service friction brake equipment)	\$	\$
13	4 car sets	Hydraulic fluid replaceable filters, all	\$	\$
14	1 car set	Hydraulic system seals, all	\$	\$
15	1 each	Hydraulic accumulator	\$	\$
16	1 each	Track brake assembly, complete (including cables, suspension springs, and hardware)	\$	\$

**COMMUNICATIONS**

1	1 car set	Communications pre-amplifiers, mixer amplifiers, and power amplifiers	\$	\$
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<b>COMMUNICATIONS (continued)</b>				
2	1 each	Communication control head, complete	\$	\$
3	1 car set	Interior and exterior P.A. speakers, complete with transformers	\$	\$
4	1 each	Audio Dc to Dc power converter	\$	\$
5	1 car set	Passenger intercom stations	\$	\$
<b>INTERIOR &amp; EXTERIOR APPOINTMENTS</b>				
1	2 each	Windshield	\$	\$
2	2 each	Operable cab window LH & RH (if applicable)	\$	\$
3	1 car set	Side window	\$	\$
4	1 car set	Door window	\$	\$
5	1 car set	Covers for exterior and interior equipment enclosures (all)	\$	\$
6	1 car set	Seat bottom insert	\$	\$
7	1 car set	Seat back insert	\$	\$
8	1 each	Seat, complete, each type	\$	\$
9	1 each	Interior ceiling panel, each type	\$	\$
10	1 car set	Interior liners	\$	\$
11	1 car set	Interior molding	\$	\$

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<b>INTERIOR &amp; EXTERIOR APPOINTMENTS (continued)</b>				
12	1 car set	Destination sign units, complete	\$	\$
13	1 car set	Exterior and interior graphics, all	\$	\$
14	1 car set	Interior air intake and exhaust grills	\$	\$
15	1 car set	Exterior air intake and exhaust grills	\$	\$
16	1 car set	Flooring (equivalent amount in rolls)	\$	\$
17	2 car sets	Skirts	\$	\$
18	1 car set	Stanchions and rails (all horizontal and vertical sections plus all fittings)	\$	\$
19	2 each	Exterior mirror assembly	\$	\$
20	1 each	Interior mirror assembly	\$	\$
25	1 car set	Passenger stop request chime	\$	\$
26	1 car set	Passenger stop request indicator	\$	\$
27	1 car set	Passenger stop request cord (in roll), with ferrules and cleats	\$	\$
28	1 car set	Passenger stop request switches	\$	\$
29	25 each	Master controller key	\$	\$
30	25 each	Crew key	\$	\$
31	25 each	Maintenance key	\$	\$

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<u>NUMBER</u>	<u>QUANTITY</u>	<u>DESCRIPTION OF ITEM</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
<b>INTERIOR &amp; EXTERIOR APPOINTMENTS (continued)</b>				
32	1 car set	Interior and exterior locks assemblies not part of other spare parts	\$	\$
<b>MISCELLANEOUS</b>				
1	1 car set	All seals and gaskets not included in specific subsystems spares	\$	\$
2	1 car sets	All air, hydraulic, and pneumatic filters not included within specific subsystem spares	\$	\$
3	1 car sets	All fuses not included in specific subsystems spares	\$	\$
4	1 car set	All fuse holders not included in specific subsystems spares	\$	\$
5	1 car set	All pneumatic and refrigerant hoses and lines (including fittings) not included within specific subsystem spares	\$	\$
6	1 car set	All vehicle control high voltage contactor and low voltage relays not included in specific subsystems spares	\$	\$
7	1 car set	All special fasteners not commercially available	\$	\$
8	1 car set	All special and commercially available terminals and connectors for wire and cable	\$	\$
9	1 unit	All lubricants (oil and greases) necessary to maintain the vehicles per the O&M Manual (1 year supply)	\$	\$

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**SECTION C: SPECIFICATIONS/WORK STATEMENT**

**C.1 SCOPE**

The work to be accomplished under this Request for Proposal consists of the design, manufacture, test, and delivery of Streetcar vehicles to the District of Columbia, in quantities and at the location identified by the District, to provide safe, reliable service over the District's system for the life of each Streetcar vehicle. In addition to the vehicle, the Offeror shall provide: Operations and Maintenance Manuals and Training, Spare Parts, and Warranty Support as specified.

The Offeror shall provide all personnel, material, equipment, machinery, and any other items needed to fulfill the requirements.

**C.1.1 APPLICABLE DOCUMENTS**

Except as otherwise specified in the Contract Documents, or otherwise directed by the District, references to standards, codes, or criteria, or to the latest version of standards, codes, or criteria, shall mean the latest version in effect on the Proposal Due Date.

The documents included in the Reference Information are for information only and are not Contract Documents to be relied upon by the Contractor. Except where explicitly stated, cross-references in the Contract Documents to the Reference Information do not incorporate the Reference Information or portions of the Reference Information as Contract Documents or requirements.

**C.1.2 ABBREVIATIONS AND DEFINITIONS**

**C.1.2.1 Abbreviations**

AAR	Association of American Railroads
ADA	Americans with Disabilities Act
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standard Institute
APTA	American Public Transit Association
AREA	American Railway Engineering Association
AREMA	American Railway Engineering & Maintenance Of Way Association
ASA	See ANSI
ASM	American Society for Metals
ASME	American Society of Mechanical Engineers

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ASTM	American Society for Testing and Materials
AWG	American Wire Gauge
AWS	American Welding Society
CBM	Certified Ballast Manufacturers Association
CDA	Copper Development Association
CDRL	Contract Data Requirements List
CFR	Code of Federal Regulations
CPM	Critical Path Method
DBE	Disadvantaged Business Enterprise
DCMR	District of Columbia Municipal Regulations
DOT	United States Department of Transportation
DDOT	District Department of Transportation
EIA	Electronics Industries Association
EPA	United States Environmental Protection Agency
FAI	First Article Inspection
FCC	Federal Communications Commission
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
ICEA	Insulated Cable Engineers Association
IEEE	Institute of Electrical and Electronic Engineers
IES	Illuminating Engineering Society
IPCEA	Insulated Power Cable Engineers Association
IPS	Iron Pipe Size
ISO	International Standards Organization
ITE	Institute of Transportation Engineers
JEDEC	Joint Electronic Device Engineering Council
MDBF	Mean Distance Between Failure
MSDS	Material Safety Data Sheet
NBS	National Bureau of Standards
NEC	National Electric Code
NEMA	National Electrical Manufacturers Association

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NESC	National Electric Safety Code
NFPA	National Fire Protection Association
NPC	Notice of Proposed Change
NTP	Notice to Proceed
OEM	Original Equipment Manufacturer
OSHA	U.S. Occupational Safety and Health Administration
PCO	Proposed Change Order
RMA	Rubber Manufacturing Association
SAE	Society of Automotive Engineers
UL	Underwriters Laboratories
USDOT	United States Department of Transportation
WBE	Women Business Enterprise

**C.1.2.2 DEFINITIONS**

Acceptance Certificate: The certificate of the Contracting Officer certifying that the Contract has been satisfactorily completed and finally accepted as of the date of signature.

Addendum (a): Written interpretations, clarifications and revisions to any of the Contract Documents issued by DDOT.

Advertisement: The public announcement, as required by law, inviting proposals for work to be performed, materials to be furnished, or both.

Apply: Attach or otherwise mount following original equipment manufacturer instructions.

Approval: The endorsement, sanction or authorization by DDOT of a proposal, plan, procedure, action, document, report, specification, design, or any part thereof, undertaken, promulgated or developed by the Contractor in accordance with the indicated requirements of the Contract.

Approval for Revenue Service: Certificate issued by DDOT, certifying that the car has successfully completed all specified functional and performance tests and is suitable for revenue service, even though the car requires rework, repair and/or modification to complete the specified work. A list of all open items to be remedied must be attached to the Certificate.

Approved: Written approval from DDOT or its designated representative.

Award: The approval by DDOT of the proposal and written notice of the same to the tendering party of said proposal.

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Buyer: DDOT

Calendar Day: Each and every day shown on the calendar.

Car(s): See Streetcar(s)

Certificate of Delivery: A document issued by DDOT to the Contractor following delivery of the Car from the Contractor's facility to DDOT's property.

Certificate of Fitness for Service: Form issued by the Contractor certifying that all Federal and State requirements have been met and all functional tests have been performed.

Change Order: A written order issued by the Contracting Officer, or his authorized representative, to the Contractor delineating changes in the Contract, Drawings, or Technical Provisions, or a combination, or all three, in conjunction with one or more Notice of Proposed Changes and establishing the basis of payment and time adjustments for the work affected by the changes.

Clean: To make free of dirt, impurities, pollutants and extraneous matter, following all manufacturing standards.

Conditional Acceptance: A written statement issued by DDOT indicating that a Car is accepted subject to the repair or other corrective action required for all defects and deficiencies identified as "Open Items" by DDOT.

Consultant: Any consulting engineer or other person or firm hired by DDOT to act on behalf of DDOT to perform certain services, including but not limited to, design or inspection related to the Work.

Contract: The written agreement executed by DDOT and the Contractor which covers the performance of the Work, the furnishing of labor, materials, tools and equipment and the basis of payment, and incorporates the various Contract Documents. The Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements either written or oral.

Contract Administrator (CA): The person designated by the Contracting Officer to act as liaison with the Contractor in all matter pertaining to the Work and make sure that all required documentation and data are submitted in accordance with the technical provisions and the procurement deliverable schedule (See Article G.10).

Contract Data Requirements List (CDRL): A matrix provided in the Contract Documents listing data, such as drawings, catalogs, reports, notices, and samples, required to be submitted by the Contractor. The matrix also establishes when and how often such submittals and revised

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submittals are required to be provided by the Contractor. A summary listing of all CDRLs is located in the Technical Provisions.

Contract Documents: The Contract Documents include: the Information for Proposers, the General Provisions, Technical Provisions, Completed Proposal Forms, Contract Drawings, Documents referenced by these Specifications, the Purchase Order, Directive Letters, Change Orders and Addenda.

Contract Drawings: Drawings provided by DDOT as part of the Technical Provisions.

Contract Item (Pay Item): A specifically described product or unit of work for which a price is provided by the Contract.

Contract Time: The number of calendar days or specified date set forth in the Contract for completion of the Work, including authorized amendments thereto; also referred to as Time of Completion.

Contracting Officer: The Director of Procurement of DDOT, or their designated representative, authorized and empowered to execute Contracts and agreements on behalf of DDOT, all as more particularly described in Article G.9.

Contracting Officers Technical Representative (COTR): See Contract Administrator

Contractor: The individual, firm, partnership, corporation, joint venture or any combination thereof, who, as an independent Contractor has entered into a Contract with DDOT, as party or parties of the second part and who is referred to throughout the Contract Documents by singular number and masculine gender.

Contractor Drawings: Items such as general arrangement drawings, detail drawings, graphs, diagrams, and sketches which are prepared by the Contractor to detail its work.

Days: Days as used in the Contract Documents shall be understood to mean calendar days unless otherwise designated.

DDOT: District Department of Transportation.

Defect(s) / Defective: A condition which: does not meet the requirements of the Contract Documents; results in a part or material to not meet designated quality documentation or standards, causes a Vehicle or a portion of the Work to cease operating or operate in a degraded mode; or inflicts damage or harm on any other portion of a Vehicle or the Work.

Engineer: See Project Manager.

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**Equipment:** All machinery, together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for the proper and acceptable completion of the Work.

**“Equal” or “Approved Equal”:** In connection with the make or quality of material or equipment in these Contract Documents, DDOT’S decision that any material or equipment proposed by the Contractor is equal to that specified.

**Execution of the Contract:** The signing of the Contract by the Contracting Officer and the authorized representative of the Contractor.

**Extra Work:** An item of work not provided for in the Contract as awarded but found essential to the acceptable completion of the Contract within its intended scope.

**Failure:** Inability of a component, equipment or system to function or perform in accordance with the indicated requirements.

**Federal; Federal Government:** The Government of the United States of America.

**Final Acceptance of Each Car:** The act of DDOT, by which a Car is accepted after completion and approval of all open items of work.

**Final Acceptance Notice:** The form issued by DDOT to the Contractor upon Final Acceptance of each Car.

**Final Acceptance of the Project:** Acceptance by DDOT of all the work, including Cars, spare parts, plans, schedules, procedures, reports, drawings, forms, manuals, modifications including those deemed necessary during the warranty period, and certification as required by Contract. Final Acceptance of the project shall not take place until expiration of the General Warranty period.

**Holidays:** Specific days on which DDOT is not open for business.

**Inspector:** DDOT’s authorized representative assigned to make detailed inspections of Contract performance and materials furnished by the Contractor for purposes of quality assurance.

**Job/Project Site:** The geographical area of the property at which the Contract work is to be delivered, as authorized by DDOT.

**Joint:** Involving mutually the Contractor and DDOT.

**Joint Inspection/Receiving Report:** Description of all defects, shipping damage and missing parts upon Car delivery to the DDOT Car Acceptance Facility.

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Line Replaceable Unit (LRU): A unit which is designated by the maintenance plan to be removed upon failure from a larger entity (assembly, subsystem, system, or car) and replaced in order to return the car to a serviceable condition.

Lowest Level Replaceable Unit (LLRU): The lowest LRU which is designated by the maintenance plan to be removed upon failure from a larger entity (assembly, subsystem, system, or car) and replaced to return the car to a serviceable condition.

Manufacturer or OEM: Original equipment manufacturer supplying materials, components or any apparatus whatsoever for use on the Cars.

Materials: Substances specified for use in the work and its appurtenances.

New: Component manufactured from raw materials and has not been fabricated from salvaged, reconstructed or repaired material and has never been installed on any vehicle or used in service.

Notice of Approval for Shipment: Written notification to the Contractor from DDOT that a given Car has met all requirements necessary to ship from the respective Contractor facility.

Notice of Arrival: Written notification to the Contractor from DDOT that a given Car has arrived on DDOT property.

Notice to Proceed: The written directive from the Contracting Officer to the Contractor to begin the prosecution of the Work in the Contract.

Notice of Proposed Change (NPC): A notice issued to the Contractor by DDOT specifying a proposed change to the Contract Documents.

Notice of Rejection: Written directive from the Contracting Officer to the Contractor rejecting the prosecution of any proposed work not specifically called out in the Contract or Technical Provisions.

Option: The right of DDOT to purchase within the times specified, additional cars and equipment, in quantities and at prices set forth in the Contract.

Performance Bond: The approved form of security furnished by the Contractor and his surety guaranteeing complete performance of the Contract in conformity with the Contract Documents.

Project Data: Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, performance and test data, test procedures, existing drawings, operational manuals, maintenance manuals, spare parts lists and data, descriptive literature, catalogs, catalog cuts and other information furnished by the Contractor to illustrate a material, product or equipment and to support its test, installation, operation or maintenance.

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Proposed Change Order (PCO): The effects on cost and schedule that the Contractor believes will result if the scope of work provided in a Notice of Proposed Change is implemented.

Project: The specific Work required to be performed by the Contractor as described in the Contract Documents.

Project Manager, Contractor: The Contractor's authorized representative in charge of the work.

Proposal: An offer submitted to DDOT to enter into a Contract, containing technical methodology and costs.

Provide: Contractor to furnish, install and make ready for service.

Purchase Order: The written document generated by the Procurement Department and issued to the Contractor for billing purposes.

Referenced Standards: All materials, equipment and workmanship, specified by the number, symbol or title of a referenced standard shall comply with the latest edition or revision thereof and all amendments and supplements thereto in effect on the date when the Notice to Proceed is given to the Contractor, except where a particular edition is indicated in the reference. In case of conflicting requirements between Referenced Standards and the Technical Provisions, the Technical Provisions shall govern.

Reliability: The probability that equipment or a system will perform its intended functions without failure and within design parameters under specified operating conditions for which designed and for a specific distance and/or period of time.

Resident Inspector: DDOT's authorized representative assigned to any of the Contractor's manufacturing facilities to make detailed inspections of Contract performance and materials furnished by the Contractor at that facility for purposes of quality assurance.

Revenue Service: The operation of the streetcars under normal conditions with passengers.

Samples: Physical examples which illustrate materials, equipment or workmanship and establish standards by which the work will be judged.

Seller: Manufacturer or vendor furnishing the equipment and materials described in the Technical Provisions.

Specifications: The directions, provisions and requirements contained or referred to in the General Provisions, Technical Provisions, and any Addenda, together with all written agreements made or to be made pertaining to the manner of performing the Work, or to the quantities and qualities of materials to be furnished or the quantities and qualities of work to be performed under the Contract.

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Streetcar(s): An assembly of materials, parts, components and systems based on specifications and drawings for the express purpose of carrying rail passengers safely and comfortably.

Streetcar Maintenance Facility: The DDOT facility known as The H Street Maintenance Facility, located at 1<sup>st</sup> Street and H Street, NE, Street, Washington, DC, United States of America. It will be the location for the staging of the Streetcar acceptance program.

Streetcar Operations: Streetcar operations will be the responsibility of DDOT.

Subcontractor: Any individual, partnership, firm or corporation who undertakes, with the prior approval of DDOT, the partial or total manufacture of one or more items of work under the terms of the Contract, or who performs other services for the Contractor as required to fulfill the terms of this Contract by virtue of an agreement with the Contractor.

Supplier: Any individual, partnership, firm, corporation, or combination thereof which provides materials or equipment but not labor or services to the Contractor in partial fulfillment of the work and who is responsible to the Contractor by virtue of an agreement.

Surety: The corporate body authorized to issue surety bonds in the District of Columbia which is bound with and for the Contractor for the satisfactory performance of the Work by him, and the prompt payment in full for materials, labor, equipment, rentals, utility services and debts and obligations, as provided in the bonds.

Technical Data: Written, typed or printed material prepared by the Contractor, whether or not copyrighted, and submitted by the Contractor in response to the requirements set forth in these Specifications. Technical data include, but are not limited to: product data, shop drawings, pictorial representations, reports, schedules, studies and assessments, training and instructional materials.

Technical Provisions and/or Specifications: Specific requirements setting forth the descriptions of elements of the Work to be performed or supplied, the quality of required labor, workmanship, material and equipment, and the performance thereof including changes or addenda made subsequent to award of the Contract.

Time of Completion: See Contract Time.

Total Bid: The total monetary amount of the Proposal in dollars and cents for the performance of the work of the entire Contract.

Total Contract Price: The total amount of consideration in U.S. Dollars and Cents specified in the Contract to be paid to the Contractor subsequent to the successful completion of all authorized work in strict and complete compliance with all Contract terms and conditions.

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Upgrade: To raise and improve the quality, classification and usefulness.

Vehicle: See “Streetcar”.

Work: The furnishing of labor, materials, equipment, and other incidentals necessary or convenient to the successful completion of the Project and the carrying out of the duties and obligations imposed by the Contract, including alterations, amendments or extensions thereto made by Change Order or other written orders of the Contracting Officer.

**C.2 BACKGROUND**

The District Department of Transportation is constructing an urban streetcar system along H Street NE and Benning Road NE from west of 1<sup>st</sup> Street NE to east of Oklahoma Avenue NE. Portions of the system, such as tracks and OCS pole foundations, have already been installed along the corridor. The District is initiating the second phase of construction in Winter/Spring 2011 and will create a fully functional streetcar line along the H/Benning corridor by Spring 2012. The streetcar vehicles procured through this contract will be used to operate the H/Benning streetcar line.

**C.3 REQUIREMENTS**

Technical requirements for the project are included in Technical Specifications.

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**SECTION D: SHIPMENT AND DELIVERY**

**D.1 SHIPMENT AUTHORIZATION**

Each Streetcar shipped from the Contractor's plant to the District shall be complete, ready to run, and in compliance with all provisions of the Technical Specification, except as noted below. Prior to shipment of each Streetcar, the Contractor shall obtain a shipping release (Release for Shipment) signed by the District's Contract Administrator (CA) or his or her designee. The shipping release shall certify that the Streetcar is complete, has passed all pre-shipment tests described in the Technical Specification and complies with approved Contractor's drawings, samples, is accompanied by an up-to-date Streetcar history book, and other agreed upon conditions for shipping. The Contract Administrator, at his or her sole discretion, may permit shipment of a Streetcar with minor defects that will not affect testing and can easily be corrected after shipment. All known defects shall be submitted by the Contractor with the request for shipping release. The shipping release shall not be construed nor inferred to constitute to any degree Streetcar delivery or acceptance by the District.

**D.2 SHIPMENT**

The Contractor shall arrange for shipment of Streetcars and Streetcar components to be controlled so as to prevent damage to Streetcars and Streetcar components. All sub-systems shall be protected from damage during shipment. All parts removed for shipment shall be boxed securely and shipped with the Streetcar to which they belong. Any temporary fittings and parts required for shipment shall be furnished by the Contractor and removed by the Contractor upon delivery. The cost of supplying these fittings and parts, the labor to install and remove them, and the cost of returning them to the Contractor shall be borne by the Contractor and included in the Contract Price.

If shipped by sea, all Streetcars and Streetcar components shall be below deck and shall be enclosed and adequately protected against physical damage from handling and from exposure to the marine environment.

If shipped over land, the District prefers shipment of Streetcars by road, due to the greater risk of damage, the higher cost to the District for unloading and handling and resulting in the loss of time in the schedule.

During shipment, each Streetcar shall be equipped with an impact recorder provided by the Contractor and approved by the District. The recorder shall record all handling impacts. All records shall become the property of the District and shall be included in the Streetcar History Book.

The Contractor shall require shippers to log and record any incidents of damage or potential damage to the Streetcars and Streetcar components, and of interruption of

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shipments. The Contractor shall report such shipment incidents to the District promptly upon the Contractor's receipt of such information, describing the nature of the shipment damage, potential damage or interruption, and the actions taken and to be taken to complete the shipment and repair any damage.

The Contractor shall be responsible for safely and efficiently maintaining traffic in all areas affected by its shipment of Streetcars on public roadways or by any other activities of the Contractor affecting roadway traffic, and shall comply with all requirements of any authority having jurisdiction over the roadway.

All Streetcars shall be shipped F.O.B. DDOT destination, as identified in Article D.3. The Contractor is reminded that there may be security issues to be addressed for any materials, equipment, or Streetcars that qualify as a foreign shipment. The Contractor shall bear the responsibility for any and all costs, for example, tariffs, duties, security inspections, associated with the shipment and importation of materials, components, equipment, and Streetcars.

**D.3 SHIPPING DESTINATION**

All Streetcars shall be shipped to the District's Streetcar Maintenance Facility or at such other destination within a 50 mile radius of the District as may be determined by DDOT. The Contractor shall make all arrangements and be responsible for local shipment of the vehicles to such delivery site.

**D.4 UNLOADING**

The Streetcars shall be received at the shipping destination identified in Article D.3 during normal business hours (8:00 AM to 4:00 PM) or as otherwise agreed by the District. No deliveries shall be made on Saturdays, Sundays, or District-observed holidays. Evening work is not contemplated. The Contractor shall be responsible for those charges incurred in loading, unloading, shipping, and receipt of the Streetcars at the shipping destination.

Should evening or holiday work be undertaken with the prior approval of the District, all costs including DDOT labor costs associated with the evening or holiday work, will be borne by the Contractor.

After arrival at the DDOT's designated facility, each Streetcar shall be examined jointly by representatives of the District and the Contractor for shipping damage. The District then will issue a receiving notice to the Contractor, which will acknowledge receipt of the Streetcar and describe any missing parts or visible damage that may have occurred during shipment.

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**D.5 TRANSFER OF TITLE AND RISK OF LOSS**

Title to each Streetcar shall pass to the District upon issuance of the delivery receipt as defined in Section D.4 above, and the Contractor shall furnish and execute all necessary documentation of title at that time. Passage of title shall not constitute delivery, as defined in Article D.6 or acceptance of the Streetcar nor relieve the Contractor of any of its obligations under the Contract, nor preclude rejection of the Streetcar by the District. Following delivery receipt, the District shall bear the risk of any loss or damage to the Streetcar, except for that due to equipment failure or failure due to design or workmanship deficiencies, or damage to the Streetcars during testing and pre-delivery operations resulting from the acts or omissions of the Contractor.

**D.6 DELIVERY**

Delivery of a Streetcar is defined as the completely assembled Streetcar on the track of the District's Streetcar Maintenance Facility, with all post-shipment acceptance testing completed and approved by the District, and ready-to-run for "burn-in" testing. The Contractor shall deliver each Streetcar in excellent condition in all details, and shall assume all liability and risk of loss incidental to delivery of Streetcars.

Delivery of each Streetcar shall require written authorization by the Contract Administrator or his or her representative. An executed copy of such delivery receipt shall be furnished by the District upon the Contractor's presentation of each Streetcar for delivery. Authorization for Streetcar delivery shall be issued to the Contractor promptly following each such satisfactory performance and completion of Streetcar post-shipment acceptance testing, provided the Streetcar is completely assembled. The District may at its sole discretion issue delivery receipts for Streetcars that have identified deficiencies.

The Contractor shall be responsible for all work and all costs associate with the placing of Streetcars in a ready to run condition on the rails of the specified location.

**D.7 DELIVERY OF SPARE PARTS, SPECIAL TOOLS, TEST EQUIPMENT, AND MANUALS**

The Contractor shall notify the Contract Administrator at least ten (10) days in advance of delivery of all spare parts, special tools and test equipment, and manuals. All such materials shall be delivered to the District's Streetcar Maintenance Facility during normal business hours (8:00 AM to 4:00 PM) or as otherwise agreed by DDOT. Shipping documents shall accompany delivery of all materials. The shipping documents shall identify all parts by part number and serial number (where applicable).

Parts lists corresponding to Schedule B, Schedule of Prices, Vehicle Spare Parts, and Schedule B, Schedule of Prices, Special Tools, shall be submitted for approval at least 30 days before notice of shipping. Upon approval of the parts lists, the District will issue a

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no-cost purchase order under which the materials will be shipped. No deliveries shall be made without prior issuance of the spare parts purchase order. The District will inspect all materials to confirm the accuracy of the shipping documents and to check for damage to the materials.

Should the correction of defects require the removal of spare parts from the District's property, all expenses and costs incurred in their removal from the shipping destination shall be borne by the Contractor.

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**SECTION E: INSPECTION AND ACCEPTANCE**

**E.1 INSPECTION**

The District has the right to conduct and the Contractor hereby approves the most thorough and minute inspection by the Project Manager and his representatives or subordinates of all Work and materials and of the manufacture or preparation of such materials from the beginning to the final completion of the Work in accordance with the Technical Specification. The District has the right to identify to the Contractor all defects in workmanship or materials and other errors or variations from the requirements of this Contract. No omission on the part of the District or the Project Manager or any of their representatives or subordinates to point out such errors, omissions, variations, or defects shall give the Contractor any right or claim against the District or shall in any way relieve the Contractor from his obligations according to the terms of this Contract.

The right of inspection by the District herein provided is intended solely for the District's benefit; and the Contractor covenants and warrants that the Streetcars furnished and delivered hereunder shall be free from patent and latent defects, which the District is not in any manner bound by inspection or otherwise to discover.

**E.1.1 ACCESS TO THE WORK**

The Contractor shall at all times give to the District and to any person designated by the District, access to all facilities, whether necessary or convenient, for inspecting the materials to be furnished and the Work to be done under this Contract. The members of the District, the Contract Administrator, and all employees of the District bearing the Contract Administrator's or his authorization shall be admitted at any time summarily and without delay at any place where the Work is being performed, or to inspect materials at any place or stage of their manufacture, preparation, shipment or delivery.

The Contract Administrator shall be furnished with every facility, including but not limited to, tools, pits, hoists, scaffolds, platforms, other equipment, and assistance as may be necessary for inspections or tests for ascertaining whether the Work is in accordance with the requirement and intent of this Contract.

Any inspection hereunder shall not unreasonably disrupt the Contractor's performance of the Work.

**E.1.2 NOTIFICATION OF PRE-SHIPING INSPECTIONS**

Prior to shipping each Streetcar, the Contractor shall provide the District with no less than two weeks advance written notice of each Streetcar inspection to be performed by the Contractor at his plant.

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No Work shall be performed on the District's property at night, on Saturdays, Sundays or holidays, or at any other unusual time without due written request to the Project Manager at least 72 hours prior to planned commencement of said Work and prior written approval by the Project Manager. The Contractor may give a single notice of normally scheduled night, Saturday, Sunday or holiday work.

**E.1.3 DEFECTIVE WORK**

If the Work or any part thereof shall be found defective, the Contractor shall without cost to the District immediately remedy such defect in a manner to comply with the Contract.

**E.1.4 INSPECTORS**

The District may employ inspectors, who shall be representatives of the Contract Administrator. They shall have access to the design, fabrication, assembly, and testing of the Streetcars at all times, wherever in progress at the Contractor's, Contractor's subcontractors', or the District's facilities. Inspectors are employed solely for the District's benefit, and are not intended as a source of advice for the Contractor's employees, subcontractors, or suppliers.

The inspectors shall observe and may inspect the work, and shall report their observations to the Contract Administrator. Except as expressly authorized by the Contract Administrator in writing, the inspectors shall have no authority to accept, reject, or approve the work, to stop the work, to authorize any changes in the work, or to direct any extra work.

The Contractor shall, at no additional cost to the District, provide any reasonable facilities including a private office that the inspectors may require for the performance of their duties at its manufacturing and assembly facilities. A minimum office area of 720 square feet for each member of the inspection staff, as applicable, shall be provided at each such facility for the entire period during which District staff members are stationed at the facilities. The Contractor shall provide the following office equipment for use by the inspector(s):

- Two (2) double pedestal desks and two (2) chairs;
- One(1) secretarial desk and chair;
- One(1) drafting area;
- One (1) IBM compatible personal computer with disk drive;
- One (1) plain paper printer with a minimum production capacity of seven (7) pages per minute;
- Two (2) long distance telephone lines (touchtone) with three (3) telephone instruments;
- Two (2) locking five (5) drawer legal size file cabinets;
- One (1) telefax machine with long distance access.

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- Internet access through a cable connection independent of the Contractor's network.

One of the telephone lines shall be a dedicated line independent of the Contractor's switchboard. The second line shall be connected to the Contractor's telephone network to facilitate communication between the District's inspection staff and the Contractor's staff. The office shall be provided with heating, ventilation and air conditioning of such capacity to maintain temperatures between 68°F and 72°F under the severest of weather conditions. If the office provided is a trailer, it shall have functioning lavatory facilities. If the offices are within a building, the District spaces shall be segregated and secured from other spaces by floor to ceiling walls to assure privacy.

## **E.2 TESTING**

The Contractor shall perform at its own cost any and all inspections and tests required to be performed as set forth in the Technical Specifications or which it requests for its own convenience.

The Contracting Officer's Technical Representative shall be apprised of all such tests in advance to permit his representatives to be able to witness any such tests.

Any and all Systems, Subsystems and components required or proposed to be incorporated into the Work shall be subject to the testing requirements set forth in this Article E.1.2 and in the Technical Specification, and shall not be incorporated into the Work unless and until the Project Manager has been satisfied that same has successfully passed the applicable test(s). All tests must be performed in accordance with the approved test procedures and in the event of a failure of any test, the Contractor shall be responsible for any necessary corrective action and retesting until the applicable certified test results have been approved by the Project Manager.

All tests required to demonstrate that all equipment and Work including materials are in accordance with the requirements of the Contract shall be made by and at the expense of the Contractor in the presence of the District's inspector; provided, however, that the Contractor may conduct tests and submit certified copies of test results in the case of tests that the Project Manager has authorized to be conducted in the absence of its inspector. The Project Manager reserves the right to determine which tests are necessary. The necessary testing instruments and apparatus, and all labor and the facilities for the transportation of testing apparatus shall be furnished by the Contractor at its own cost.

The District shall pay the costs of any testing it requests in addition to that required by the Technical Specifications, except that the Contractor shall pay the cost of any of those tests that are performed to evaluate non-conforming work or that demonstrate the Contractor's failure to meet the requirements of the Contract. The Contractor shall cooperate with and assist the District and any testing representatives in conducting any

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tests or inspections requested or approved by the District. Tests performed by the District shall not relieve the Contractor of the responsibility for conformance to the Contract.

**E.2.1 ACCEPTANCE TESTING**

Acceptance Testing shall be conducted at the Contractor's facility prior to shipment to the District.

**E.2.2 POST DELIVERY TESTING**

Prior to Acceptance, Post Delivery Testing shall be conducted by the Contractor on the District's property in accordance with the Technical Specification.

**E.3 ACCEPTANCE**

Acceptance will occur after successful completion of all testing (both acceptance and post-delivery) and the District's determination that the Streetcar conforms in all respects to the Contract requirements. Acceptance of a Streetcar shall not relieve the Contractor from responsibility for errors, improper fabrication, non-conformance to a requirement, or for deficiencies within the Contractor's control.

**E.3.1 CONDITIONAL ACCEPTANCE**

The District may conditionally accept a Streetcar if the District determines after inspection and testing that the Streetcar is suitable for operation in revenue service, but that it is not yet totally responsive to all Contract requirements. Conditionally accepted Streetcars shall be available to the District for revenue service until the Contractor is able to initiate and execute corrective action. The warranty period shall begin with Conditional Acceptance except for parts and systems which require corrective action. Any Conditional Acceptance for revenue service does not relieve the Contractor of the liability to correct defects as required by the Contract.

**E.3.2 FINAL ACCEPTANCE**

Before the District issues written Final Acceptance of the Streetcars the Contractor shall have fulfilled all of its obligations under the Contract, including, without limitation the following:

- (a) Completion of Final Acceptance of the Vehicles;
- (b) Submittal and approval by the District of all final documents and drawings;
- (c) Submittal and approval by the District of all test records and reports;
- (d) Delivery to the District of approved Operations and Maintenance Manuals;
- (e) Delivery and acceptance by the District of all Capital Spare Parts;

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- (f) Resolution to the District's satisfaction and approval of all open inspection items and other non-conformances; and
- (g) Completion and receipt of the District's approval of all required retrofits.

Upon receipt of the District's Final Acceptance of the Work the Contractor may invoice the District for any amount due under the Contract.

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**SECTION F: SCHEDULE**

**F.1 PROGRESS SCHEDULE**

Within thirty (30) days after Notice to Proceed, the Contractor shall furnish to the District for approval a detailed written progress schedule identifying critical events of design, procurement and manufacture, and identifying delivery dates of each Streetcar. During the entire term of Contract performance, the Contractor shall report to the District in writing monthly on the progress of performance.

If any of the Contractor's monthly reports indicates any potential delay in any of the critically dependent events identified on the schedule, the Contractor shall submit a detailed statement of action it intends to take to avoid the delay. The District will consider approving a revised schedule for completion of the critical events only if the Contractor satisfies the District that the delivery of Streetcars and other Contract work will be completed on time, or that the Contractor's failure to perform constitutes an excusable delay as defined in Article F.4.

**F.2 DELIVERY PENALTIES**

The District shall impose financial penalties for late delivery of the Streetcars, based on the delivery dates proposed in the RFP. Late delivery penalties are not considered liquidated damages and are not an estimate of any tangible or intangible damage to the District. The Contractor shall agree to pay the District \$2500 per calendar day for late deliveries up to a maximum of \$350,000 per Streetcar. If delivery of any item extends 180 calendar days beyond the delivery dates agreed upon in the final contract, the District may, at its sole option, declare the Contractor in default.

**F.3 EXCUSABLE DELAYS**

Except with respect to defaults of Subcontractors, the Contractor shall not be considered in default by reason of any failure to perform in accordance with the Contract delivery schedule if such failure 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, acts of God or of the public enemy, acts of the government in its sovereign or contractual capacity, fires, floods, epidemics, wars whether declared or undeclared, quarantine restrictions, strikes or other labor disputes, freight embargoes, and unusually severe weather, but in every case the failure to perform 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 the Subcontractor, and without the fault or negligence of either of them, the Contractor shall not be in default by reason of any failure to perform. As used herein, the terms "Subcontractor" and "Subcontractors" mean Subcontractor(s) or Supplier(s) at any tier.

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Should the Contractor anticipate or suffer delay because of cause(s) as described in this guideline, the parties shall consult with each other to revise the delivery schedule and agree on an equitable price adjustment, upon the Contractor's fully documented and supported written request timely made, unless the District should decide instead to terminate the Contract.

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**SECTION G: CONTRACT ADMINISTRATION**

**G.1 INVOICE PAYMENT**

The District will make payments to the Contractor, upon the submission of proper invoices, at the prices stipulated in this contract, for supplies delivered and accepted or services performed and accepted, less any discounts, allowances or adjustments provided for in this contract.

The District will pay the Contractor on or before the 30<sup>th</sup> day after receiving a proper invoice from the Contractor.

**G.2 INVOICE SUBMITTAL**

The Contractor shall submit proper invoices according to the work events set forth in the progress payment schedule specified in Section G.4. Invoices shall be prepared in duplicate and submitted to the agency Chief Financial Officer (CFO) with concurrent copies to the Contract Administrator specified in Section G.9 below. The address of the CFO is:

**Name:** Office of the Controller/Agency CFO  
**Address:** 2000 14<sup>th</sup> St NW  
6<sup>th</sup> Floor  
Washington, DC 20009  
**Telephone:** (202) 671-2300

To constitute a proper invoice, the Contractor shall submit the following information on the invoice:

- 1) Contractor's name, federal tax ID and invoice date (Contractors shall date invoices as of the date of mailing or transmittal);
- 2) Contract number and invoice number;
- 3) Milestone identifier, description, price, and the date(s) that the supplies or services were delivered or performed;
- 4) Other supporting documentation or information, as required by the Contracting Officer;
- 5) Name, title, telephone number and complete mailing address of the responsible official to whom payment is to be sent;
- 6) Name, title, phone number of person preparing the invoice;

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- 7) Name, title, phone number and mailing address of person (if different from the person identified in 6) above) to be notified in the event of a defective invoice; and
- 8) Authorized signature.

**G.3 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT**

For contracts subject to the 51% District Residents New Hires Requirements and First Source Employment Agreement requirements, final request for payment must be accompanied by the report or a waiver of compliance discussed in Section H.5.5.

No final payment shall be made to the Contractor until the CFO has received the Contracting Officer's final determination or approval of waiver of the Contractor's compliance with 51% District Residents New Hires Requirements and First Source Employment Agreement requirements.

**G.4 PROGRESS PAYMENTS**

Progress payments are specified percentages for each milestone listed and are based on the Total Contract Award Price for Vehicles as shown on Schedule of Prices, Section B.3.

The Contractor's invoices shall account for the work events described in the progress payment schedule below. Progress payment invoices shall not exceed the following stated percentages of the Contract price at the time of the following stated work events:

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MILE- STONE	DESCRIPTION	CUMULATIVE % TOTAL BASE PRICE
A	Ten (10) percent of the Total Base Contract Price following Contract execution for mobilization.	10
B	Ten (10) percent of the Total Base Contract Price upon: Completion of all sub-supplier contracts; Approval of all CDRLs specified in the Technical Specifications (to be submitted within 180 days after NTP); Approval of Fault Hazard Analysis; Approval of the <del>fourteen</del> <u>twenty-five</u> (425) HO Scale models No sooner than six (6) months after NTP.	20
C	Twenty (20) percent of the Total Base Contract Price upon: Receipt of all major sub-assemblies; Completion of first carshell; Approval of qualification test results (TS 15.3; 15.4) Within twelve (12) months after NTP.	40
D	Fifty (50) percent of the Total Base Contract Price upon: Delivery of all vehicles; Delivery of all Manuals and Catalogs; Delivery of Spare parts. Within the number of days after NTP provided in the Proposal.	90
F	Ten (10) percent of the Total Base Contract Price upon Final Acceptance	100

Applications for Payment shall be supported by evidence which is required by this Section and such other documentation as the District may require.

Within thirty (30) days after receipt of an invoice by the District, the District shall pay the amount the District determines is properly due and inform the Contractor in writing of the reason for withholding any amounts not paid.

In addition to the retained amounts described in Article G.4.1, Retainage, the The District may withhold all or part of a payment to the extent deemed necessary by the District to protect the District from loss due to defective material or work not remedied by the Contractor within a reasonable period of time or due to the Contractor's substantive

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failure to carry out the work in accordance with the Contract. The amount withheld shall be commensurate with the District's reasonable estimation of the cost to correct the defective work or failure.

No approval for payment, nor any payment by the District, shall constitute an acceptance of any Streetcars or other Contract deliverables that are not in accordance with the Contract.

G.4.1 Retainage

The District shall pay the approved invoice, less five percent (5%) for retainage, except as provided under Article G.4.2, Reduction of Retainage, within period of time prescribed above. All retainage shall be held by the District until the time for final payment and the District has received the consent of surety.

G.4.2 Reduction of Retainage

The District shall withhold five (5%) retainage until the Contractor successfully achieves Acceptance of the Streetcars. Following Acceptance, the District, may, at its sole discretion, elect to withhold retainage in an amount equal to twice the amount of the estimated value of all uncompleted Work, including Warranty and pay the Contractor the remainder of withheld retainage. The balance of withheld retainage shall be paid after Final Completion.

**G.5 PROGRESS PAYMENTS FOR OPTION STREETCARS**

Payment for options shall be made in accordance with the progress payment schedule below:

	<b>MILESTONE DESCRIPTION</b>	<b>CUMULATIVE PERCENTAGE</b>
A	Ten percent (10%) of the total option price immediately following execution of the option.	10
B	Twenty-five percent (25%) of the unit price for each option Streetcar upon completion of the car shell.	35
C	Twenty percent (20%) of the unit price for each option Streetcar upon installation and completion of wiring of the car body mounted components of the following major sub-systems: Propulsion System, Friction Brake System, Auxiliary Electrical Equipment, HVAC, and Doors.	55
D	Twenty percent (20%) of the unit price for each option Streetcar on shipment of each Streetcar from the Contractor's plant.	75

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<b>MILESTONE DESCRIPTION</b>		<b>CUMULATIVE PERCENTAGE</b>
E	Ten percent (10%) of the unit price for each option Streetcar upon issuance of delivery receipt by the District.	85
F	Ten percent (10%) of the unit price for each Streetcar upon conditional acceptance of the Streetcar by the District.	95
G	Five percent (5%) of the unit price for each Streetcar upon final acceptance of the Streetcar by the District.	100

**G.6 UNITS OF CURRENCY**

All Contractor invoices for payment shall be accounted in U.S. dollars, and all District payments to the Contractor shall be in U.S. dollars.

**G.7 ASSIGNMENT OF CONTRACT PAYMENTS**

In accordance with 27 DCMR 3250, the Contractor may assign funds due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution.

Any assignment shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party.

Notwithstanding an assignment of contract payments, the Contractor, not the assignee, is required to prepare invoices. Where such an assignment has been made, the original copy of the invoice must refer to the assignment and must show that payment of the invoice is to be made directly to the assignee as follows:

Pursuant to the instrument of assignment dated \_\_\_\_\_,  
make payment of this invoice to \_\_\_\_\_  
(name and address of assignee).

**G.8 THE QUICK PAYMENT CLAUSE**

The District will pay interest penalties on amounts due to the Contractor under the Quick Payment Act, D.C. Official Code §2-221.01 *et seq.*, for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before the 15<sup>th</sup> day after the required payment date.

Any amount of an interest penalty which remains unpaid at the end of any 30-day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

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**G.9 CONTRACTING OFFICER (CO)**

The CO is the only person authorized to approve changes in any of the requirements of this Contract. The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this Contract, unless issued in writing and signed by the CO. In the event the Contractor effects any change at the instruction or request of any person other than the CO, the change will be considered to have been made without authority and no adjustment will be made in the Contract Price to cover any cost increase incurred as a result thereof. The name, address and telephone number of the Contracting Officer is:

Jerry M. Carter  
*Office of Contracting and Procurement*  
*Address:* 2000 14<sup>th</sup> Street, NW 3<sup>rd</sup> Floor  
Washington, DC 20009  
*Telephone:* (202) 671 2270  
*Email:* [jerry.carter@dc.gov](mailto:jerry.carter@dc.gov)

**G.10 CONTRACT ADMINISTRATOR (CA)**

G.10.1 The CA is responsible for general administration of the contract and advising the CO as to the Contractor's compliance or noncompliance with the contract. The CA has the responsibility of ensuring the work conforms to the requirements of the contract and such other responsibilities and authorities as may be specified in the contract. These include:

G.10.1.1 Keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the contract;

G.10.1.2 Coordinating Site entry for Contractor personnel, if applicable;

G.10.1.3 Reviewing invoices for completed work and recommending approval by the CO if the Contractor's costs are consistent with the negotiated amounts and progress is satisfactory and commensurate with the rate of expenditure;

G.10.1.4 Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions; and

G.10.1.5 Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.

G.10.2 The address and telephone number of the CA is:

Ralph Burns  
Progressive Transportation Services Administration

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Deputy Associate Director  
2000 14<sup>th</sup> Street NW, 5<sup>th</sup> Floor  
Washington DC 20009  
(202) 369-7940

G.10.3 The CA shall NOT have the authority to:

1. Award, agree to, or sign any contract, delivery order or task order. Only the CO shall make contractual agreements, commitments or modifications;
2. Grant deviations from or waive any of the terms and conditions of the contract;
3. Increase the dollar limit of the contract or authorize work beyond the dollar limit of the contract,
4. Authorize the expenditure of funds by the Contractor;
5. Change the period of performance; or
6. Authorize the use of District property, except as specified under the contract.

**G.11 CONTRACTOR'S PROJECT MANAGER**

During performance of the Contract, the Contractor shall assign a competent Project Manager on a full time basis, fluent in English, who shall have full authority to act on behalf of the Contractor and all of the Contractor's subcontractors at all tiers in all matters within the scope of the Contract. The Project Manager shall have experience acceptable to the District. The Project Manager must be thoroughly familiar with all procedures involved in Streetcar production. As part of the Proposal, the Offeror shall submit to the District the resume of its candidate for the position of Project Manager.

With Notice to Proceed the candidate submitted in the Proposal shall become the Contractor's Project Manager. If for any reason, and at any time, the candidate submitted by the Contractor is not acceptable to the District, or becomes unacceptable, the Contractor shall propose additional candidates. If the Contractor wishes to replace its Project Manager at any time during the performance of this Contract, it first shall submit the resume of its new candidate to the District for the District's approval and shall not make the substitution without the District's approval.

**G.12 SUBCONTRACTORS AND SUPPLIERS**

The Contractor shall be fully responsible and liable for the products and actions of all subcontractors and suppliers at any tier.

**G.13 PROJECT MEETINGS**

The Contract Administrator shall schedule and preside over pre-production, periodic, and special meetings throughout the progress of the work. Agendas for the meetings may include, but are not necessarily limited to, discussions of in-plant observations, problems, conflicts, production schedules, delivery schedules, supplier fabrication, quality

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standards, design review, Contract modifications, and any other topics that the Contract Administrator determines to be relevant to the project.

**G.14 AUTHORIZED CHANGES BY THE CONTRACTING OFFICER**

The Contracting Officer is the only person authorized to approve changes in any of the requirements of this contract.

The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the Contracting Officer.

In the event the Contractor effects any change at the instruction or request of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

**G.14.1 CHANGE ORDERS**

Oral change orders are not permitted. A Change Order is a written document, executed and issued by the District for work within the general scope of the Contract that adds to or differs from the Work then required under the Contract, or the deletion of any Work then required under the Contract. This may include, among other things, changes to the design of the Streetcars as specified in the Technical Specifications or the schedule for delivery of the Contract deliverables as set forth in the currently approved delivery schedule, or any other change to the Contract, or any combination thereof.

No Change Order shall be binding unless executed in writing by the District's Contracting Officer.

The Contractor shall be entitled in any instance to request that the Contracting Officer consider a change to the Work through the initiation of a Change Order. In this event, the Contractor shall deliver a Request for Change Order to the District within fifteen (15) days of receipt of any order, direction, instruction, interpretation, or determination of the District that the Contractor believes will cause a change in the cost of the work or in the schedule for delivery of the Contract deliverables as set forth in Article F.2 or in the currently approved progress schedule, or in any other change in the Contract. Additionally, the Contractor may deliver a Request for Change Order to the District for any new or different work in the Contract or adjustments to the Contract that the Contractor believes should be implemented.

With any Request for Change Order, the Contractor shall provide to the District a detailed description of the proposed adjustment to the Contract Price or currently approved progress schedule, or both, and describing any other provisions of the Contract

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that will require modification because of the change. If the Contractor's proposal is acceptable to the District, the District will issue a Contract Change Order consistent with such proposal.

In connection with any Request for Change Order including a proposed adjustment in the Contract price, the Contractor shall submit a complete breakdown costs associated with the Change Order work.

In addition to the change order procedure described above, the District may at any time unilaterally direct changes within the general scope of the Contract by a written order to the Contractor. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Contract, the parties shall attempt to negotiate an equitable adjustment in Contract price or delivery schedule or both. In the event that the District and the Contractor are unable to agree on the equitable adjustment, the Contractor shall proceed with the District's directed change, and the disagreement shall be resolved in accordance with Article G.15, Disputes and Claims.

**G.14.2 STOP WORK ORDER**

The Contract Administrator has the authority to stop any work whenever he or she deems necessary.

In addition to the right to terminate work under any other provision of this Contract, the District may require the Contractor to stop all, or any part of, the work called for by this Contract at any time for up to ninety (90) days after a written stop work order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a "Stop Work Order" issued pursuant to this Paragraph. As a minimum, a Stop Work Order shall include the following in writing:

- 1) A clear description of the work to be suspended;
- 2) Guidance as to the action to be taken on subcontracts; and
- 3) Other suggestions to the Contractor for minimizing costs.

Upon receipt of a Stop Work Order, the Contractor shall comply with its terms immediately and take all reasonable steps to minimize the incurrence of cost allocable to the work covered by the order during the period of work stoppage. Within the period specified by the order, or within any extension of that period, to which the parties agreed, the District may:

- 1) Terminate the work covered by the order;
- 2) Cancel the Stop Work Order; or
- 3) Allow the period of the Stop Work Order to expire.

**G.14.3 COSTS OF STOP WORK**

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If a Stop Work Order is canceled or expires, the Contractor shall resume work. An equitable adjustment shall be made in the work scope, Contract Price, or Contract time, as appropriate, and the Contract shall be modified in writing accordingly if:

- 1) The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and
- 2) The Contractor asserts a claim for an adjustment within thirty (30) days after the end of the period of work stoppage; and
- 3) The Stop Work Order was not caused by the Contractor's default or other act or omission within the control or responsibility of the Contractor.

**G.14.4 MAINTENANCE DURING SUSPENSION**

In preparation for and during any suspension of work, the Contractor shall take every reasonable precaution to prevent damage to or deterioration of the work. The Contractor shall repair or replace at no cost to the District work that is damaged or deteriorated during a work suspension due to the Contractor's failure to comply with this Paragraph. If the District finds that the Contractor is not taking a reasonable precaution and the Contractor fails to take the precaution within five (5) days after written notice from the District, the District may cause the precaution to be taken and recover the reasonable cost of taking the precaution from the Contractor.

**G.15 DISPUTES AND CLAIMS**

**G.15.1 DISPUTES**

- A. All disputes arising under or relating to this contract shall be resolved as provided herein.
- B. Claims by a Contractor against the District.

Claim, as used in Section B of this clause, means a written assertion by the Contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

- (a) All claims by a Contractor against the District arising under or relating to a contract shall be in writing and shall be submitted to the Contracting Officer for a decision. The contractor's claim shall contain at least the following:
  - (1) A description of the claim and the amount in dispute;
  - (2) Any data or other information in support of the claim;

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- (3) A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and
  - (4) The Contractor's request for relief or other action by the contracting officer.
- (b) The Contracting Officer may meet with the contractor in a further attempt to resolve the claim by agreement.
- (c) For any claim of \$50,000 or less, the Contracting Officer shall issue a decision within sixty (60) calendar days from receipt of a written request from a Contractor that a decision be rendered within that period.
- (d) For any claim over \$50,000, the Contracting Officer shall issue a decision within ninety (90) calendar days of receipt of the claim. Whenever possible, the Contracting Officer shall take into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.
- (e) The Contracting Officer's written decision shall do the following:
- (1) Provide a description of the claim or dispute;
  - (2) Refer to the pertinent contract terms;
  - (3) State the factual areas of agreement and disagreement;
  - (4) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
  - (5) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
  - (6) Indicate that the written document is the contracting officer's final decision; and
  - (7) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.
- (f) Any failure by the Contracting Officer to issue a decision on a contract claim within the required time period will be deemed to be a denial of the claim, and will authorize the commencement of an appeal to the Contract Appeals Board as authorized by D.C. Official Code § 2-309.04.
- (g) (1) If a Contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable

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to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim.

- (2) Liability under this paragraph (f) shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.
- (h) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor as authorized by D. C. Official Code § 2-309.04.
- (i) Pending final decision of an appeal, action, or final settlement, a Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

**C. Claims by the District against a Contractor**

- (a) Claim as used in Section C of this clause, means a written demand or written assertion by the District seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.
- (b) (1) All claims by the District against a Contractor arising under or relating to a contract shall be decided by the Contracting Officer.
- (2) The Contracting Officer shall send written notice of the claim to the Contractor. The Contracting Officer's written decision shall do the following:
  - (a) Provide a description of the claim or dispute;
  - (b) Refer to the pertinent contract terms;
  - (c) State the factual areas of agreement and disagreement;
  - (d) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
  - (e) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
  - (f) Indicate that the written document is the Contracting Officer's final decision; and

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- (g) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.
- (3) The decision shall be supported by reasons and shall inform the Contractor of his or her rights as provided herein.
- (4) The authority contained in this clause shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle, or determine.
- (5) This clause shall not authorize the Contracting Officer to settle, compromise, pay, or otherwise adjust any claim involving fraud.
- (c) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the District as authorized by D.C. Official Code §2-309.04.
- (d) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

Notwithstanding any other provision of this Contract, the Contractor shall be absolutely barred from recovering extra costs or obtaining extra time within which to complete Contract work if the notice required under this Paragraph is delivered to the District later than one hundred eighty (180) days after the District's acceptance of the last Streetcar. However, the Contractor may raise counterclaims for additional compensation for work performed under the Contract in the event that the District asserts a claim against the Contractor later than one hundred eighty (180) days after the District's acceptance of the last Streetcar.

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## **SECTION H: SPECIAL CONTRACT REQUIREMENTS**

### **H.1 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES**

For all new employment resulting from this contract or subcontracts hereto, as defined in Mayor's Order 83-265 and implementing instructions, the Contractor shall use its best efforts to comply with the following basic goal and objectives for utilization of bona fide residents of the District of Columbia in each project's labor force:

At least fifty-one (51) percent of apprentices and trainees employed shall be residents of the District of Columbia registered in programs approved by the District of Columbia Apprenticeship Council.

The Contractor shall negotiate an Employment Agreement with the DOES for jobs created as a result of this contract. The DOES shall be the Contractor's first source of referral for qualified apprentices and trainees in the implementation of employment goals contained in this clause.

### **H.2 PUBLICITY**

The Contractor shall at all times obtain the prior written approval from the Contracting Officer before it, any of its officers, agents, employees or subcontractors, either during or after expiration or termination of the contract, make any statement, or issue any material, for publication through any medium of communication, bearing on the work performed or data collected under this contract.

### **H.3 FREEDOM OF INFORMATION ACT**

The District of Columbia Freedom of Information Act, at D.C. Official Code § 2-532 (a-3), requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If the Contractor receives a request for such information, the Contractor shall immediately send the request to the Contract Administrator designated in subsection G.9 who will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act.

If the agency with programmatic responsibility receives a request for a record maintained by the Contractor pursuant to the contract, the Contract Administrator will forward a copy to the Contractor. In either event, the Contractor is required by law to provide all responsive records to the Contract Administrator within the timeframe designated by the Contract Administrator. The FOIA Officer for the agency with programmatic responsibility will determine if the records can be released. The District will reimburse the Contractor for the costs of searching and copying the records in

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accordance with D.C. Official Code §2-532 and Chapter 4 of Title 1 of the *D.C. Municipal Regulations*.

**H.4 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT**

**H.4.1 FIRST SOURCE EMPLOYMENT AGREEMENT**

The Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code §2-219.01 et seq. (“First Source Act”).

**H.4.2 AGREEMENT WITH DDOT**

The Contractor shall enter into and maintain, during the term of the contract, a First Source Employment Agreement, (Reference Section J, Item J.8) in which the Contractor shall agree that:

- (1) The first source for finding employees to fill all jobs created in order to perform this contract shall be the Department of Employment Services (“DOES”); and
- (2) The first source for finding employees to fill any vacancy occurring in all jobs covered by the First Source Employment Agreement shall be the First Source Register.

**H.4.3 REPORTING REQUIREMENTS**

The Contractor shall submit to DOES, no later than the 10<sup>th</sup> each month following execution of the contract, a First Source Agreement Contract Compliance Report (“contract compliance report”) verifying its compliance with the First Source Agreement for the preceding month. The contract compliance report for the contract shall include the:

- (1) Number of employees needed;
- (2) Number of current employees transferred;
- (3) Number of new job openings created;
- (4) Number of job openings listed with DOES;
- (5) Total number of all District residents hired for the reporting period and the cumulative total number of District residents hired; and
- (6) Total number of all employees hired for the reporting period and the cumulative total number of employees hired, including:
  - (a) Name;
  - (b) Social security number;
  - (c) Job title;
  - (d) Hire date;
  - (e) Residence; and

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(f) Referral source for all new hires.

**H.4.4 COMPLIANCE**

If the contract amount is equal to or greater than \$100,000, the Contractor agrees that 51% of the new employees hired for the contract shall be District residents.

**H.4.5 SUBMITTAL REQUIREMENTS FOR FINAL PAYMENT**

With the submission of the Contractor's final request for payment from the District, the Contractor shall:

- (1) Document in a report to the Contracting Officer its compliance with the Article H.5.4;  
or
- (2) Submit a request to the Contracting Officer for a waiver of compliance with Article H.5.4 and include the following documentation:
  - (a) Material supporting a good faith effort to comply;
  - (b) Referrals provided by DOES and other referral sources;
  - (c) Advertisement of job openings listed with DOES and other referral sources; and
  - (d) Any documentation supporting the waiver request pursuant to Article H.5.6.

**H.4.6 GRANTING OF WAIVERS**

The Contracting Officer may waive the provisions of Article H.5.4 if the Contracting Officer finds that:

- (1) A good faith effort to comply is demonstrated by the Contractor;
- (2) The Contractor is located outside the Washington Standard Metropolitan Statistical Area and none of the contract work is performed inside the Washington Standard Metropolitan Statistical Area which includes the District of Columbia; the Virginia Cities of Alexandria, Falls Church, Manassas, Manassas Park, Fairfax, and Fredericksburg, the Virginia Counties of Fairfax, Arlington, Prince William, Loudoun, Stafford, Clarke, Warren, Fauquier, Culpeper, Spotsylvania, and King George; the Maryland Counties of Montgomery, Prince Georges, Charles, Frederick, and Calvert; and the West Virginia Counties of Berkeley and Jefferson.
- (3) The Contractor enters into a special workforce development training or placement arrangement with DOES; or
- (4) DOES certifies that there are insufficient numbers of District residents in the labor market possessing the skills required by the positions created as a result of the contract.

**H.4.7 CONTRACTING OFFICER'S DETERMINATION**

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Upon receipt of the contractor's final payment request and related documentation pursuant to Articles H.5.5 and H.5.6, the Contracting Officer shall determine whether the Contractor is in compliance with Article H.5.4 or whether a waiver of compliance pursuant to Article H.5.6 is justified. If the Contracting Officer determines that the Contractor is in compliance, or that a waiver of compliance is justified, the Contracting Officer shall, within two business days of making the determination forward a copy of the determination to the Agency Chief Financial Officer and the COTR.

**H.4.8 DAMAGES FOR BREACH**

Willful breach of the First Source Employment Agreement, or failure to submit the report pursuant to Article H.5.5, or deliberate submission of falsified data, may be enforced by the Contracting Officer through imposition of penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract. The Contractor shall make payment to DOES. The Contractor may appeal to the D.C. Contract Appeals Board as provided in the contract any decision of the Contracting Officer pursuant to this Article H.5.8.

**H.4.9 EXCEPTIONS**

The provisions of Articles H.5.4 through H.5.8 do not apply to not for profit organizations.

**H.5 PROTECTION OF PROPERTY**

The Contractor shall be responsible for any damage to the building, interior, or their approaches in delivering equipment covered by this contract.

The Contractor shall enforce strict discipline and good order among its employees at all times and shall not employ on the work any unfit person or anyone not skilled in the task assigned to him or her. Any person employed on the project by the Contractor or any of its subcontractors who, in the opinion of the District, does not perform his or her work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the District, be removed forthwith by his or her employer, and shall not again be employed on this project without the prior approval of the District.

**H.6 AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)**

During the performance of the contract, the Contractor and any of its subcontractors shall comply with the ADA. The ADA makes it unlawful to discriminate in employment against a qualified individual with a disability.

See 42 U.S.C. §12101 et seq.

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**H.7 SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED.**

During the performance of the contract, the Contractor and any of its subcontractors shall comply with Section 504 of the Rehabilitation Act of 1973, as amended. This Act prohibits discrimination against disabled people in federally funded program and activities. See 29 U.S.C. §794 et seq.

**H.8 DISTRICT RESPONSIBILITIES**

For the Contractor's activities, the District shall make available up to one work position within the Maintenance Facility, with an under car inspection pit and vehicle roof access. The District shall make available to the Contractor, to the extent possible as determined in the sole discretion of the District, electric power, storage for Streetcar components, and use of employee facilities at the Maintenance Facility. The Contractor shall furnish all personnel, supplies, and tools for work at the District's facilities, and shall furnish all equipment and other requirements for the work position not made available to the Contractor from the District.

**H.9 CONTRACTOR RESPONSIBILITIES**

The Contractor shall maintain its premises on the District's property in a reasonably neat and orderly condition. Upon completion of the entire project, the Contractor shall remove all temporary buildings, structures, fences, scaffolding, surplus materials, and rubbish of every kind from the site of the Contractor's work on the District's property. The Contractor shall follow rules and regulations applicable to the premises.

The Contractor shall cooperate with the District in scheduling and coordinating the Contractor's work on the District's property with the work and operations of the District.

**H.10 WARRANTY**

**H.10.1 SCOPE OF WARRANTY**

All materials, components and parts furnished under this Contract shall be new and of high quality, and all Streetcar workmanship shall be of high quality, and in conformance with the Contract.

The Contractor warrants all materials, components, parts and workmanship of each Streetcar, each Streetcar spare part or assembly, and all special tools and diagnostic test equipment provided under this Contract to be free of defects and faults in material, design and workmanship. Such warranties by the Contractor shall apply to all Streetcar components, parts and workmanship, whether performed or provided by the Contractor, subcontractors, or suppliers at any tier. Such warranties shall not apply to Streetcars or Streetcar components abused or neglected by the District, or caused by the District's

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modification to the Streetcars and components without the knowledge and concurrence of the Contractor or damaged by some unusual and unforeseeable supervening cause occurring after acceptance. No implied warranties of merchantability or of fitness for purpose shall apply.

The Contractor shall furnish, at its own expense, all materials, parts, labor, shipping costs and other expenses to fulfill its Streetcar warranty obligations, except as otherwise provided by this Section H.11.

**H.10.2 WARRANTY PERIOD**

The warranty periods shall be as set forth below:

- (1) Five (5) years after Streetcar Acceptance for each streetcar shell, including under frame, side walls, roof and support brackets, truck frame, axles, floor panels and structure and exterior panels and painting.
- (2) Two (2) year after Streetcar Acceptance for each Streetcar for all other parts and components except spare parts.
- (3) For spare parts that have been installed, as provided in Article H.11.5. For spare parts that have not been installed, the warrantee shall be for three (3) years after delivery.
- (4) One (1) year after Acceptance of special tools and test equipment.

If the District does not perform “burn-in” testing within sixty (60) days after Delivery, as defined in Article D.6, for such Streetcar(s), the Streetcar warranty will begin sixty days after Delivery.

Any warranty from a subcontractor or supplier to the Contractor exceeding the periods described herein shall be extended to the District for the same period of time as given to the Contractor.

**H.10.3 REPAIR AND REPLACEMENT**

For each Streetcar component or workmanship failure during the warranty period, the District shall determine whether to correct the failure by repair or replacement of part(s) within an assembly, or by replacement of the entire assembly, based upon minimization of time for return of the affected Streetcar for operation, or consideration that the life of the assembly has or may have been adversely affected by the failure of one or more of its component parts.

Throughout the warranty period, the Contractor shall provide, at no expense to the District, all necessary fixtures, jigs, special tools, and diagnostic test equipment for the

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District to perform warranty work; all such equipment shall be owned by the District at the end of the warranty period.

The Contractor at its sole cost and expense shall maintain an inventory of warranty parts in quantities sufficient to meet its obligations under this Article. These parts shall be stored on District property, whenever possible, or at a location to be approved by the Contract Administrator. The Contractor shall furnish the parts to replace defective parts identified during performance of the warranty work. In the event that the Contractor is unable to furnish a replacement part in a timely manner, the District may, in its discretion, use spare parts from its own inventory for warranty work; however, the Contractor shall replenish at its own cost, the District's inventory of spare parts on a per item basis, as provided herein below.

The District or its designee will perform removal of failed parts or assemblies and installation of repaired or replacement parts or assemblies for accepted Streetcars under warranty, unless the District and the Contractor agree to other arrangements for such work. The Contractor shall concur with the work to be performed and may provide technical supervision for such removal or installation work performed by the District. The Contractor shall confirm that the warranty work has been performed as specified. The Contractor shall retain full responsibility for warranty of such repaired parts or assemblies.

The District shall have the right to inspect all work done under a warranty repair or replacement subject to the same terms as is applicable to all other Work.

The Contractor shall receive such removed failed Streetcar parts or assemblies at the District's Streetcar Maintenance Facility, unless the Contractor requests shipment of such failed parts or assemblies to its facilities; in such case, the District will ship such failed parts or assemblies at the Contractor's expense. The Contractor shall deliver to the District a replacement or repaired streetcar part or assembly for each such returned failed part or assembly within thirty (30) days of the Contractor's receipt of each failed part or assembly. In the event that a failed part or assembly is manufactured to order only and cannot be repaired or replaced within the thirty (30) day period, the Contractor and the District mutually shall consider whether the defective unit is to be repaired or replaced. The decision as to which alternative will be used shall be based on minimizing down time of the Streetcar, and the Contractor shall return the repaired or replaced unit at the earliest possible date.

The Contractor shall pay the District within thirty (30) days of the District's invoicing any and all amounts billed by the District at its actual labor, material and shipping costs, plus applicable overhead costs, for its removal of failed streetcar parts or assemblies and installation of replacement or repaired streetcar parts or assemblies pursuant to the warranty program.

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**H.10.4 SYSTEMATIC FAILURES**

In the event that, during any twelve-month window of the base warranty period, component failures occur to an extent in excess of twenty five percent (25%) of the same components used for the same function in the same assembly or subsystem among all Streetcars furnished under this Contract, the Contractor shall, within thirty (30) days of notification of such instance, commence a modification program to repair or replace all such components, including those that have passed beyond the warranty period, to correct the cause(s) of such failures. The base warranty period extends from conditional acceptance of the first Streetcar to expiration of the two-year warranty period of the last base order Streetcar. The twenty four-month window applies individually for each component systematic failure. The design of the repair or replacement for the component(s) involved in each such modification program shall be developed by the Contractor to remedy the nature and probable cause of the component failures and shall be approved by the District. Repair and/or replacement of components pursuant to each modification program shall be according to the same provisions herein as if such components were failed components requiring warranty repair and/or replacement, whether or not actual failures for some or most of the involved components have occurred following notification of a requirement for a modification program.

In no case shall the correction of defects in design, material or workmanship result in an increase in maintenance requirement beyond that specified in the Contract Documents.

**H.10.5 WARRANTY ON REPLACED PARTS**

Any materials, parts or components which are used for replacement under the initial warranty period shall be warranted again for either half the total original warranty period of the replaced particular component, or for the remainder of the original warranty period of the replaced component, whichever is greater. The remainder of the original warranty period for each such particular component shall be computed from the date of failure of such component as recorded in the District's Streetcar maintenance records. In the case of components that are to be replaced pursuant to a modification program but have not yet failed, the remainder of the original warranty period shall be computed from the date of the District's notification to the Contractor of a requirement for the particular modification program.

If the Contractor fails to comply with the warranty/modification provisions herein, or within the times specified for such performance, the District may have the component failures or defects corrected. The Contractor and the Contractor's surety shall be liable for all expense incurred. In case of emergency where, in the opinion of the Contract Administrator, correction of component failures or defects pursuant to the procedures and durations specified for the warranty/modification programs may cause serious loss or damage, repairs or corrections may be made without notice to the Contractor, and the Contractor shall pay the cost of the repairs or corrections.

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**H.10.6 REPORTING**

Each and every piece of equipment, component, unit, or part thereof that is replaced, repaired, adjusted, or serviced in any manner under the terms of the warranty by the Contractor, subcontractors, suppliers, and manufacturers of any tier, shall be reported to the Contract Administrator on warranty forms provided by the District. Each report shall indicate in detail, all repairs, adjustments and servicing performed on each and every component, unit, or part thereof.

Within 24 hours of the occurrence of a warranty event, the Contractor shall accurately complete the reporting of District-specified information on the District's warranty forms.

If defective units are claimed by the Contractor to be damaged by means other than their use for the intended purpose, the Contractor shall prove such causes at its own expense.

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**SECTION I: CONTRACT CLAUSES**

**I.1 APPLICABILITY OF STANDARD CONTRACT PROVISIONS**

The Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts dated November 2004 (“SCP”) are incorporated as part of the contract resulting from this solicitation. To obtain a copy of the SCP go to [www.ocp.dc.gov](http://www.ocp.dc.gov), click on OCP Policies under the heading “Information”, then click on “Standard Contract Provisions – Supplies and Services Contracts”.

In the event of a conflict between the SCP and this document, precedence shall be given to the terms and conditions specified in this RFP.

**I.2 CONFIDENTIALITY OF INFORMATION**

All information obtained by the Contractor relating to any employee or customer of the District will be kept in absolute confidence and shall not be used by the Contractor in connection with any other matters, nor shall any such information be disclosed to any other person, firm, or corporation, in accordance with the District of Columbia and Federal laws governing the confidentiality of records.

**I.3 TIME**

Time, if stated in a number of days is to be construed as calendar days and will include Saturdays, Sundays, and holidays, unless otherwise stated herein.

**I.4 RIGHTS IN DATA**

**I.4.1** “Data,” as used herein, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

**I.4.2** The term “Technical Data”, as used herein, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work, or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and computer software documentation. Technical data does not include computer software or

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financial, administrative, cost and pricing, and management data or other information incidental to contract administration.

- I.4.3** The term “Computer Software”, as used herein means computer programs, computer databases, microprocessor software used to control full systems on the Streetcar. “Computer Programs”, as used herein means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. "Computer Programs" include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort merge programs, and automated data processing equipment maintenance diagnostic programs, as well as applications programs such as payroll, inventory control and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general purpose in nature or designed to satisfy the requirements of a particular user.
- I.4.3.1** The term “Documentation”, shall mean the software information in the form(s) required by the Technical Specification, as to all input/output protocols and operating parameters for microprocessor-based control systems installed in the Streetcars.
- I.4.4** The term "computer databases", as used herein, means a collection of data in a form capable of being processed and operated on by a computer.
- I.4.5** All data first produced in the performance of this Contract shall be the sole property of the District. The Contractor hereby acknowledges that all data, including, without limitation, computer program codes, produced by Contractor for the District under this Contract, are works made for hire and are the sole property of the District; but, to the extent any such data may not, by operation of law, be works made for hire, Contractor hereby transfers and assigns to the District the ownership of copyright in such works, whether published or unpublished. The Contractor agrees to give the District all assistance reasonably necessary to perfect such rights including, but not limited to, the works and supporting documentation and the execution of any instrument required to register copyrights. The Contractor agrees not to assert any rights in common law or in equity in such data. The Contractor shall not publish or reproduce such data in whole or in part or in any manner or form, or authorize others to do so, without written consent of the District until such time as the District may have released such data to the public.
- I.4.6** The District will have restricted rights in data, including computer software and all accompanying documentation, manuals and instructional materials, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, provided however, notwithstanding any contrary provision in any such license or agreement, such restricted rights shall include, as a minimum the right to:
- I.4.6.1** Maintenance and repair of the Streetcars;

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- I.4.6.2** Modification and upgrading of the Streetcars;
- I.4.6.3** Overhaul and remanufacture of the Streetcars;
- I.4.6.4** Manufacture of parts for the Streetcars which become unavailable for purchase. The term unavailable for purchase means that a part is no longer being manufactured; or an inventory of the part in sufficient quantities to meet the District's needs is not available for purchase; or no supplier will sell a part to the District or cannot supply the part according to the delivery schedule that meets the District's needs; or no supplier will offer the part at a commercially reasonable price. Before using the licensed data for the aforementioned purposes, the District shall first solicit a proposal from the licensor.
- I.4.7** The restricted rights set forth in section I.4.6 are of no effect unless
- (i) the data is marked by the Contractor with the following legend:

**RESTRICTED RIGHTS LEGEND**

Use, duplication, or disclosure is subject to restrictions stated in Contract No. \_\_\_\_\_

With \_\_\_\_\_(Contractor's Name); and

- (ii) If the data is computer software, the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The Contractor may not place any legend on the computer software indicating restrictions on the District's rights in such software unless the restrictions are set forth in a license or agreement made a part of the contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the District of liability with respect to such unmarked software.
- I.4.8** In addition to the rights granted in Section I.4.6 above, the Contractor hereby grants to the District a nonexclusive, paid-up license throughout the world, of the same scope as restricted rights set forth in Section I.4.6 above, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the District under this contract. Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the District under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the District any rights necessary to perfect a copyright license of the scope specified in the first sentence of this paragraph.
- I.4.9** Whenever any data, including computer software, are to be obtained from a subcontractor under this contract, the Contractor shall use this clause, I.4, Rights in Data, in the

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subcontract, without alteration, and no other clause shall be used to enlarge or diminish the District's or the Contractor's rights in that subcontractor data or computer software which is required for the District.

- I.4.10** If for any reason the software has not been placed into escrow, for all computer software furnished to the District with the rights specified in Section I.4.5, the Contractor shall furnish to the District, a copy of the source code with such rights of the scope specified in Section I.4.5. For all computer software furnished to the District with the restricted rights specified in Section I.4.6, the District, if the Contractor, either directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided the District under this contract or any paid-up maintenance agreement, or if Contractor should be declared bankrupt or insolvent by a court of competent jurisdiction, shall have the right to obtain, for its own and sole use only, a single copy of the then current version of the source code supplied under this contract, and a single copy of the documentation associated therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.
- I.4.11** The Contractor shall indemnify and save and hold harmless the District, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or (ii) based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.
- I.4.12** Nothing contained in this clause shall imply a license to the District under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the District under any patent.
- I.4.13** Paragraphs I.4.6, I.4.7, I.4.8, I.4.11 and I.4.12 above are not applicable to material furnished to the Contractor by the District and incorporated in the work furnished under contract, provided that such incorporated material is identified by the Contractor at the time of delivery of such work.

**I.4.14 USE OF COPYRIGHTED MATERIAL**

The Licenses granted herein each shall entitle the District to copy, modify and disseminate, solely for the purposes identified in Article I.4.6, all copyrighted material included in Article I.4.1, Data, I.4.2, Technical Data, I.4.3, Computer Software and Computer Programs, and I.4.3.1, Documentation, including (without limitation) manuals, drawings, diagrams, schematics, data bases, form, fit and function data, and all materials furnished pursuant to Article I.4.

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**I.4.15 TANGIBLE MATERIALS**

The tangible copies of all drawings, schematics, parts lists, diagrams, manuals, Software, Documentation and other data and documents, regardless of the media or form of its storage or use, furnished to the District in connection with this Contract shall become the property of the District; provided, however, the use, storage, reproduction, handling, disclosure and dissemination of any such materials shall be subject to this Article I.4.

**I.4.16 DELIVERABLES**

The Contractor shall furnish to the District, in the form(s) required by the Technical Specification, as-built drawings, parts lists, schematics, diagrams, manuals, other data, documents and information, including all Software and Documentation, of the Streetcars including but not limited to all Systems, Subsystems, assemblies, subassemblies, Components and interface systems and controls required by the Technical Specification and needed by the District for its use for the purposes identified above, as well as form, fit and function data sufficient for the Specification Purpose. The Contractor, and each Subcontractor, Supplier and Manufacturer, shall prepare all such materials in such manner as not to include any confidential or restricted information that is to be protected pursuant to Article I.4.6, however, if confidential information must be furnished in respect of certain Systems, Subsystems, assemblies, subassemblies, or Components thereof, in order to permit use by the District for the aforementioned purposes, those materials containing confidential information shall be prepared separately from the nonconfidential materials. The parties shall agree on procedures for verifying the completeness of each delivery. Upon each delivery, the District and Contractor shall jointly verify the deliverables in accordance with agreed upon procedures.

**I.4.17 ESCROW**

**I.4.17.1 Software and Hardware Escrow - General**

The Contractor and Suppliers may request that the design details and Source code files for specific hardware and software Items be placed in an escrow account in lieu of submittal to the District. Information required for planned maintenance and operations will not be allowed to be placed in escrow.

Such requests shall be subject to approval by the District and must be made within ninety (90) working days of Notice to Proceed. Approval by the District shall include a review of all material to ensure the District can comprehend and analyze the operation of the equipment in which the software is to be installed, enable the District to maintain and modify the software to correct problems, adapt it changing requirements, add features, and port it to a new hardware platform. The Contractor shall employ a third party escrow firm to verify and hold drawings, programs, source code and supporting documentation for the District for seven years following the date of warranty expiration.

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Establishment of the escrow account will be confirmed by joint signature of the Escrow Agreement included as an Appendix to this Request for Proposal.

The escrow package shall be kept current with all documents revisions throughout the escrow period.

At the expiration of the escrow period, the District shall have the option of extending the escrow period. If mutually agreed by the District, the Contractor may terminate the escrow agreement by making available all materials held under terms of the escrow to the District

**I.4.17.2 Hardware Escrow**

The placing of all hardware design details, such as proprietary circuit board layouts and components, in an escrow account in lieu of submittal to the District is permitted, subject to the District's approval, provided that sufficient design detail information is provided (submitted and/or shown to an approved reviewer) to allow the District to operate and maintain the hardware including, but not limited to, replacing obsolete components, modifying functionality, and troubleshooting of hardware issues.

The Contractor shall conduct a hardware verification procedure for all escrowed hardware design details. These procedures, at a minimum, shall verify that the escrowed documents match the actual hardware delivered as part of the contract. For circuit board layout the procedure shall verify that all software and developmental tools required to modify and generate the printed circuit board manufacturing files have been escrowed

If a hardware escrow arrangement is established, the Contractor shall place in escrow for the District, at no additional charge, complete copies of:

- (1) Printed Circuit Assembly layout(s).
- (2) Parts lists complete with suppliers and supplier's part numbers fully identified.
- (3) Specifications for materials, components, fabrication, assembly, etc.
- (4) Interface definitions and requirements.
- (5) Test procedures including programs for automated testing.
- (6) Firmware.

Any software not otherwise covered by a separate software agreement, including: source code, libraries, other source components, compilers, and linkers so that, when compiled, linked and otherwise manipulated to create the runtime/executable image for the fully operational run-time/executable version of the delivered software.

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Any documentation provided in an electronic media and format shall identify the application program in which it is supplied. A copy of the application program shall be supplied for any software that is not commercially available-off-the-shelf

**I.4.17.3 Software Escrow**

If a software escrow arrangement is established, the Contractor shall place in escrow for the District, at no additional charge, complete copies of all software source code and supporting software documentation developed for or used within the equipment or software applications delivered during the course of this project, at the time of delivery.

These source code files shall be provided in electronic form, with complete hard copy documentation.

A demonstration shall be performed and witnessed by the District for all software to be in escrow. This test shall verify that all software and developmental tools have been included in the escrow package to generate loadable software from the source code and that the files generated are identical to the files used in final tests of the corresponding system.

**I.4.17.4 Escrow Availability**

The materials in escrow shall be delivered to the District for its own use for any of the following reasons:

- (1) If the Contractor or its supplier is no longer in business, or no longer supports the product and has not transferred the rights to the design to another entity that does support the product;
- (2) If, based on an independent third party assessment, the Contractor, its supplier, or any successor no longer supports the product at a reasonable cost;
- (3) In the event of Contractor default, bankruptcy, product termination, or market abandonment, the escrow agent shall convey all above noted source code and related materials and documentation to District within ten (10) business days of notification by the District.

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**I.4.18 COPYRIGHT AND PATENT INFRINGEMENT**

**I.4.18.1 Rights and Remedies of the District**

The Contractor warrants that, at the time that the Contractor shall perform the Work, each Subcontractor, Supplier or Manufacturer of any System, Subsystem, assembly, subassembly or Component thereof shall not be party to any litigation which it has not disclosed to the District involving allegations of infringement of patents, copyrights, mask works, trademarks, trade secrets, antitrust or other trade regulation relating to any of the Data, Technical Data, Computer Software, Computer Programs, Documentation, any System, Subsystem, assembly, subassembly or any Component thereof, or any drawing, document, information, equipment or other material to be delivered to the District, and shall not be the subject of any injunction, order, award or judgment which may prohibit or restrict it under certain circumstances from supplying or licensing any System, Subsystem, assembly, subassembly or Component thereof to be used or delivered under the Contract or incorporated in the Streetcars. If a party to such litigation is a Subcontractor, Supplier or Manufacturer to the Contractor under this Contract, it shall be at the Contractor's risk, and in all events, neither the District will undertake to determine the merits of such litigation. The Contracting Party and the District reserve the right to reject any article which is the subject of such litigation, injunction, order, award or judgment if in their judgment use of such article as a result of such circumstance would delay the Work or be unlawful.

The Contractor and each Subcontractor, Supplier, or Manufacturer supplying any System, Subsystem, assembly, subassembly, or Component thereof, shall indemnify, defend and hold harmless the District against all damages, liabilities, charges and expenses (including reasonable attorney's fees) arising out of or related to any claim of infringement of any patent, trademark, copyright or mask work or misappropriation or misuse of any trade name, trade secret or other unpatented technology based upon (i) the Contractor, or such Subcontractor, Supplier, or Manufacturer supplying any System, Subsystem, assembly, subassembly, or Component thereof, or any tools, equipment, test materials or process to be delivered to the District under the Contract, (ii) the District's operation of the Streetcars or (iii) the District's use of any System, Subsystem, assembly, subassembly, Component, or Conversion Kit thereof.

Promptly following the District's receipt of notice of any alleged claim or liability asserted against it which may constitute an indemnified claim or liability asserted under Article I.4.18.1, the District shall give notice to the indemnifying party. The District shall proceed to resist and dispose of such liability in such manner as it deems appropriate; provided, however, that the indemnifying party or its insurer shall have the right to assume the defense thereof, including the employment of legal counsel reasonably acceptable to the District and payment of all expenses in connection therewith.

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If the indemnifying party elects to assume the defense of any such action, the District shall cooperate with the indemnifying party in its defense of such claim. In addition, the District shall have the right to employ separate legal counsel in any such action and participate in the defense thereof, but the fees and expenses of such other counsel shall be at the expense of the District and not subject to indemnification under this Article I.4.18.

The indemnifying party, in the defense of any such claim or litigation, shall not, except with the prior written consent of the District, which consent shall not be unreasonably withheld or delayed, consent to the entry of any judgment or enter into any settlement which does not include the release by the claimant or plaintiff of the District from all liability in respect to such claim or litigation. The District shall not consent to the entry of any judgment or enter into any settlement without the prior written consent of the indemnifying party, which consent shall not be unreasonably withheld.

The District agrees that if operation of the Streetcars becomes, or is likely to become, the subject of a claim within the scope of this ARTICLE I.4.18, the District will permit the Contractor, at its option and expense, either to secure the right for the District to continue to use the Data, Technical Data, Computer Software, Computer Programs, Documentation and operate the Streetcars or to replace or modify the technology or software so that it becomes non-infringing, yet still meets all functional and operational standards of the article replaced.

If the Contractor has not resolved any claim pursuant to the provisions of this Article and the District is enjoined from using a portion of the Work as to which the Contractor is to indemnify the District under this Article, during the pendency of any such injunction the District may, at its option and without limiting any of the rights it otherwise may have under this Contract or at law or in equity, require the Contractor to supply at its own expense a replacement for the infringing item which shall not be subject to such injunction and shall not infringe any patent, copyright or mask work or misuse or misappropriate any trade secret or other proprietary right. If the Contractor shall fail to provide such a replacement or cannot do so, the Contractor, at its own expense, shall take such steps as may be necessary to ensure compliance by the District with such injunction, while preserving the District's right to continue to use the offending item and to operate the Streetcars.

Any invention, idea, design, method, System, Subsystem, assembly, subassembly, Component, design or document which the District provides to the Contractor, or directs the Contractor to use, shall be excluded from the Contractor's indemnity under this Article, but the Contractor shall notify the District if the Contractor is aware of any claim of infringement, or threatened claim of infringement, relating to the same.

Subject to the limitations provided elsewhere in this Contract, the rights and remedies to be provided to the District under this Article shall be exclusive for any claim within the scope of Article I.4.18.1.

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**I.4.18.2 District's Obligations with Respect to Data, Software, Software Programs, and Documentation**

The District shall implement the Policy and Procedure of the Escrow Agent as set forth in ARTICLE I.4.18.1 and generally shall employ good business practices no less diligent than those used for its own confidential information to hold in confidence the data, technical data, software Data, Technical Data, Computer Software, Computer Programs, Documentation,, drawings, schematics, manuals, and other information and materials provided by the Contractor pursuant to the Contract which contain proprietary or confidential nonpublic information and which bears appropriate notices and legends to afford notice of the confidential character of the item.

The duty of confidence shall not apply to any information that: (i) is or becomes publicly available without restriction through no act or fault of the District; (ii) is received from a third party free of any restriction for the benefit of Contractor and without any breach of duty of secrecy, nondisclosure or nonuse due the Contractor; or (iii) is known to the District prior to its delivery by the Contractor, free of any restriction for the Contractor's benefit.

The duty of confidence shall not prevent the District from disclosing to its agents any confidential information (including the Software and Documentation) for use for the District's purposes specified in Article I.4.14, provided that the District complies with the requirements of Article I.4.17 to assure that its Agent and those employees of the agent who have access to the confidential information shall agree to hold in confidence and use the confidential information solely for the intended purposes.

The District shall advise the Contractor if the District learns or has reason to believe that any unauthorized person has had access to any part of the Contractor's confidential information, or that any person who has had access to such confidential information has violated or intends to violate the terms of this Contract regarding protection of such confidential information. The District shall reasonably cooperate with the Contractor, at the Contractor's expense, in seeking injunctive or other equitable relief in the name of the District or the Contractor against any such person.

The District shall reasonably cooperate with the Contractor, at the Contractor's expense, in seeking injunctive or other equitable relief in the name of the Contractor or the District against any individual or entity who fails to comply with the provisions of this Article I.4.18.

**I.4.18.3 Contractor's Obligations with Respect to its Confidential Information**

The Contractor and each Subcontractor, Supplier, and Manufacturer shall use reasonable efforts to place copyright notices and patent notices on all documents, drawings,

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schematics, manuals, Software, Documentation, etc., to which such notices are applicable (whether or not such notices are required by statute) in a manner reasonably calculated to give notice to the District of the same.

The Contractor, and each Subcontractor, Supplier, and Manufacturer, shall restrict the use of confidentiality legends to those documents, drawings, schematics, manuals, Software, Documentation, etc., and other materials and information furnished to the District which contain proprietary trade secrets. If requested by the District, the Contractor, and each Subcontractor, Supplier and Manufacturer, shall use its or their reasonable efforts to prepare separate versions of each drawing, document, diagram, schematic, manual, etc., containing confidential information, so that one version will not contain any confidential information and therefore will not be marked with such notice and the other version will contain the confidential information will be appropriately marked.

Nothing in this Article shall prevent the District from disclosing confidential information of the Contractor, or any Subcontractor, Supplier, or Manufacturer under order of a court or governmental agency having jurisdiction, but only after having given the other party, if legally permissible, timely notice and affording it full opportunity to appeal such order, seek a protective order or take other action for protection of its confidential information as it deems appropriate.

**I.4.18.4 Remedies for Breach of Duties for Confidential Information**

The Contractor and the District agree that each of them would be irreparably damaged by breach of any of their respective agreements under Articles I.4.18 and that, in the event of any breach or threatened breach of any such agreement, in addition to any remedy for damages available to the damaged party, at law or in equity, the such party shall be entitled to injunctive relief prohibiting future breaches or violations of, or other non-compliance with, the terms of Article I.4.18, or to prevent any threatened breach.

The Contractor agrees that, in view of the District's public character, in the event of a breach by the District of any provision of this Article I.4.18, the Contractor shall have as its sole remedy against the District a claim for money damages and prospective equitable relief to prohibit further wrongful use or disclosure by the District; in all events the Contractor shall have no right to terminate the use or license for data, technology, software, software programs, or documentation.

During the resolution of any dispute between the Contractor and the District relating to a claimed breach of an obligation under this Article I.4.18, the parties shall continue to perform their respective obligations under this Contract in good faith and neither to exercise any remedy of self-help nor to suspend performance pending determination of the dispute resolution.

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**I.5 OTHER CONTRACTORS**

The Contractor shall not commit or permit any act that will interfere with the performance of work by another District contractor or by any District employee.

**I.6 PERMITS, FEES AND NOTICES**

Prior to commencing any work requiring a permit or similar authorization, the Contractor shall secure and pay for all necessary licenses, fees, inspections, permits, and similar authorizations from governmental authorities required to fulfill the Contract requirements and the Contractor's obligations. All such fees and charges shall be paid for by the Contractor. The Contract Administrator will assist the Contractor's Project to identify all such permits.

**I.7 INSURANCE**

- A. **GENERAL REQUIREMENTS.** The Contractor shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the CO giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A-VIII or higher. The Contractor shall require all of its subcontractors to carry the same insurance required herein. The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event the stated limit in the declarations page of the policy is reduced via endorsement or the policy is canceled prior to the expiration date shown on the certificate. The Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium.
1. Commercial General Liability Insurance. The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries \$1,000,000 per occurrence limits; \$2,000,000 aggregate; Bodily Injury and Property Damage including, but not limited to: premises-operations; broad form property damage; Products and Completed Operations; Personal and Advertising Injury; contractual liability and independent contractors. The policy coverage shall include the District of Columbia as an additional insured, shall be primary and non-contributory with any other insurance maintained by the District of Columbia, and shall contain a waiver of subrogation. The Contractor shall maintain Completed Operations coverage

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for five (5) years following final acceptance of the work performed under this contract.

2. Automobile Liability Insurance. The Contractor shall provide automobile liability insurance to cover all owned, hired or non-owned motor vehicles used in conjunction with the performance of this contract. The policy shall provide a \$1,000,000 per occurrence combined single limit for bodily injury and property damage.
3. Workers' Compensation Insurance. The Contractor shall provide Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

Employer's Liability Insurance. The Contractor shall provide employer's liability insurance as follows: \$500,000 per accident for injury; \$500,000 per employee for disease; and \$500,000 for policy disease limit.

- B. **DURATION.** The Contractor shall carry all required insurance until all contract work is accepted by the District, and shall carry the required General Liability; any required Professional Liability; and any required Employment Practices Liability insurance for five (5) years following final acceptance of the work performed under this contract.
- C. **LIABILITY.** These are the required minimum insurance requirements established by the District of Columbia. **HOWEVER, THE REQUIRED MINIMUM INSURANCE REQUIREMENTS PROVIDED ABOVE WILL NOT IN ANY WAY LIMIT THE CONTRACTOR'S LIABILITY UNDER THIS CONTRACT.**
- D. **CONTRACTOR'S PROPERTY.** Contractor and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia.
- E. **MEASURE OF PAYMENT.** The District shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price.
- F. **NOTIFICATION.** The Contractor shall immediately provide the CO with written notice in the event that its insurance coverage has or will be substantially changed, canceled or not renewed, and provide an updated certificate of insurance to the CO.
- G. **CERTIFICATES OF INSURANCE.** The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to

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commencing work. Evidence of insurance shall be submitted to the Contracting Officer identified in Article G.9

H. **DISCLOSURE OF INFORMATION.** The Contractor agrees that the District may disclose the name and contact information of its insurers to any third party which presents a claim against the District for any damages or claims resulting from or arising out of work performed by the Contractor, its agents, employees, servants or subcontractors in the performance of this contract.

**I.8 EQUAL EMPLOYMENT OPPORTUNITY**

In accordance with the District of Columbia Administrative Issuance System, Mayor's Order 85-85 dated June 10, 1985, the forms for completion of the Equal Employment Opportunity Information Report are incorporated herein as Section J.2.2. An award cannot be made to any offeror who has not satisfied the equal employment requirements.

**I.9 ORDER OF PRECEDENCE**

Any inconsistency in this solicitation shall be resolved by giving precedence in the following order: the Supplies or Services and Price/Cost Section (Section B), Specifications/Work Statement (Section C), the Special Contract Requirements (Section H), the Contract Clauses (Section I), and the Technical Specifications.

**I.10 SUBSTITUTION OF SPECIFIED PRODUCTS**

For products specified in the Technical Specifications or in the Contractor's Proposal by brand name or manufacturer, the Contractor shall select the product and manufacturer named, or shall submit a request to substitute an equal product or manufacturer. The Contractor may not make a substitution without the District's prior written approval.

The District may, at its option, approve requests from the Contractor for substitution of products in place of those specified if the Contractor demonstrates satisfaction of at least one of the following criteria:

- (1) The substitution is required for compliance with a final interpretation of code requirements or insurance regulations that was not available or reasonably known to the Contractor prior to execution of Contract;
- (2) The substitution is due to the unavailability of the specified products, and the unavailability is not the Contractor's fault and was unknown to the Contractor prior to execution of Contract;
- (3) The specified product will not perform properly or fit into the designated space; or

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- (4) The manufacturer or fabricator does not certify or warrant performance of the specified product as required for the intended purpose.

Unless otherwise agreed to by the Contract Administrator the Contractor shall submit a separate request for each substitution. Each request shall include: complete data substantiating compliance of the proposed substitution with the Contract; product identification, including manufacturer's name and address; manufacturer's literature, including product description, performance and test data, and reference standards; samples, if appropriate; name and address of similar Streetcar deliveries on which the product was used and date of installation; itemized comparison of proposed substitution with product or method specified; and data relating to changes in production schedules.

In making a request for substitution, the Contractor shall represent that:

- (1) It has investigated the proposed product, and has determined, with the District's concurrence, that it is equal or superior in all respects to that specified;
- (2) It will provide the same or greater warranty for the substitution as for the product specified;
- (3) It will coordinate installation of the accepted substitution into the work, making changes as may be required for the work to be complete in all respects; and
- (4) It waives all claims for additional costs and changes to schedule related to the substitution that subsequently become apparent.

The District shall approve or disapprove the Contractor's requests for substitution of suppliers or products within fifteen (15) days of the District's receipt of all information required by the District for such determination according to the provisions set forth in this Section. In the event of the District's disapproval of the Contractor's request for substitution of a supplier or product, the Contractor shall utilize the supplier or product specified in the Technical Specifications and/or in the Contractor's Proposal, or may request substitution of another supplier or product.

The City may not approve substitutions if they are indicated or implied on Shop Drawings or product data submittals without a request submitted in accordance with this Section, or if approval will result in significant non-conformance of the Streetcar with the Technical Specifications, or if approval will require extensive revision of the Contract, or if approval is not in the best interest of the District.

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**I.11 OWNERSHIP AND USE OF DOCUMENTS**

All drawings, specifications, and copies thereof furnished by the District shall remain the property of the District. They are to be used only with respect to this Contract. With the exception of one contract set for each party to the Contract, those documents are to be returned (or suitably accounted for) to the District upon request at the completion of the work.

**I.12 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES**

Shop drawings are drawings, diagrams, schedules, or other data prepared for the work by the Contractor or any subcontractor of any tier, manufacturer, supplier, or distributor to illustrate or detail some portion of the work.

Product data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, or other information furnished by the Contractor to illustrate materials, products, systems, or equipment for some portion of the work.

Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the work shall be judged.

Approval of shop drawings, product data, samples, and similar submittals shall be required when the design of the base vehicle is altered or modified to meet the requirements of the Technical Specifications and/or the Contractor's proposal. The purpose of their submittal is to demonstrate for those portions of the work for which submittals are required the way the Contractor proposes to conform to the information given and the Technical Specifications and/or Contractor's proposal.

The Contractor shall review, approve, and submit to the Contract Administrator with reasonable promptness and in a sequence that causes no delay in the work, or in the work of the City or any other City contractor, all shop drawings, product data, samples, or similar submittals required by this Contract, or that are necessary for its proper completion.

By approving and submitting shop drawings, product data, samples, or similar submittals, the Contractor represents that it has determined and verified all related materials, measurements, and construction criteria, and that it has checked and coordinated the information contained within its submittals with the requirements of the work and this Contract.

The Contractor shall not be relieved of responsibility for any deviation from the requirements of this Contract by the District's approval of shop drawings, product data, samples, or similar submittals unless the Contractor has specifically informed the District at the time of submission in writing of the deviation and the District has given written approval of the specific deviation. The Contractor shall not be relieved of responsibility for errors or

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omissions in shop drawings, product data, samples, or similar submittals by the District's approval of the submittal. The Contractor shall not deviate from approved shop drawings, product data, samples, or similar submittals without the District's written approval.

The Contractor shall not commence any portion of the work requiring submission of shop drawings, product data, samples, or similar submittals until the required submittal has been approved by the District.

The Contractor shall direct specific attention, in writing or on resubmitted shop drawings, product data, samples, or similar submittals, to revisions other than those required by the Contract Administrator on previous submittals.

**I.13 INTERPRETATION OF DRAWINGS AND SPECIFICATIONS**

Omissions from the Contract Specifications, or the misdescription of details of work that are manifestly necessary to carry out the Contract specifications, or that are customarily performed, shall not relieve the Contractor from performing such omitted work or misdescribed details of the work, and they shall be performed as if fully and correctly set forth and described.

In the event of differences between small and large scale drawings, the large scale drawings shall govern. In the event of discrepancies between any drawing and a dimension written on it the written dimension shall govern over scaled dimensions.

In the event of discrepancies between information on any drawing and the written specifications, the discrepancy shall be resolved in favor of the written specifications.

**I.14 USE OF THE ENGLISH LANGUAGE**

All correspondence shall be provided using the English language. A submittal that is not provided using the English language shall not be considered to be a formal submittal until an English translation is provided.

The Contractor shall provide all documents in the English language, whether created and submitted in satisfaction of any contract requirement or in support of any document required to be submitted. All references shall be in English. If an English reference cannot be found, an English translation shall be provided. Both the original and the translation shall be included with any submittal.

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**I.15 SEVERABILITY**

If any provision of this contract, or the application thereof to any person or circumstances is rendered or declared illegal for any reason or shall be invalid or unenforceable, the remainder of this contract and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by applicable law. The parties agree to negotiate in good faith for a proper amendment to this contract in the event any provision hereof is declared illegal, invalid, or unenforceable.

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**SECTION J: LIST OF ATTACHMENTS**

REFERENCE ————— TITLE

J.1 The following attachments are incorporated as part of the Contract:

J.1.1 General Provisions

J.1.2 U.S. Department of Labor Wage Determination No.: 2005-2103,  
Revision No.: 10, Date of Revision 06/15/2010

J.1.3 Office of Local Business Development Equal Employment  
Opportunity Information Report and Mayor’s Order 85-85  
Available at [www.ocp.dc.gov](http://www.ocp.dc.gov) (click on “Solicitation  
Attachments”)

J.1.4 Department of Employment Services First Source Employment  
Agreement  
Available at [www.ocp.dc.gov](http://www.ocp.dc.gov) (click on “Solicitation  
Attachments”)

J.1.5 Way to Work Amendment Act of 2006 – Living Wage Notice  
Available at [www.ocp.dc.gov](http://www.ocp.dc.gov)

J.1.6 Tax Certification Affidavit  
Available at [www.ocp.dc.gov](http://www.ocp.dc.gov) (click on “Solicitation  
Attachments”)

J.1.7 First Source Employment Agreement  
Available at [www.ocp.dc.gov](http://www.ocp.dc.gov) (click on “Solicitation  
Attachments”)

J.1.8 Cost and Pricing Data Certification  
Available at [www.ocp.dc.gov](http://www.ocp.dc.gov) (click on “Solicitation  
Attachments”)

J.12 Proposer Identification

J.32 Affidavit of Non-Collusion

J.43 Receipt of Addenda

J.4 Wage Determination No. \_\_\_\_\_

J.5 LSDBE Certification Package

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~~J.6 E.E.O. Information and Mayor's Order 85-85~~

~~J.7 Tax Certification Affidavit~~

~~J.8 First Source Employment Agreement~~

J.95 Technical Summary Form

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**SECTION K: REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS**

**K.1 AUTHORIZED NEGOTIATORS**

The offeror represents that the following persons are authorized to negotiate on its behalf with the District in connection with this request for proposals: (list names, titles, and telephone numbers of the authorized negotiators).

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**K.2 TYPE OF BUSINESS ORGANIZATION**

**K.2.1** The offeror, by checking the applicable box, represents that

(a) It operates as:

- a corporation incorporated under the laws of the State of: \_\_\_\_\_
- an individual,
- a partnership,
- a nonprofit organization, or
- a joint venture.

(b) If the offeror is a foreign entity, it operates as:

- an individual,
- a joint venture, or
- a corporation registered for business in \_\_\_\_\_  
(Country)

**K.3 CERTIFICATION AS TO COMPLIANCE WITH EQUAL OPPORTUNITY OBLIGATIONS**

Mayor's Order 85-85, "Compliance with Equal Opportunity Obligations in Contracts", dated June 10, 1985 and the Office of Human Rights' regulations, Chapter 11, "Equal Employment Opportunity Requirements in Contracts", promulgated August 15, 1986 (4 DCMR Chapter 11, 33 DCR 4952) are included as a part of this solicitation and require the following certification for contracts subject to the order. Failure to complete the certification may result in rejection of the offeror for a contract subject to the order. I hereby certify that I am fully aware of the content of the Mayor's Order 85-85 and the Office of Human Rights' regulations, Chapter 11, and agree to comply with them in performance of this contract.

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Offeror \_\_\_\_\_ Date \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_

Offeror \_\_\_\_ has \_\_\_\_ has not participated in a previous contract or subcontract subject to the Mayor's Order 85-85. Offeror \_\_\_\_ has \_\_\_\_ has not filed all required compliance reports, and representations indicating submission of required reports signed by proposed subofferors. (The above representations need not be submitted in connection with contracts or subcontracts which are exempt from the Mayor's Order.)

**K.4 DISTRICT EMPLOYEES NOT TO BENEFIT CERTIFICATION**

Each offeror shall check one of the following:

\_\_\_\_\_ No person listed in Clause 13 of the SCP, "District Employees Not To Benefit" will benefit from this contract.

\_\_\_\_\_ The following person(s) listed in Clause 13 may benefit from this contract. For each person listed, attach the affidavit required by Clause 13 of the SCP.

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

**K.5 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION**

(a) Each signature of the offeror is considered to be a certification by the signatory that:

- 1) The prices in this contract have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any offeror, competitor, or District representative relating to:
  - (i) those prices
  - (ii) the intention to submit a contract, or
  - (iii) the methods or factors used to calculate the prices in the contract.
  
- 2) The prices in this contract have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror, competitor, or District representative before contract opening unless otherwise required by law; and

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- 3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit a contract 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 contract, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
  - 2) 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 subparagraphs (a)(1) through (a)(3) above:  
  

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*(insert full name of person(s) in the organization responsible for determining the prices offered in this Contract and the title of his or her position in the offeror's organization);*
- (i) As an authorized agent, does certify that the principals named in subdivision (b)(2) have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and
  - (ii) As an agent, has not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.
- (c) If the offeror deletes or modifies subparagraph (a)(2) above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

**K.6 TAX CERTIFICATION**

Each offeror must submit with its offer, a sworn Tax Certification Affidavit, incorporated herein as Section J, Item J.71.6.

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**SECTION L: INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS**

**L.1 CONTRACT AWARD**

**L.1.1 MOST ADVANTAGEOUS TO THE DISTRICT**

The District intends to award the contract resulting from this solicitation to the responsible offeror(s) whose offer(s) conforming to the solicitation will be most advantageous to the District, cost or price, technical and other factors, specified elsewhere in this solicitation considered.

**L.1.2 INITIAL OFFERS**

The District may award the contract on the basis of initial offers received, without discussion. Therefore, each initial offer should contain the offeror's best terms from a standpoint of cost or price, technical and other factors.

**L.2 PROPOSAL FORM, ORGANIZATION AND CONTENT**

One original and seven copies of the written proposals shall be submitted in two parts, titled "Technical Proposal" and "Price Proposal". Proposals shall be submitted in English on 8.5" by 11" bond paper. Telephonic, telegraphic, and facsimile proposals will not be accepted. Each proposal shall be submitted in a sealed envelope conspicuously marked: "Proposal in Response to Solicitation No. DCKA-2011-R-0042, the name and title of the offeror".

Offerors are directed to the specific proposal evaluation criteria found in Section M of this solicitation, Evaluation Factors. The Offeror shall respond to each factor in a way that will allow the District to evaluate the Offeror's response. The Offeror shall submit information in a clear, concise, factual and logical manner providing a comprehensive description of program supplies and services delivery thereof. The information requested below for the technical proposal shall facilitate evaluation and best value source selection for all proposals. Offerors shall not submit extensive drawings, catalogs, parts lists or marketing brochures. Extraneous material beyond what is sufficient to present a complete and effective response to this RFP shall not be included. The technical proposal must contain sufficient detail to provide a clear and concise representation of the requirements in Section C.

**L.2.1 TECHNICAL PROPOSAL**

Technical Proposals should be clear and concise and explain how the Offeror intends to meet the requirements of this Request for Proposal. Statements merely indicating that the

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Offeror will meet specific requirements are not sufficient. Unless specifically noted to the contrary as an exception, the District assumes that the Offeror will meet all requirements and conditions.

**L2.1.1 Format and Content**

Technical Proposals must include all information listed below, organized in three-ring binders, separated by section, and in the sequence indicated.

- Sub-part A     Vehicle Description as required by L.2.1.2
- Sub-part B     Qualification, Experience and References as required by L.2.1.3
- Sub-part C     Schedule and Management Approach as required by L.2.1.4
- Sub-part D     Testing And System Assurance Approach as required by L.2.1.5
- Sub-part E     System Support Plan as required by L.2.1.6

**L.2.1.2 Vehicle Description**

For Sub-part A of the Technical Proposal, the Offeror shall provide the following:

General Description

- (1) A general overview description of the proposed vehicle
- (2) Conceptual design drawings of the proposed vehicle, indicating all pertinent dimensions, including:
  - (a) Preliminary artist renderings (45° front / side view)
  - (b) General exterior and interior arrangement plans
  - (c) Floor plan
  - (d) Exterior side and end elevations
  - (e) Dynamic envelope diagrams
  - (f) Roof and undercar arrangement drawings

These conceptual design drawings are intended to represent a general understanding of the requirements of the Technical Specifications and are not intended to represent precise design for initiation of the design review process.

System Requirements

- (1) Propulsion and braking characteristics, including graphs of:
  - (a) Vehicle speed vs. time and vehicle speed vs. distance
  - (b) Tractive effort vs. speed for maximum acceleration
  - (c) Tractive effort vs. speed for maximum braking

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Indicate if the above plots depict actual performance of an existing streetcar or represent Offeror's estimate of anticipated performance.

- (2) Performance simulations over a complete round trip on the east/west line using the District's line profiles provided in Figure 2-5 of the Technical Specifications (TS) based on duty cycle requirements in TS 2.5.13.
- (3) Braking system performance calculations for blended and friction only service braking at maximum command at AW3 loading conditions on level, tangent track. Define the stopping distance and time from 15 mph, and 30 mph for blended and friction-only service braking and emergency braking. Indicate if the above information depicts actual performance of an existing streetcar or represents Offeror's estimate of anticipated performance.
- (4) Diagram showing vehicle in station platform with both 356 mm (14-inch) and 255 mm (10-inch) heights. Clearly show normal horizontal and vertical gaps, maximum carbody dynamic envelope at door thresholds, and bridgeplate extension on 255 mm (10 inch) platform height.
- (5) Diagram showing plan view of streetcar at a platform with both accessible and non-accessible (if provided) door locations marked
- (6) Anticipated Streetcar weight and axle weight distribution. Provide actual weights from prior builds of the proposed streetcar.
- (7) Actual exterior and interior noise data for the existing vehicle forming the basis for the proposed vehicle while indicating differences between the existing and proposed vehicle having an influence on the noise data. If the proposed vehicle is based on proven subsystems only, provide exterior and interior noise estimates for the proposed vehicle.
- (8) Evidence of service proven design for systems and components as required by TS 2.9. The District realizes that no existing vehicles meet all requirements of this specification, and modifications to existing designs will be necessary. Offerors should base their overall vehicle design on proven subsystems. Concepts based on a single vehicle or hybrids of two or more existing vehicles are acceptable.

Carbody Requirements

- (1) A narrative proposal that addresses how the Offeror intends to meet or exceed the requirements of TS 3, Carbody.
- (2) Approach used to achieve the carbody structural design load requirements. Indicate previous experience in providing the levels of car body strength similar to those specified. Describe the approach to modify an existing streetcar to be compatible with District's existing fleet, if necessary to provide equivalent strength and anti-climber engagement.
- (3) For previous car body Finite Element Analyses performed, how did the results of actual testing agree with the stress analysis results? Provide examples.

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- (4) Floor and roof cross-sections meeting NFPA 130 30-minute fire resistance requirement. If not previously certified, include proposed cross-sections to meet requirement.
- (5) Interior step arrangement and dimensions, if applicable.
- (6) Location of carbody manufacture, and subcontractor information if applicable.
- (7) Proposed interior lining and trim materials.

Draft Gear Requirements

- (1) Coupler manufacturer and assembly-level drawings, including coupler head.
- (2) Description of the features and operation of the coupler shroud, including procedures for opening, closing, stowing and any other operational characteristics.
- (3) Manual uncoupling device.

Operator's Cab Requirements

- (1) A narrative proposal, which addresses how the Offeror intends to meet or exceed the requirements of Section TS 5, Operator Cab.
- (2) Operator cab area plan and elevation drawings.
- (3) Description of the proposed master controller group.
- (4) Description of the sun screening methods proposed

Passenger Doors and Bridgeplate Requirements

- (1) A narrative proposal that addresses how the Offeror intends to meet or exceed the requirements of Section TS 6, Passenger Doors and Bridgeplates.
- (2) A description of the general arrangement and function of the door system.
- (3) A description of the general arrangement and function of the bridgeplate.
- (4) A description of the door and bridgeplate control circuitry and control logic.

Heating, Ventilation and Air Conditioning Requirements

- (1) A narrative proposal that addresses how the Offeror intends to meet or exceed the requirements of Section TS 7, Heating, Ventilation and Air Conditioning.
- (2) Cooling and heating capacities of the equipment.
- (3) General arrangement drawings of the HVAC unit.
- (4) Without a climate room test, describe and explain in detail the testing that the Offeror has previously performed to verify the cooling capacity and uniformity of temperatures in the passenger compartment on a completed streetcar of this design.

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Lighting System Requirements

- (1) A narrative proposal that addresses how the Offeror intends to meet or exceed the requirements of TS 8, Lighting System.
- (2) Relamping requirements – List times required for bulb replacement. Describe any lamps that require the removal of more parts than just the lens for replacement of the lamp. This includes protective cages or covers, destination signs, etc.

Auxiliary Electrical Equipment Requirements

- (1) A narrative proposal, which addresses how the Offeror intends to meet or exceed the requirements of TS 9, Auxiliary Systems.
- (2) A block diagram showing the proposed auxiliary power generation and distribution.
- (3) Description of the auxiliary power supply, load management and shedding, technical and performance data. Include “limp home” capabilities.
- (4) Description of the diagnostic capabilities.
- (5) A preliminary listing of anticipated loads connected to the AC supply.
- (6) A preliminary listing of anticipated loads connected to the 750 Vdc primary supply.
- (7) Description of the batteries, battery charger, high-speed circuit breaker, knife switch assembly.
- (8) Description of the pantograph.
- (9) Description of Streetcar safety grounding and power return arrangement.
- (10) Description of vehicle network topology, protocol and architecture, if applicable. A listing of vehicles in revenue service and contact information for which the described network system has been provided by the Offeror.
- (11) Describe in detail the effects of the emergency loads on the battery

Propulsion System Requirements

- (1) A narrative proposal addressing how the Offeror intends to meet or exceed the requirements of TS 10, Propulsion System & Controls.
- (2) Drawings showing the general arrangement and the location of propulsion equipment on the vehicle.
- (3) Description of spin/slide correction system and its interface with the braking system.
- (4) Description of traction motor and gear drive.
- (5) Description of propulsion control system, including interface to friction brake system.
- (6) Description of the propulsion system diagnostic capabilities.
- (7) Description of overload and transient protection.

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Truck Assemblies Requirements

- (1) A narrative proposal that addresses how the Offeror intends to meet or exceed the requirements of TS 11, Trucks.
- (2) General arrangement drawings of the proposed trucks.
- (3) Description of the truck/bolster and the truck to carbody interface.
- (4) Description of the proposed wheels and axles.
- (5) Description of the primary and secondary suspension arrangement of the trucks, including leveling system.
- (6) Description of suspension adjustment for wheel wear.

Friction Braking Requirements

- (1) A narrative proposal addressing how the Offeror intends to meet or exceed the requirements of TS 12, Friction Brake System.
- (2) Description of the electronic control system.
- (3) Description of hardware components.
- (4) Description of the diagnostic capabilities.
- (5) Description of the friction brake blending method.

Vehicle Communications Requirements

- (1) A narrative proposal that addresses how the Offeror intends to meet or exceed the requirements of TS 13, Vehicle Communications.
- (2) Supplier experience details and reference contact information.
- (3) A block diagram depicting the interfacing of communication equipment subsystems and components.
- (4) Complete functional description.

Carborne Train Control Equipment

- (1) A narrative proposal that addresses how the Offeror intends to meet or exceed the requirements of Section TS 13, Vehicle Communications.

The Offeror shall certify that the proposed vehicle meets all the requirements of this RFP. No deviations or exceptions to this Section or the Technical Specifications are permitted.

**L.2.1.3 Qualification, Experience and References**

For sub-part B of the Proposal, the Offeror shall provide the following:

- (1) A narrative describing the Offeror's capacity to perform the work under this contract. The capacity information should include annual volume figures for the past five years, facility and resource capabilities, and a listing of current commitments and ongoing projects.
- (2) A narrative describing how the Offeror delivered streetcars and LRVs on a similar schedule, complete with names of properties, dates of Notice to

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Proceed, and acceptance and revenue service dates for the streetcars and LRVs.

- (3) Three customer references to demonstrate that similar work has been successfully performed in the past or is currently being performed. Each referenced project shall include the following information:
  - (a) Customer's name, address, email address and telephone number of current client employee who is familiar with the Offeror's work
  - (b) Number and type of vehicles supplied
  - (c) Original amount of Contract at Contract Award on a per vehicle basis.
  - (d) Final or current amount of Contract on a per vehicle basis
  - (e) Amount (if any) of claims (by either party)

**L.2.1.4 Schedule and Management Approach**

Special consideration shall be given to the contract schedule. The Proposal shall include a statement indicating the number of Days (not to exceed 630 Days) from NTP until the Contractor will achieve Project Completion. The number of Days indicated will be used to establish the Project Schedule for the Contract.

For sub-part C of the Proposal, the Offeror shall provide the following:

- (1) A comprehensive schedule showing key milestones.
- (2) A narrative proposal that addresses how the Offeror intends to meet the proposed schedule. Proposals should include suggested measures and methods to assure schedule adherence during design, manufacture, assembly, and test.
- (3) A narrative proposal that addresses how the Offeror intends to meet or exceed the requirements of Section TS 18, Program Control and Quality Assurance.
- (4) A complete organization chart, including major sub-contractors, with the following information:
  - (a) Key individuals and their departments
  - (b) Their responsibilities within the organization
  - (c) System integration responsibilities
  - (d) Design, manufacturing and testing responsibilities of the Contractor and each sub-contractor or supplier for all systems and major subsystems
- (5) The resumes of key personnel listed in the organization chart.
- (6) A manufacturing plan indicating plants and locations for manufacture of major components and for final assembly.
- (7) Offerors' ability to comply with the project schedule and provide assurance that the schedule can be maintained will be highly important. The Organization and Management Chart, Resumes, Manufacturing Plan and Schedule in conjunction shall demonstrate that there is sufficient

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design and production staff and plant capacity available at the times indicated in the schedule, and that processes and structures are in place or are planned to ensure that the schedule will be maintained.

Note that Section TS 18 of the Technical Specifications requires that the Contractor provide Management Plan and Project Schedule for the District's review and approval after Notice to Proceed is given. The Proposal submittals required by this Section L.2.1 are conceptual in nature, intended to represent a general understanding of the requirements of the Technical Specifications and demonstrate the Offeror's ability to properly perform this project. They are not intended to represent the detailed submittals required by the Technical Specifications for initiation of the design review process.

**L.2.1.5 Testing and System Assurance Approach**

For sub-part D of the Proposal, the Offeror shall provide the following:

- (1) A narrative proposal that addresses how the Offeror intends to meet or exceed the test and system assurance requirements of TS 15, Testing.
- (2) Overview description of the test program, including preliminary schedule.
- (3) Test matrix, showing all component and system design conformance tests. The matrix shall identify which tests the Contractor intends to perform, and for which waivers will be requested. For those tests for which waivers will be requested, identify for which contract the test was done, what the result was, whether the test was approved.
- (4) Description of the approach applied by the Offeror to the incorporation of safety considerations in its design.
- (5) A sample quality assurance plan from Offeror's previous projects.

**L.2.1.6 System Support Plan**

For sub-part E of the Proposal, the Offeror shall provide the following:

- (1) A preliminary plan and approach for on-site support during delivery, testing and the warranty period, manuals, training and spare part provisioning.
- (2) Representative samples of training material, manuals and, parts catalogs from Offeror's previous projects that demonstrate Offeror's experience, capability and approach.

**L.2.2 PRICE PROPOSAL**

All copies of the Price Proposal shall be enclosed in one sealed envelope, which shall be marked as follows:

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Price Proposal: Streetcars  
Request For Proposal No.: DCKA-2011-R-0042

Submitted by: \_\_\_\_\_

All prices shall be indicated on the forms provided in this RFP as Form III, Schedule of Prices. All blank spaces shall be filled in and no changes shall be made in the wording of the forms. All prices shall be in U.S. dollars and shall be typed. All prices in the Price Proposal shall remain valid for a period of one hundred eighty (180) days after the Proposal due date.

**L.3 PROPOSAL SUBMISSION DATE AND TIME AND LATE SUBMISSIONS**

Proposals must be submitted no later than **5 PM EST on January 24, 2011**. Proposals that are received in the designated District office after the exact local time specified above, are "late" and shall be considered only if they are received before the award is made and one (1) or more of the following circumstances apply:

- (1) The proposal was sent by registered or certified mail not later than the fifth (5th) day before the date specified for receipt of offers;
- (2) The proposal was sent by mail and it is determined by the Contracting Officer that the late receipt at the location specified in the solicitation was caused by mishandling by the District, or
- (3) The proposal is the only proposal received.

**L.4 EXPLANATION TO PROSPECTIVE OFFERORS**

If a prospective offeror has any questions relative to this solicitation, the prospective offeror shall submit the question in writing to the contact person, identified on page one. The prospective offeror shall submit questions no later than **5 PM EST on January 7, 2011**. The District will furnish responses promptly to all other prospective offerors. An amendment to the solicitation will be issued if that information is necessary in submitting offers, or if the lack of it would be prejudicial to any other prospective offerors. Oral explanations or instructions given before the award of the contract will not be binding.

**L.5 FAILURE TO SUBMIT OFFERS**

Recipients of this solicitation not responding with an offer should not return this solicitation. Instead, they should advise the DDOT Contracting Officer, at the address

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and telephone number provided in Article G.9, by letter, or postcard whether they want to receive future solicitations for similar requirements. It is also requested that such recipients advise the DDOT Contracting Officer, of the reason for not submitting a proposal in response to this solicitation. If a recipient does not submit an offer and does not notify the DDOT Contracting Officer that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

**L.6 RESTRICTION ON DISCLOSURE AND USE OF DATA**

Offerors who include in their proposal data that they do not want disclosed to the public or used by the District except for use in the procurement process shall mark the title page with the following legend:

"This proposal includes data that shall not be disclosed outside the District and shall not be duplicated, used or disclosed in whole or in part for any purpose except for use in the procurement process.

If, however, a contract is awarded to this offeror as a result of or in connection with the submission of this data, the District will have the right to duplicate, use, or disclose the data to the extent consistent with the District's needs in the procurement process. This restriction does not limit the District's rights to use, without restriction, information contained in this proposal if it is obtained from another source. The data subject to this restriction are contained in sheets (insert page numbers or other identification of sheets)."

Mark each sheet of data it wishes to restrict with the following legend:

"Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal."

**L.7 PROPOSALS WITH OPTION YEARS**

The offeror shall include option year prices in its price/cost proposal. An offer may be determined to be unacceptable if it fails to include option year pricing.

**L.8 PROPOSAL PROTESTS**

Any actual or prospective offeror or contractor who is aggrieved in connection with the solicitation or award of a contract, must file with the D.C. Contract Appeals Board (Board) a protest no later than 10 business days after the basis of protest is known or should have been known, whichever is earlier. A protest based on alleged improprieties in a solicitation which are apparent at the time set for receipt of initial proposals shall be filed with the Board prior to the time set for receipt of initial proposals. In procurements in which proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, must be

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protested no later than the next closing time for receipt of proposals following the incorporation. The protest shall be filed in writing, with the Contract Appeals Board, 717 14th Street, N.W., Suite 430, Washington, D.C. 20004. The aggrieved person shall also mail a copy of the protest to the Contracting Officer for the solicitation.

**L.9 SIGNING OF OFFERS**

The offeror shall sign the offer and print or type its name on the Solicitation, Offer and Award form of this solicitation. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the Contracting Officer.

**L.10 UNNECESSARILY ELABORATE PROPOSALS**

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective response to this solicitation are not desired and may be construed as an indication of the offeror's lack of cost consciousness. Elaborate artwork, expensive paper and bindings, and expensive visual and other presentation aids are neither necessary nor desired.

**L.11 RETENTION OF PROPOSALS**

All proposal documents will be the property of the District and retained by the District, and therefore will not be returned to the offerors.

**L.12 PROPOSAL COSTS**

The District is not liable for any costs incurred by the offerors in submitting proposals in response to this solicitation.

**L.13 ELECTRONIC COPY OF PROPOSALS FOR FREEDOM OF INFORMATION ACT REQUESTS**

In addition to other proposal submission requirements, the offeror must submit an electronic copy of its proposal, redacted in accordance with any applicable exemptions from disclosure in D.C. Official Code § 2-534, in order for the District to comply with Section 2-536(b) that requires the District to make available electronically copies of records that must be made public. The District's policy is to release documents relating to District proposals following award of the contract, subject to applicable FOIA exemption under Section 2-534(a)(1).

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**L.14 CERTIFICATES OF INSURANCE**

The Contractor shall submit certificates of insurance giving evidence of the required coverages as specified in Section I.8 prior to commencing work. Evidence of insurance shall be submitted within fourteen (14) days of contract award to the Contracting Officer identified in Article G.9

**L.15 ACKNOWLEDGMENT OF AMENDMENTS**

The offeror shall acknowledge receipt of any amendment to this solicitation (a) by signing and returning the amendment; (b) by identifying the amendment number and date in the space provided for this purpose in Section A, Solicitation, Offer and Award form; or (c) by letter or telegram including mailgrams. The District must receive the acknowledgment by the date and time specified for receipt of offers. Offerors' failure to acknowledge an amendment may result in rejection of the offer.

**L.16 BEST AND FINAL OFFERS**

If, subsequent to receiving original proposals, negotiations are conducted, all offerors within the competitive range will be so notified and will be provided an opportunity to submit written best and final offers at the designated date and time. Best and Final Offers will be subject to the Late Submissions provision of the solicitation. After receipt of best and final offers, no discussions will be reopened unless the Contracting Officer determines that it is clearly in the District's best interest to do so, e.g., it is clear that information available at that time is inadequate to reasonably justify Contractor selection and award based on the best and final offers received. If discussions are reopened, the Contracting Officer shall issue an additional request for best and final offers to all offerors still within the competitive range.

**L.17 LEGAL STATUS OF OFFEROR**

Each proposal must provide the following information:

**L.17.1** Name, address, telephone number and federal tax identification number of offeror;

**L.17.2** A copy of each District of Columbia license, registration or certification that the offeror is required by law to obtain. This mandate also requires the offeror to provide a copy of the executed "Clean Hands Certification" that is referenced in D.C. Official Code §47-2862 (2001), if the offeror is required by law to make such certification. If the offeror is a corporation or partnership and does not provide a copy of its license, registration or certification to transact business in the District of Columbia, the offer shall certify its intent to obtain the necessary license, registration or certification prior to contract award or its exemption from such requirements; and

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**L.17.3** If the offeror is a partnership or joint venture, the names and addresses of the general partners or individual members of the joint venture, and copies of any joint venture or teaming agreements.

**L.18 FAMILIARIZATION WITH CONDITIONS**

Offerors shall thoroughly familiarize themselves with the terms and conditions of this solicitation, acquainting themselves with all available information regarding difficulties which may be encountered, and the conditions under which the work is to be accomplished. Contractors will not be relieved from assuming all responsibility for properly estimating the difficulties and the cost of performing the services required herein due to their failure to investigate the conditions or to become acquainted with all information, schedules and liability concerning the services to be performed.

**L.19 STANDARDS OF RESPONSIBILITY**

The prospective contractor must demonstrate to the satisfaction of the District the capability in all respects to perform fully the contract requirements; therefore, the prospective contractor must submit the documentation listed below, within five (5) days of the request by the District.

**L.19.1** Evidence of adequate financial resources, credit or the ability to obtain such resources as required during the performance of the contract.

**L.19.2** Evidence of the ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.

**L.19.3** Evidence of the necessary organization, experience, accounting and operational control, technical skills or the ability to obtain them.

**L.19.4** Evidence of compliance with the applicable District licensing and tax laws and regulations.

**L.19.5** Evidence of a satisfactory performance record, record of integrity and business ethics.

**L.19.6** Evidence of the necessary production, construction and technical equipment and facilities or the ability to obtain them.

**L.19.7** Evidence of other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations

**L.19.8** If the prospective contractor fails to supply the information requested, the Contracting Officer shall make the determination of responsibility or nonresponsibility based upon

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available information. If the available information is insufficient to make a determination of responsibility, the Contracting Officer shall determine the prospective contractor to be nonresponsible.

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**SECTION M: EVALUATION FACTORS**

**M.1 EVALUATION**

The contract will be awarded to the responsible offeror whose offer is most advantageous to the District, based upon the evaluation criteria specified below. Thus, while the points in the evaluation criteria indicate their relative importance, the total scores will not necessarily be determinative of the award. Rather, the total scores will guide the District in making an intelligent award decision based upon the evaluation criteria.

The District will appoint an evaluation committee that will evaluate proposals and recommend award of the Contract to a particular offeror. The committee will employ only those evaluation criteria set forth in this RFP and in addenda that might be issued. An evaluation criterion is deemed to include any unstated sub-criterion that reasonably might be included within the scope of the stated criterion.

Technical Proposals will be opened and reviewed for compliance with the RFP by the evaluation committee. Proposals will be evaluated based on the information received before the proposal deadline stated in Article L.3. Any part of a Proposal received after the Proposal deadline will be considered late and may be rejected without evaluation in accordance with Article L.3.

**M.2 EVALUATION CRITERIA AND RELATIVE WEIGHTS**

The District has established the following relative weights for the Technical Proposal and the Price Proposal.

- Technical Proposal 60 points
- Price Proposal 40 points
- Buy America 5 points

**M.2.1** The evaluation committee will employ the following main criteria and relative weights in evaluating Technical Proposals:

- |   |           |
|---|-----------|
| A. Proposed product, per Section L2.1.2, as demonstrated by completeness, clarity, and credibility of the Technical Proposal, and the adherence to the Request for Proposal | 20 points |
| B. Qualification, Experience and References per L2.1.3  | 10 points |
| C. Schedule and Management Approach per L2.1.4  | 20 points |
| D. Testing and System Assurance Approach per L2.1.5   | 5 points  |
| E. System Support Plan per L2.1.6   | 5 points  |

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The evaluation committee may use more detailed unstated evaluation sub-criteria as long as those sub-criteria generally correlate with the main criteria stated in this Section.

**M.2.1.1 Evaluation of Schedule and Management Approach**

As described in Section L2.1.4, the Proposal shall include a statement indicating the number of Days (not to exceed 630 Days) from NTP until the Contractor will achieve Project Completion. Offerors will receive points based on the number of Days to achieve Project Completion. The District will evaluate the following subfactors:

- (1) Management approach (5 points) – The District will evaluate the adequacy of the approach to ensuring that the schedule goals of the Project are met, as well as the adequacy of the approach to ensuring that subcontractors and material suppliers are able to meet the schedule goals.
- (2) Schedule (15 points) - A Proposal, as substantiated by prior manufacturing experience, indicating 380 Days or less will receive 15 points. Proposals indicating between 381 Days and 630 Days will receive a prorated number of points from twelve (381 Days) to zero (630 Days).

**M.2.2 Buy America (5 points)**

The procurement of the two streetcars under the base contract, are not being purchased using any federal contributions. However, it is the District’s intention to pursue Federal Transit Administration funding for the purchase of additional Streetcars. Option cars purchased with federal funds are subject to the Federal Transit Administration “Buy America” Requirements provided in 49 USC § 5323(j), 49 CFR Part 661 and FTA implementing guidelines, which provides that certain Federal funds may be obligated for mass transportation projects in the case of rolling stock, such as the vehicles [streetcars] to be produced under this contract, only if the cost of all components produced in the United States is more than sixty percent (60%) of the cost of all components, and if final assembly takes place in the United States. For this proposal to be considered complete, each Offeror must indicate if it will or intends to comply with Federal regulations for streetcars purchased pursuant to the execution of any option under a contract resulting from this RFP. An affirmative response will receive five (5) points. A negative response will receive no points.

**M.3 EVALUATION METHODOLOGY**

The evaluation committee will review each compliant proposal and establish two intermediate scores, a Technical Score and a Price Score, which will then be combined into the final score for each proposal.

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M.3.1 The Technical Rating Scale is as follows:

<u>Numeric Rating</u>	<u>Adjective</u>	<u>Description</u>
0	Unacceptable	Fails to meet minimum requirements; e.g., no demonstrated capacity, major deficiencies which are not correctable; Offeror did not address the factor.
1	Poor	Marginally meets minimum requirements; major deficiencies which may be correctable.
2	Minimally Acceptable	Marginally meets minimum requirements; minor deficiencies which may be correctable.
3	Acceptable	Meets requirements; no deficiencies.
4	Good	Meets requirements and exceeds some requirements; no deficiencies.
5	Excellent	Exceeds most, if not all requirements; no deficiencies.

**M.3.1.1** The technical rating is a weighting mechanism that will be applied to the point value for each evaluation factor to determine the Offeror’s score for each factor. The Offeror’s total technical score will be determined by adding the Offeror’s score in each evaluation factor. For example, if an evaluation factor has a point value range of zero (0) to forty (40) points, using the Technical Rating Scale above, if the District evaluates the Offeror’s response as “Good,” then the score for that evaluation factor is 4/5 of 40 or 32.

If subfactors are applied, the Offeror’s total technical score will be determined by adding the Offeror’s score for each subfactor. For example, if an evaluation factor has a point value range of zero (0) to forty (40) points, with two subfactors of twenty (20) points each, using the Technical Rating Scale above, if the District evaluates the Offeror’s response as “Good” for the first subfactor and “Poor” for the second subfactor, then the total score for that evaluation factor is 4/5 of 20 or 16 for the first subfactor plus 1/5 of 20 or 4 for the second subfactor, for a total of 20 for the entire factor. The subfactors are not necessarily divided equally within each category.

Proposals that receive an unweighted Technical Score of less than thirty (30) points shall be deemed non-responsive to the District’s minimum technical requirements. Such Proposals will not be considered further and will be rejected without opening the Price Proposal.

M.3.2 The Price Score will be established by the following procedure: The sealed envelope of the Price Proposals, i.e. Schedule of Prices identified in Section B.3, will be opened by the evaluation committee after the technical evaluation has been completed. The basis for evaluation and ranking of Price Proposals will be the Basis for Price Proposal Evaluation, as indicated in and identified in Section B.3 (Schedule of Prices), Part I. The evaluation committee will check the Schedule of Prices for mathematical errors and will

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correct any errors and recalculate prices on the assumption that (the lowest) unit prices are correct and thus predominate. The District reserves the right to review its recalculation of a mathematical error with that Offeror. The District also reserves the right to reject any Proposal with widespread and egregious mathematical errors or with significantly unbalanced unit prices. The Offeror with the lowest price will receive the maximum price points. All other proposals will receive a proportionately lower total score. The following formula will be used to determine each Offeror's evaluated price score:

$$\frac{\text{Lowest price proposal}}{\text{Price of proposal being evaluated}} \times \text{points available} = \text{Evaluated price score}$$

Price scores cannot be less than zero.

M.3.3 The Technical Score, Price Score, and Buy America preference (if applicable) will be combined to form the final score for each Offeror. Offerors will be ranked according to the score achieved, with the highest ranking being that with the highest score.

After ranking, the evaluation committee will decide whether to

- A. Award to the highest ranked Offeror;
- B. Reject all Proposals; or
- C. Enter into negotiations with all Offerors within the competitive range.

The District reserves the right to reject all Proposals if the prices are unreasonable or for any other reason in the District's best interest.

**M.4 SELECTION FOR AWARD**

After receipt, Proposals will be reviewed, evaluated and ranked, following procedures outlined in M.1 through M.3 above. Unless all Proposals are rejected, the highest ranked Offeror and Proposal will be selected for award and Notice of Intent to Award will be sent to the selected Offeror.

**M.5 CONTRACT EXECUTION**

The Offeror to whom the District issues a Notice of Intent to Award shall sign and return the written contract to the District. Upon receipt by the District of all required documentation and submittals, including acceptable performance bonds and the signed

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contract, the District will execute the contract, and issue a written Notice to Proceed (NTP).

**M.5.1 BONDING REQUIREMENTS**

A performance bond or letter of credit shall be provided at the District's option. If the District elects to exercise the option at Contract award, the successful Offeror shall provide the bond or letter of credit described below before NTP, at the price shown in the Schedule of Prices.

**M.5.2 OPTIONAL PERFORMANCE BOND OR LETTER OF CREDIT**

At the District's option, the contractor shall provide and continuously maintain for the term of the Contract a performance bond or letter of credit in the amount of twenty-five percent (25%) of the total contract amount including change orders.

The Performance Bond, Letter of Credit, and/or other ~~other~~ security shall be effective from the date of approval by the Authority to the issuance of a Final Completion Certification. The Contractor may reduce the amount of the Performance Bond (or other security) to ten percent (10%) of the Total Base Contract Price upon delivery and Acceptance or Conditional Acceptance of the final Streetcar required by this Contract, or the Contractor may substitute a Warranty Bond in a form acceptable to the Authority.

The performance bond shall guarantee faithful performance of the Contract including any changes thereto. The bond shall be payable to the District and issued by a good and sufficient surety company authorized to transact business in the District of Columbia and listed in the then current U.S. Department of the Treasury's Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies. The Contractor shall deliver the performance bond to the District within ten (10) days after it has been notified by the District of award.

In lieu of a performance bond as described above, the Offeror may provide an irrevocable letter of credit issued by a bank with an underlying rating of AA- or better by Standard & Poor's or Aa3 or better by Moody's Investor Service and subject to the District's approval. If a Letter of Credit is proposed, the Offeror shall so declare and provide all relevant details in its proposal.

**M.5.3 CORPORATE GUARANTEE**

The District may consider other contractor-proposed alternates to the bonding requirements described herein, such as a Corporate Guarantee, provided by a sufficiently large and financially stable parent company of the Offeror.

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**M.6 SINGLE OFFEROR - COST AND PRICE ANALYSIS**

If only one responsive and responsible Proposal is received, the District may conduct a price or cost analysis, or both, of the Proposal to assess whether the prices offered by the Offeror are fair and reasonable. A price analysis is the process of examining and evaluating a prospective price without evaluation of the separate cost elements. A cost analysis includes the appropriate verification of cost data, the evaluation of specific elements of cost, and the projection of the data to determine the effect on price. If so requested by the District, the Offeror shall promptly submit cost data and related information on a form provided by the District. The district may choose to have auditors perform an audit of the Offeror's cost data, and the Offeror shall cooperate with the District and make personnel and cost information available to the auditors. Permissibility of costs will be determined in accordance with the Federal Acquisition Regulations. The District may negotiate with the single Offeror and request a revised Best and Final Offer, before requesting detailed cost data for a cost analysis.

**ATTACHMENTS**

**J.1.1 GENERAL PROVISIONS**  
**(Federally Funded Agreements)**

**February 19, 1981**

**REVISED 3/2/2001**

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## GENERAL PROVISIONS

### 1. DEFINITIONS:

The terms "Mayor" and "Contract Appeals Board" shall mean the Mayor of the District of Columbia and the Contract Appeals Board of the District of Columbia. The term "Contracting Officer" shall mean the contracting Officer of the District of Columbia District Department of Transportation or his Authorized Representative. The term "DC DDOT" shall mean the District of Columbia District Department of Transportation. The term "U.S. DOT" shall mean the United States Department of Transportation. The term "FHWA" shall mean the Federal Highway Administration of the U.S. DOT. The term "Consultant" shall mean, the Consultant, an individual, association, joint venture, corporation or any other like term, and its heirs, its executors and its administrators or successors.

### 2. PROPRIETARY RIGHTS:

A. PATENT RIGHTS: The parties to this Agreement agree that all rights accruing from discoveries or inventions resulting from work described herein shall be the sole property of the Consultant. The Consultant agrees and hereby grants to the District, all state highway departments and the United States an irrevocable, non-exclusive, non-transferable and royalty-free license to practice each invention in the manufacture, use and disposition of any article, material or method that may be developed as a part of the work under this Agreement.

B. COPYRIGHTS: Copyrights resulting from work described herein shall be the sole property of the Consultant. The Consultant agrees and does hereby grant to the District, all state highway departments and United States a royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use and to authorize others to use the work for Government purposes.

### 3. PATENTS AND COPYRIGHT INFRINGEMENT:

The Consultant shall hold and save the District, its officers, agents, servants and employees harmless from liability or claims of any nature or kind, including cost and expenses, for or on account of any patented or unpatented invention, copyright, article, process or appliance manufactured or used in the performance of this Agreement, including their use by the District, unless otherwise specifically stipulated in this Agreement.

### 4. CHANGES:

The Contracting Officer may, at any time by a written order and without notice to the sureties, make changes in the work and services to be performed under this Agreement and within the general scope thereof. If such changes cause an increase or decrease in the cost of performing the work and services under this Agreement or in the time required for its performance, an equitable

adjustment shall be made and this Agreement shall be modified in writing accordingly. Any claim under this Provision must be made in writing to the Contracting Officer within ten (10) consecutive calendar days from the date the change is ordered. Provided, however, the Contracting Officer, if he determines that the facts justify such action, may receive, consider and adjust any such claim made at any time prior to the date of final settlement of this Agreement. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in Provision 14 hereof. Nothing provided in this Provision shall excuse the Consultant from proceeding with the prosecution of the work so changed.

5. INDEMNIFICATION AGREEMENT:

The District shall have an absolute right of indemnity against any and all claims or liability arising from or based on, or as a consequence or result of, any negligent act, error, omission or fault of the Consultant, its employees, or its subconsultants, in the performance of, or in connection with any services required, contemplated or performed under the contract; any and all claims or liability arising from or based on, or as a consequence or result of, any act of approval, inspection, supervision, or acceptance, or any failure to approve, inspect, supervise, or accept, by the District and any of its officers, agents, servants and employees, where such act or failure to act causes or contributes to any negligent act, error, omission or fault of the Consultant, its employees, or its subconsultants, in the performance of, or in connection with any services required, contemplated or performed under the contract. Monies due or to become due the Consultant under this contract, may be retained by the District as necessary to satisfy any outstanding claim which the District may have against the Consultant.

6. APPOINTMENT OF ATTORNEY:

A. The Consultant shall designate and appoint a person, located within the District, whether the Consultant himself, an individual, a partnership or corporation or member thereof, an attorney, attorney-in-fact, agent, or representative, who shall receive service of all notices and process issued by any court or agency of the District and all pleadings or other papers related to any legal action or proceedings arising out of, or pertaining to, this Agreement or the work required by, or performed hereunder.

B. The Consultant expressly agrees that the validity of any service upon the person or entity designated pursuant to Section 1 hereof shall not be affected either by the fact that the said Consultant was personally within the District and otherwise subject to personal service at the time of such service upon the designated person or entity or by the fact that the Consultant failed to receive a copy of such process, notice, pleading or other paper so served upon the designated person or entity.

C. The Consultant shall immediately inform the Contracting Officer in writing of any change in the designation required by Section 1 hereof, whether such change is in the designee, the address or telephone numbers.

7. EMPLOYMENT OF DISTRICT EMPLOYEES:

The Consultant shall not, without written permission from the Contracting Officer, engage the services of any person or persons in the employment of the District for any work required by the terms of this Agreement for the period of this Agreement.

8. POST-GOVERNMENT EMPLOYMENT CONFLICT OF INTEREST:

A. Pursuant to Public Law 95-521, as amended, no former employee of the United States or Government of the District of Columbia:

1. Shall knowingly represent the Consultant before any Government agency through personal appearance or communication in connection with a matter involving specific parties to this Agreement where the former Government employee participated personally and substantially in the matter while in Government employ.

2. Shall, within two (2) years after terminating Government employment, knowingly represent the Consultant before any Government agency through personal appearance or communication in connection with a matter involving specific parties to this Agreement, where the matter was pending under the official responsibility of the former employee within one (1) year prior to termination of Government service.

B. Pursuant to Public Law 95-591, as amended, no former senior level officer or former senior level employee of the United States Government or the District of Columbia Government, named in or designated by the Director of the Office of Government Ethics under Section 207(d) of Title 18 USC:

1. Shall, within two (2) years after terminating Government employment, knowingly represent or aid, counsel, advise, consult or assist in representing any other person by personal presence at any formal or informal appearance before any Government agency in connection with a matter involving specific parties, where the former employee participated personally and substantially in that matter while in Government employ.

2. Shall, within one (1) year after terminating Government employment, knowingly act as an agent or attorney for or otherwise represent anyone in any formal or informal appearance before or, with the intent to influence, make any written or oral communication on behalf of anyone to (1) his or her former Department or agency or any of its officers or employees, or (2) in connection with any particular Government matter, whether or not involving a specific party, which is pending before such Department or agency or in which it has a direct and substantial interest.

9. LAWS TO BE OBSERVED:

The Consultant at all times shall observe and comply with all laws, regulations, orders and decrees of the United States and of the District, and shall indemnify and save harmless the District and all of its officers, agents and servants against any and all claims or liability arising from or based on the violation of any such law, regulation, order or decree, whether by the Consultant or any employee or agent of the Consultant associated with him, including any person, firm or corporation having the status of an independent contractor engaged by the Consultant in the performance of, or in connection with the work required by this Agreement.

10. WAIVER:

No action or non-action of the District shall be construed as a waiver of any provision or any breach of this Agreement unless the same has been expressly declared and recognized as a waiver by the Contracting Officer in writing. No waiver so declared and recognized as such in writing by the Contracting Officer shall operate as a waiver of any other provision of subsequent breaches of the same or other provisions of this Agreement.

11. PERFORMANCE BY THE CONSULTANT:

Except as otherwise expressly provided In this Agreement, none of the work or services required by this Agreement to be performed by the Consultant shall be performed by anyone other than Consultant or regular salaried employees of the Consultant, including subconsultants, without express written consent of the Contracting officer, and any violation of this Provision shall entitle the Contracting Officer to reduce the compensation otherwise payable to the Consultant whether or not the Contracting Officer terminates this Agreement or any part hereof for violation of this Provision or for any other reason.

12. TERMINATION FOR THE CONVENIENCE OF THE GOVERNMENT:

The District reserves the right to terminate this contract in whole or In part, for the convenience of the Government in accordance with the provisions of Chapter 37 of the D.C. Procurement Regulations, Title 27 DCMR (July, 1988).

13. AUTHORITY OF THE CONTRACTING OFFICER:

The Contracting Officer represents that he or she has the authority to take any action provided for herein on behalf of the District, including approval, certification, acceptance and changes within the scope of the work.

14. DISPUTES:

A. All disputes arising under or relating to this contract shall be resolved as provided herein.

B. Claims by a Contractor against the District.

(1) Claim, as used in Section B of this clause, means a written assertion by the Contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

(2) All claims by a Contractor against the District arising under or relating to a contract shall be in writing and shall be submitted to the Contracting Officer for a decision.

(3) For any claim of \$50,000 or less, the Contracting Officer shall issue a decision within sixty (60) days from receipt of a written request from a Contractor that a decision be rendered within that period.

(4) For any claim over \$50,000, the Contracting Officer shall issue a decision within ninety (90) days of receipt of the claim. Whenever possible, the Contracting Officer shall take into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.

(5) Any failure by the Contracting Officer to issue a decision on a contract claim within the required time period will be deemed to be denial of the claim. The Contractor may appeal denial of the claim as provided herein.

(6) If a Contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim.

Liability under this paragraph (f) shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.

(7) Interest on amounts found due to a Contractor on claims shall be payable at a rate set in D.C. Code Section 28-3302(b) applicable to judgments against the District and shall begin accruing from the date the Contracting Officer receives the claim until payment of the claim.

(8) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor as authorized by D.C. Code Section 1-1189.4.

(9) Pending final decision of an appeal, action, or final settlement, a Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

C. Claims by the District against a Contractor.

(1) Claim as used in Section C of this clause, means a written demand or written assertion by the District seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

(2) All claims by the District against a Contractor arising under or relating to a contract shall be decided by the Contracting Officer.

(a) The Contracting Officer shall send written notice of the claim to the Contractor. The Contractor may respond to the claim within thirty (30) days from the date the Contractor receives the claim.

(b) After the expiration of sixty (60) days from the date the Contractor receives the claim, the Contracting Officer shall issue a decision in writing, and furnish a copy of the decision to the Contractor.

(c) The decision shall be supported by reasons and shall inform the Contractor of his or her rights as provided herein. Specific findings of fact are not required, but, if made, shall not be binding in any subsequent proceeding.

(d) The authority contained in this clause shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle, or determine.

(e) This clause shall not authorize the Contracting Officer to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(3) Interest on amounts found due to the District from a Contractor on claims shall be payable at the rate set in D.C. Code Section 28-3302(b) applicable to judgments against the District, and shall begin accruing from the date the Contractor receives a Contracting Officer's written decision on behalf of the District until payment of the claim.

(4) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the District as authorized by D.C. Code Section 1-1189.4.

(5) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

15. OFFICIALS NOT TO BENEFIT:

No Member or no Delegate to Congress nor Resident Commissioner nor officer nor employee of the District shall be admitted to any share or part of the Agreement or to any benefit that may arise there from, and any contract entered into by any Contracting Officer in which he or any officer or employee of the District shall be personally interested shall be void, and no payment shall be made thereon by the District or any officer thereof, but this Provision shall not be construed to extend to the Agreement if made with a corporation for its general benefit.

16. COVENANT AGAINST CONTINGENT FEES:

The Consultant warrants that he has not employed any person to solicit or secure this Agreement upon any agreement for a bonus, commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the Contracting Officer the right to terminate this Agreement, or, in his discretion, to deduct from the Agreement price or consideration the amount of such bonus, commission, percentage, brokerage or contingent fees. This warranty shall not apply to commissions payable by the Consultant upon contract or sales secured or made through bona fide established commercial or selling agencies maintained by the Consultant for the purpose of securing business.

17. CONSULTANT'S WARRANTY AGAINST DEBARMENT:

The Consultant, in compliance with Section 29.510 of the debarment regulation (49 CFR 29), shall certify at the time of the bid opening that he/she or anyone associated therewith in any capacity of (owner, partner, director, officer, principal investigator, project director, manager, auditor, or any position involving the administration of federal funds) is not suspended, debarred or voluntarily excluded from or otherwise determined ineligible to receive award of or performance on D.C. or Federally-funded projects.

If at any time the Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, he/she shall provide immediate written notification to the Contracting Officer.

Furthermore, the Consultant agrees that he/she shall not knowingly subcontract any company or person which/who is debarred, suspended, declared ineligible or voluntarily excluded from participation on D.C. or Federally-funded projects.

The Consultant, when subcontracting, or when soliciting for subcontractors, further agrees to certification regarding debarment, and to include the clause titled 'Certification Regarding

Debarment, Suspensions, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction' without modification in all lower tier covered transactions.

Finally, this General Provision serves to apprise the Consultant that if he/she knowingly subcontracts with a company or person which/who is suspended, debarred, ineligible or voluntarily excluded from participation on D.C. or federally-funded projects, in addition to other remedies available to the District of Columbia and Federal Government, the contracting Officer may terminate the contract for Cause of Default.

The foregoing requirements apply as well to their full extent to suppliers, vendors, materialmen, et al. The Consultant shall comply with this General Provision by submitting with his/her Agreement a completed and notarized Certification."

#### 18. NON-ASSIGNABILITY, DEATH OR DISABILITY:

This Agreement is for the services of the Consultant and is not assignable by him. Where the services of a partnership are engaged as Consultants, each partner shall be held fully responsible for, and shall actively participate in all work provided for herein from date of execution of this Agreement until the services have been completed and accepted by the District; provided, however, that the death, incapacitation or retirement of one or more of the partners shall not, of itself, be deemed to incapacitate the other or remaining partner., provided the remaining partners are, in the judgment of the Contracting Officer, able and competent to carry out the terms of this Agreement, in which latter event no reduction shall be made in the compensation on account of such death, incapacitation or retirement. In the event one or more of the remaining partners is determined by the District to not be competent to carry out the terms of this Agreement, the District may reduce compensation in proportion to the number of partners thus deemed not competent to complete the Agreement.

#### 19. DOCUMENTATION:

**The Consultant shall, where appropriate, document the results of his work to the satisfaction of the District and the FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of agreement objectives.**

#### 20. SUBCONTRACTS:

The Consultant shall be required to perform all work not subcontracted under General Provision 27, Section D (Goal for DBE Participation) except specialized services or other tasks specifically exempted in this Agreement, provided, however, that governmental recipients of 23 U.S.C. 104(f) or 402 funds may subcontract as necessary to accomplish approved work program activities.

All subcontracts exceeding \$10,000 in cost shall incorporate all required provisions of these General Provisions by reference thereto.

21. COST PRINCIPLES:

Cost principles contained in 41 CFR 1-15 (Federal Procurement Regulations) and Subpart 1-15.2, as modified by subpart 1-15.102, apply to this Agreement.

22. AUDIT INSPECTION AND RETENTION OF RECORDS:

The Consultant shall permit the authorized representatives of the District, the U.S. DOT and the Comptroller General of the United States to inspect and audit all data and records of the Consultant relating to performance or transactions under the Agreement until the expiration of three (3) years after final payment.

The Consultant further agrees that the District, the U.S. DOT and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under any subcontract, have access to and the right to examine any directly pertinent books, documents, papers and records of such subconsultant.

With respect to records which relate to (1) appeals under the "Disputes" clause of this contract, (2) litigation or the settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, the periods of access and examination described above shall continue until such appeals, litigation, claims or exceptions have been finally resolved.

23. CLEAN AIR AND WATER:

The standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738 and Environmental Protection Agency (EPA) regulations (40 CFR Part 15), prohibiting the use of facilities Included on the EPA List of Violating Facilities under non-exempt Federal contracts, grants or loans, are applicable to this contract and to each subcontract hereunder, where such amounts are in excess of \$100,000.

The Consultant shall report any notices of violation to the Contracting Officer and to the U.S. EPA Assistant Administrator for Enforcement. (EN-329).

24. EQUAL OPPORTUNITY OBLIGATION:

During the performance of this Agreement, the Consultant shall comply with, Mayor's Order 85-85 dated June 10, 1985 and implementing guidelines published as Chapter 11 in DISTRICT OF COLUMBIA REGISTER, dated August 15, 1986.

25. NON-DISCRIMINATION REQUIREMENTS:

During the performance of this Agreement, the Consultant agrees as follows:

A. Compliance with Regulations. The Consultant shall comply with the regulations of the U.S. DOT relative to non-discrimination in federally-assisted programs of the U.S. DOT (49 CFR Part 21 appendix H and 23 CFR 710.405(b), hereinafter referred to as "the Regulations"), which are incorporated by reference and made part of this Agreement.

B. Non-Discrimination. The Consultant, in fulfilling the provisions and requirements of this Agreement, after execution thereof and prior to completion of its terms and conditions by the said Consultant, shall not discriminate on the grounds of race, color, religion, age, sex or national origin in the selection and retention of contractors and subcontractors, including procurements of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations.

C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment

In all solicitations either by competitive bidding or negotiations made by the Consultant for work under this Agreement to be performed under a contract and/or a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the Consultant of his obligations under this Agreement and the Regulations relative to non-discrimination on the grounds of race, color, religion, age, sex or national origin.

D. Information and Reports. The Consultant shall provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the District or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the District or the FHWA, as appropriate, and shall set forth what efforts he has made to obtain the information.

E. Sanctions for Noncompliance. In the event of the Consultant's noncompliance with the non-discrimination provisions of this Agreement, the District shall impose such sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the Consultant under this Agreement until the Consultant complies; and/or
2. Cancellation, termination or suspension of this Agreement in whole or in part.

F. Incorporation of Provisions. The Consultant shall include the provisions of sections (1) through (6) in every contract and subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations or orders and instructions issued pursuant thereto. The Consultant shall take such action with respect to any contract and subcontract or procurement as the District or the FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the consultant becomes involved in, or is threatened with, litigation with a contractor or subcontractor or supplier as a result of such direction, the Consultant shall notify the District of the litigation in

writing. The Consultant may request the District to enter into such litigation to protect the interests of the District, and in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

26. EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES:

A. General: The requirements of Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60) shall apply to the Consultant and to each subcontract hereunder, where such amounts are in excess of \$10,000. The requirements set forth herein supplement these orders.

B. Equal Employment Opportunity Policy: The Consultant shall accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons and to promote the full realization of equal employment opportunity through a positive continuing program:

"It is the policy of this Consultant to assure that applicants are employed, and that employees are treated during employment, without regard to race, religion, color, age, sex or national origin. Such action shall include: employment, upgrading, demotion or transfer; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship and/or on-the-job training."

C. Equal Employment Opportunity Officer: The Consultant shall designate and make known to the Contracting Officer an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who shall be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who shall be assigned adequate authority and responsibility to do so.

D. Dissemination of Policy: All members of the Consultant's staff who are authorized to hire, supervise, promote and discharge employees, or who recommend such action, or who are substantially involved in such action shall be made fully cognizant of, and shall implement the Consultant's equal employment opportunity policy and contractual responsibilities. To ensure that the above Agreement will be met, the following actions shall be taken as a minimum:

1. Periodic meetings of supervisory and personnel office employees shall be conducted before the start of work and then not less often than once every six (6) months, at which time the Consultant's equal employment opportunity policy and its implementation shall be reviewed and explained. The meeting shall be conducted by the EEO Officer or other knowledgeable company official.

2. All new supervisory or personnel office employees shall be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the Consultant's equal employment opportunity obligations within thirty (30) days following their reporting for duty with the Consultant.

3. The EEO Officer or knowledgeable company official shall instruct all employees engaged in the direct recruitment of employees for the project relative to the methods following by the Consultant in locating and hiring minority group employees.

In order to make the Consultant's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., employment agencies, labor unions (where applicable), schools, college placement officers, etc., the Consultant shall take the following actions:

a. Notices and posters setting forth the Consultant's equal employment opportunity policy shall be placed in areas readily accessible to employees, applicants for employment and potential employees.

b. The Consultant's equal employment opportunity policy and the procedures to implement such policy shall be brought to the attention of employees by means of meetings, employee handbooks or other appropriate means.

E. Recruitment: When advertising for employees, the Consultant shall include in all advertisements for employees the notation: "An Equal Opportunity Employer". He shall insert all such advertisements in newspapers or other publications having a large circulation among minority groups in the area from which the project workforce would normally be derived.

The Consultant shall, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, state employment agencies, schools, colleges and minority group organizations. To meet this requirement, the Consultant shall, through his EEO Officer, identify sources of potential minority group employees and establish with such identified sources procedures whereby minority group applicants may be referred to the Consultant for employment consideration.

The Consultant shall encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants shall be discussed with employees.

**F. Personnel Actions: Wages, working conditions and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff and termination, shall be taken without regard to race, religion, color, age, sex or national origin. The following shall be followed:**

1. The Consultant shall periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

2. The Consultant shall periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Consultant shall promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective actions shall include all affected persons.

3. The Consultant shall investigate all complaints of alleged discrimination made to the Consultant in connection with his obligations under this Agreement, shall attempt to resolve such complaints and shall take corrective action. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other

persons. Upon completion of each investigation, the Consultant shall inform every complainant of all the complainant's avenues of appeals.

G. Training and Promotion: The Consultant shall assist in locating, qualifying and increasing the skills of minority group employees and applicants for employment. Consistent with his manpower requirements and as permissible under Federal and District regulations, the Consultant shall make full use of training programs, i.e., preapprenticeship, apprenticeship and/or on-the-job training programs for the Consultant's geographical area. The Consultant shall advise employees and applicants for employment of available training programs and entrance requirements for each. The Consultant shall periodically review the training and promotion potential of minority group employees and shall encourage eligible employees. to apply for such training and promotion.

**H. Unions: If the Consultant relies in whole or in part upon unions as a source of his workforce, he shall use his best efforts to obtain the cooperation of such unions to increase minority group opportunities within the unions, and to effect referrals by such unions of minority group employees. Actions by the Consultant shall include the procedures set forth below:**

1. Use his best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members for membership in the unions and increasing the skills of minority group employees so that they may qualify for higher paying employment.

2. Use his best efforts to incorporate an equal employment opportunity clause into all union agreements to the ends that such unions will be contractually bound to refer applicants without regard for race, religion, color, age, sex or national origin.

3. In the event a union is unable to refer applicants as required by the Consultant within the time limit set forth in the union agreement, the Consultant shall, through his recruitment procedures, fill the employment vacancies without regard to race, religion, color, age, sex or national origin, making full efforts to obtain qualified minority group persons.

I. Records and Reports: The Consultant shall keep records as necessary to determine compliance with the Consultant's equal employment opportunity obligations. The records shall be designed to indicate:

1. The number of minority and non-minority group members employed in each work classification on the project.

2. The progress and efforts being made in cooperation with unions to increase minority group employment opportunities (applicable only to consultants who rely in whole or in part on unions as a source of their workforce).

3. The progress and efforts being made in locating, hiring, training, qualifying and upgrading minority group employees.

Such records shall be retained for a period of three (3) years following completion of work under this Agreement and shall be available at reasonable times and places for inspection by authorized

representatives of the DC DDOT and the FHWA. The Consultant shall submit a monthly report to DC DDOT for the first three (3) months after work under this Agreement begins, and thereafter upon request, for the duration of the project, indicating the number of minority and non-minority group employees currently engaged in each work classification required by this Agreement.

## 27. DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

A. Policy - It is the policy of the U.S. Department of Transportation that DBEs, as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. Consequently, the DBE requirements contained in the above cited regulation are applicable on this contract and shall be complied with by all consultants.

B. DBE Obligation- The prime consultant agrees to ensure that DBEs, as defined in 49 CFR Part 26, have the maximum opportunity to participate in the performance of subcontracts on this federally-funded contract and that he/she shall not discriminate on the basis of race, color, national origin, age, sex or handicap in the prosecution of this contract

All offerors are required to submit a written certification that they have read, understand and will comply with these requirements.

C. Definitions - The following definitions apply to this contract:

1. "Disadvantaged business" means a small business concern, (a) which is at least fifty-one percent (51%) owned by one or more socially and economically disadvantaged individuals or in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

2. "Small business concern" means a small business as defined pursuant to Section (3) of the Small Business Act, as amended, including all applicable and relevant rules and regulations promulgated pursuant thereto.

3. "Socially and economically disadvantaged individuals who are citizens of the United States ( or lawfully admitted permanent residents) and who are:

- a. "Black Americans", which includes persons having origins in any of the Black racial groups of Africa;
- b. "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- c. "Native Americans", which includes persons who are American Indian, Eskimos, Aleuts, or Native Hawaiians;
- d. "Asian-Pacific Americans" which includes persons whose origins are from Japan, China Taiwan, Korea, Vietnam, Laos, Cambodia, Burma,

- Thailand, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;
- e. "Asian-Indian Americans", which includes persons who origins are from India, Pakistan and Bangladesh
- f. Women ( of all races); and
- g. "Any other minorities or individuals found to be economically and socially disadvantaged by the Small Business Administration under Section 8(a) and 8(d) of the Small Business Act, as amended, (15 U.S.C. 637(a)).

The Contracting Officer shall make a rebuttable prerogative that individuals in the above groups are socially and economically disadvantaged. This prerogative shall be based on criteria set forth in 49 CFR Part 26. The Contracting Officer also may determine, on a case-by-case basis, that individuals who are not members of one of the above groups are socially and economically disadvantaged.

D. Goal

The District Department of Transportation will establish a yearly overall goal for DBE participation. DDOT will institute contract goals only in the event that the overall yearly goal cannot be met utilizing the race neutral method of procurement. While no specific contract goal has been established, offerors are encouraged to utilize DBE firms to perform work on this project.

Offerors are advised that each proposed DBE participant must have a valid certification at the time of proposal submission.

Please submit the names of any firm, both DBE and non-DBE from which quotations were received or discussions were held in conjunction with this project. The following information is to be provided: Name and address of firm; Proposed area of work; Proposed Dollar Amount.

A complete DBE plan containing a list of the DBE firms to be used on this project will be submitted with the proposal. This list should contain the name and address of each DBE firm, amount of award and area of work to be performed.

Furthermore, offerors are advised that they will be required to provide proof of actual payment to DBE firms utilized on this project by providing cancelled checks for each payment made.

E. Good Faith Efforts (If Contract Goals are Found Necessary)

On any project on which contract goals have been established, all offerors who submit proposals shall document steps taken to obtain DBE participation, including, but not limited to, the following listed efforts as well as any others from 49 CFR Part 26,

Appendix A - Guidance Concerning Good Faith Efforts and shall make this documentation and other pertinent records available to the Contracting Officer and his representative.

- a. Publishing of advertisements in area newspapers, various trade association publications and minority-oriented publications for at least fifteen (15) days.
- b. Written notification to a reasonable number of specific DBEs soliciting their interest in sufficient time to allow them to respond
- c. Follow-up to determine which DBEs were genuinely interested
- d. Negotiations with DBEs for specific sub bids, including at a minimum:
  - i. The names, addresses and telephone numbers of DBEs with whom negotiations occurred.
  - ii. A description of information provided to solicited DBEs describing plans and specifications for various portions of the project proposed for DBE participation and opportunities provided to the DBE firms for entering into consulting agreements. This statement also shall explain what efforts were made to assist firms contacted to obtain necessary technical and financial assistance.
  - iii. A statement explaining the lack of additional DBE subconsulting agreements. This statement shall explain the reasons for the DBE exclusions.

This documentation must be made available, upon request, to DDOT, Construction Contract Branch, 2000 - 14th Street, N.W., 6th Floor, Washington, DC 20009.

#### DBE Directory

Information pertaining to lists of certified DBEs may be obtained by contacting:

DC District Department of Transportation  
Construction Contract Branch  
2000 14th St. NW 6th Floor  
Washington, DC 20009  
202/671-2270

#### 28. TAXES:

The Government of the District of Columbia is exempt from, and will not pay, Federal Excise Taxes and DC Sales and Use Tax. BIDDERS MUST EXCLUDE SUCH TAXES, AS WELL AS STATE AND CITY TAXES FROM THEIR BIDS.

29. DEFAULT:

A. The District may, subject to the provisions in Chapter 37 of the D. C. Procurement Regulations, 27 DCMR (July 1988), and paragraph C. below, by written notice of default to the Consultant, terminate the whole or any part of this contract in any of the following circumstances:

1. If the Consultant fails to make satisfactory delivery of the supplies or to satisfactorily perform the services within the time specified herein or any extension thereof; or

2. If the Consultant fails to satisfactorily perform any of the other provisions of this contract, or so fails to make satisfactory progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

3. If the consultant fails or refuses to go forward with the work in accordance with the directions of the Contracting Officer; or

4. If the Consultant expresses through word or conduct an intention not to complete the work in a timely manner; or

5. If the Consultant fails to perform any of the other provisions of the contract.

B. In the event the District terminates this contract in whole or in part as provided in paragraph A. of this clause, the District may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated, and the Consultant shall be liable to the District for any excess costs of reprocurring said similar supplies or services, provided the Consultant shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

C. The Consultant 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 Consultant. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the District or Federal Government in either their sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Consultant.

**D. If this contract is terminated as provided in paragraph A. of this clause, the District, in addition to any other rights provided by applicable law or regulation, may require the Consultant to transfer title and deliver to the District, in the manner and to the extent directed by the Contracting Officer, (1) completed supplies and (2) such partially completed supplies and materials, parts, tools, dies, jig., fixtures, plans, drawings information and contract rights (hereinafter called "manufacturing materials") as the Consultant has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Consultant shall, upon direction of the Contracting Officer, protect and preserve property in the possession of the Consultant in which the District has an interest. Payment for completed supplies delivered to and**

accepted by the District shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the District and for the protection and preservation of property shall be in an amount agreed upon by the Consultant and Contracting Officer; failure to agree to such amount shall be a dispute concerning within the meaning Of the clause of this contract entitled "DISPUTES". The District may withhold from amounts otherwise due the Consultant for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the District 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 clause, it is determined for any reason that the Consultant was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the contract had been terminated for the convenience of the District. The Consultant shall submit a settlement proposal in accordance with Chapter 37 of the D. C. Procurement Regulations, 27 DCMR (July 1988). Failure to agree to, or the amount of, the settlement shall constitute a dispute within the meaning of the clause of this contract entitled "DISPUTES".

F. The rights and remedies of the District provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law, regulation or this contract .

**FORM J.12**  
**PROPOSER IDENTIFICATION**

Name of Proposer \_\_\_\_\_

Principal Business Address \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Business Address Through Which  
Most Contract Work Will be Performed \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

1. What form of business is your organization? (check one)

\_\_\_\_\_ Sole Proprietorship

\_\_\_\_\_ Partnership ( \_\_\_ Limited \_\_\_ General)

\_\_\_\_\_ Corporation

2. If a corporation, when and where was your organization incorporated?

3. If a limited partnership, when and where is your organization certified?

4. If not certified or incorporated in the District of Columbia, is your organization authorized to do business in the District of Columbia? \_\_\_\_\_ (Registration to do business in the District is not required prior to Notice of Award, registration shall be effective prior to Notice to Proceed.)

**REQUEST FOR PROPOSALS (RFP)  
FOR SUPPLIES AND SERVICES**

**FORM J.32  
AFFIDAVIT OF NON-COLLUSION**

District of Columbia

I (Type/Print Name) \_\_\_\_\_

state that I am (Position/Title) \_\_\_\_\_ of

(Name of Firm) \_\_\_\_\_ and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors and officers. I am the person responsible in my firm for this proposal.

I state that:

1. The price(s) and amount of this proposal have been arrived at independently and without consultation, communication or agreement with any other contractor, proposer or potential proposer except as disclosed on the attached appendix.
2. That proposed fees have not been disclosed to any other firm or person who is a proposer or potential proposer, and they will be not disclosed before completion of the Request for Proposals process.
3. No attempt has been made or will be made to induce any firm or person to refrain from submitting a proposal, or to submit a proposal bid higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.
4. The proposal of any firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit complementary or other noncompetitive proposal.
5. (Name of Firm) \_\_\_\_\_, its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted of or found liable for any action prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as described in the attached appendix.

I state that (Name of Firm) \_\_\_\_\_ understands and acknowledges that the above representations are material and important, and will relied on THE DISTRICT OF COLUMBIA in selecting a contractor for which this proposal is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from THE DISTRICT OF COLUMBIA of the true facts relating to the submission of bids for this contract.

\_\_\_\_\_  
(Signature)

Subscribed and sworn to me before this \_\_\_\_ day of \_\_\_\_\_, 199\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

REQUEST FOR PROPOSALS (RFP)  
FOR SUPPLIES AND SERVICES

FORM J.43  
RECEIPT OF ADDENDA

ADDENDA RECEIVED:

Addendum No. \_\_\_\_\_ Date Received

If no addendum was received, write "None Received":

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

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

Name: \_\_\_\_\_  
(print)

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

REQUEST FOR PROPOSALS (RFP)  
FOR SUPPLIES AND SERVICES

FORM J.95  
TECHNICAL SUMMARY FORM

Proposer's Name:

**A. DATA AND DIMENSIONS (AT AW0 WEIGHT, EXCEPT AS SPECIFIED)**

- 1 Length of Streetcar, over anticlimbers \_\_\_\_\_mm
- 2 Width of Streetcar (excluding mirrors) \_\_\_\_\_mm
- 3 Floor height above top of rail, at entryways \_\_\_\_\_mm
- 4 Height from top of rail to top of roof-mounted equipment \_\_\_\_\_mm
- 5 Height from floor to ceiling, minimum \_\_\_\_\_mm
- 6 Width of side door openings \_\_\_\_\_mm
- 7 Height of side door openings \_\_\_\_\_mm
- 8 Centerline-to-centerline truck spacing \_\_\_\_\_mm
- 9 Truck wheelbase, motor truck \_\_\_\_\_mm
- 10 Wheel size, motor truck \_\_\_\_\_mm
- 11 Weight of Streetcar as proposed \_\_\_\_\_kg
- 12 Number of seats \_\_\_\_\_
- Passenger capacity, AW2 \_\_\_\_\_

**B. CARBODY**

- 1 Underframe Supplier \_\_\_\_\_  
Materials: \_\_\_\_\_
- 2 Front End Frame Supplier \_\_\_\_\_  
Materials: \_\_\_\_\_

**REQUEST FOR PROPOSALS (RFP)  
FOR SUPPLIES AND SERVICES**

- 3 Side Frame Supplier \_\_\_\_\_  
Materials: \_\_\_\_\_
- 4 Roof Supplier \_\_\_\_\_  
Materials: \_\_\_\_\_
- 5 Articulation Assembly Supplier \_\_\_\_\_  
Materials: \_\_\_\_\_
- 6 Side Sheets Supplier \_\_\_\_\_  
Materials: \_\_\_\_\_

**C. DOORS AND BRIDGEPLATES**

- 1 Type of Door System \_\_\_\_\_
- 2 Door Panels Supplier \_\_\_\_\_  
Materials: \_\_\_\_\_
- 3 Door Operator Supplier \_\_\_\_\_  
Materials: \_\_\_\_\_
- 4 Bridgeplate Supplier \_\_\_\_\_  
Materials: \_\_\_\_\_

**D. HEATING, VENTILATING, AND AIR CONDITIONING**

- 1 Unitized HVAC Supplier \_\_\_\_\_
- 2 Compressor Supplier \_\_\_\_\_
- 3 Air Conditioning Capacity \_\_\_\_\_ KW
- 4 Roof Heating Capacity \_\_\_\_\_ KW





**REQUEST FOR PROPOSALS (RFP)  
FOR SUPPLIES AND SERVICES**

- |   |                    |          |       |
|---|--------------------|----------|-------|
| 1 | PA/Intercom System | Supplier | _____ |
| 2 | Destination Signs  | Supplier | _____ |
|   |                    | Type     | _____ |

**K. SPECIAL TOOLS**

Attach a listing of special tools recommended and reference to appropriate vehicle systems.