

Metropolitan Washington Airports Authority
PROCUREMENT AND CONTRACTS DEPT.
SOLICITATION OFFER AND AWARD

Metropolitan Washington Airports Authority Procurement and Contracts Dept., MA-29-IAD Washington Dulles International Airport 45025 Aviation Drive, Suite 240 Dulles, VA 20166		1. FOR INFORMATION CALL NAME: Richard D. Myrah TELEPHONE NUMBER: <i>(No Collect Calls)</i> 703-572-2992	
2. SOLICITATION NUMBER	3. TYPE OF SOLICITATION	4. DATE ISSUED	
1-17-C057	REQUEST FOR PROPOSALS (RFP)	March 31, 2017	
SOLICITATION			
5. DESCRIPTION OF SUPPLIES, SERVICES, CONSTRUCTION			
The Contractor shall furnish all necessary labor, materials, tools, equipment and supervision to provide real estate broker services and consulting to the Metropolitan Washington Airports Authority for leased and owned properties.			
All questions concerning this solicitation must be submitted by 3:00 PM April 12, 2017 via the Airports Authority's website at: http://www.mwaa.com/business/current-contracting-opportunities Note: This solicitation has a 0% LDBE participation requirement.			
NOTE: CONTRACTORS ARE RESPONSIBLE FOR VERIFYING NUMBER AND DATES OF AMENDMENTS PRIOR TO SUBMITTING A PROPOSAL. FAILURE TO ACKNOWLEDGE AN AMENDMENT MAY RESULT IN PROPOSAL BEING DETERMINED NON-CONFORMING.			
6. BOND REQUIREMENTS			
PAYMENT BOND: None		PERFORMANCE BOND: None	
7. PRE-PROPOSAL CONFERENCE			
None			
8. DEADLINE FOR OFFER SUBMISSION			
Sealed offers in original and 7 copies to perform the work or to furnish the supplies or services in the Schedule are due at the place specified at the top of this form by 1:00 P.M. local time, April 28, 2017 . Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time the offers are due. Proposals will not be publicly opened.			
OFFER (Must be fully completed by offeror)			
9. NAME AND ADDRESS OF OFFEROR (Include Zip Code)		11. REMITTANCE ADDRESS (If different than Item9)	
		12A. E-MAIL ADDRESS	
10A. TELEPHONE NUMBER	10B. FAX NUMBER	12B. COMPANY INTERNET WEBSITE	
NOTICE: Offer shall be valid for 180 days			
13. ACKNOWLEDGMENT OF AMENDMENTS (This offeror acknowledges receipt of amendments to this solicitation - give number and date of each)		14A. NAME & TITLE OF PERSON AUTHORIZED TO SIGN OFFER	
AMENDMENT NO.			
DATE			
		14B. SIGNATURE	
		14C. DATE	
AWARD (To be completed by MWAA)			
15. ACCEPTED AS TO ITEMS NUMBERED		20A. NAME OF CONTRACTING OFFICER	
		Richard D. Myrah	
16. CONTRACT NUMBER	17. AMOUNT	20B. SIGNATURE OF CONTRACTING OFFICER	
1-17-C057			
18. DATE OF AWARD	19. CONTRACT EFFECTIVE DATE		

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SECTION III - PRICE SCHEDULE

The Price Schedule for this solicitation is in Microsoft Excel format and downloadable at:

<http://www.mwaa.com/business/current-contracting-opportunities>

This Price Schedule must be submitted in both electronic and hard copy. The electronic copy of the Price Schedule must be submitted in its original Microsoft Excel Format on either a CD-ROM or USB Flash Drive. The structure of the schedule is protected and shall not be modified in any way. Modified schedules may be deemed non-conforming to the solicitation. In the event of a discrepancy between the hard copy and the Microsoft Excel file on CD-ROM or USB Flash Drive, the hard copy will take precedence.

RFP 1-17-C057 Section III - Price Schedule

The commission structure will reflect a "sliding scale" where the amount of the transaction will be allocated among the appropriate pre-determined transaction ranges or levels and the corresponding commission percentage will be applied to calculate the component of each level. The components of all levels would be added to derive the commission for the transaction.

Offerors will propose commission percentages for each of the three properties assuming a ground lease program and an additional proposal for a sales program in the case of Western Lands (only). Offerors will propose commission percentages for both scenarios : i) "With" a cooperating broker and ii) "Without" a cooperating broker.

Example of Commission Calculation

Transaction Amount	\$12,500,000			Commission Percentage proposed by Offeror	
	Transaction Range		Allocation	Commission Percentage *	Component
Level	From	To			
1	\$0	\$5,000,000	\$5,000,000	3.00%	\$150,000
2	\$5,000,001	\$10,000,000	\$5,000,000	2.50%	\$125,000
3	\$10,000,001	\$15,000,000	\$2,500,000	2.00%	\$50,000
4	\$15,000,001	\$20,000,000	\$0	1.50%	\$0
5	\$20,000,001	and above	\$0	1.00%	\$0
Total			<u>\$12,500,000</u>		<u>\$325,000</u> <====Commission

*Example only

Commission Percentages Proposed by Offeror

	Level	Transaction Range		Commission Percentage	
				With Co-	Without Co-
		operating Broker	operating Broker		
WESTERN LANDS (Ground Lease)	1	\$0	\$5,000,000		
	2	\$5,000,001	\$10,000,000		
	3	\$10,000,001	\$15,000,000		
	4	\$15,000,001	\$20,000,000		
	5	\$20,000,001	and above		

	Level	Transaction Range		Commission Percentage	
				With Co-	Without Co-
		operating Broker	operating Broker		
WESTERN LANDS (Sales)	1	\$0	\$5,000,000		
	2	\$5,000,001	\$10,000,000		
	3	\$10,000,001	\$15,000,000		
	4	\$15,000,001	\$20,000,000		
	5	\$20,000,001	and above		

	Level	Transaction Range		Commission Percentage	
				With Co-	Without Co-
		operating Broker	operating Broker		
METRO 606 PROPERTY (Ground Lease)	1	\$0	\$5,000,000		
	2	\$5,000,001	\$10,000,000		
	3	\$10,000,001	\$15,000,000		
	4	\$15,000,001	\$20,000,000		
	5	\$20,000,001	and above		

	Level	Transaction Range		Commission Percentage	
				With Co-	Without Co-
		operating Broker	operating Broker		
606 FRONTAGE PROPERTY (Ground Lease)	1	\$0	\$5,000,000		
	2	\$5,000,001	\$10,000,000		
	3	\$10,000,001	\$15,000,000		
	4	\$15,000,001	\$20,000,000		
	5	\$20,000,001	and above		

Consulting Services Rates

Loaded Hourly Rates proposed by Offeror

**GENERAL CONSULTING AND
ADVISORY SERVICES**

**Senior Managing Director
Managing Director
Technical Staff
Analyst**

The Authority reserves the right to request a cost breakdown to include base labor, overhead, other indirect costs and profit of each loaded hourly rate.

SECTION IV - REPRESENTATIONS AND CERTIFICATIONS

01 PARENT COMPANY AND IDENTIFYING DATA

A. A "parent" company, for the purpose of this provision, is one that owns or controls the activities and basic business policies of the offeror. To own the offeror's company means that the parent company must own at least 51% of the voting rights in that company. A company may control an offeror as a parent company even though not meeting the requirement for such ownership if the parent company is able to formulate, determine, or veto basic policy decisions of the offeror through the use of dominant minority voting rights, use of proxy voting, or otherwise.

B. The offeror is, is not (check applicable box) owned or controlled by a parent company.

C. If the offeror checked "is" in paragraph B. above, it shall provide the following information:

Name and Main Office Address of
Parent Company (include zip code)

Parent Company's Employer's
Identification Number

D. If the offeror checked "is not" in paragraph B. above, it shall insert its own Employer's Identification Number on the following line:

_____.

E. The offeror (or its parent company) is, is not (check applicable box) a publicly traded company.

F. The offeror shall insert the name(s) of its principal(s) on the following line:

_____.

02 TYPE OF BUSINESS ORGANIZATION

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 partnership, a nonprofit organization, a joint venture, or a corporation, registered for business in _____ (country).

03 AUTHORIZED NEGOTIATORS

The offeror represents that the following persons are authorized to negotiate on its behalf with the Authority in connection with this solicitation:

04 LOCAL DISADVANTAGED BUSINESS ENTERPRISE REPRESENTATION

- A. Representation. The offeror represents and certifies as part of its offer that it [] is, [] is not a local disadvantaged business enterprise.
- B. Definitions. "**Local Disadvantaged Business Enterprise**" (**LDBE**) is defined as a disadvantaged business concern which is organized for profit and which is located within a 100-mile radius of Washington, DC's zero mile marker. Those business entities located within counties that fall partially within the aforementioned boundary would also be eligible to participate in the Authority's LDBE Program. "**Located**" means that, as of the date of the contract solicitation, a business entity has an established office or place of business within a city, county, town, or political jurisdiction within the 100-mile radius referenced above. Evidence of whether a business is "**located**" within the region includes, but is not limited to: an address that is not a Post Office Box; employees at that address; business license; payment of taxes; previous performance of work similar to work to be performed under contract, or related work; and other indicia. A "**disadvantaged business**" is defined as a firm which is not dominant in its field, and which meets the Authority's disadvantaged business size standard(s) for this solicitation.
- C. Certification. Proposed LDBEs must apply to the Authority's Equal Opportunity Programs Office for certification. For further instruction, see **Section IX on Local Disadvantaged Business Enterprise Participation (LDBE)** in this Solicitation.

05 MINORITY BUSINESS ENTERPRISE REPRESENTATION

- A. Representation. The offeror represents that it [] is, [] is not a Minority Business Enterprise.
- B. Definition. A **Minority Business Enterprise** is:
1. A firm of any size which is at least **51%** owned by one or more minority persons or, in the case of a publicly-owned corporation, at least **51%** of all stock must be owned by one or more minority persons; and whose management and daily business operations are controlled by such persons. A person is considered to be a minority if he or she is a citizen of lawful resident of the United States and is:
 - a. Black (a person having origins in any of the black racial groups in Africa);
 - b. Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
 - c. Portuguese (a person of Portugal, Brazilian, or other Portuguese culture or origin, regardless of race);
 - d. Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); or
 - e. American Indian and Alaskan Native (a person having origins in any of the original peoples of North America.)
- C. Certification. As verification of this representation, the offeror is encouraged to attach a copy of a current MBE/WBE certification from any agency to be used for the Authority's monitoring of MBE/WBE participation in its program.

06 WOMEN BUSINESS ENTERPRISE REPRESENTATION

- A. Representation. The offeror represents that it [] is, [] is not a Women Business Enterprise.

B. Definitions. A **Women Business Enterprise** is:

1. A firm of any size which is at least **51%** owned by one or more women or, in the case of a publicly-owned corporation, at least **51%** of stock must be owned by one or more such women; and
2. Whose management and daily business operations are controlled by such persons.

C. Certification. As verification of this representation, the offeror is encouraged to attach a copy of a current MBE/WBE certification from any agency to be used for the Authority's monitoring of MBE/WBE participation in its program.

07 CONTRACTOR IDENTIFICATION

Each offeror is requested to fill in the appropriate information set forth below:

DUNS Identification Number _____ (this number is assigned by Dun and Bradstreet, Inc., and is contained in that company's Data Universal Numbering System (DUNS). If the number is not known, it can be obtained from the local Dun & Bradstreet office. If no number has been assigned by Dun & Bradstreet, insert the word "none."

08 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION

A. The offeror certifies that --

1. The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (a) those prices, (b) the intention to submit a offer, or (c) the methods or factors used to calculate the prices offered;
2. The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
3. No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

B. Each signature of the offeror 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 its offer, 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. a. 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

(Insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization);

- b. As an authorized agent, does certify that the principals named in subdivision B.2.a. above have not participated, and will not participate, in any action contrary to subparagraphs A.1. through A.3. above.
- c. As an agent, has not personally 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.

09 SUBCONTRACTORS

The offeror represents that it intends to utilize the below listed subcontractor(s) if it is awarded a contract as a result of this solicitation.

<u>NAME OF SUBCONTRACTOR</u>	<u>SUBCONTRACTOR ADDRESS</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Once contract award has been made, the prime contractor shall not deviate from use of the above subcontractor(s) without prior submission and Contracting Officer approval of revised LDBE Exhibits, as applicable.

10 CERTIFICATION OF COMPLIANCE WITH EMPLOYMENT ELIGIBILITY VERIFICATION, FORM I-9

The offeror certifies that it [] has [] has not read and [] is [] is not in compliance with the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 U.S.C. 1324a) and the regulations issued there under. The offeror also certifies that its subcontractors are in compliance with the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 U.S.C. 1324a) and the regulations issued there under.

11 CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

- A. 1. The Offeror certifies, to the best of its knowledge and belief, that -
 - a. The Offeror and/or any of its Principals -
 - (1) Have [] have not [] been debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal, state, or local agency within the three (3) year period preceding this offer;
 - (2) Have [] have not [] had contractor or business license revoked within the three (3) year period preceding this offer;
 - (3) Have [] have not [] been declared non responsible by any public agency within the three (3) year period preceding this offer;

- (4) Have [] have not [], within the three (3) year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or sub-contract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; violation of labor, employment, health, safety or environmental laws or regulations;
- (5) Have [] have not [], within the three (3) year period preceding this offer, been indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subparagraph A.1.a.(4). of this provision; and
- (6) All performance evaluations within the three (3) year period preceding this offer have [] have not [] received a rating of satisfactory or better. If not, please provide a copy of the evaluation with detailed explanation.

b. The Offeror has [] has not [] within the three (3) year period preceding this offer, had one or more contracts terminated for default by any Federal, state or local agency.

2. "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

- B. The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- C. A certification that any of the items in paragraph A. of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.
- D. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph A. of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- E. The certification in paragraph A. of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, the Contracting Officer may terminate the contract resulting from this solicitation for default.

12 INSURANCE AFFIDAVIT

The Offeror and their insurance agent, broker, or representative must review the insurance provisions to understand their requirements and cost to contract with the Airports Authority. The Insurance Affidavit form, which is included at Section X – Attachment 03, must be completed by the Offeror and its insurance provider.

The Airports Authority may declare any offer as non-responsible without this affidavit, or made with an incomplete affidavit form.

The Offeror is required to review any insurance requirements that may be required to ensure it has adequate insurance or it will obtain the required insurance if awarded a Contract. Proof of insurance must be submitted before a Contract can be executed and insurance coverage must remain in effect during the term of the Contract.

For purpose of defining Additional Insured and Waiver of Subrogation, the term "MWAA or Airports Authority" shall mean the elected officials, boards, officers, employees, agents, and representatives of the Board.

SECTION V - SOLICITATION PROVISIONS**01 SOLICITATION DEFINITIONS**

"Offer" means "proposal" in negotiation. "Solicitation" means a Request for Proposals (RFP) in negotiation. "The Authority" means Metropolitan Washington Airports Authority.

02 PREPROPOSAL CONFERENCE

None

03 PROCUREMENT PROCESS – BEST VALUE RFP

A. The Airports Authority is using a competitively negotiated procurement process to award this contract and selection will be made on a best value basis. Award will be made to the firm whose offer is judged to be an integrated assessment of the evaluation criteria that are listed in Section X – Attachment 02, Evaluation Criteria and Proposal Submission Requirements, to be the most advantageous to the Authority based on technical merit and price (“best value”).

B. Best Value Determination:

1. The technical merit of the proposal is more important than the price, and price must be fair, reasonable and affordable.
2. The Airports Authority may select other than the lowest price proposal if it is determined by value analysis, or technical/cost tradeoffs, that the proposal is most advantageous. Price becomes more important as proposals become more technically equivalent.

C. Price Evaluation:

1. Price evaluation will be based on the prices in Section III, Price Schedule, to include all option years, if applicable.
2. Price proposals will be assessed for affordability. The Authority will not make an award for any proposal which proposes prices that would render the procurement infeasible.

04 RESERVED**05 OFFEROR'S QUALIFICATIONS**

A. Offers will be considered only from responsible individuals, partnerships, joint ventures, corporations or other private organizations demonstrating that they have the ability, experience and demonstrated resources to complete work in a timely manner and maintain a staff of regular employees adequate to ensure continuous performance of the work. Labor relations measured by standards of compensation, promptness in meeting obligations, and frequency of personnel changes, among other things, will be considered in determining whether an offeror has an established operating organization.

B. Prior to award of contract, the Contracting Officer may require the apparent successful offeror to submit the following:

1. List of the equipment to be used to perform the contract work.
2. Number of employees and hours each will work per day.
3. List of work to be subcontracted.

4. List of firms for whom similar work has been performed in the past five (5) years and a description of the work accomplished for each firm.
5. Qualifications and experience of key project individuals.
6. Documentation showing that the offeror has provided reasonable and customary pricing based on industry standards.

06 PRE-AWARD SURVEY

The Authority reserves the right to perform or to have performed, an on-site survey of the offeror's facilities or previous work products and to investigate its other capabilities. This survey will serve to verify the data and representations submitted, and to determine that the offeror has overall capability adequate to meet the contract requirements.

07 ACKNOWLEDGMENT OF AMENDMENTS TO SOLICITATIONS

Offerors 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 on the Solicitation Offer and Award form; or (c) by letter or facsimile. The Authority must receive the acknowledgment by the time specified for receipt of offers.

08 CONTRACT AWARD

- A. The Authority will award a contract resulting from this solicitation to the responsible offeror whose offer, conforming to the solicitation, will be most advantageous to the Authority, cost or price and other factors specified elsewhere in this solicitation, considered.
- B. The Authority may (1) request "best and final offers," (2) reject any or all offers if such action is in the Authority's best interest, (3) accept other than the lowest offer, and/or (4) waive informalities and minor irregularities in offers received.
- C. The Authority may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.
- D. Prompt payment discounts may be offered, however, the Authority will evaluate the cost of the offer without the offeror's prompt payment discount.

09 EXPLANATION TO PROSPECTIVE OFFERORS

Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a written reply to reach all prospective offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors.

10 PREPARATION OF OFFERS

- A. Offerors are expected to examine the drawings, Statement of Work (SOW), Price Schedule, and all instructions. Failure to do so will be at the offerors' risk.
- B. Multiple/alternate offers will not be considered unless this solicitation authorizes their submission.

- C. Offerors shall furnish the information required by the solicitation. Offerors shall sign the offer and print or type its name on the Price Schedule and each continuation sheet on which they make entries. Erasures or other changes must be initialed by anyone signing the offers. Offers signed by agents shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office. The pricing form(s) must be completed unaltered.
- D. In case of discrepancy between a unit price/cost and an extended price/cost, the unit price/cost will be presumed to be correct; subject, however, to correction to the same extent and in the same manner as any other mistake.
- E. Offers for services other than those specified will not be considered unless authorized by the solicitation.
- F. Offerors must perform the required services within the time specified in the solicitation.
- G. Time, if stated as a number of days, will include Saturdays, Sundays, and holidays.
- H. In evaluation and consideration of this procurement, the Authority, when deemed in its best interest, reserves the right to make multiple and/or split awards.
- I. The Authority may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Price Schedule, offers may be submitted for quantities less than those specified. The Authority reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the offer.
- J. A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Authority may accept an offer (or part of an offer, as provided in paragraph E above), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the Authority.
- K. Neither financial data submitted with an offer, nor representations concerning facilities for financing, will form a part of the resulting contract. However, if the resulting contract contains a clause providing for price reduction for defective cost or pricing data, the contract price will be subject to reduction if cost or pricing data furnished is incomplete, inaccurate, or not current.

11 SUBMISSION OF OFFERS

- A. Offers and modifications thereof shall be submitted in sealed envelopes or packages showing the name and address of the offeror, the solicitation number, and the time specified for receipt. Envelopes or packages should be addressed and delivered to the following location:

Metropolitan Washington Airports Authority
Procurement and Contracts Department, MA-29
Washington Dulles International Airport
45025 Aviation Drive, Suite 240, 2nd Floor
Dulles, VA 20166

- B. Offers and modifications thereof which are submitted via any form of electronic transmission such as facsimile (FAX) or email will not be considered unless authorized by this solicitation.
- C. Offers, modifications thereof, and all documentation submitted in support of the offer, including but not limited to, written narrative, enclosures, submittal, examples of past work, financial statements, and videos will become the property of the Authority and will not be returned.

12 LATE SUBMISSION, MODIFICATIONS, AND WITHDRAWALS OF OFFERS

- A. Any offer received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and:
 - 1. Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th); or
 - 2. Was sent by overnight express delivery service (i.e. FedEx, UPS, U.S. Postal Service Express Mail, or other similar guaranteed delivery service) in time to have arrived prior to the date and time specified for receipt of offers.
 - 3. Was sent by mail or by overnight express delivery service (or was electronically transmitted via fax if authorized), and it is determined that the late receipt was due solely to mishandling by the Authority after receipt at the Authority's offices.
 - 4. Is in the Authority's best interest to accept the offer.
- B. Any modification or withdrawal of an offer except a modification resulting from the Contracting Officer's request for "best and final" offer is subject to the same conditions as in paragraph A.1. through 4. above.
- C. The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the offer, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerks to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.
- D. The only acceptable evidence to establish the time of receipt at the Authority installation is the time/date stamp of that installation on the offer wrapper or other documentary evidence of receipt maintained by the installation.
- E. The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service.
- F. Notwithstanding paragraph A. above, a late modification of an otherwise successful offer that makes its terms more favorable to the Authority will be considered at any time it is received and may be accepted.

- G. Offers may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and that person signs a receipt for the offer.

13 SOLICITATION COSTS

This solicitation does not commit the Authority to pay any costs incurred in the preparation or submission of any offer or to procure or contract for any work.

14 TYPE OF CONTRACT

The Authority contemplates award of a firm fixed-price contract resulting from this solicitation.

15 RESERVED

16 PLACE OF PERFORMANCE

All work will be performed at the offeror's place of business and at:

A. Ronald Reagan Washington National Airport (DCA)

Metropolitan Washington Airports Authority
Ronald Reagan Washington National Airport
Arlington County
Gravelly Point, Virginia

B. Washington Dulles International Airport (IAD)

Metropolitan Washington Airports Authority
Washington Dulles International Airport
Loudoun County
Chantilly, Virginia

C. Dulles Toll Road (DTR)

Metropolitan Washington Airports Authority
Dulles Toll Road Office
8500 Toll Plaza Lane
McLean, VA 22102

17 RESTRICTION ON DISCLOSURE AND USE OF DATA

Offerors who include in their offers data that they do not want disclosed to the public for any purpose or use by the Authority except for evaluation purposes, shall--

- A. Mark the title page with the following legend:

"This offer includes data that shall not be disclosed outside the Authority and shall not be duplicated, used, or disclosed-in whole or in part-for any purpose other than to evaluate this offer. If, however, a contract is awarded to this offeror as a result of-or in connection with-the submission of this data, the Authority shall have the right to

duplicate, use or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Authority's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets]"; and

- B. 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."

18 STATEMENT OF UNDERSTANDING

By submission of this offer, the Offeror acknowledges that it has read and thoroughly understands the Statement of Work, agrees to all terms and conditions stated herein, and acknowledges that it can perform all work as required.

19 SITE INVESTIGATION

By submission of this offer, the Offeror acknowledges that it has investigated and/or satisfied itself as to the conditions affecting the work and its nature and location, and the general and local conditions (including but not limited to equipment and facilities needed to perform the work) which can affect the work or the cost thereof. Any failure by the Offeror to acquaint itself with the available information shall not relieve it from responsibility for estimating properly the difficulty or cost of successfully performing the work. The Authority assumes no responsibility for any conclusions or interpretations made by the offeror on the basis of the information made available by the Authority.

20 OFFER DOCUMENTS

Refer to Section X, Attachment 02, Evaluation Criteria and Proposal Submission Requirements, for documentation required in response to this solicitation.

21 PROTESTS

- A. Protests must be typewritten and hand-delivered or mailed to the Manager of the Procurement and Contracts Department, (MA-29). Protests can be hand-delivered to Metropolitan Washington Airports Authority, 2733 Crystal Drive, Arlington, VA 22202 or mailed to Metropolitan Washington Airports Authority, 1 Aviation Circle, Washington, DC 20001-6000. If a protest is mailed, it should be sent by registered or certified mail, return receipt requested. Protests sent by facsimile machine will not be considered to meet the applicable deadline unless the original is hand-delivered or mailed and received by the Procurement and Contracts Department Manager prior to the applicable deadline.
- B. If a potential offeror believes it has grounds to protest any terms or conditions contained in or omitted from a solicitation issued by the Authority or an amendment to that solicitation, the potential offeror must file its protest with the Authority's Procurement and Contracts Department Manager. The protest must be received by the manager by the earlier of the following two dates: (1) Fourteen (14) days after issuance date of the solicitation or the date of the solicitation amendment containing the terms and conditions that are the subject of the protest, or (2) the due date for bids or proposals.
- C. If an unsuccessful offeror on an Authority solicitation believes it has grounds to protest the rejection of its bid or proposal, or the award of a contract (other than grounds relating to the terms or conditions contained in or omitted from a solicitation or solicitation amendment), that offeror must file its protest with the Procurement and Contracts Department Manager. The protest must be received by the

manager within seven (7) calendar days after the date of the Authority's letter notifying the offeror that its bid or proposal was unsuccessful or not accepted.

- D. The Procurement and Contracts Department Manager will attempt to respond to a protest within seven (7) days from receipt of the protest. If the manager determines that additional time will be required to respond to the protest, the manager will, within seven (7) days, notify the protestor of the time period within which a response will be made.
- E. The Authority's President and Chief Executive Officer may proceed with Award of the contract and notice-to-proceed while a protest is pending if he determines it to be in the Authority's best interest to do so.

22 RESERVED

23 NOTICE TO LOW OFFERORS

The fact that an offeror submits the lowest offer does not automatically mean that it will be awarded the contract. Other factors, such as conformity of the offer to the solicitation, the offeror's responsibility, and any change in the Authority's requirements, must be considered. No contractual obligation or liability on the part of the Authority shall exist unless and until the contract is awarded. Therefore, no offeror should begin work on the services called for by this solicitation until after formal notice of contract award has been made by the Authority.

24 TITLE VI SOLICITATION NOTICE

The Metropolitan Washington Airports Authority, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

SECTION VI - SPECIAL PROVISIONS

01 USE OF CONTRACT BY OTHER JURISDICTIONS

The Mid-Atlantic Purchasing Team (MAPT) is the agreement between the Metropolitan Washington Council of Governments (MWCOCG) and the Baltimore Metropolitan Council (BMC) to aggregate the public entity and non-profit purchasing volumes in the Maryland, Virginia and Washington, D.C. region (region).

The Metropolitan Washington Airports Authority is the Lead Agency in this procurement and has included this MAPT Cooperative Rider Clause in this solicitation indicating its willingness to allow other public entities to participate pursuant to the following Terms and Conditions:

A. Terms

1. Participating entities, through their use of the Cooperative Rider Clause, agree to the terms and conditions of the resulting contract to the extent that they can be reasonably applied to the participating entity.
2. Participating entities may also negotiate additional terms and conditions specific to their local requirements upon mutual agreement between the parties.

B. Other Conditions - Contract and Reporting

1. The contract resulting from this solicitation shall be governed by and 'construed in accordance with the laws of the State/jurisdiction in which the participating entity officially is located;
2. To provide to MWCOCG and/or BMC contract usage reporting information, including but not limited to quantity, unit pricing and total volume of sales by entity, as well reporting other participating entities added on the contract, on demand and without further approval of contract participants;
3. Contract obligations rest solely with the participating entities only;
4. Significant changes in total contract value may result in further negotiations of contract pricing with the lead agency and participating entities.

In pricing and other conditions, vendors are urged to consider the broad reach and appeal of MAPT with public and non-profit entities in this region.

A list of the participating members of the Mid-Atlantic Purchasing Team can be found at the following websites:

- <http://www.mwcog.org/purchasing-and-bids/cooperative-purchasing/member-links>
- <http://www.baltometro.org/our-work/cooperative-purchasing/brcpc-representatives>

02 CONTRACTOR PERFORMANCE EVALUATION

The Airports Authority will conduct periodic written evaluations of the contractor's performance at various intervals throughout the life of this contract. Input for these evaluations will be provided by the Contracting Officer's Technical Representative (COTR), Contracting Officer, and, where appropriate, the end user. The COTR will be responsible for completing the evaluation forms and reviewing their contents with the contractor. The intervals at which these evaluations will be conducted will be established prior to commencement of performance and the contractor advised accordingly.

These evaluations should be looked upon as a partnering tool between the contractor and the Airports Authority. It is hoped that they will help the contractor improve performance and communications when needed, as well as provide an opportunity for the Airports Authority to recognize positive performance. It is the Airports Authority's intent to use these evaluations to help keep communications open between the parties and foster achievement of a quality end product.

03 LIMITATION OF OBLIGATIONS AND LIABILITIES

Any and all obligations of the Airports Authority under this Agreement, and any and all liabilities of the Airports Authority that may arise under this Agreement, shall be limited to the Airports Authority's Aviation Enterprise Fund (which is used to finance the operation, maintenance, improvements, operating expenses and other activities of Ronald Reagan Washington National Airport and Washington Dulles International Airport), and any claim based on any such obligation or liability of the Airports Authority shall be limited to the revenues and assets of the Aviation Enterprise ("Enterprise"). No obligation of the Airports Authority under this Agreement, and no liability of the Airports Authority that may arise under this Agreement, shall constitute an obligation or liability of, or give rise to a claim against, or create any recourse against the Airports Authority's Dulles Corridor Enterprise Fund (which is used to finance the Dulles Toll Road's ongoing capital program and the construction of the Dulles Metrorail Project), or any of the revenues or assets of the Dulles Corridor Enterprise.

04 ADDITIONAL LABOR RATES AND MARKUP

In the event an additional labor rate is required to perform work not already indicated in Section III, Schedule, the Contractor shall furnish to the Contracting Officer a fully itemized proposal of the Contractor's cost, to include overhead and profit. The allowable overhead will be based on verifiable Contractor overhead costs. Contractor shall provide an audited overhead schedule consistent with the Federal Acquisition Regulations contract cost principles. Profit shall not exceed 10%. The allowable percentages of cost for overhead and profit are deemed to include such costs as the following: coordination personnel; all office expenses required by contract; expenses for administrative staff; cost of correspondence of any kind; cost of insurance not specifically mentioned herein; incidental job burdens; and overhead of Contractor's established home office, branch office or similar facilities. Other costs not listed herein shall be subject to the approval of the Contracting Officer.

05 ORDERING OF SERVICES - TASK CALL ORDERS

Any services to be furnished under this contract may be ordered by a task call order issued by the Contracting Officer or COTR designated in the contract award document or in a subsequent letter. Such an order may be issued anytime during the life of this contract.

Task call orders and the provision of services pursuant to such orders are subject to the terms and conditions of this contract. In the event of a conflict between the task call order and this contract, the contract shall control.

Task call orders may be issued verbally (via phone or in person), electronically (via e-mail), or in writing (via first class mail). If issued in writing, the task call order is considered "issued" when the order is placed in the mail. If issued verbally or electronically, the order is considered "issued" at the time of the verbal communication is made or the electronic communication is received. Verbal orders will be confirmed by a written communication from the Contracting Officer or COTR.

Task call orders will include the following information:

- A. Date of the order;
- B. Contract number;

- C. Task call order number;
- D. Description of the services to be performed;
- E. Date by which performance of the services is to be completed; and
- F. Other information deemed pertinent by the Contracting Officer or COTR.

06 TRAVEL EXPENSES

If approved in writing in advance of the expenditure:

A. Lodging/Meals/Incidental Expenses.

1. Each consultant required to travel overnight in performance of this contract shall be reimbursed for lodging, meals and incidental expenses at the rates specified by GSA (<http://www.gsa.gov> – search “Per Diem”) for the locations being visited. Receipts are not required.
2. The amount for meals and incidental expenses includes state sales tax (where applicable) and a 15% gratuity. On the day of departure, 75% of the applicable rate will apply. On the last day of travel, 75% of the applicable rate will apply. Receipts are not required.

B. Air Travel:

The Authority shall reimburse for air travel at the coach rate. The Contractor is expected to obtain discount fares to the extent possible. Travel shall be by the route that is most cost effective to the Authority. The Contractor shall bear any additional costs incurred as a result of deviations from this route for personal reasons. Travel time shall not be compensated. Legible receipts are required.

C. Local Transportation:

1. Taxi/limousine/airport bus – Reasonable expenses reimbursable at actual cost. Receipts are required. Transportation expenses between places of lodging or business and places where meals are taken are not allowed unless suitable meals cannot be obtained at the site.
2. Rental automobiles – Reasonable expenses reimbursable at actual cost. **Rental automobiles shall be used only when it will effect a savings or other advantage or when the use of other transportation is not feasible.** Rental automobiles should be limited to sub-compact models when available. A legible copy of the rental agreement is required to support costs. Rental of other than a sub-compact is allowable when sub-compacts are not available. Receipts are required.
3. Private automobile - Use of private automobiles will be reimbursed at the current IRS business mileage rate.
4. Tolls and parking charged for the use of ferries, roads, bridges, and tunnels while traveling to and from commercial carriers and parking charges at destination are reimbursable at actual cost. Receipts are required.

- D. Telephone: Actual cost of business telephone charges incurred by Contractor while in travel status is reimbursable. Personal telephone charges are not allowable. Receipts are required.

E. Other

1. Other actual expenses incurred in the performance of this contract, exclusive of normal operating expenses, and as approved by the Authority, shall be reimbursed. Receipts or invoices are required on each individual item under this category.
2. **Non-reimbursable costs** include expense for entertainment, first-class airfare, contributions, personal telephone and facsimile charges, dues and subscriptions, alcoholic beverages, expenses for transportation and lodging for personal pursuits, gifts, gratuities, and other charges expressly disallowed under the terms of the agreement.

07 NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

The Authority reserves the right to require that the contractor sign a non-disclosure and confidentiality agreement (Section X – Attachment 05) in connection with the performance of this contract.

08 LISTING AGREEMENT

Contractor and the Authority will enter into a separate Listing Agreement for each property to be marketed by Contractor. Each Listing Agreement will be negotiated by Contractor and Authority and, at a minimum, each Listing Agreement will contain the terms listed on Attachment 06. Each Listing Agreement will be made a part of the Contract upon signature by both parties.

SECTION VII - CONTRACT PROVISIONS**01 SCOPE OF WORK**

The Contractor shall provide all labor, materials, equipment and supervision to provide real estate broker services and consulting to the Metropolitan Washington Airports Authority for leased and owned properties.

02 PRE-PERFORMANCE CONFERENCE

Prior to commencement of work, the Contractor shall meet in conference with the Contracting Officer and the Contracting Officer's Technical Representative (COTR) to discuss and develop mutual understandings related to scheduling and administration of work.

03 VEHICLE REGISTRATION AND PARKING

The Contractor's employees will **NOT** be provided parking for their personal cars when performing the services called for in this contract.

04 AIRPORT REGULATIONS

The Contractor and its employees shall become familiar with, and shall be governed by, all Authority regulations as posted or as indicated by this contract or by the Contracting Officer and/or COTR. Operators of all equipment on airport property shall comply with all licensing requirements of the State of Virginia.

05 SAFETY REQUIREMENTS

If the Contractor fails or refuses to promptly comply with safety requirements, the Contracting Officer and/or the COTR may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stoppage shall be made subject to claim for extension of time or for excess costs or damages to the Contractor.

06 DAMAGE REPORTS

In all instances where Authority property and/or equipment is damaged by Contractor employees, a full report of the fact and extent of such damage shall be submitted, in writing, to the Contracting Officer's Technical Representative (COTR) within 24 hours of the occurrence.

07 DAMAGE OR LOSS OF CONTRACTOR'S PROPERTY

The Contractor is responsible for taking that action necessary to protect its supplies, materials, and equipment and the personal property of its employees from loss, damage, or theft.

08 WORKING HOURS

A. Normal working hours for Authority employees are Monday through Friday, 7:30 A.M. to 4:00 P.M., except for Federal Holidays. Overtime working hours are Monday through Friday, Saturdays, Sundays, and Federal Holidays, 4:00 P.M. to 7:30 A.M. The ten Federal Holidays observed at the Authority are:

New Year's Day	Labor Day
Martin Luther King, Jr.'s Birthday	Columbus Day
President's Day	Veterans' Day
Memorial Day	Thanksgiving
Independence Day	Christmas

B. When one of the above designated holidays falls on a Sunday, the following Monday will be observed as a legal holiday. When a legal holiday falls on a Saturday, the preceding Friday is observed as a holiday.

09 AUTHORITY FURNISHED FACILITIES

There will be no Authority furnished facilities under this contract.

10 AUTHORITY FURNISHED EQUIPMENT

There will be no Authority furnished equipment under this contract.

11 RESERVED

12 CONTRACTOR PERSONNEL

The Contracting Officer may, at any time under this contract, require an investigation of Contractor personnel. When notified of such a requirement, the Contractor shall have completed on each employee who would have a requirement to visit and/or work at an Authority Facility, such investigative forms as are furnished by the Contracting Officer.

13 WORKMANSHIP AND INSPECTION

- A. All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may, in writing, require the Contractor to remove any employee from work that the Contracting Officer deems incompetent or careless.
- B. Further, the Authority may, from time to time, make inspections of the work performed under this contract. Any inspection by the Authority does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements.

14 BILLING INSTRUCTIONS

The Contractor shall submit, no more than once each month, an original of both its invoices and the Authority's Invoice Attachment Form (Exhibit J), listing all subcontractors and their activities, either electronically via e-mail to mwaa.invoices@mwaa.com or in hard copy to the following address:

Metropolitan Washington Airports Authority
Accounting Department, MA-22B
1 Aviation Circle
Washington, DC 20001-6000

Failure to include required Exhibit J Attachment may delay payment of your invoice.

Invoices shall be properly identified with the Contractor's name, address and applicable contract/purchase order number. Invoices without proper identification will be returned to the sender. Invoices in excess of one (1) per month will be returned to the contractor.

The Contractor is encouraged to utilize banks owned and controlled by Disadvantaged Business Enterprises. To obtain a list of Disadvantaged Business Enterprise banks, contact the Equal Opportunity Programs Office at 703-417-8625.

15 LIABILITY INSURANCE

The Contractor shall procure and maintain at its expense during the contract period the following insurance coverage from an insurance company or companies possessing a rating of A- VII or higher from the A.M. Best Company or an equivalent rating service. **THE METROPOLITAN WASHINGTON AIRPORTS AUTHORITY SHALL BE NAMED AS AN ADDITIONAL INSURED** on Commercial General Liability (including completed operations), Commercial Auto Liability and, if such a policy is required, Environmental Impairment Liability. All of the policies required of the Contractor shall contain a waiver of subrogation provision to waive all rights of recovery under subrogation or otherwise against the Airports Authority. Contractor shall advise the Airports Authority of any cancellation, non-renewal, or material change in any policy within five business days of notification of such action. All of the policies required of the Contractor shall be primary and the Contractor agrees that any insurance maintained by the Airports Authority shall be non-contributing with respect to the Contractor's insurance.

Insurance Coverage and Minimum Limits

A. Commercial General Liability

Shall be a limit of not less than \$5,000,000 per occurrence. Coverage shall include, but not be limited to, Bodily Injury and Property Damage to Third Parties, Contractual Liability, Products-Completed Operations, Personal Injury and Advertising Injury Liability, Premises-Operations, Independent Contractors and Subcontractors, and Fire Legal Liability. The Products-Completed Operations coverage shall be provided for a minimum of one year following final acceptance of the work except in the case of construction, in which case the coverage shall be provided for a minimum of five years following final acceptance of the work.

B. Commercial Automobile Liability

Shall be a limit of not less than \$1,000,000 per occurrence for any vehicle. If any portion of the Contractor's work will occur on the Airport Operations Area (AOA), the required limit shall be \$2,000,000 per occurrence.

C. Professional Liability (if required)

Shall be a limit of not less than \$1,000,000 per claim with a \$1,000,000 aggregate for all employees for contracts with an annual value of \$500,000 and less. For contracts with an annual value over \$500,000, the required limits shall be not less than \$2,000,000 per claim with a \$2,000,000 aggregate for all employees. There shall be an extended reporting period provision of not less than two years. When Environmental Impairment Liability is also required, the Professional Liability shall not contain any exclusion or limitation related to Environmental Impairment.

D. Environmental Impairment Liability (if required)

Shall be a limit of not less than \$1,000,000 per occurrence for bodily injury, property damage, and environmental cleanup costs caused by pollution conditions, both sudden and non-sudden. This requirement can be satisfied by either a separate environmental liability policy or through a modification to the Commercial General Liability policy. Evidence of either must be provided.

E. Workers Compensation and Employers Liability

Workers Compensation shall be at Virginia Statutory Limits. Contractor shall satisfy all compulsory requirements relating to workers compensation in any jurisdiction in which benefits may be claimed. Employers Liability shall be a limit of not less than \$1,000,000 for bodily injury by accident and \$1,000,000 each employee for bodily injury by disease.

F. "All Risk" Property (Contractor's Property)

Replacement cost coverage under an "All Risk" policy for any of the Contractor's real or personal property used or situated on Airports Authority's property.

By requiring insurance herein, the Airports Authority does not represent that coverage and limits will necessarily be adequate to protect Contractor, and such coverage and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to the Airports Authority in this Contract. The Contractor may use commercial umbrella/excess liability insurance so that Contractor has the flexibility to select the best combination of primary and excess limits to meet the total insurance limits required by this Contract. Any umbrella or excess liability coverage must be at least as broad as the primary coverage and contain all coverage provisions that are required of the primary coverage.

The Airports Authority reserves the right at any time throughout the term of the Contract to adjust the aforementioned insurance requirements, if, in Airports Authority's reasonable judgment, the insurance required by the Contract is deemed inadequate to properly protect the Airports Authority's interest. The Airports Authority reserves the right to modify portions of the insurance requirements for the apparent successful offeror for good cause.

The failure of the Airports Authority at any time to enforce the insurance provisions, to demand such certificate or other evidence of full compliance with the insurance requirements, or to identify a deficiency from evidence that is provided shall not constitute a waiver of those provisions nor in any respect reduce the obligations of the Contractor to maintain such insurance or to defend and hold the Airports Authority harmless with respect to any items of injury or damage covered by this Contract.

The Contractor shall provide the Contracting Officer with a valid Certificate of Insurance, in advance of the performance of any work and as soon as possible after renewal, exhibiting coverage as required by the Metropolitan Washington Airports Authority's contract terms and conditions. The Contractor is responsible to ensure that all Subcontractors independently carry insurance appropriate to cover the Subcontractors' exposures, or are covered under the Contractor's policies. The Certificate of Insurance shall be provided on the industry standard form (ACORD 25) or other form acceptable to the Airports Authority. **The Certificate of Insurance shall be issued to:**

Procurement and Contracts Department
Metropolitan Washington Airports Authority
1 Aviation Circle
Washington, DC 20001-6000

16 CONTRACT TERM

The period of performance under this contract will be for five (5) years from the contract effective date. The term may be extended for up to five (5) one year options that may be exercised at the sole discretion of the Authority.

17 CORRESPONDENCE PROCEDURES

All correspondence, except that which is technical in nature, will be directed to the Contracting Officer at the following address. Technical correspondence shall be forwarded to the Contracting Officer's Technical Representative (COTR), with a copy forwarded to the Contracting Officer.

Metropolitan Washington Airports Authority
Procurement and Contracts Department, MA-29
2733 Crystal Drive
Arlington, VA 22202
Attn.: Richard D. Myrah

or

Metropolitan Washington Airports Authority
Procurement and Contracts Department, MA-29
Washington Dulles International Airport
45025 Aviation Drive, Suite 240, 2nd Floor
Dulles, VA 20166
Attn.: Richard D. Myrah

18 DISPUTES**A. General**

This contract provision sets forth the Authority's disputes procedures for disputes under remedy-granting contract provisions and non-material breaches of contract. It applies to all disputes except disputes based upon a material breach of contract.

It is the Authority's policy to encourage resolution of disputes by mutual agreement between the Contracting Officer and the Contractor. Consistent with this intent, the Authority requires, as a condition precedent to the initiation of litigation, the exhaustion of the administrative disputes procedure described in this contract provision. If the dispute is not resolved by the administrative disputes procedure, the contractor may proceed to court litigation in accordance with the agreements contained in this contract.

B. Waiver of Jury Trial

To the fullest extent permitted by law, the Contractor and the Authority hereby waive their respective rights to a trial by jury on any dispute or claim or cause of action upon, arising under, arising out of or related to, the contract. In addition, the Contractor and the Authority hereby waive their respective rights to trial by jury in any other proceeding or litigation of any type brought by any of the contracting parties against the other party whether with respect to contract claims or actions, tort claims, or otherwise. Without limiting the foregoing, the Authority and the Contractor further agree that their respective rights to a trial by jury are waived as to any action, counterclaim, or other proceeding that seeks, in whole or

in part, to challenge the validity or enforceability of the contract. This waiver of jury trial shall also apply to any subsequent amendments, modifications, renewals or supplements to the contract.

C. Performance Pending Dispute

The contractor shall proceed diligently with performance of the contract's requirements, including the disputed portions, pending resolution of any dispute.

D. Steps of Administrative Disputes Procedure

1. Claim Submission

The Contractor shall submit a written claim signed and certified as true and accurate and that it is made in good faith based upon supporting facts and cost and pricing data that are current, accurate and complete as of date of submission and date of any agreement; the claim and certifications shall be made by a duly authorized officer of the Contractor. The claim at a minimum shall include a) the basis of liability; b) basis of request for additional compensation, time extension request or other relief requested; c) a narrative that fully explains the basis for liability; d) the claim must state that it is made in good faith, that the supporting facts and cost and pricing data are current, accurate and complete as of the date of certification, and the amount of additional compensation, time of performance, or other relief requested reasonably and accurately reflect the added cost, added time of performance, and other damage the Contractor reasonably believes it has incurred; and e) the claim must include or specifically reference all actual cost accounting records, actual schedule data, as-built data, or other data or facts that relate to any aspect of the Contractor's claim.

2. Prohibited Claim Formats

Monetary claims based on anticipatory profits are prohibited. Monetary claims requests based on a total cost approach are prohibited. Time extension requests or claims on a total time approach are prohibited.

E. Claims Review and Disposition

1. Contracting Officer Discussions

Discussions between the Contracting Officer and the Contractor concerning the claim presented shall occur within a reasonable period of time after submission of the certified claim and receipt by the Contracting Officer of sufficient information, including, but not limited to, information resulting from an audit, if deemed necessary. Discussions shall be conducted in good faith for the resolution of the dispute, including the exchange of relevant information. If requested by the Contracting Officer, the COTR shall provide the Contracting Officer with a written response to the claim that references the applicable provisions of the statement of work, contract requirements, and applicable contract provisions and may include a specific request that the COTR obtain additional information or audit access, or both. The Contractor shall provide such additional information or audit access and failure to promptly provide such information or access shall be a bar to the claim.

2. Alternative Dispute Resolution (ADR)

Non-binding evaluative mediation is established as the ADR for this contract. The parties agree that the following procedures shall apply:

- a. Selection of the neutral mediator shall be as made by the parties; a neutral means an individual who is trained or experienced in conducting dispute resolution proceedings and in providing dispute resolution services related to significant construction contracts.
- b. All statements made as a part of the proceeding and all memoranda, work products or other materials made during the course of the mediation are deemed confidential and are to be treated in accordance with Virginia Code Section 8.01-576.10; in addition, the statements and any written materials are considered privileged settlement discussions, are not party admissions, and are made without prejudice to any party's legal position, if mediation does not result in an agreement.
- c. Materials prepared for the mediation are not subject to disclosure in any other judicial or administrative proceeding.
- d. Informal discovery is permissible in the form of production or inspection of certain categories of documents.
- e. The parties agree to split evenly the costs of the mediator and any incidental costs associated with holding the mediation.

3. Impasse and Litigation

If the ADR procedure does not result in an agreement, an impasse can be declared.

4. Contracting Officer's Final Decision

Upon the declaration of an impasse, the Contractor shall request a written final decision by the Contracting Officer. The Contracting Officer shall issue a final decision within sixty (60) calendar days from receipt of the request and adequate documentation unless the dispute is determined to be complex in nature. The final decision of the Contracting Officer shall be final and conclusive unless within thirty (30) calendar days from receipt of the Contracting Officer's final decision, the Contractor mails or otherwise furnishes a written notice of appeal to the Manager, Procurement and Contracts Department.

5. Litigation

Following the completion of the administrative disputes resolution process without an agreement as indicated by the timely receipt of a notice of appeal, the dispute may be resolved by litigation without a jury before a court of competent jurisdiction within the Commonwealth of Virginia.

F. Remedies for inappropriate claims

The following remedies are provided for the Authority's use in the event the Contractor submits reckless or frivolous claims or false, misleading, or material misrepresentations relating to claims.

1. Remedies for Reckless or Frivolous Claims

In the event that the Contractor makes a claim against the Authority and the Contractor's claim, as certified by an officer of the contractor, is a) found by a court to be based on any reckless statement contained in the certification of the claim or b) is found by a court to be of frivolous nature or materially overstated in amount, then the Contractor shall be liable to the Authority

and shall pay to it a percentage of costs incurred by the Authority in investigating, analyzing, negotiating, mediating and litigating (including attorneys' fees) the frivolous or overstated claim. The percentage of costs referenced shall be equal to the percentage of the contractor's total claim which is determined through litigation to be the result of a reckless statement or frivolous claim. "Frivolous" shall mean having no basis in law or in fact. This remedy is a contractual remedy and does not otherwise affect the other rights of the Authority in law or in equity.

2. Remedies for False or Misleading Statements or Material Misrepresentation

Any claim by the Contractor that is based on false or reckless statements that mislead the Authority or material misrepresentations shall entitle the Airports Authority to a full recovery of all costs incurred by the Authority in investigating, analyzing, negotiating, mediating and litigating (including attorneys' fees) the claim. This remedy is a contractual remedy and does not otherwise affect the other rights of the Authority in law or in equity.

19 TERMINATION FOR CONVENIENCE OF THE AUTHORITY

- A. The Authority may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Authority's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.
- B. After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause;
1. Stop work as specified in this notice.
 2. Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
 3. Terminate all subcontracts to the extent they relate to the work terminated.
 4. Assign to the Authority, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Authority shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 5. With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
 6. As directed by the Contracting Officer, transfer title and deliver to the Authority (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Authority.
 7. Complete performance of the work not terminated.
 8. Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Authority has or may acquire an interest.

9. As directed or authorized by the Contracting Officer, use its best efforts to sell and/or return at the Authority's expense to manufacturers, suppliers, or distributors for full credit less any applicable restocking charges, any property of the types referred to in subparagraph 6. above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Authority under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- C. After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this one-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after one year of any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- D. Subject to paragraph C. above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph D. or paragraph E. below, exclusive of costs shown in subparagraph E.3. below, may not exceed the total contract price as reduced by A. the amount of payments previously made and (B) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph E. below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- E. If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph D. above:
1. The Contract price for completed supplies or services accepted by the Authority (or sold or acquired under subparagraph B.9. above) not previously paid for, adjusted for any saving of freight and other charges.
 2. The total of -
 - a. The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph E.1. above;
 - b. The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision a. above; and
 - c. A sum, as profit on subdivision a. above, determined by the Contracting Officer in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the

Contracting Officer shall allow no profit under this subdivision c. and shall reduce the settlement to reflect the indicated rate of loss.

3. The reasonable costs of settlement of the work terminated, including -
 - a. Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - b. The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - c. Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- F. Except for normal spoilage, and except to the extent that the Authority expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph E. above, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Authority or to a buyer.
- G. The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraphs C., E., or I., except that, if the Contractor failed to submit the termination settlement proposal within the time provided in paragraphs C. or I., and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraphs C., E., or I., the Authority shall pay the Contractor (1) the amount determined by the Contracting Officer, if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.
- H. In arriving at the amount due the Contractor under this clause, there shall be deducted -
 1. All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;
 2. Any claim which the Authority has against the Contractor under this contract; and
 3. The agreed price for, or the proceeds of, sale of materials, supplies or other things sold or sold under the provisions of Paragraph B.9 of this clause and not recovered by or credited to the Authority.
 4. The amount credited to the Contractor for materials, supplies or other things that are returned to the manufacturers, suppliers or distributors in accordance with Paragraph B.9 of this clause and not recovered by or credited to the Authority.
- I. If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination, unless extended in writing by the Contracting Officer.
- J.
 1. The Authority may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes that the total of these payments will not exceed the amount to which the Contractor will be entitled.

2. If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Authority upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until ten (10) days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.
- K. Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for three years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Authority, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

20 DEFAULT

- A. If the Contractor: 1) fails to comply with the terms of this contract; 2) refuses or fails to prosecute the work, or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension; or 3) fails to complete the work within this time, the Authority may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Authority may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plants on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Authority resulting from the Contractor's refusal or failure to comply with the contract or to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Authority in completing the work.
- B. The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause, if:
1. The delay in completing the work or failure to comply with contract terms arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Authority in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the Authority, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers, and
 2. The Contractor, within ten (10) days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay or failure to comply with contract terms. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended.

- C. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Authority.
- D. The rights and remedies of the Authority in this clause are in addition to any other rights and remedies provided by law or under this contract.

21 INTERPRETATION OR MODIFICATION

Except as otherwise provided in this contract, no oral statement of any person and no written statement of anyone other than the Contracting Officer, shall modify or otherwise affect the terms or meaning of the contract or specifications. All requests for interpretation or modifications shall be made in writing to the Contracting Officer.

22 SECURITY

All Employees who will be working unescorted in a restricted area of the airport must have an Airport Identification badge. There must be one person with a valid identification badge with the work crew at all times. When contract work requires the group to separate, additional badged escorts must be provided.

The Contractor's company vehicles and equipment must be registered with the Airport Operations Division. Vehicles utilized in restricted areas must meet requirements set forth in the applicable Orders and Instructions for the airport. Personnel shall be licensed by the Airport Pass and ID Section of Airport Operations prior to vehicle operation on the Airport Operations Area (AOA).

Security Training: All individuals who apply for a restricted area access must attend an FAA required training session prior to receipt of the Airport Identification badge and vehicle operator's permit. NOTE: Submission of fraudulent or intentional false statements may lead to legal enforcement action by the FAA.

The Contractor, subcontractors and their respective employees must enforce the Airport Security Program, failure to do so will result in removal of restricted area access. Vehicle registration, vehicle operator's permits, security requirements, procedures, associated costs and applicable forms are as specified by the Contracting Officer's Technical Representative (reference Section X, Attachment 04).

23 ACCIDENT AND FIRE REPORTING (Applicable to contracts performed on authority owned or leased property)

- A. The Contractor shall immediately report to the Contracting Officer and the Contracting Officer's Technical Representative (COTR) any accident or fire occurring at the site of the work which causes:
 - 1. A fatality or as much as one lost workday on the part of any employee of the Contractor or subcontractor at any tier;
 - 2. Damage to Authority property, either real or personal;
 - 3. Damage to Contractor or subcontractor owned or leased motor vehicles or mobile equipment;
 - 4. Damage because of which a contract time extension may be requested.
- B. Accident and fire reports required by paragraph (A) above shall be accomplished by the following means:

1. Accidents or fires resulting in a death, hospitalization of five or more persons, or destruction of Authority property (either real or personal) the total value of which is estimated at \$100,000 or more, shall be reported immediately by telephone to the Contracting Officer and Contracting Officer's Technical Representative (COTR), and shall be confirmed in writing within 24 hours to the Contracting Officer. Such communication shall state all known facts as to the extent of injury and damage and as to the cause of the accident or fire.
 2. Other accident and fire reports required by paragraph A. above may be reported by the Contractor using a State, private insurance carrier, or Contractor accident report form which states extent of injury and damage and cause of accident or fire. Such report shall be mailed or otherwise delivered to the Contracting Officer within 48 hours subsequent to the occurrence of the accident or fire.
- C. The Contractor shall assure compliance by subcontractors at all tiers with the provisions of this clause.

24 INDEMNIFICATION

- A. To the fullest extent permitted by law, the Contractor shall hold harmless and indemnify the Authority, the Authority's employees, and the Authority's agents, contractors, subcontractors, and consultants, and agents and employees of any of them, from and against all claims, suits, damages, losses, expenses, and attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, suit, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury or damage to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused by negligent acts or omissions of the Contractor, or any of its subcontractors, their agents or anyone directly or indirectly employed by them, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.
- B. In claims against any person or entity indemnified under this provision by an employee of the Contractor, a subcontractor, an employee of a subcontractor, or an agent of the Contractor or a subcontractor, the indemnification obligation under this provision shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

25 LICENSES AND PERMITS

The Contractor shall, without additional expense to the Authority, be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal, State, and Municipal laws, codes and regulations, in connection with the prosecution of the work.

26 SUPERVISION

The Contractor shall arrange for satisfactory supervision of the contract work. The Contractor or its supervisors shall be available at all times, when the Contractor work is in progress. It is the Authority's policy that the Authority will not supervise the Contractor's employees, directly or indirectly.

27 KEY PERSONNEL

The key personnel specified in the Contractor's proposal are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification, including proposed

substitutions, in sufficient detail to permit evaluation of the impact on the program. No diversion of key personnel shall be made by the Contractor without the written consent of the Contracting Officer. The listing of key personnel may be amended from time to time during the course of the contract to either add or delete personnel or positions, as appropriate, subject to prior approval of the Contracting Officer.

The Contractor shall require in each subcontract a provision that requires the subcontractor to advise the Contractor promptly of any significant changes in the organization of such subcontractor, and the Contractor shall promptly advise the Contracting Officer of any such changes reported to the Contractor or otherwise discovered by the Contractor.

28 CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR) AUTHORITY

The Contracting Officer may designate Authority personnel to act as his or her authorized representatives for one or more contract administration functions not involving a change in the scope, price, terms, or conditions of the contract. Such designation will be in writing, set forth by a separate letter signed by the Contracting Officer, and will contain specific instructions as to the extent to which the representative may take action for the Contracting Officer. Such designation will not contain authority to sign contractual documents, nor authorize the designee to order contract changes, modify contract terms, or create any liability on the part of the Authority.

29 OPERATION OF MOTOR VEHICLES

- A. Each employee of the Contractor (and of its subcontractors) driving motor vehicles on the Airport shall have a valid driver's license and each such motor vehicle shall have a current inspection sticker if required by the state of registration.
- B. After contract award, and before commencing use of vehicles, the Contractor shall furnish to the Contracting Officer a list showing the following:
 - 1. Name and address of each of its employees and those of its subcontractors that will be involved with the movement of motor vehicles.
 - 2. Operator's permit number for each employee.
 - 3. Registration number of each vehicle that will be used at the Airport.

30 RESERVED

31 RESERVED

32 CHANGES

- A. The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:
 - 1. Description of services to be performed;
 - 2. Time of performance (i.e., hours of the day, days of the week, etc.); or
 - 3. Place of performance of the services.

- B. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.
- C. The Contractor must submit any "proposal for adjustment" (hereafter referred to as proposal) under this clause within 30 days from the date of receipt of the written order. If however, the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.
- D. If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.
- E. Failure to agree to any adjustment shall be a dispute under the Disputes clause. Nothing in this clause however, shall excuse the Contractor from proceeding with the contract as changed.

33 INSPECTION OF SERVICES

- A. Definitions. "**Services,**" as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.
- B. The Contractor shall provide and maintain an inspection system acceptable to the Authority covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Authority during contract performance and for as long afterwards as the contract requires.
- C. The Authority has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Authority shall perform inspections and tests in a manner that will not unduly delay the work.
- D. If any of the services do not conform with contract requirements, the Authority may require the Contractor to perform the services again in conformity with contract requirements at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the Authority may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce the contract price to reflect the reduced value of the services performed.
- E. If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Authority may (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Authority that is directly related to the performance of such service or (2) terminate the contract for default.

34 WARRANTY OF SERVICES

- A. Definitions. "**Acceptance,**" as used in this clause, means the act of an authorized representative of the Authority by which the Authority assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services, as partial or complete performance of the contract.

"**Correction,**" as used in this clause, means the elimination of a defect.
- B. Notwithstanding inspection and acceptance by the Authority or any provision concerning the conclusiveness thereof, the contractor warrants that all services performed under this contract will, at

the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Contracting Officer shall give written notice of any defect or nonconformance to the Contractor within 30 days from the date of acceptance by the Authority. This notice shall state either (1) that the Contractor shall correct or reperform any defective or nonconforming services, or (2) that the Authority does not require correction or reperformance.

- C. If the Contractor is required to correct or reperform, it shall be at no cost to the Authority, and any services corrected or reperformed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or reperform, the Contracting Officer may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the Authority thereby, or make an equitable adjustment in the contract price.
- D. If the Authority does not require correction or reperformance, the Contracting Officer shall make an equitable adjustment in the contract price.

35 RESERVED

36 CLEANING UP

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, The Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Authority. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

37 EXCUSABLE DELAYS

- A. Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Authority in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.
- B. If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless -
1. The subcontracted supplies or services were obtainable from other sources;
 2. The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and
 3. The Contractor failed to comply reasonably with this order.
- C. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the

causes above, the delivery schedule shall be revised, subject to the rights of the Authority under the termination clause of this contract.

38 ORDER OF PRECEDENCE

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- A. Price Schedule (excluding the specifications);
- B. Representations and Certifications
- C. Solicitation Provisions;
- D. Special Provisions;
- E. Contract Provisions;
- F. Other documents, exhibits, and attachments;
- G. The specifications/Statement of Work; and
- H. The drawings, if applicable.

39 MODIFICATION PROPOSALS - PRICE BREAKDOWN

The Contractor, in connection with any proposal it makes for a contract modification, shall furnish a price breakdown, itemized as required by the Contracting Officer. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract, and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification therefore shall also be furnished. The proposal, together with the price breakdown and time extension justification, shall be furnished by the date specified by the Contracting Officer.

40 CLAIMS FOR ADDITIONAL COSTS

If the Contractor wishes to make a claim for an increase in the contract sum, it shall give the Authority written notice of the intent to do so within twenty (20) calendar days following the occurrence of the event giving rise to the claim. This notice shall be given by the Contractor prior to proceeding to execute the work, except in an emergency endangering life or property. No such claim shall be valid unless so made. Any change in the contract sum resulting from such claim shall be authorized by contract modification.

41 TAXES

The Contractor is responsible for all applicable Federal, state, and local taxes of all kinds on materials, labor, or services furnished by it or arising out of its operations under the contract. Such taxes shall include, without limitation, sales, use, excise, employee benefit and unemployment taxes, customs duties, and income taxes.

42 PAYMENTS

- A. The Authority shall pay the Contractor the contract price as provided in this contract.
- B. The Authority strongly recommends that contractors participate in a program whereby payments under this contract are made via electronic funds transfer into the contractor's bank. Contractor requests to initiate such service shall include the bank name, address, account number, contact person, telephone number, and American Bankers Association (ABA) 9-digit identifying number. The initial request and any subsequent changes must be signed by the contractor's signatory of the contract and shall be submitted directly to the Authority's Finance Office (MA-22B).

- C. The Authority shall make payments monthly, or at more frequent intervals as determined by the Contracting Officer, on estimates provided by the Contractor and approved by the Contracting Officer. The Contractor shall furnish to the Authority the Invoice Attachment Form (See Exhibit J) which will be included with each invoice submission. This Form shall provide information on all subcontractors, each subcontractor's scope of services, and the subcontract dollar amount for those services. When reviewing the Contractor's invoicing, the Authority will use the Invoice Attachment Form as verification of subcontracting activities and payments. If requested by the Contracting Officer, the Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining payments:
- Failure to include required Exhibit J Attachment may delay payment of your invoice.
- D. Reserved.
- E. All material and work covered by payments made shall, at the time of payment, become the sole property of the Authority, but shall not be construed as:
1. Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or
 2. Waiving the right of the Authority to require the fulfillment of all the terms of the contract.
- F. The Authority shall pay the amount due the Contractor under this contract after:
1. Completion and acceptance of all work;
 2. Presentation of a properly executed voucher; and
 3. Presentation of releases of all claims, liens and encumbrances against the Authority arising by virtue of this contract. The release shall identify other claims, liens and encumbrances, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract have been assigned. Any assignment must be approved by the Contracting Officer.
- G. The Authority shall make payments within 30 calendar days after receipt of a proper invoice in the office designated to receive the invoice.
- H. The Contractor promises that it will pay its subcontractors within 10 days following receipt of payment from the Authority. The prime contractor also agrees to return any retainage withheld from subcontractors within 10 days after the subcontractor has satisfactorily completed its work. Any delay or postponement of payment may not take place without prior approval of the Authority. A finding of non-payment is a material breach of this Contract. The Authority may, at its option, increase allowable retainage or withhold progress payments unless and until the Contractor demonstrates timely payment of sums due subcontractors. Provided, however, that the presence of a "pay when paid" clause in a subcontract shall not preclude Authority inquiry into allegations of nonpayment. Provided, further, that the remedies above shall not be employed when the Contractor demonstrates that failure to pay results from a bona fide dispute with its subcontractor or supplier. The Contractor shall incorporate this provision into all subcontracts in excess of \$5,000 that results from this contract.

I. Contractor Submission Of W-9 Required Prior to Contract Award

As a prerequisite for contract award, the contractor shall complete all parts of the Internal Revenue Service ("IRS") Form W-9 (Request for Taxpayer Identification Number and Certification). Contract award will not be made until the completed W-9 has been received by the Authority. The W-9 form and instructions are available to contractors by accessing the IRS website at www.irs.gov and inserting the form number "W-9".

The W-9 information is requested so that we may determine the need to file IRS Form 1099 in connection with payments made by the Authority to the contractor. To assure accurate maintenance of your firm's status, the submission of the W-9 is required for each contract or purchase order executed by and between the Authority and its contractors. If the term of the contract exceeds one year, the Authority may request periodic resubmission of the W-9. If the contractor fails to submit the form by the deadline stated in the resubmission request, the Authority may refuse to pay invoices until the form has been submitted.

43 PUBLICITY RELEASES

Publicity releases in connection with this contract will not be made by the contractor unless prior written approval is obtained from the Manager, Procurement and Contracts Department.

44 OPTION TO EXTEND THE TERM OF THE CONTRACT

The Authority may extend the term of this contract by written notice to the Contractor within 30 days of contract expiration. The Authority will give the Contractor a preliminary notice of its intent to extend at least 60 days prior to contract expiration. This preliminary notice shall not commit the Authority to an extension. If the Authority exercises an option, the extended contract shall be considered to include this option provision. The extended contract shall be at the rates specified in the Price Schedule. The total duration of this contract, including the exercise of any options under this provision, shall not exceed 10 years.

45 OPTION TO EXTEND SERVICES

The Authority may require continued performance of any services within the limits and at the rates specified in the Price Schedule. This option provision may be exercised more than once, but the total extension hereunder shall not exceed six (6) months. The Contracting Officer may exercise the option by written notice to the Contractor within thirty (30) days of contract expiration.

46 AUDIT AND INSPECTION OF RECORDS

The Contractor shall maintain records and the Contracting Officer shall, until the expiration of five years after final payment under this Contract have access to and the right to examine any pertinent books, documents, papers and records of the Contractor involving the formation of the contract, transactions related to the Contract, for the purpose of inspection, making audit, examination, excerpts and transcriptions. The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the Contracting Officer shall until the expiration of five years after final payment under the Contract have similar access to and the right to examine any pertinent books, documents, papers and records of the subcontractor(s) involving all aspects of the subcontract including formation.

The Contracting Officer shall have all of the aforementioned rights for all types of contracts including fixed price contracts. The rights include without limitation the right to examine costs. The Authority's rights hereunder are in addition to any other audit and inspection rights under the Contract. The Authority reserves these rights because cost information is frequently needed to investigate performance issues and whether it is in the

Authority's interest to exercise other reserved rights under the contract. The Contracting Officer shall have the broad rights of audit and inspection including but not limited to, the right to examine books, records, documents and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature that have been incurred for the performance of this Contract. Such right of examination shall include inspection at all reasonable times of the Contractor's labor, materials, plant or such parts thereof, or other costs or revenues as may be expended or received as a part of the performance of the Contract.

When costs are a factor in any request for an equitable price adjustment pursuant to a remedy granting provision of the Contract, the Contractor shall maintain separate accounts by specific designation or other suitable accounting procedure of all incurred segregable, direct costs, less allocable credits. Failure to maintain such cost records is a bar to any claim, legal or equitable, for such costs.

47 CONSENT TO ASSIGNMENT

The Contractor shall obtain the written consent of the Contracting Officer prior to any assignment of all or any part of this contract.

48 NOTIFICATION OF OWNERSHIP CHANGES

The Contractor shall notify the Contracting Officer in writing when the Contractor becomes aware that a change in its ownership is certain to occur. The Contractor shall also include this provision in all subcontracts under this contract, requiring each subcontractor to notify the Contracting Officer in writing when the subcontractor becomes aware that a change in its ownership is certain to occur.

49 COMPLIANCE WITH EMPLOYMENT ELIGIBILITY VERIFICATION, FORM I-9

The Contractor shall ensure that it is in compliance with the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 U.S.C. 1324a) and the regulations issued there under, and that it will maintain compliance as long as any work is being performed under this contract with the Authority. The Contractor shall also ensure that its subcontractors are in compliance with the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 U.S.C. 1324a) and the regulations issued there under, and that its subcontractors will maintain compliance as long as they are performing any work under this contract with the Authority.

50 RESERVED

51 GENERAL CIVIL RIGHTS PROVISIONS

The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Contractor and subcontractors from the solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

52 TITLE VI CLAUSES FOR COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

During the performance of this contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the Contractor) agrees as follows:

- A. Compliance with Regulations. The Contractor (hereinafter includes consultants) will comply with the **Title VI List of Pertinent Nondiscrimination Acts and Authorities**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Contract.
- B. Non-Discrimination. The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- D. Information and Reports. The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Airports Authority or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Airports Authority or the FAA as appropriate, and will set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the Airports Authority will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to: Withholding payments to the Contractor under the contract until the Contractor complies; and/or cancelling, terminating, or suspending a contract, in whole or in part.
- F. Incorporation of Provisions. The Contractor will include the provisions of paragraphs A. through F. in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Airports Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, the Contractor may request the Airports Authority to enter into any litigation to protect the interests of the Airports Authority. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

53 TITLE VI LIST OF PERTINENT NONDISCRIMINATION AUTHORITIES

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest, agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

**SECTION VIII - POLICIES ON EQUAL OPPORTUNITY, MINORITY AND WOMEN BUSINESS
ENTERPRISE (MBE/WBE) PARTICIPATION, AND EMPLOYMENT OF VETERANS**

01 EQUAL OPPORTUNITY

No person or firm shall be discriminated against because of race, color, national origin, or sex in the award of Authority contracts. Further, the Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract.

02 MBE/WBE PARTICIPATION

While there is no LDBE requirement associated with this solicitation, the Authority is committed to achieving significant voluntary participation in its contracting programs by business enterprises that are owned and operated by minorities and women (MBEs and WBEs) regardless of the size of the enterprise. All offerors are strongly encouraged to take active steps to maximize the participation of MBEs and WBEs in this contract.

03 TECHNICAL ASSISTANCE

The Authority will provide assistance to promote the participation of MBEs and WBEs in this contract, including the identification of MBEs and WBEs. To obtain assistance, interested parties are encouraged to contact the Authority's Department of Supplier Diversity at (703) 417-8625, or at the following address: Metropolitan Washington Airports Authority, Department of Supplier Diversity, 1 Aviation Circle, Washington, DC 20001-6000.

04 MONITORING OF MBE/WBE PARTICIPATION

To monitor and evaluate MBE/WBE participation in its contracting programs, the Authority is collecting information on the voluntary efforts made by offerors in securing MBE/WBE participation for this contract. All offerors are encouraged to provide information relating to these efforts (Exhibit A) and return it with their offer.

When MBE/WBE participation has been obtained, all offerors are required to include this information on the Contract Participation Form (Exhibit D1) and to attach to the Contract Participation Form the MBE's or WBE's letter of DBE certification from the Authority, or MBE/WBE/DBE certification from another agency. This letter verifies the firm's MBE/WBE status, and is used in this case for the Authority's monitoring of its programs for the purposes of monitoring expenditures to MBE/WBEs, all contractors are required to identify on the Invoice Attachment Form (Exhibit J1) expenditures to first tier subcontractors who are MBEs or WBEs. (Note: Exhibits D1 and J1 are available from the Business Information section of the Authority's website at <http://www.mwaa.com>)

The information requested above will be used to assist the Authority in monitoring and evaluating MBE/WBE participation and will not be used to determine to whom this contract will be awarded.

05 EMPLOYMENT OF VETERANS

The Authority has adopted a policy to encourage reasonable efforts whenever possible to offer employment to qualified veterans, including the disabled, by the Authority, its contractors and subcontractors.

Voluntary Efforts to Obtain MBE/WBE Participation

Please answer the following questions and return this questionnaire with attachments (i.e., ads, meeting attendance list, etc) to the Contracting Officer with your offer.

Project Name: _____
 Solicitation Number: _____
 Contractor: _____

Did your company:

YES NO

- | | | | |
|----|--|----------------------------------|-------|
| 1. | Attend any pre-proposal meetings that were scheduled by the Authority? If YES, please attach list of meetings attended. | _____ | _____ |
| 2. | Advertise subcontracting opportunities in major circulation newspapers such as: a) the <u>Washington Post</u> , b) trade association press, c) minority and women oriented media? If YES, please attach copies of ads for a, b, c. | a) _____
b) _____
c) _____ | _____ |
| 3. | Provide timely written notice to specific MBEs/WBEs that their interest in the contract is being solicited? If YES, please attach a sample of such notification and list MBEs/WBEs contacted on page 2. | _____ | _____ |
| 4. | Follow-up initial solicitations of interest by personally contacting MBEs/WBEs? If YES, please list those MBEs/WBEs contacted on page 2. | _____ | _____ |
| 5. | Select the portions of the contract to be performed by MBEs/WBEs in a manner that will increase the likelihood of MBE/WBE participation? If YES, please attach a list of those portions of the contract selected for MBE/WBE participation. | _____ | _____ |
| 6. | Provide interested MBEs/WBEs with timely and thorough information about the plans, specifications and technical requirements of the contract? If YES, please list the MBEs/WBEs provided with such information on page 2. | _____ | _____ |
| 7. | Negotiate in good faith with interested MBEs/WBEs, and not reject MBEs/WBEs as unqualified without sound reasons based on a thorough investigation of their capabilities? If YES, list MBEs/WBEs with whom good faith negotiations were conducted on page 2. | _____ | _____ |
| 8. | Assist interested MBEs/WBEs in obtaining bonding and/or insurance? If YES, list MBEs/WBEs assisted on page 2. | _____ | _____ |

SECTION IX - LOCAL DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION REQUIREMENTS

01 LDBE PARTICIPATION

There is no Local Disadvantaged Business Enterprise (LDBE) participation requirement associated with this solicitation. However, there are reporting requirements to be met for purposes of tracking all subcontractor participation in Airports Authority projects.

An LDBE is defined as a small business concern which is organized for profit and which is located within a 100-mile radius of Washington, D.C.'s zero mile marker. Those business entities located within counties that fall partially within the aforementioned boundary would also be eligible to participate in the Authority's LDBE program. "Located" means that, as of the date of the contract solicitation, a business entity has an established office or place of business within a city, county, town, or political jurisdiction within the 100-mile radius referenced above. Evidence of whether a business is "located" within the region includes, but is not limited to: an address that is not a Post Office Box; employees at that address; business license, payment of taxes; previous performance of work similar to work to be performed under the contract, or related work; and other indicia. A "disadvantaged business" is defined as a firm which is not dominant in its field, and which meets the Authority's small business size standard(s) for this solicitation. The receipts of all affiliates shall be counted in determining the size of the business. Please direct any questions concerning LDBE status to the Authority's Department of Supplier Diversity at (703) 417-8625.

02 MONITORING OF LDBE PARTICIPATION

- A. The Authority routinely verifies LDBE participation and may contact you and your subcontractors after award to verify contract and payment amounts to ensure that the Authority's reporting is accurate.
- B. All offerors (including those who are Authority certified LDBEs) shall submit a Contract Participation Form (Exhibit D1) with their offers. Exhibit D1 is to list the prime contractor and all first tier subcontractors that are participating in the contract and to provide all information required by the Exhibit. This form must be signed and dated by the offeror. Offerors are also asked to identify whether or not any LDBE firms listed on the Exhibit D1 are also MBEs and WBEs.
1. Failure to Submit Exhibit D1.

Failure to submit Contract Participation Form (Exhibit D1) by the deadline specified by the Contracting Officer may result in rejection of the offer.
 2. By accepting this contract, the Contractor agrees to the following requirements:
 - a. The Contractor shall submit a revised Contract Participation Form (Exhibit D1) which reflects changes in the subcontractor participation associated with the modifications to the contract. A revised Exhibit D1, if required, shall be provided to the Contracting Officer concurrent with submission of the proposal for the changed work.
 - b. The Contractor shall submit a completed Invoice Attachment Form (Exhibit J1) with each invoice. The Contractor is responsible for the accuracy of all information reported.

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY CONTRACT PARTICIPATION FORM – ZERO LDBe

Check One: Original Revised Date: _____ Contract No.: _____

Name of Offeror: _____ Project Name: _____

The Offeror shall submit the Contract Participation Form to the Contracting Officer with the offer. Please attach additional sheets if needed.

EX	LIST THE PRIME AND <u>ALL</u> FIRST TIER FIRMS PARTICIPATING IN THIS CONTRACT <small>Identify whether firms are *P, S, JV, SP, B, H, MFG, in next column.</small>	TYPE OF FIRM <small>(see below)</small>	FEDERAL TAX ID <small>(also known as Employer Identification Number) nine digit number.</small>	Enter "X" for all that apply				ADDRESS <small>(Number, Street, City, State, ZIP)</small>	DESCRIBE TYPE OF WORK <small>(Electrical, Paving, etc. with notation e.g. "Labor Only", "Material Only", "Complete") Item Number if Applicable, Quantity, Unit Price</small>	AGREED PRICE
				LDBe	MBE **	WBE ***	OTHER			
	SAMPLE	S	55-5555555	X	X			12345 Main Street, Washington, DC 20001	Furnish and install Structural Steel	\$986,000.00
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
12										
13										
14										
15										
16										
17										
18										
19										
TOTAL AGREED PRICE MUST EQUAL TOTAL OFFERED PRICE:										

I, _____, a duly authorized representative of _____, certify that the above information is true and correct.
(type or print name) (name of firm)

Signature: _____ Date: _____

TYPE OF FIRM

*P = Prime Contractor
 S = Subcontractor
 JV = Joint Venture

SP = Stocking Supplier/Distributor
 B = Broker, Agent, Packager
 H = Hauler
 MFG = Manufacturer

** MBE = A certified Minority Business Enterprise (Attach current certification letter)
 *** WBE = A certified Women Business Enterprise (Attach current certification letter)
(Information regarding MBE/WBE participation will be used for generalized statistical purposes and program analysis.)

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY INVOICE ATTACHMENT FORM – ZERO LD BE

Name Of Prime Contractor _____
 Contract Name & Number _____
 Original Contract Amount \$ _____ Payments Received \$ _____
 Current Contract Amount \$ _____ Retainage Withheld \$ _____
 Invoice Period From _____ Through _____ Date Submitted _____

#	NAME OF SUBCONTRACTOR	BUSINESS ADDRESS (CITY, STATE, ZIP)	DESCRIPTION OF WORK	* LD BE	M BE	W BE	O T H E R	MONTHLY CONTRACT INFORMATION				% C O M P L E T E	% LD BE
								ORIGINAL SUBCONTRACT AMOUNT	CURRENT SUBCONTRACT AMOUNT	TOTAL PAYMENTS TO DATE	AMOUNT THIS INVOICE		
1													
2													
3													
4													
5													
6													
7													
8													
9													
10													
11													
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16													
17													
18													
19													
20													
SUBCONTRACTOR TOTALS													
PRIME CONTRACTOR TOTAL													
TOTAL THIS INVOICE													

* PUT AN "X" IN THIS COLUMN ONLY IF SUBCONTRACTOR IS AN AUTHORITY CERTIFIED LD BE.

I certify that the information furnished above is correct to the best of my knowledge and represents the current status of the firm's (Prime Contractor) subcontract(s) with the listed firms (Subcontractors) for the designated period covered by this report.

Signed: _____ Title _____ Date _____

This form must be attached to all Invoices submitted by the Prime Contractor.

SECTION X - ATTACHMENTS

ATTACHMENT 01
STATEMENT OF WORK

Commercial Real Estate Brokerage and Consulting Services

STATEMENT OF WORK

The Metropolitan Washington Airports Authority (Airports Authority) requires a professional brokerage firm to contract with the Airports Authority to provide real estate brokerage services and general real estate consulting services.

The real estate brokerage services will be provided for each of three parcels of land (each, the Property and collectively, the Properties) located adjacent to Washington Dulles International Airport known as:

- Western Lands Area
- Metro 606 Area
- 606 Frontage Area

The Properties can be marketed as a long term ground lease program. In addition, the Western Lands Area can potentially be marketed for sale.

The Airports Authority may also require general real estate consulting services for Airports Authority-controlled property or off-airport property or unrelated to a specific property.

Real Estate Brokerage Services

The selected brokerage firm (Firm) will provide brokerage services for the Properties under the direction of the Airports Authority to market the Properties for the economic benefit of the Airports Authority. The Firm will meet with the Airport Authority's Executive Real Estate Team on a monthly basis and with the Airport Authority's Office of Revenue on a bi-weekly basis, or as otherwise requested by the Authority. The Firm will be compensated for the real estate brokerage services on a commission basis. The real estate brokerage services include, but are not limited to:

1. Advertising & Marketing

- a. The Firm shall be responsible for advertising and marketing the Properties to local, regional, national and international markets in order to generate the widest possible exposure to the market. The Broker must provide a marketing plan for each Property that demonstrates that these objectives are taking place through appropriate channels. The plan may include, but not be limited to, direct marketing techniques, solicitations for offers, advertising, real estate media, the Firm's internal marketing network, designing collateral materials or utilizing appropriate listing services (e.g. CoStar, Loopnet) and/or any other appropriate and acceptable method.
- b. The Firm will be responsible for planning and executing ad-hoc marketing projects and events related to the Properties.

- c. All advertising and marketing in any form shall be presented to the Airports Authority for its approval prior to implementation.

2. Development Analysis

- a. Evaluate land use and development. Determine consistencies and inconsistencies of land use with trends in the market. Identify unfulfilled market demand and development barriers.
- b. Develop scenarios for potential development of parcels within each Property.
- c. Propose ground lease and/or sale structures.
- d. Propose a marketing strategy for each Property.
- e. Prepare and maintain pro forma financial projections of the cash flows through final land absorption.
- f. Identify potential institutional partnerships that may play a significant role in stimulating investment and development.

3. Strategic planning

- a. Utilize its expertise in local market trends in industrial, office, retail and land development to provide strategic planning related to preferred building footprints, master plan, building and infrastructure lay outs, maximizing Foot-Area Ratio, parking ratio considerations and building functions (i.e. docks, drive-in bays etc.);

4. Market and Submarket Analyses

- a. Provide relevant market research such as market fundamentals, analysis of inventories of vacant/available spaces and recent leasing activity in any submarket within the Greater Washington DC Market which may be useful in informing the Airports Authority on a decision, intelligence gathering or due diligence.
- b. Determine fair market ground lease packages of potential commercial land leases based on local expertise regarding comparable transactions in the Northern Virginia market or wherever deemed relevant by Firm and/or Airports Authority (including ground rent, common area expenses, annual escalations, etc.)
- c. Determine the fair market value of potential commercial land sales based on local expertise regarding comparable transactions in the Northern Virginia market or wherever deemed relevant by Firm and/or Airports Authority.

5. Negotiation service and support

- a. Perform economic and qualitative analysis on Letters Of Intent (LOIs) and other proposals to assist decision making by the Airports Authority.
- b. Assist and advise the Airports Authority in negotiating sale and lease transactions.
- c. Coordinate contract parties and supporting services to complete each transaction.

- d. Maintain records of any and all transactions throughout the process from new proposals and LOIs through the execution of ground leases or land sales.
 - e. Regularly update the Airports Authority on the status of prospects, progress of proposals/LOIs and the status of marketing programs.
- 6. Perform such other real estate broker services as required by the Airports Authority.**

Real Estate Consulting Services

The Broker may be asked to perform real estate consulting services on specific properties, markets, real estate property types, real estate trends and other topics of interest to the Airports Authority. Compensation for real estate consulting services will be on a fixed price or hourly basis, as negotiated by the Airports Authority.

The real estate consulting services to be provided by the Firm shall depend on the Airports Authority's requirements and needs. The Airports Authority intends to assign these services on an as-needed basis pursuant to this Statement of Work in a Task Order format. For each specific real estate consulting project, the Airports Authority will provide a specific scope of work to the Firm.

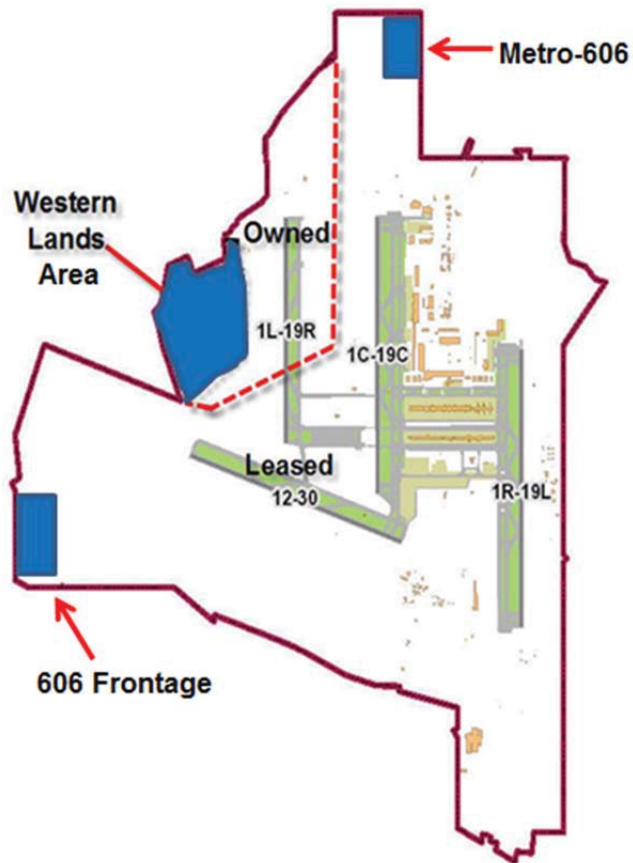
The Airports Authority's Department of Real Estate will task and oversee each individual real estate consulting project assigned to the Firm. Each individual real estate consulting project will be executed by a Task Order by the Airports Authority's assigned Contracting Officer.

Commercial Real Estate Brokerage and Consulting Services

Property Description

The real estate brokerage services will be provided for each of three parcels of land located adjacent to Washington Dulles International Airport known as:

- Western Lands Area
- Metro 606
- 606 Frontage



Note: All data is believed to be accurate but is not guaranteed.

Property Locations at Dulles International Airport

Western Lands Area (WLA) is a 416-acre parcel located at the western extreme of Dulles International on State Route 606, also known as Old Ox Road. The Airports Authority has been processing the necessary Federal Aviation Administration (FAA) approvals, including a National Environmental Policy Act (NEPA) approval, to position the WLA to be marketed as early as 3Q17.

The current strategy is to market the WLA as a ground lease program even though the Airports Authority is the fee owner of the land and it could be sold outright. For additional transaction flexibility, the scope of services and the pricing structure for this solicitation will include WLA land sales.



Note: All data is believed to be accurate but is not guaranteed.

1-17-C057 Attachment 01 Exhibit 1

Metro-606 site consists of approximately 56-68 acres and is located adjacent to the future Loudoun Gateway Metro Station. The Silver Line Metrorail is anticipated to be operational in 2020, bringing commercial activity to this area. Currently, a 56-acre site is not being used, while a 12-acre parcel is being used by Virginia Department of Transportation as a Park & Ride Lot, under a cancellable Deed of Easement. The 12-acre site is known as the Dulles North Transit Center.

Development of this site requires various FAA approvals, including NEPA. Staff has not pursued FAA or NEPA approvals on these parcels because the ultimate use of the site will be determined by the ground lessee(s). This combined 68-acre site is a part of the Airports Authority's federal lease; therefore, the Airports Authority does not have the authority to sell the property. As such, the site will be marketed as a ground lease program. That federal lease expires in June 2067.



Note: All data is believed to be accurate but is not guaranteed.

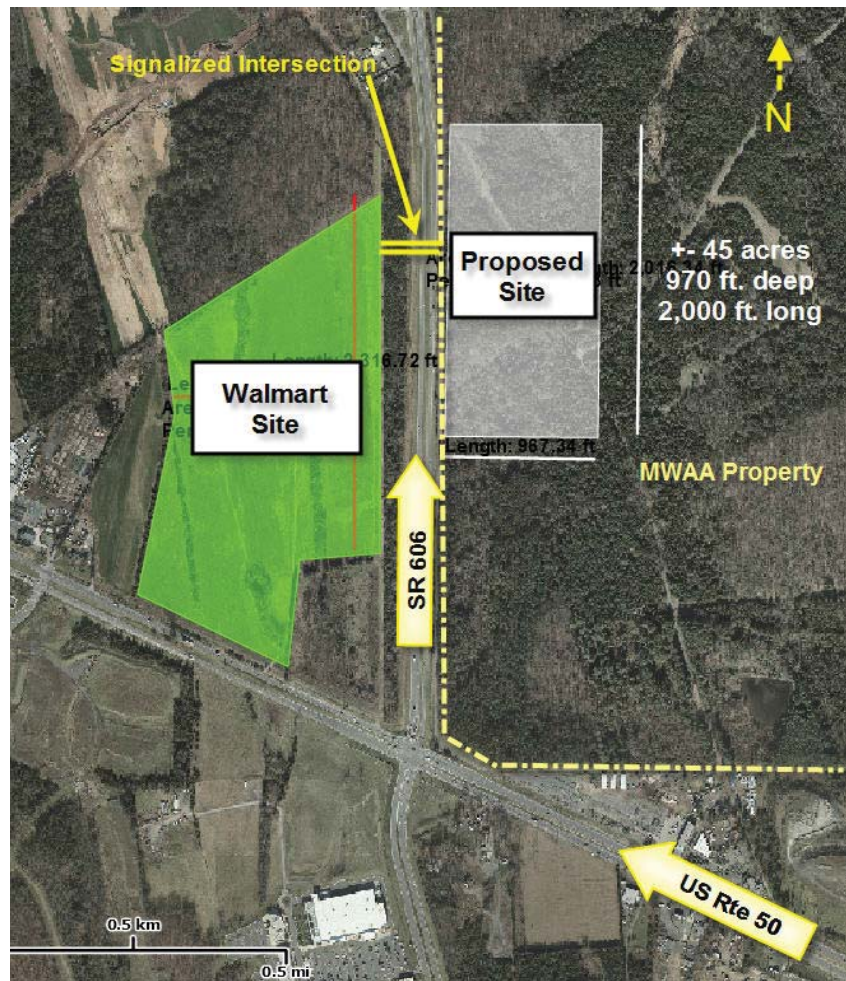
1-17-C057 Attachment 01 Exhibit 1

606-Frontage site is a 45-acre site fronting State Route 606 (Old Ox Road/Loudoun County Parkway) located approximately one-half mile north of State Route 50 (Lee Jackson Memorial Highway). The site is located at an existing signalized intersection at Dulles West Boulevard across Loudoun County Parkway from a 490,000 square foot Walmart-anchored shopping center.

The size and placement of the subject site may vary depending upon adjustments in the road frontage and the lessee's site plan.

FAA approvals, including NEPA, will be required in order to develop this site, but as with the Metro-606 site, staff has not yet pursued these approvals. The site is also a part of the Airports Authority's federal lease that expires in June 2067 and will only be marketed as a ground lease program.

A 70-acre parcel to the north of the site and an additional 45-acre parcel to the south may present future development opportunity; the combined site would be approximately 160 acres.



Note: All data is believed to be accurate but is not guaranteed.

ATTACHMENT 02

EVALUATION CRITERIA AND PROPOSAL SUBMISSION REQUIREMENTS

RFP 1-17-C057 Section X Attachment 02
EVALUATION CRITERIA AND PROPOSAL SUBMISSION REQUIREMENTS

01 EVALUATION CRITERIA

- A. Information submitted in proposals will be evaluated using only the criteria listed below. The criteria are listed in descending order of importance with the first having the most weight and with each of the following criteria having equal or lesser weight than the one preceding it. Each criterion consists of all elements listed in the paragraph under each criterion. Please note that the elements listed in each of these paragraphs are not considered subcriteria and will be evaluated collectively, not individually. In other words, when evaluating how well a technical proposal meets a particular criterion, the Authority will consider all of the elements of that criterion together as a single criterion, not as separate subcriteria. The Authority will base its evaluation on information provided by the Offeror.
- B. The Authority reserves the right to establish a competitive range of offerors based upon its initial evaluation of the technical proposals (the technical evaluation) and at subsequent points during the evaluation process. The Authority also reserves the right to conduct oral interviews with only the offerors in the competitive range and to include the results of the interviews in its evaluation and to consider only these firms for contract award. The Authority further reserves the right to request Best and Final Offers (BAFO) if in the best interest of the Authority. If BAFOs are desired, the Contracting Officer will issue a solicitation amendment containing the BAFO request. This amendment will be issued to all offerors still within the competitive range and will state a deadline for receipt of the best and final offers. Offerors are not required to change their technical and price proposals in response to the BAFO request, but must acknowledge the BAFO amendment even if they do not change their proposals. Once the technical evaluation is complete, those price proposals of offerors on the final list of offerors within the competitive range will be combined with the technical score in making the final selection for contract award.

EVALUATION CRITERIA

PRICE PROPOSAL EVALUATION

Complete Price Schedule and submit as part of the Price Proposal envelope as stated in paragraph 02.A.

The Authority will evaluate price proposals for reasonableness, completeness, and realism as appropriate. Each Offeror's cost will be evaluated in terms of the following which are equal in importance:

1. Submittal of proposed fully loaded fixed rates for period of performance, failure to do so will necessitate rejection of the proposal;
2. Any offer which is materially unbalanced may be rejected. An unbalanced offer is one which is based on prices that are significantly overstated for some items and understated for other items;
3. The Authority will compare the price proposals to the Authority estimate and otherwise determine reasonableness by performing a price analysis if adequate competition exists. A cost analysis will be performed if adequate price competition does not exist, to ascertain whether or not the proposed price is fair and reasonable; and
4. In accordance with the Contracting Manual (latest edition, as revised) or FAR 15.400 for DOT Funded projects, the Offeror shall provide certified cost or pricing data as requested by the Contracting Officer.

TECHNICAL PROPOSAL EVALUATION

The following Criteria are the only ones considered during the Technical Evaluation

Criterion 1: Qualifications and Experience of Assigned Individuals:

The evaluation of this criterion will be based on the breadth, depth, relevance and quality of the recent experience (past three years only) of the individuals who will be assigned to perform the Statement of Work services in selling or leasing commercial land parcels in Northern Virginia and specifically Loudoun County. The proposal should document and explain (i) each assigned individual's real estate experience and specific experience with projects of a similar size, location and complexity as each Property described in the Statement of Work (ii) the prior experience the proposed individuals have working together and (iii) the experience of the individual who will be the Team Leader and primary Point of Contact who will direct and supervise the work of other individuals and who will ultimately be responsible for performing the Statement of Work services.

Criterion 2: Qualifications, Experience and Resources of the Firm:

The evaluation of this criterion will be based on (i) the breadth, depth, relevance and quality of the proposing Firm's recent experience (past three years only) in the provision of services comparable to the Statement of Work services (ii) the proposing Firm's recent experience (past three years only) in selling or leasing commercial land parcels and in selling or leasing improved commercial-industrial property in Northern Virginia and specifically Loudoun County (iii) the proposing Firm's ability to provide logistical and other resources in terms of the office locations, support staff, property management expertise and construction management expertise required to support the individuals in performing the Statement of Work services (iv) the Firm's policies regarding the attainment and/or presence of diversity within its workforce, its actions to implement and achieve these policies, and its performance under these policies and (v) the Firm's ability to market each Property on a local, regional, national and international basis as evidenced by the Firm's number of employees and offices located in each of these sectors.

Criterion 3: Management and Marketing Plan:

The evaluation of this criterion will be based on (i) the extent of participation by the Firm's senior management in the performance of the Statement of Work services and (ii) the nature and quality of the proposing Firm's preliminary marketing plan for each Property including a timeline to bring each Property to market. Acceptability of the proposed Listing Agreement.

02 PROPOSAL SUBMISSION REQUIREMENTS

A. Submission Instructions

Proposals shall be submitted in three (3) parts, each in a separate sealed envelope labeled with the Offeror's name and address, the solicitation number and the envelope name as follows:

Envelope 1: Representation Package

Submit an **original** and **one** (1) copy of the following documents in the **Representation Package** envelope:

- a. Solicitation Offer and Award Page
- b. Representations and Certifications, Section IV
- c. LDDB Certification Exhibits as applicable:
 - Exhibit A, Voluntary Efforts to Obtain MBE/WBE Participation
- d. References. Offerors shall also provide three references (other than the Authority) with the proposal. Include the name of the organization, address, telephone number, name and title of the organization's representative for whom work was provided. Reference should be for firms for which the suggested personnel for this project have provided the work.

Envelope 2: Price Proposal

Submit an **original** and **one** (1) copy of the following documents in the **Price Proposal** envelope:

- a. Price Schedule, Section III
- b. Exhibit D1, Contract Participation Form

Envelope 3: Technical Proposal

Submit an **original** and **seven** (7) copies in the **Technical Proposal** envelope.

- a. Do not include any reference to price.
- b. Submit on typewritten 8 ½ x 11" plain white paper.
- c. Assemble in a three ring binder or staple. No other binding methods are acceptable.
- d. Do not exceed twenty-five (25), double-spaced, single sided pages.
- e. Address the evaluation criteria in the order they are presented.

B. Format and Instructions for Technical Proposal Preparation

Each Offeror's technical proposal must demonstrate the Offeror's ability to meet all requirements in this RFP. The following information is to be provided in the technical proposals and will be used in evaluating the proposals.

The technical proposal will be limited to a total of twenty-five (25) pages, not including exhibits, attachments, resumes, etc. and will include the following sections in the order listed below.

Cover/Title Sheet

Table of Contents Offerors will include a table of contents that lists section numbers and page numbers. This is not part of the overall page limit.

Section 1 Qualifications and Experience of Assigned Individuals

Provide resumes with names, titles, education and real estate experience of all individuals who will be assigned to perform the services described in the Statement of Work. Indicate if the proposed key personnel have worked on projects included in the summary of the firm's most significant experience requested in Section 2 (ii) below, and what role they performed on those projects. Provide the Commonwealth of Virginia, Department of Professional and Occupational Regulation License Number and License Type of each licensee, and identify the relevant Broker of Record.

Provide detailed information regarding the experience (past three years only) of these individuals in selling or leasing commercial land parcels in Northern Virginia and specifically Loudoun County. Provide property specifics such as property location, , total acreage, number of lots, property status in terms of approvals and improvements, total lease consideration or sales volume, land use, sell-out or absorption periods and any other information deemed relevant in demonstrating their qualifications and abilities to perform these services. Outline the experience the individuals have in working together, if any. Identify the individual that will be the Team Leader and primary Point of Contact and provide detailed information regarding their experience as a Team Leader on projects similar to those described in the Statement of Work.

Describe, for each of these individuals, one or more assignments (up to three) which best demonstrates his or her ability to perform the services described in the Statement of Work at a high level of competency. As to each such assignment, please explain the

reasons why you believe the assignment “best demonstrates” the individual’s ability to provide the Statement of Work services, and identify the client for which the services were provided, as well as a person employed by the client (along with a current phone number and email address) who is well acquainted with the individual’s work.

Section 2 Qualifications, Experience and Resources of the Firm

Detail the Offeror’s prior experience and qualifications in providing work similar to that required by the statement of work within the last three years. Provide an overview of the offeror firm (Firm), which must include (i) a general description of Firm’s experience in providing Statement of Work services, (ii) a summary of the Firm’s most significant experience (within the past three years) in selling or leasing commercial land parcels and in selling or leasing improved commercial-industrial property in Northern Virginia and specifically Loudoun County, and in advising and assisting clients in the other real estate brokerage and consulting services described in the Statement of Work (iii) a description of the Firm’s ability to provide the logistical and other resources in terms of the office locations, support staff, property management expertise and construction management expertise required to support the individuals who will be assigned to perform the Statement of Work services and (iv) a description of the Firm’s policies regarding the attainment and/or presence of diversity within the Firm’s workforce, the actions of the Firm to implement and achieve these policies, and the Firm’s performance under these policies and (v) a description of the Firm’s number of employees and offices on a local, regional, national and international basis.

Section 3 Management and Marketing Plan

Provide an organizational chart for the areas of work represented in the Statement of Work. The organizational chart must show the Firm, individuals, Team Leader, key managers, and other staff. The chart must demonstrate the connection of senior management with the individuals performing the Statement of Work services and summarize the communication content and frequency. Based on the Property Description provided herein, describe the Firm’s preliminary marketing plan for each Property, including anticipated significant strategic decisions for the Authority’s consideration and a preliminary timeline for preparing each Property for exposure to the market. Provide a Pro-Forma copy of your proposed Listing Agreement.

Do not include any Price Proposal information in any of the technical proposal sections.

Proposals that do not include all requested information as required in this RFP, that do not conform to these instructions and that do not acknowledge all amendments to the RFP in accordance with the amendment’s instructions, may be deemed nonconforming by the Authority and rejected without evaluation.

ATTACHMENT 03
INSURANCE AFFIDAVIT

INSURANCE AFFIDAVIT

TO BE EXECUTED BY OFFEROR AND AGENT(S) AND SUBMITTED WITH OFFER

Solicitation Number: _____

Name of Offeror: _____

To be completed by the Offeror:

I confirm that, if awarded the Contract, I will comply with all of the insurance requirements listed in the Contract Provisions section of the above referenced solicitation, and said insurance shall be provided without change to the prices offered. I also acknowledge that any questions concerning these requirements, and requests for exceptions, must be submitted by the due date for questions stated in the solicitation.

Name of Offeror

Offeror's Authorized Agent (please print):

Offeror's Authorized Agent's Signature

Date

To be completed by Offeror's insurance provider

(use multiple forms if more than one provider)

I confirm that, if awarded the Contract, the OFFERING Firm (Offeror) stated above either has insurance coverage or can obtain coverage in compliance with the requirements of the above referenced solicitation.

Name of Insurance Agency

Insurance Agent's Name (please print):

Insurance Agent's Signature

Date

ATTACHMENT 04

**AIRPORT ORDERS & INSTRUCTIONS
(Incorporated by Reference)**

Ronald Reagan Washington National Airport

<http://www.mwaa.com/business/orders-and-instructions-dca>

Washington Dulles International Airport

<http://www.mwaa.com/business/orders-and-instructions-iad>

ATTACHMENT 05

NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

THIS NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT, effective the ___ day of _____20___ (“Effective Date”), is made and entered into by and between the Metropolitan Washington Airports Authority (“Authority”), with offices at 1 Aviation Circle, Washington, DC, 20001-6000, and _____ (“Recipient”), with offices at _____.

WHEREAS, in connection with the work that Recipient performs under a contract with the Authority (“Contract”), which includes work that is or may be related to or involve the Authority’s real estate business opportunities (Concepts), among other things, it may be necessary for the Authority or others to convey to Recipient certain information which the Authority considers to be proprietary and confidential; and

WHEREAS, both parties understand the desire that such information be maintained in the strictest of confidence.

NOW THEREFORE, for good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Authority and Recipient hereby agree as follows:

1. **Term.** This Agreement shall commence on the contract Effective Date and shall expire five (5) years after such date or five (5) years after the disclosure of Confidential Information, whichever is later.
2. **Confidential Information.** The Authority may from time to time furnish to Recipient information, in written, oral, visual, or electronic form, pertaining in some manner to real estate business opportunities which the Authority deems to be proprietary and/or confidential (“Confidential Information”). For purposes of this Agreement, (i) information pertaining or related in any a manner to the Concept that is provided Recipient by the Authority in written or other physical form will be deemed Confidential Information if such information is identified as “confidential” or “proprietary” by the Authority, and (ii) information pertaining or related in any a manner to the Concept that is provided Recipient by the Authority orally, visually or electronically shall be deemed to be Confidential Information if the Authority identifies it as such at the time it is provided to Recipient. Notwithstanding the prior sentence, any information provided to Recipient which pertains or relates in any manner to the Concept will be deemed “Confidential Information” if, given the nature of the Concept and its potential utility to the Authority, a reasonable person would consider such information confidential.
3. **Non-Disclosure by Recipient.** Recipient shall treat all Confidential Information provided by the Authority as proprietary and confidential and shall not disclose such information to any person except Recipient’s employees who are assigned to and are working under the Contract and other employees who have a need to know such information in order for Recipient to properly perform under the Contract (collectively, “Representatives”). Recipient shall be responsible for the actions of its Representatives and for purposes of this Agreement, a Representative’s actions shall be deemed actions of the Recipient. Recipient shall safeguard all Confidential Information with at least the same degree of care to avoid disclosure as Recipient uses to protect its own proprietary and confidential information, but no less than reasonable care. Recipient and its Representatives shall not use any Confidential Information other than in connection with the Contract, and shall not use such information for their own benefit or for the benefit of any third party.
4. **Ownership.** All Confidential Information, any copies or summaries thereof, and any materials or concepts developed with Confidential Information shall be and remain the property of the Authority and, if in the possession of Recipient or any Representative shall, upon the Authority’s written request, be promptly returned to the Authority or destroyed in accordance with the Authority’s written instructions; if destroyed, such destruction shall be certified by a senior officer of Recipient. Nothing contained in this Agreement shall be construed as granting or conferring any license, patent, copyright, trademark, or other proprietary rights to Recipient or any third party.

5. Exclusions. Notwithstanding anything herein to the contrary, the parties agree that information will not be deemed Confidential Information, and Recipient will have no obligation with respect to such information, where the information (i) was in the public domain prior to the Effective Date or subsequently came into the public domain other than as a result of disclosure by Recipient, (ii) is independently developed by Recipient outside of the Contract and without use of or reliance on any Confidential Information, (iii) is approved for disclosure by written authorization of the Authority, or (iv) is disclosed to Recipient from a source other than the Authority and such source is not violating any applicable confidentiality obligations.
6. Permitted Disclosure by Recipient.
 - a. Except for a disclosure to a Representative and a disclosure under subsection (b) of this Section 6, any disclosure by Recipient of any Confidential Information provided to it by the Authority may be made only with the prior written consent of the Authority. In any request for consent, Recipient shall provide the Authority with (i) a description of the Confidential Information it wishes to disclose, (ii) the name, occupation, and title of the party to whom Recipient wishes to disclose such Confidential Information, (iii) the purpose of the disclosure, and (iv) in a format reasonably acceptable to the Authority, a copy of an executed original version of a confidentiality statement signed by such person acknowledging he or she (a) is aware of the confidentiality requirements and restrictions of this Agreement, (b) is authorized to act on behalf of the party being bound by the confidentiality statement, (c) agrees, on behalf of himself or herself and that party entity, to be bound by the confidentiality requirements and restrictions of this Agreement, and (d) understands that such requirements and restrictions inure to the benefit of the Authority and may be enforced by the Authority.
 - b. If Recipient or any of its Representatives, employees, officers, directors, or agents is served with a subpoena or other process, or is subject to any law or regulation, requiring the disclosure of Confidential Information provided it by the Authority, then the person or entity receiving such subpoena or other process, before complying with the subpoena or other process, shall immediately notify the General Counsel of the Authority of the same and permit the Authority a reasonable period of time to intervene and contest such disclosure or production. If the Authority does not so contest or is unsuccessful in an effort to contest, Recipient may disclose the requested Confidential Information. In that case, the disclosure shall be limited to only what is required by lawful requirement or operation of law, and Recipient shall otherwise remain bound by its obligations hereunder.
7. Right to Seek Injunction. Recipient acknowledges that any failure by Recipient or any Representative to maintain the confidentiality of any and all Confidential Information as required by this Agreement will cause irreparable harm to the Authority for which no adequate remedy at law exists. The parties therefore agree that, in addition to any other remedies and rights available to the Authority in the event of any such failure, the Authority may seek a court order or injunction without further notice and without posting bond to protect its Confidential Information and to halt any unauthorized disclosure thereof by Recipient or a Representative.
8. Notices. Any notice required or permitted to be delivered pursuant to this Agreement shall be in writing and sent to the address first listed above via any commercially acceptable means including personal delivery, U.S. mail (registered or certified), or overnight courier. Notices shall be deemed delivered upon receipt or upon attempted delivery where such delivery is refused or mail unclaimed.
9. No Waiver. No waiver by either party of any default or breach by the other party of any provision of this Agreement will operate as or be deemed a waiver of any other or subsequent default or breach.
10. Assignment. Neither party to this Agreement may assign or otherwise transfer any of its rights or obligations under this Agreement to any third party.

11. Entire Agreement; Modifications. This Agreement constitutes the entire agreement and understanding of the parties on the subject matter hereof and supersedes all prior or contemporaneous communications, agreements, and understandings, whether written or oral, relating hereto. This Agreement may be modified only by a written agreement dated subsequent hereto and signed by each party's duly authorized representative.
12. Governing Law. This Agreement and any dispute arising under or in connection with this Agreement, including any action in tort, will be governed and construed by the laws of the Commonwealth of Virginia, without regard to any conflict of laws principles which may direct the application of laws of another jurisdiction.
13. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, each party represents and warrants that it has authority to enter into this Agreement and to have executed this Agreement as of the Effective Date.

METROPOLITAN WASHINGTON
AIRPORTS AUTHORITY

____[Recipient Name]____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT 06
LISTING AGREEMENT DEAL TERMS

1-17-C057 Section X Attachment 06

Commercial Real Estate Brokerage

Listing Agreement Deal Terms

The following terms shall be incorporated into any listing agreement (Listing Agreement), between the Contractor and the Airports Authority.

1. The term of each Listing Agreement cannot exceed the term of the Contract.
2. Commission Calculation and Payment
 - a. Ground Leases (applies to all three properties)
 - i. Ground Lease commissions will be based on lease revenue generated during the first ten (10) years (only) of the Ground Lease including calculated escalations but excluding Consumer Price Index increases. Lessee's costs of site improvements, security deposits paid to Airports Authority, utility and common area costs and other expenses are not included as revenue for calculating the Ground Lease commissions.
 - ii. Commissions will be paid from ground lease proceeds when and if collected by the Airports Authority until the full commission amount has been paid to the Contractor.
 - b. Sales (applies to Western Lands only)
 - i. Sale commissions will be based on proceeds generated by the sale. Buyer's costs of site improvements, security deposits paid to Airports Authority, utility and common area costs and other expenses are not included as proceeds for calculating the sale commissions.
 - ii. Commissions will be paid to Contractor from sale proceeds upon closing of the sale transaction.
 - c. Airports Authority will have the unqualified right to discontinue negotiations or, prior to the execution and delivery of a ground lease or sale contract, reject any proposal.
3. Without Cooperating Broker
 - a. If Contractor is the sole procuring cause of the ground lease or sale contract, the ***Without Cooperating Broker Schedule*** will be used for calculating the Contractor's commission.
4. With Cooperating Broker
 - a. If a Cooperating Broker is involved in a ground lease or sale contract, commissions payable to Contractor will be calculated according to the ***With Cooperating Broker Schedule*** and will be shared evenly (i.e. 50% each) between the Contractor and the Cooperating Broker. Contractor will provide Airports Authority a copy of each cooperating brokerage agreement and proof of payment upon request.
 - b. Whether or not an agent in the Contractor's firm can be deemed to be a Cooperating Broker will be decided by the Airports Authority and the parties will document the decision in each situation.
5. Termination
 - a. The Listing Agreement can be terminated by Airports Authority "for cause" with 10 calendar days prior written notice to Broker during the initial term of the agreement or

“without cause” by either party during any renewal period with 10 calendar days prior written notice to the other party.

6. Performance Standards

- a. The Airports Authority will determine the duties and obligations of the Contractor under each Listing Agreement.

7. Broker Protection Period

- a. Upon expiration or termination of each Listing Agreement, Airports Authority will recognize Contractor in pending negotiations of a ground lease or sale contract provided such ground lease or sale contract is fully executed i) within 120 calendar days of the expiration or termination of the Listing Agreement and ii) with an active prospect identified as such by Contractor and approved by Airports Authority prior to expiration or termination of the Listing Agreement.
- b. An active prospect will be defined as a prospective lessee of a ground lease contract or prospective buyer in a sale contract who has both i) toured the property and ii) recently engaged in documented negotiations, with the actual knowledge of Airports Authority.

8. Reimbursements

- a. Broker will be reimbursed for expenses related to the Listing Agreement that have received prior written approval by Airports Authority.

9. Other

- a. All agents providing services under the Listing Agreement must be licensed in the Commonwealth of Virginia.
- b. Each Listing Agreement will be governed by laws of the Commonwealth of Virginia