

METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS



REQUEST FOR PROPOSAL, RFP No. 17-001

July 18, 2016

SPECTROSCOPIC PERSONAL RADIATION FOR MULTIPLE JURISDICTIONS IN THE NATIONAL CAPITAL REGION

I. INTRODUCTION

The Metropolitan Washington Council of Governments (“COG”) is the regional organization comprised of 22 of the Washington area's major local governments and their governing officials, plus area members of the Maryland and Virginia legislatures and the U.S. Senate and House of Representatives. COG provides a focus for action on issues of regional concern such as comprehensive transportation planning, air and water quality management plans, environmental monitoring, tracking economic development and population growth and their implications on the region, coordinating public safety programs, and promoting adequate child care and housing for the region. COG is supported by financial contributions from its participating local governments, federal and state government grants and contracts, and through donations from foundations and the private sector. More information on COG may be found at www.mwcog.org.

II. BACKGROUND

The National Capital Region (NCR) is committed to preserving life and to promoting health and safety through pre-hospital treatment and transportation, fire prevention, fire suppression and rescue, law enforcement, and attentiveness to homeland security threats. With that said we strive through training, purchasing state of the art equipment, and utilizing the latest technological innovations to protect the citizens and avoid unnecessarily placing our responders at risk. Our role as the fire and emergency medical services departments, and law enforcement agencies requires us to perform early detection of radiological hazards and request the necessary local, state, and federal resources to further investigate and mitigate the accidental or intentional release of radiological materials.

The NCR is requesting to purchase 350 spectroscopic personal radiation detectors (SPRDs) that will meet the specifications listed below in order to ensure we are meeting the steady state and enhanced steady state goals set forth by the Securing the Cities initiative.

For more information on the STC program, please visit: <http://hsema.dc.gov/page/securing-cities-stc-program>

III. SCOPE OF WORK

COG desires to find a responsible and responsive Contractor to fulfill the requirements of this RFP. The Contractor, at COG’s direction, shall manage the purchasing of 350 equipment participating agencies. The Contractor shall ensure the ordering agencies receive the listed equipment as specified below and in the approximate quantities as defined.

The Contractor must be an authorized Partner/Reseller capable of ordering and providing the equipment at the time of award selection. The Contractor shall provide COG with the complete (not partial) version specifications and quantities of the required equipment identified below. The most recent commercially available model, version or release of the specified equipment must be supplied. New items only; no refurbished, grey market, or previously used items will be accepted. “Grey market” is defined as trade of a commodity through distribution channels which are legal but are unofficial, unauthorized or unintended by the original manufacturer.

Instrument must meet or exceed all of the specifications listed below:

Detector(s)	Detector(s) capable of detecting gamma and neutron radiation
Sensitivity for Cs¹³⁷ (662 keV)	1.0 cps/uR/hr
Thermal Neutron Sensitivity	2.0 cps/nv
Gamma Energy Range	50 keV – 2.6 MeV
Neutron Energy Range	.05 eV – 12 MeV
Gamma Dose Rate Measurement Range	1 uR/h – 20 mR/h
Dose and Dose Rate Alarm Levels	Must be configurable via PC software connection (may be BlueTooth, USB or IR connection)
Dose Rate Accuracy (Linearity error)	Maximum ±20% (Dose rate accuracy must be within these values, across the entire range of operating temperatures.)
Dose Range	1 µR – 999 R
Time to Alarm	Gamma: Within 2 seconds (must meet requirement of ANSI 42.32) Neutron: Within 2 seconds (must meet requirement of ANSI 42.48-2008, 20,000n/s @25cm)

Time to Identify Gamma	Ba-133 @ 100uR/h – no more than 30 seconds Ra-226 @ 100uR/h – no more than 120 seconds
Alarm Type	Visual, audio (including connection for earphone), vibration. Distinction between gamma and neutron visual and audio alarms
Dose Alarm	2 alarms provide low and high indication for dose rate and integrated dose.
Enhanced Algorithm	Energy window ratio algorithm or similar processing technique which allows operator to distinguish between harmless changes in natural background radiation and potential sources of threat due to the presence of man-made radioactive sources
Identification Algorithm	Automatic start of spectrum acquisition when alarm threshold is met. (Identification must meet ANSI N42.48 2008)
Calibration: Gamma	Automatic and continuous energy calibration using temperature. Field calibrations using exempt or NORM sources. Not required to return to factory for calibration.
Calibration: Neutron	Automatic and continuous calibration without a source. Detector status on screen to provide indication that detector is operational.
Data Recording	≥ 1,500 mean and maximum values of dose rate ≥ 200 alarms, errors and configuration changes ≥ 1000 spectroscopic data files
Data Format	Spectroscopic data files must in N42.42 format. Other file formats are acceptable as options in addition to the N42.42 format.
Environmental Protection	IP65
Drop Test on Concrete Floor	3 feet. (Protective cover may be used to accomplish this, as long as PRD with cover conforms to dimensions requirement)
Display	Bright, backlit numbers/letters for easy readability.
Displayed Units	Units autoscale and are configurable between CPS, CPM, dose rate, or dose rate level (1-9)
Power Supply	Either alkaline or rechargeable batteries

Battery Life Time	<p>Not less than 100 hours at normal background when using alkaline batteries.</p> <p>Not less than 50 hours at normal background when using rechargeable batteries.</p> <p>Not less than 100 hours at normal background when using alkaline batteries when PRD is utilizing a BlueTooth connection to another device.</p> <p>Not less than 50 hours at normal background when using rechargeable batteries when PRD is utilizing a BlueTooth connection to another device.</p>
Operating Temperature Range	0° F - 120° F
Dimensions (L x W x H)	Not to exceed 2" x 3" x 5"
Weight	Not to exceed 8.0 oz (including batteries)
Low Battery Warning	LCD and audible
Overload Indication	Must have an alert word such as "OVERLOAD" or "DANGER" on display screen
Personnel Carrier	Each SPRD must be accompanied with a holster or durable belt clip designed for personnel wearing the SPRD on their person. Holster must be ruggedized and durable to meet requirements of daily use by first responders. Holster must meet STC Committee approval prior to acceptance.
Vehicle Holder / Recharger	Mechanical holding device for SPRD that secures PRD in a vehicle and that also charges SPRD via 12V DC "cigarette lighter" adaptor if rechargeable batteries are being used.
PC Communication	IRDA to USB; or Blue Tooth 4.0 or better. Blue tooth must be native to the SPRD and not require additional external equipment.
Software	Windows based PC software for data logging and recording histories of total accumulated dose for personnel.
Training	Training for SPRD basic use and configuration, PC Software use and program administration developed per STC NCR provided curriculum to be completed and available online and/or as smart phone application (for iOS and Android, per

	STC NCR specifications) within 2 months of receipt of order. Vendor may be required to provide mechanism to record and report training completed online or by smart phone, per NCR regional specifications. The vendor must provide use of these training tools for the life of the SPRDs, with no additional cost to the region.
Other	Region may require that SPRDs be delivered with STC NCR region provided inventory control stickers adhered to the SPRDs and with a CD containing completed .csv file containing region specified data fields for use in inventory tracking for all SPRDs. Vendor may be required to create and produce customized label to complete the previous task, which includes bar or Q code information per regional tracking requirements.
Other	Vendor is responsible for ensuring that SPRD data stream from vendor generated and DNDO STC smart phone app can transmit data in real time to into the DHS STC Information Sharing Environment (an ESRI GIS portal) or approved local server. Vendor may be required to develop and support a smart phone app (at no additional cost to the region) in iOS and Android formats, to facilitate this transmission. Specifications will be provided after receipt of order, as further details are not available at this time.
Other	Vendor is responsible for providing regular maintenance and repair records to the region in a predetermined format compatible with the region's inventory and tracking systems. Data will requested at regular and recurring intervals by the region, TBD.

IV. PROJECT MANAGEMENT REQUIREMENTS

1. Reports – Complete the following reports using templates and deadlines provided by the Task Lead:

- a. Weekly – Status of and work completed on delivery status;
 - b. Monthly – Status of and work completed on deliverables, hours worked by project team on each deliverable, and status of budget compared to proposed budget;
 - i. Input on this monthly report will also be used for invoicing requirements;
 - c. Quarterly – Status of spending and completion of each deliverable included in the grant required Project Management Plan document; and
 - d. Close-Out – Status of projects, close-out requirements, and best practices and lessons learned from processes used to complete deliverables.
2. Meetings – Participate in the following meetings as directed by the Task Lead:
- a. Weekly (30-60 minutes) – Conference call or meeting with Task Lead and associated contractor teams on the status of the deliverables and barrier identification;
 - b. Monthly (1 hour) – In-progress review with Senior Leadership to discuss progress, barriers, and budget issues; and
 - c. Close-Out (1 hour) – Discussion of deliverables, best practices, and lessons learned.

V. RIDER CLAUSE

The contract resulting from this procurement shall be available for use by any state or local agencies and the District of Columbia. However, COG has identified the following agencies as potential major users of the resulting contract.

Agency	Address
Maryland State Police	Maryland State Police 6855 Deerpath Rd Ste G Elkridge MD 21075
Maryland Natural Resource Police	Maryland Natural Resources Police, Special Operations 306 Marine Academy Dr Stevensville, MD 21666
Montgomery County Fire	Chevy Chase Fire Department 8001 Connecticut Ave Chevy Chase, MD
Montgomery County Police	Montgomery County Police Department Officer Carl Holland- ESU 14935-B - Door 7 Rockville, MD 20850
Price George County Fire	Fire Station 816 14901 Health Center Drive Bowie, MD 20716
Prince George County Police	Prince George’s County Police Department 6700 Riverdale Road Riverdale, Maryland 20737
Virginia State Police	Virginia State Police

	9801 Braddock Road, Fairfax, Virginia 22032
City of Alexandria Fire	City of Alexandria, Virginia Fire Dept. 2800 Main Line Blvd. Alexandria, VA 22301
City of Alexandria Police	Alexandria Police Department 3600 Wheeler Ave., Alexandria, VA 22304
Fairfax County Fire	Fairfax County Fire & Rescue Department 4621 Legato Road, Fairfax, Va. 22030
Fairfax County Police	Fairfax County Police Department Deliver to 3911 Woodburn Road Annandale VA 22003
Arlington County Fire	Arlington County Fire Department Logistics Attn: FF Ned Waterfall 1740 South Hayes St Arlington, VA 22202
Arlington County Police	Arlington County Police 1425 N. Courthouse Rd. Arlington, VA. 22201
Prince William County Fire	Prince William County Police Department Logistics & Support Section 9039 Euclid Avenue Manassas, VA 20110
Prince William County Police	Prince William County Police Department Logistics & Support Section 9039 Euclid Avenue Manassas, VA 20110
City of Manassas Fire	9324 West Street Manassas, Va. 20110
Loudoun County Fire	Loudoun County Fire, Rescue, and Emergency Management Logistics Warehouse 14 Cardinal Park Drive, SE, Suite 103 Leesburg, VA 20175
Loudoun County Sheriffs	Loudoun County Sheriff's Office 803 Sycolin Road, SE Leesburg, VA 20175
DC Metropolitan Police	2850 New York Ave., N.E. Washington DC 20002

DC Fire and EMS	1338 Park Road NW Washington, DC 20010
Washington Metropolitan Area Transit Authority (MWATA)	600 Fifth Street NW Washington, DC 20001
Metropolitan Washington Airport Authority (MWAA)	MWAA Fire & Rescue Department ATTN: CAPT. Mike Fetsko, MA-320 c/o: Warehouse Bldg., MA-134 Reagan National Airport Washington, D.C. 20001
George Mason University Police Department	George Mason University Department of Police & Public Safety 4400 University Drive, MS 3D3 Fairfax, VA 22030
Gaithersburg Police Department	Gaithersburg Police Department 14 Fulks Corner Ave. Gaithersburg, MD 20878

VI. TYPE OF CONTRACT AND PERIOD OF PERFORMANCE

COG shall award a fixed price contract for **Section III Scope of Work and Section IV Project Management Requirements**. This price shall be inclusive of all expenses, profits, and fees. The period of performance of the contract will be from July 1, 2016 through June 30, 2017. COG may, at its own discretion, and based on the successful Contractor(s) performance, extend any contract awarded as a result of this procurement for up to four (4) additional option years. The selected Contractor will be notified 60 days in advance of the termination date if the contract will be renewed for the ensuing option year.

VII. DEFINITIONS

- a. Contracting Officer - The Executive Director of the Metropolitan Washington Council of Governments.
- b. Contractor – An individual or organization awarded the prime contract based on this solicitation
- c. Subcontractor- An individual or business firm contracting to perform part or all of a Contractor’s contract.
- d. Technical Selection Committee (“TSC”) - A group of individuals assigned to evaluate proposals received in response to a Request for Proposals or an approved alternate form of procurement, or specific aspects of such proposals.

VIII. SPECIAL CONDITIONS

The following conditions apply to the Contractor:

- a. Federal, state, or foreign taxes are not allowable.
- b. Legal fees of any type are not allowable without prior written approval of the COG Contracting Officer.
- c. In the event the project is terminated by administrative action, the Contractor will be paid for work actually performed prior to the date of termination.
- d. Any work to be subcontracted to a "Subcontractor" shall be clearly identified and such "Subcontractor" shall be approved by COG prior to contract issuance pursuant to this RFP.
- e. The Contractor, acting as an independent contractor, shall hold COG harmless from and shall be solely responsible, where found liable, for the payment of any and all claims for loss, personal injury, death, property damage, or otherwise, arising out of any act of omission or negligence of its employees or agents in connection with the performance of this work.
- f. In case of failure by the Contractor and/or Subcontractor to perform the duties and obligations imposed by the resulting contract, COG may, upon verbal notice, to be confirmed in writing, procure the necessary services from other sources and hold the Contractor and/or Subcontractor responsible for any and all additional costs occasioned thereby.
- g. The Contractor covenants that it presently has no interest, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. The Contractor further covenants that in the performance of this contract, no person having any such interest shall be employed.
- h. It is understood that funding for the ensuing contract is contingent upon COG receiving funds from the sponsoring agency. Should funding from the sponsoring agency be delayed, for any reason, COG shall make a concomitant delay in funding to the Contractor.
- i. Payment will be made to the Contractor 30 days following the receipt of a correct invoice from the Contractor and approval by the COG Project Manager. Contractor shall submit its final invoice within 30 days after expiration of the contract.
- j. The terms and conditions set forth within Exhibits A and B, attached to this RFP, are incorporated by reference as if set forth herein verbatim. In submitting a proposal in response to this RFP, and in performing services under any contract resulting from this RFP, the successful contractor shall be bound to comply with all of the terms, conditions, and requirements referenced within Exhibits A and B.

IX. INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS

The Contractor shall supply with its proposal the following:

1. An itemized list of all equipment based on a unit cost breakdown as per the approximate quantities outlined in Attachment C.
2. Specification sheets for all items including the names all manufacturers.
3. A project narrative including a timeline, as well as, an outline of the organization's capabilities, capacities, and key employees who will be involved in fulfilling the contract requirements. This needs to include a definition of proposed associated contractor teams mentioned in Section IV(2)(a) above.
4. A list of at least three (3) references to which the Contractor supplied similar products and equipment.

COG is the procuring entity, and this procurement transaction will, in all aspects, be governed by COG's own procurement policy and procedures. A copy of COG's procurement policy is available to any potential offeror, by request. COG intends to award one or more contracts resulting from this solicitation to qualified, responsible Offeror(s) whose proposals conform to the requirements of this RFP and whose proposals are most advantageous to COG.

COG may award a contract on the basis of initial offers received, without discussion. Therefore, each initial offer shall contain the Offeror(s)'s best terms from a price and technical standpoint. COG may communicate with Offeror(s) in order to clarify, verify or obtain additional information about the Offeror(s)'s past performance or experience; however, if discussions are conducted with any Offeror(s), COG will follow the process set forth within its procurement policy relative to the conduct of competitive negotiations.

X. QUESTIONS

Technical or Administrative questions must be submitted in writing to COG Contract and Procurement Analyst Jalene Duressa at jduressa@mwkog.org Questions must be submitted by **Monday July 25th by 12noon**

XI. SUBMISSION AND CONTACT

All respondents shall submit two (2) paper copies and one (1) PDF copy on CD or USB of their proposal to:

JALENE DURESSA
CONTRACTS AND PURCHASING ANALYST
METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS
777 NORTH CAPITAL STREET, NE, SUITE 300
WASHINGTON, DC 20002-4239

Proposals shall be submitted by no later than 2:00 p.m., Monday August 1, 2016.

Please place the RFP number on the outside of your submission. Proposals **MAY NOT** be submitted through email, fax or any other electronic methods.

XII. METHOD OF EVALUATING PROPOSAL AND CONTRACTOR SELECTION

Proposal Evaluation

The proposals will be evaluated by a Technical Selection Committee. In evaluating the proposals, the following factors will be considered, with points awarded up to the maximum shown:

Factor	Points
Experience and capabilities of the Contractor	30
DBE Participation	15
Cost and Price Analysis	40
References	15
Total Points	100

Contractor Selection

The Technical Selection Committee may hold a pre-selection meeting with the top ranked proposers. The final recommendations for selection to the COG Contracting Officer may be made based upon the interviews and/or a best and final offer, submitted by the proposers if required.

Late Proposals

Any proposal received at the office designated in this RFP after the exact time specified for receipt, will not be considered, and will be returned, unopened, to the sender, unless it is the only proposal received. Any modifications to a proposal will be subject to these same conditions. Proposals may be withdrawn by written or telephonic notice received at any time prior to award.

XIII. REFERENCES

In addition to the requirements above, the proposed Contractor, and any Subcontractor or "Other Subcontractor" shall provide references from a minimum of three (3) current/past clients who were provided goods or services of a similar nature to those provided in this RFP. Names, titles, addresses, and telephone numbers shall be included for each reference.

XIV. DISADVANTAGED BUSINESS ENTERPRISE

The Metropolitan Washington Council of Governments, in accordance with Title VI of the Civil Rights Act of 1964 and 78 Stat. 252, 42 USC 2000d and Title 49, Code of Federal Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract

entered pursuant to this advertisement will afford minority business enterprises full opportunity to submit bids in response to this invitation, and will not discriminate on the grounds of race, color, sex or national origin in consideration for an award.

Disadvantaged Business Enterprise (DBE) participation shall be an integral component of the Contractor selection procedure for this RFP. COG has established a DBE goal of 15% for this project. Respondents shall submit with their proposals a DBE Participation Plan to meet this goal. The plan shall identify any DBE (defined in 49 CFR Part 26) that shall be participating in the project. The plan shall include the name and address of the firm, a copy of the firm's current DBE Certification from any federal, state, or local government agency that certifies DBE ownership (please note only DBE certifications will be accepted by COG for this purpose).

<u>PARTICIPATION</u>	<u>POINTS</u>
10% to 14%	2
15% to 19%	4
20% to 24%	6
25% to 34%	8
35% or more	15

Please note that the Contractor will be required to track DBE for itself and any subcontractors in a manner required by COG with each submission of an invoice requesting payment.

ATTACHMENT A
STANDARD TERMS AND CONDITIONS

I. Energy Conservation – 42 U.S.C. 6321 et seq.

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

II. Clean Water Requirements – 33 U.S.C. 1251 et seq.

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended. The Contractor agrees to report each violation to COG and understands and agrees that COG will, in turn, report each violation as required to assure notification to appropriate federal agencies including the appropriate EPA Regional Office.
2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance.

III. Lobbying – 31 U.S.C. 1352 et seq.

(To be submitted with each bid or offer exceeding \$100,000)

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal Loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of and Federal contract, grant, loan, or cooperative agreement.
2. If any funds or than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions [as amended by “Government wide Guidance for New Restrictions on Lobbying,” 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein as been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et.seq.*)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

IV. Access to Records and Reports – 49 U.S.C. 5325

1. The Contractor agrees to provide COG, and if applicable the state or federal funding agency, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transactions.
2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until COG, the applicable state or federal funding agency, the Comptroller General, or any of the their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

V. Funding Agency Changes

Contractor shall at all times comply with all applicable state and federal agency regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the funding agreement between such agency and COG, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to comply shall constitute a material breach of this contract.

VI. Clean Air – 42 U.S.C. 7401 et seq

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to COG and understands and agrees that COG will, in turn, report each violation as required to assure notification to the funding federal agency, if any, and the appropriate EPA regional office.
2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance.

VII. Recycled Products – 42 U.S.C. 6962

The Recycled Products requirements apply to all contracts for items designated by the EPA, when COG or the contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using federal funds.

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

VIII. No Government Obligation to Third Parties

1. The Contractor acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities of COG, the Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

IX. Program Fraud and False or Fraudulent Statements and Related Acts – 31 U.S.C. 3801 et seq.

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et. seq. and all appropriate federal agency regulations apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract of the Federally assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or caused to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor or to the extent the Federal Government deems appropriate.

2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
3. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

X. Termination – 49 U.S.C. Part 18

Applicable to all contracts in excess of \$10,000

- a. **Termination for Convenience** – COG, by written notice, may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in COG's best interest. If this contract is terminated, COG shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- b. **Termination for Default [Breach or Cause]** – If the Contractor fails to perform in the manner called for in this contract, or if the Contractor fails to comply with any other provisions of the contract, COG may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contract is in default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by COG that the Contractor had an excusable reason for not performing, such as strike, fire, or flood, events which are beyond the control of the Contractor, COG, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.
- c. COG in its sole discretion may, in the case of termination for breach or default, allow the Contractor ten (10) working days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.
If the Contractor fails to remedy to COG's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within the 10 working days after receipt by Contractor of written notice from COG setting forth the nature of said breach or default, COG shall have the right to terminate the Contract without further obligation to Contractor. Any such termination for default shall not in any way operate to preclude COG from also pursuing all available remedies against Contractor and its sureties for said breach or default.
- d. In the event COG elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by COG shall

not limit COG's remedies for any succeeding breach of that or any other term, covenant, or condition of this Contract.

XI. Civil Rights Requirements – 29 U.S.C. § 62, 42 U.S.C. § 2000, 42 U.S.C. § 602, 42 U.S.C. § 12112, 42 U.S.C. § 12132, 49 U.S.C. § 5332

1. **Nondiscrimination** – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of Federal law, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations.
2. **Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying contract:
 - a. **Race, Color, Creed, National Origin, Sex** – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable Federal Statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of this Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements the funding federal agency may issue.
 - b. **Age** – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and other applicable law, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements the funding federal agency may issue.
 - c. **Disabilities** – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees

to comply with any implementing requirements the funding federal agency my issue.

3. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal Assistance, modified only if necessary to identify the affected parties.

XII. Breaches and Dispute Resolution

Disputes – Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the COG Executive Director or his/her designee. This decision shall be final and conclusive unless within ten (10) working days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Executive Director or his/her designee. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Director or his/her designee shall be binding upon the Contractor and the Contractor shall abide the decision.

Performance During Dispute – Unless otherwise directed by COG, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claim for Damages – Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for acts it is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies – Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between COG and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the District of Columbia.

Rights and Remedies – The duties and obligations imposed by the Contract and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by COG or the Contractor shall constitute a waiver or any right or duty afforded to them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach there under, except as may be specifically agreed in writing.

XIII. Patent and Rights in Data

A. Rights in Data - The following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in

computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance.

(c) For FTA Assisted Contracts - When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or

disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless the federal funding agency determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through the federal funding agency, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until the Federal funding agency is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through the Federal funding agency, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

XIV. Interest of Members of Congress

No member of or delegates to the Congress of the United States shall be admitted to a share or part of this Contract or to any benefit arising there from.

XV. Interest of Employees of COG

No employee of COG who exercises any functions or responsibilities in review or approval of the undertaking or carrying out the Project during his or her tenure or one year thereafter, shall have any personal interest, direct or indirect, apart from his or her official duties, in this Contract or the proceeds thereof.

XVI. Interest of the Contractor

The Contractor covenants that it has presently no financial interest, shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this CONTRACT. The Contractor further covenants that, in the performance of this Contract, no person having any such interest shall be employed.

XVII. Allowable Costs

Only those costs which are consistent with Title 48 Part 31 of the Code of Federal Regulations shall be reimbursed under this Contract.

XVIII. Covenant Against Contingent Fees

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

XIX. Indemnification

The Contractor, acting as an independent contractor, shall hold COG harmless from and shall be solely responsible, where found liable, for the payment of any and all claims for loss, personal injury, death, property damage, or otherwise, arising out of any act of omission or negligence of its employees or agents in connection with the performance of this work.

XX. Severability

It is understood and agreed by the parties that if any of these provisions shall contravene, or be invalid under, the laws of the particular state, county or jurisdiction where used, such

contravention or invalidity shall not invalidate the whole agreement, but the Contract shall be construed as if not containing the particular provision or provisions held to be invalid in the said particular state, county or jurisdiction and the rights and obligations of the parties shall be construed and enforced accordingly.

XXI. Assignments

This Contract shall not be assigned, sublet or transferred in whole or in part by the Contractor, except with the previous written consent of the COG Contracting Officer or his designee.

XXII. DBE Assurances

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or other such remedy as the recipient deems appropriate.

XXII. Entire Agreement

This Contract sets forth the entire understanding of the parties and supersedes all previous agreements, whether oral or in writing, relating to the subject matter hereof. This Contract may only be altered, amended or modified in accordance with Changes Clause of this Contract.

XXIII Confidential or Personal Data

- a. COG respects the privacy or business interests involved in confidential or personal data. It is COG's policy to obtain confidential or personal data or store or allow storage of such data only 1) when necessary to fulfill COG's information-gathering and data collection responsibilities, or 2) in conjunction with COG projects. COG intends to minimize risk of disclosure of such confidential or personal data.
- b. Whenever feasible and the requirements of a project allow, the names of survey participants or users of a website or other data collection method shall not be accepted, recorded, stored or retained.
- c. When COG engages in a project, which involves the collection or storage of confidential or personal information by or through use of surveys, websites or by other data collection, the following conditions shall be met:
 - 1) The survey, website or other collection method shall contain a set of conditions for use and a disclaimer of any COG liability for use, in language approved by COG in writing.

- 2) The party(ies) working with COG shall demonstrate adherence to a federal or applicable state standard for protecting confidential or personal information.
- 3) The confidential or personal information collected or stored by or through the survey, website or other data collection shall be kept confidential. All necessary steps shall be taken to protect the privacy of the users of the website or other data collection. Any confidential or personal information provided by users of the website or other data collection, including but not limited to their names and addresses, shall be protected.
- 4) COG shall retain control over and ownership of all surveys, WebPages, control files and scripts, database schema, and database contents, in addition to all content which is published on or stored by the website or other data collection, unless COG specifically agrees in writing otherwise.
- 5) No release of any announcements intended for public dissemination concerning the collection or storage of such information by or through the survey, website or other data collection shall occur until COG has given prior written authorization, unless COG specifically agrees in writing otherwise.
- 6) In the event that information collected or stored by or through the survey, website or other data collection shall be stolen or handled incorrectly, the party(ies) working with COG on the project shall be responsible for any required notification to persons who have entered personal information in that system and all costs related thereto.
- 7) The project documents shall provide that other parties working with COG on the survey, website or other data collection or storage shall indemnify COG with at least the following commitment:

The [CONTRACTOR or other party] shall indemnify and hold COG harmless from and shall be solely responsible, for the payment of any and all claims for loss, personal injury, death, property damage, infringement or misappropriation of any third party's intellectual property rights, violation of privacy, confidentiality or otherwise, arising out of any act of omission or negligence of its employees or agents in connection with the performance of the work under this [agreement or memorandum of understanding].

- 8) At the end of the project or contract, any personal or confidential information shall be given to COG or destroyed and a certification of destruction provided to COG by the contractor or other party.

ATTACHMENT B

**CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS**

The prospective vendor certifies to the best of its knowledge and belief that it and its principals:

- Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any department or agency of the District of Columbia, State of Maryland or the Commonwealth of Virginia or any of the 22 jurisdictions comprising the membership of the Metropolitan Washington Council of Governments (COG);
- Have not within a three year period preceding this date been convicted of or had a civil judgment rendered against them for commission of fraud or criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated above of this certification; and
- Have not within a three-year period preceding this date had one or more public transactions (Federal, State or local) terminated for cause or default.

Vendor understands that a false statement on this certification may be grounds for rejection of any submitted proposal or quotation or termination of any award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both if federal funds are being used to support the procurement.

Typed Name of Vendor

Typed Name & Title of Authorized Representative

Signature of Authorized Representative

Date

