



REQUEST FOR PROPOSAL #19-014

SUSPICIOUS ACTIVITY RECOGNITION TRAINING (SART) PROGRAM

Submission Due Date: May 30, 2019

Time: 2:00 PM EDT

Please see Section IX for submission instructions

Attn: Jayme Hardy
Cooperative Purchasing Specialist
Metropolitan Washington Council of Governments

SUSPICIOUS ACTIVITY RECOGNITION TRAINING (SART)
PROGRAM

Request for Proposal (RFP) #19-014

I. METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS

The Metropolitan Washington Council of Governments (“COG”) is the regional organization of 24 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. REQUIRED SERVICES

COG is seeking a qualified Contractor to provide a comprehensive Suspicious Activity Recognition Training (SART) Program for up to 90 law enforcement officials and non-law enforcement personnel within the National-Capital Region (NCR). The Program should deliver training on how to, at a minimum, detect, respond, and prevent violent events (“SART Program”). COG anticipates a contract award with a one (1) year base term, with five (5) one-year renewal options, for the delivery of the SART Program.

III. DEFINITIONS USED IN THIS DOCUMENT

COG	The Metropolitan Washington Council of Governments
Contractor	The term used throughout this document to describe the individual or organization awarded the contract based on this solicitation.
Contracting Officer	The Executive Director of the Metropolitan Washington Council of Governments
Technical Selection Committee	The Committee established to review the qualifications of contractors offering to provide the requested professional services in this solicitation and recommend the selection of a contractor to the COG Contracting Officer.
Subcontractor	Any subcontractor hired by the Contractor.
Offeror	Party of interest submitting a proposal in response to this RFP.
Key Personnel	Personnel proposed by the Offeror to meet the requirements of the RFP for acceptance by COG. Any changes to the proposed personnel must be approved by COG.

IV. PROGRAM INFORMATION AND SPECIFICATIONS

A. CONTRACTOR(S) QUALIFICATIONS

The Contractor must meet the following required qualifications:

1. Minimum of three (3) years of recent (within the last five (5) years), successful experience teaching law enforcement (LE) personnel, civilian responders, security staff and civilians about suspicious activity recognition (preferably within the NCR); and
2. Propose Suspicion Indicators Recognition and Assessment (SIRA) certified instructor(s) as Key Personnel.

B. SCOPE OF WORK

Contractor shall supply the qualified personnel, tools, techniques, equipment, and materials to deliver the SART Program, meeting the following objectives for LE officials and non-LE personnel by August 31, 2019:

1. Detection: detect and assess suspicion indicators that could be an intent to carry out any man-made threat;
2. Response: immediately respond to a threat and/or an incident and disrupt the overall goal of an attacker;
3. Prevention: prevent additional threats and/or violent incidents from occurring; and
4. Training: train LE personnel how to teach other LE officials and non-LE personnel how to identify suspicious activity anywhere in the NCR and prevent violent events from occurring.

Contractor shall provide a standardized SART Program curriculum in advance, inclusive of a course schedule, to COG for approval. At a minimum, the SART Program shall deliver the following courses:

1. LE Certification Course: Five (5) Day/40 Hour classroom-based training course for up to 40 LE Personnel;
2. LE Instructor Course: Five (5) Day/40 Hour classroom-based training course for up to ten (10) LE personnel to become an instructor of other LE and non-LE personnel. Contractor shall provide a method of confirming attendees have met the requirements as an instructor ("SART Instructor Certificate(s)"); and
3. Non-LE Awareness Course: One (1) Day/ Eight (8) Hour classroom-based training course for up to 40 non-LE personnel awareness.

Contractor will be responsible for carrying out the following administrative duties in connection with its performance of the SART Program:

1. Attendance Sheets: Contractor will be responsible for ensuring attendance of the SART Program is recorded and provided to COG after each course;
2. SART Instructor Certificates: Contractor shall deliver the certificates as designated in the contract award following the LE Instructor Course. If any attendee does not meet the requirements to receive Certificate, an explanation must be sent to COG in writing (“SART Instructor Denial Explanation”); and
3. SART Surveys: Contractor shall conduct a survey measuring the effectiveness of each course of the SART Program and provide the survey results to COG following each course.

C. DELIVERABLES

Deliverables	Due Dates
SART Program curriculum	Two (2) weeks prior to SART Program
SART Program	August 31, 2019
Attendance Sheets	Within two (2) weeks following each SART Program course
SART Instructor Certificates	Within two (2) weeks following LE Instructor Course
SART Instructor Denial Explanation	Within two (2) weeks following LE Instructor Course
SART Surveys	Within 30 days following each SART Program course
Invoices	Shall be submitted in accordance with contract terms. Final invoice must be submitted no later than September 30, 2019.

V. SPECIAL CONDITIONS

The following conditions apply to the Contractor(s) selected:

- A. Federal, state or foreign taxes are not allowable.
- B. Legal fees of any type, are not allowable without prior written approval of COG Contracting Officer.
- C. In the event the project is terminated by administrative action; Contractor will be paid for work performed 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.
 - E. Contractor, acting as an independent contractor, shall defend and hold COG harmless from and shall be solely responsible, where found liable, for the payment of 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 Contractor and/or Subcontractor to perform the duties and obligations imposed by the resulting contract, COG may, upon written notice, procure the necessary services from other sources and hold Contractor and/or Subcontractor responsible for all additional costs occasioned thereby.
 - G. 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. Contractor further covenants that in the performance of this contract, no person having any such interest shall be employed.
 - H. In submitting a proposal in response to this RFP, and in performing services under any contract resulting from this RFP, Contractor shall be bound by, and comply with, all the terms, conditions, and requirements contained within this RFP, as well as, Exhibits and Attachments.
- VI. INSTRUCTIONS, CONDITIONS AND NOTICES TO Offeror
- A. COG may award to a single, or multiple Offerors, as deemed most advantageous to COG and its members. Contract award(s) will only be made to responsible Offerors whose qualifications and offerings conform to the requirements of this RFP.
 - B. COG may award a contract based on initial offers received without discussion. Therefore, each initial offer should contain the Offeror's best terms from a price and technical standpoint. COG may communicate with Offerors to clarify, verify or obtain additional information about its past performance or experience.
- VII. PROPOSAL SUBMITTAL REQUIREMENTS
- A. All Offerors must submit their responses to this RFP in the following prescribed format to ensure a fair evaluation regarding the Offeror's qualifications and the needs of COG. **Offerors not following the prescribed format may be deemed non-responsive.**
 - 1. Technical Proposal: Offeror's Technical Proposal shall contain Offeror's Transmittal Letter, Executive Summary, Qualifications of Key Personnel, Technical Approach, Examples of Experience, and Certifications and Disclosures, as follows:
 - a. Transmittal Letter: The letter transmitting the proposal must be

signed by an officer authorized to bind the Offeror.

- b. **Executive Summary:** This section shall provide the qualifications, professional credentials and experience of the firm, and any proposed subcontractors. Elaborate corporate brochures are discouraged.
 - c. **Qualifications of Key Personnel:** Trainers must be NFPA 1583 certified and knowledgeable in first responder training. Trainers must be ATC (NATA) certified, be Certified Athletic Trainers, and be subject matter experts in the field of instruction. Subject matter expertise can include prior first responder experience, military, profession or amateur athletics, or other applicable experience. Resumes must be submitted with certification and qualifications shown.
 - d. **Technical Approach:** An outline of the Offeror's technical approach. Evaluators are looking for specific descriptions of the Health and Wellness Program Services and their applicability and value for public safety entities.
 - e. **Examples of Experience:** Offeror will provide examples demonstrating a minimum of three (3) years of experience performing suspicion recognition trainings conducted within the last five (5) years (preferably in the NCR). Examples shall include work in which proposed Key Personnel has served.
 - f. **Certifications and Disclosures:** Offeror shall complete the certifications and disclosures found at Exhibit A of this RFP and submit as a part of its proposal.
 - g. **Offeror Qualifications Form:** Offeror shall complete the Qualifications Form found at Exhibit B of this RFP and submit as a part of its proposal.
2. **Price Proposal:** Offeror's submission shall contain the completed Price Proposal form found at Attachment A of this RFP, inclusive of a Disadvantaged Business Enterprise (DBE) Participation Plan, as applicable (See Section XIII below). Evaluators will review the overall price of the proposal and points will be awarded using a standardized pricing model based on cost.

Price Proposals submitted in response to this RFP shall not exceed \$57,143.00.

- B. Proposals must be submitted in two (2) separate files. The first file will contain the Technical Proposal and the second file will contain the Price Proposal, including the DBE Participation Plan, if any.

VIII. QUESTIONS

Technical questions concerning the RFP must be submitted in writing to Jayme Hardy, COG Contracts and Purchasing, at purchasing@mwkog.org (cc: jhardy@mwkog.org) no later than **5:00 PM EDT, Thursday, May 16, 2019**. No questions will be accepted after the cut-off date.

Procedural or administrative questions must be submitted in writing to Jayme Hardy at purchasing@mwkog.org (cc:jhardy@mwkog.org).

All technical and procedural/administrative questions will be answered and posted on COG's website as an amendment to this RFP no later than **5:00 PM EDT, Thursday, May 23, 2019**. See www.mwkog.org/purchasing-and-bids/cog-bids-and-rfps/.

IX. SUBMISSION DATE AND CONTACT

- A. Proposals shall be received by COG no later than **2:00PM EDT, Thursday, May 30, 2019**.
- B. Proposals may not be submitted through hard copy, fax or other electronic methods except as designated below.
- C. Please use the RFQ number and your firm name in the file name of your electronic submission.
- D. Offerors shall submit one (1) electronic copy of their qualifications to the COG Lockbox system as per the below directions.
 1. Proposers shall submit one electronic copy to the COG "Lockbox" system in the following fashion:
 - a. Registration – To utilize the "LOCKBOX" service, your agency must be registered on the Mid-Atlantic Purchasing Team Vendor Registration System (VRS) portal at <https://mwkog.net>.

If you are not registered please do this before accessing the LOCKBOX.

To register:

- Go to the portal at <https://mwkog.net> and click the Vendors listing the left menu on the page.
 - Click Register and fill out the form. NOTE: You will need your company information including your TIN/EIN number if you are a company or your SS if you are a sole proprietor.
 - Registering will give you access to the LOCKBOX solicitations.
- b. Submission – Once registered in the VRS system go to the website at <https://mwkog.net> and click on Solicitation Listings tab.

Those solicitations utilizing the VRS Lockbox service will be highlighted

with a LOCKBOX button.

Click on the LOCKBOX button.

If your agency is interested in submitting a response to this solicitation, click on the REQUEST button. After providing the VRS vendor ID and VIN, you will receive a one-time use bid id and password by email.

Use your credentials for the following:

- To submit a question to the buyer
- To upload your formal bid response and any additional attachments to the lockbox (before the closing time for the solicitation)
- Please limit size of individual files to 10 MB
- To withdraw your formal response should you wish to cancel your submission or to allow you to replace an already uploaded copy with a modified version
- To verify that the document in the lockbox is the one you uploaded.

If no vendor ID is provided, you will be directed to the registration page.

If you would like to ensure that your company details are correct prior to your upload, then logon to VRS using your VRS vendor ID and VIN then jump to the vendor summary page in VRS to make any changes desired.

To return to the MWCOC solicitation page, after registering or updating your company details, click SOLICITATION LISTINGS button on the VRS home page followed by clicking on the VIEW SOLICITATIONS button for MWCOC on the PENDING SOLICITATIONS page.

2. Please do not wait until the last moment to register.

DO NOT email submissions directly to COG they will be disqualified.

E. COG will also accept hand-delivered or mailed submissions in CD or USB form, following the prescribed format in Section VII, addressed to:

Jayme Hardy
 Cooperative Purchasing Specialist
 Metropolitan Washington Council of Governments
 777 North Capitol Street, N.E., Suite 300
 Washington, D.C. 20002-4290

X. 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 notice received at any time prior to award.

XI. METHOD OF PROPOSAL EVALUATION AND SCORING

- A. The qualifications will be evaluated by a Technical Selection Committee.
- B. The Technical Selection Committee may hold, at COG’s option, a pre-selection meeting with the top-ranked Offerors.
- C. The final recommendation for selection to the COG Contracting Officer may be made based upon interviews and/or a best and final offer submitted by the Offerors, if required by the Technical Selection Committee.
- D. In evaluating the submissions, the following factors will be considered, with points awarded up to the maximum shown:

Evaluation Factors	Points
Methodology and technical approach to meet the requirements of the scope of work	30
Qualifications and Experience of the Offeror	20
Qualifications and Experience of the proposed Key Personnel	20
Price	15
DBE Participation Plan	15
Total Points	100

XII. CONTRACTOR SELECTION

The Technical Selection Committee, at COG’s option, may hold a pre-selection meeting with the top ranked Offerors. 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 Offerors, if required.

XIII. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

- A. DBE participation shall be an integral component of the selection procedure for this RFP. COG's DBE Policy may be viewed on its website at www.mwcog.org/purchasing-and-bids/dbe-policy/. Offerors shall submit a DBE Participation Plan with their proposals that identifies 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).
- B. COG, in accordance with Title VI of the Civil Rights Act of 1964 and 78 Stat. 252, 42 USC 2000 d – 42 and Title 49, Code of Federal Regulations, hereby notifies all Offerors that it will affirmatively ensure that any contract entered pursuant to this RFP 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.

- C. Federal Law – CFR Part 26.37 (Monitoring Performance) requires COG to include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is performed by DBE’s. To comply with this requirement, the Contractor will be required to submit a monthly report and supporting documentation (DBE invoices, check registers, etc.) showing timely payments to the DBE’s listed in your proposal. This information should be submitted by the 30th of April and the 31st of October each year on all contracts made pursuant to this RFP in conjunction with other required reporting.

- D. A total of 15 possible points (out of a maximum of 100 points) may be awarded for DBE participation, as measured in dollars, either as the Contractor or "Subcontractor". In the event of a tie score for contract award between two or more proposals, the proposal with the largest percentage of DBE participation, as measured in dollars, will be awarded the contract. DBE points are to be awarded as follows:

<u>PARTICIPATION</u>	<u>POINTS</u>
10% to 14%	3
15% to 19%	6
20% to 24%	9
25% to 34%	12
35% or more	15

SAMPLE DBE PARTCIPATION PLAN

DBE SUBCONTRACTOR		PERCENTAGE OF CONTRACT
Subcontractor:		
Address:		
Certifying State:	DBE Certification #	
Subcontractor:		
Address:		
Certifying State:	DBE Certification #	
Subcontractor:		
Address:		
Certifying State:	DBE Certification #	

EXHIBIT A

CERTIFICATION REGARDING DEBARMENT,
SUSPENSION, AND OTHER RESPONSIBILITY
MATTERS

The Offeror 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 24 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.

Offeror 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 Offeror

Typed Name & Title of Authorized Representative

Signature of Authorized Representative

EXHIBIT B

PROPOSER QUALIFICATION FORM

1. NAME OF PROPOSER: _____

2. PERMANENT MAILING ADDRESS: _____

3. YEAR & STATE INCORPORATED: _____

4. DUN AND BRADSTREET D-U-N-S # _____

5. HOW MANY YEARS HAVE YOU ENGAGED IN BUSINESS UNDER YOUR PRESENT FIRM
NAME: _____ YEARS _____

6. GENERAL CHARACTER OF WORK PERFORMED BY YOUR COMPANY:

7. HAVE YOU EVER DEFAULTED ON A CONTRACT? YES NO

IF YES, WHY? _____

8. ATTACH A LISTING BY PRODUCT LINE OF ALL MANUFACTURES FOR WHOM YOUR COMPANY IS AN
AUTHORIZED DEALER/DISTRIBUTOR/RESALER

9. NAME OF BANKS WITH WHICH YOU DO BUSINESS:

10. DO YOU GRANT THE AWARDDING AUTHORITY PERMISSION TO CONTACT THIS (THESE)
MANUFACTURES AND LENDING INSTITUTION(S)? YES NO

By signing this form, you acknowledge compliance with all terms and conditions of this Proposal.

Name: _____ Date: _____

Title: _____

Company: _____

Attachment A

PRICE PROPOSAL

Proposer _____

DATE: _____

PLEASE PROVIDE FULLY-LOADED HOURLY LABOR RATES AND NOT-TO-EXCEED (NTE) COSTS FOR EACH OF THE FOLLOWING SART PROGRAM COMPONENTS WHERE INDICATED BELOW AND AS REQUIRED BY THIS RFP. Please feel free to add attachments to this price proposal for consideration. Extra space has been provided in each section below to add itemized costs.

SART Program Components	Hourly Labor Rate	Number of Hours	NTE Cost
PROGRAM COURSES			
Five (5) day LE Certification Course	\$ _____	40	\$ _____
Five (5) day LE Instructor Course	\$ _____	40	\$ _____
One (1) day Non-LE Awareness Course	\$ _____	8	\$ _____
	\$ _____	_____	\$ _____
	\$ _____	_____	\$ _____
EQUIPMENT & MATERIALS			
	Each: \$ _____	Quantity: _____	Total Cost: \$ _____
	Each: \$ _____	Quantity: _____	Total Cost: \$ _____
	Each: \$ _____	Quantity: _____	Total Cost: \$ _____
	Each: \$ _____	Quantity: _____	Total Cost: \$ _____
	Each: \$ _____	Quantity: _____	Total Cost: \$ _____
	Each: \$ _____	Quantity: _____	Total Cost: \$ _____
	Each: \$ _____	Quantity: _____	Total Cost: \$ _____
	Each: \$ _____	Quantity: _____	Total Cost: \$ _____
	Each: \$ _____	Quantity: _____	Total Cost: \$ _____
	Each: \$ _____	Quantity: _____	Total Cost: \$ _____
TOTAL NTE COST		\$ _____	

Addendums Acknowledged (if applicable) -

Addendum #1 YES ____ NO ____ N/A ____

Addendum #2 YES ____ NO ____ N/A ____

Others _____

I have read, understood, and agreed to the terms and conditions of all contents of this RFP. The undersigned agrees to furnish the commodity or service stipulated in this RFP as stated above.

NAME: _____

COMPANY: _____

ADDRESS: _____

TELEPHONE: _____

EMAIL: _____

SIGNATURE: _____

TITLE: _____

PROPOSAL CHECKLIST

<u>Item</u>	<u>Attached</u>	<u>YES</u>	<u>NO</u>
PROPOSAL CHECKLIST		_____	
Attachment A PRICE PROPOSAL FORM		_____	
Exhibit A CERTIFICATION FORM		_____	_____
Exhibit B PROPOSER QUALIFICATIONS FORM		_____	_____
Certificate of Insurance (see Terms and Conditions)		_____	_____
Sample Contract		_____	
Acknowledgements		YES	Exceptions
Attachment B TERMS AND CONDITIONS		_____	_____
Attachment C MWCOG COOPERATIVE RIDER CLAUSE		_____	_____

If a Proposer is unable to accept all or parts Attachments B and C, Proposer must indicate that it has exceptions and provide an attachment indicating the exceptions. Exceptions may cause the Proposal to be disqualified. If no exceptions are noted, then checking "yes" indicates acceptance of the Attachments as written.

Attachment BCONTRACT TERMS AND CONDITIONS

(for review)

This document sets out provisions generally applicable to Metropolitan Washington Council of Governments (“MWCOG”) and our Participating Agencies’ contracts. The provisions herein do not constitute a complete agreement, and must be appended to a document, executed by all parties, which identifies the specific work to be performed, compensation, term, incorporated attachments, and special conditions, if any. This document and the Contract are intended to be complementary and shall be construed accordingly.

However, should there be a direct contradiction between the terms and conditions contained herein and the Contract, then the Contract shall govern and control those contradictory terms and conditions. As used herein, the term "MWCOG" includes MWCOG, its various Participating Agencies, employees or agents as may be appropriate. The term “Contract” shall include a document entitled “agreement” or any other title on a document that is denoting a contract.

- I. Amendment. This Contract constitutes the entire agreement between the parties and all other communications prior to its execution, whether written or oral, with reference to the subject matter of this Contract are superseded by this Contract. No amendment to this Contract shall be binding unless in writing and signed by the parties.
- II. Bankruptcy. Upon filing for any bankruptcy proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the Contractor must notify MWCOG immediately. Upon learning of the actions herein identified, MWCOG reserves the right at its sole discretion either to cancel the Contract or to affirm the Contract and hold the Contractor responsible for damages. The exercise of this right is in addition to any other rights MWCOG may have as provided in this agreement or by law.
- III. Compliance with Law. The Contractor hereby represents and warrants that:
 - A. It has the power and authority to enter into and perform the Contract, that the Contract, when executed and delivered, shall be a valid and binding obligation of Contractor, enforceable in accordance with its terms;
 - B. Its performance under the Contract shall be in a good and workmanlike manner and in accordance with all applicable professional standards;
 - C. It is qualified to do business in the jurisdictions covered by the Contract and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
 - D. It is not in arrears in the payment of any obligations due and owing to any agency involved in this agreement, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
 - E. It shall comply with all federal, state and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
 - F. It shall obtain, at its expense, all licenses, permits, insurance and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

- IV. Contingent Fee Prohibition. The Contractor, architect or engineer (as applicable) warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, architect or engineer, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation or other entity, other than a bona fide employee or agent, any commission, percentage, brokerage or contingent fee or other consideration contingent on the making of this Contract.
- V. Counterparts. This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute one and the same instrument.
- VI. Force Majeure. Neither MWCOG and/or its members nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, declaration of emergency, or war where such cause was beyond, respectively, MWCOG's and/or its members or Contractor's reasonable control. MWCOG and/or its members and Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- VII. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the District of Columbia or the Participating Agencies required jurisdiction without regard to principles of conflicts of law.
- VIII. Indemnification. The Contractor shall protect, hold free and harmless, defend and indemnify MWCOG and its Participating Agencies including their officers, agents and employees from all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments (including attorney's fees) resulting from injury to, or death of, any person or damage to property of any kind, which injury, death or damage arises out of, or is in any way connected with the performance of the work or failure to perform its obligations under this Contract.

This obligation of indemnification shall apply to any acts or omissions, negligent conduct, whether active or passive, including acts or omissions of Contractor's agents or employees; except that it shall not be applicable to injury, death or damage to the property arising from the sole negligence of MWCOG and/or members, their officers, agents and employees.

- IX. Independent Contractor.
- A. Contractor shall perform the work required by this Contract as an "Independent Contractor." Although MWCOG and/or members reserves the right to determine the delivery schedule for the work to be performed and to evaluate the quality of the completed performance, MWCOG and/or members cannot and will not control the means or manner of the Contractor's performance. The Contractor shall comply promptly with any requests by MWCOG and/or members relating to the emphasis or relative emphasis to be placed on various aspects of the work or to such other matters pertaining to the work under this Contract. Contractor is responsible for determining the appropriate means and manner of performing the work.
- B. Contractor represents and warrants that Contractor is not an employee of MWCOG and/or members, is not currently employed by the Federal Government, and is not an officer, employee or agent of MWCOG and/or

- members.
- C. Contractor shall be responsible for all federal or state taxes applicable to any compensation or payments paid to Contractor under this Contract. Contractor is not eligible for any federal Social Security, unemployment insurance, or workers' compensation benefits from compensation or payments paid to Contractor under this Contract.
- D. Contractor agrees to immediately provide MWCOG and/or members notice of any claim made against Contractor by any third party. Contractor also agrees not to assign to any third party, without MWCOG's written consent, any obligation of MWCOG to indemnify Contractor for any actions under this Contract.
- X. Insurance Requirements.
- A. Contractor shall obtain, and at all times keep in effect, Commercial General Liability Insurance in the amounts listed below for its activities and operations. The insurance shall include coverage for personal injury, discrimination and civil rights violation claims. All such insurance shall name the Participating Agency, individual members, their employees, and agents as ADDITIONAL INSURED. A copy of the certificate of insurance shall be filed with MWCOG and/or Participating Agencies prior to the time any services are rendered. Contractor shall maintain coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 general aggregate and \$500,000 for property damage. Coverage shall be written on an occurrence form.
- B. Contractor shall obtain, and at all times keep in effect, automobile insurance on all vehicles used in this Contract with MWCOG and/or members to protect Contractor against claims for damages resulting from bodily injury, including wrongful death, and property damage that may arise from the operations of any owned or hired automobiles used by Contractor in connection with the carrying out of this Contract. All such insurance shall name MWCOG and/or individual members, their employees, and agents as ADDITIONAL INSURED.
- C. Contractor shall, upon request, provide MWCOG and/or members with certification of Workers' Compensation Insurance, with employer's liability in the minimum amount required the governing jurisdiction's law in effect for each year of this Contract.
- D. All insurance policies shall have a minimum 30 days' notice of cancellation. Immediate written notice to MWCOG and members involved in the contract shall be required in the event of cancellation or restriction by the insurance company of any insurance policy referred to in this section.
- E. When insurance coverage is renewed, Contractor shall provide new certificates of insurance prior to expiration of current policies to all contracting agencies.
- XI. Nondiscrimination. A contractor who is the recipient of MWCOG and/or member funds, or who proposes to perform any work or furnish any goods under this Contract shall not discriminate against any worker, employee or applicant because of religion, race, sex, age, sexual orientation, physical or mental disability, or perceived disability. Contractor further agrees that this provision will be incorporated in all sub-contracts entered into in connection with this Contract.
- XII. Ownership of Documents and Materials.

- A. The Contractor agrees that all documents and materials, including but not limited to, reports, drawings, studies, specifications, estimates, maps, photographs, designs, graphics, mechanicals, artwork, and computations prepared by or for the Contractor under the terms of this Contract shall at any time during the performance of the services be made available to MWCOCG and/or members upon request and shall become and remain the exclusive property of MWCOCG and/or members upon termination or completion of the services. These jurisdictions shall have the right to use the same without restriction or limitation and without compensation to the Contractor other than that provided in this Contract. MWCOCG and/or members shall be the owner for the purposes of copyright, patent or trademark registration.
 - B. If the Contractor obtains or uses for purposes of this Contract, or subcontracts for, any design, device, material, or process covered by letters of patent for copyright, it shall provide an assignment to MWCOCG and/or members of ownership for purposes of copyright, patent or trademark and of all right to possess and to use such design, device, material or process and a legally sufficient agreement with the patentee or owner, and a copy of such agreement shall be filed with MWCOCG and/or members.
 - C. The Contractor shall indemnify and save harmless MWCOCG and/or members from any and all claims for infringement by reason of the use of any such patented design, device, materials, or process, or any trademark or copyright, and shall indemnify, protect and save harmless MWCOCG and/or members, their officers, agents, and employees with respect to any claim. Action, costs or infringement, for royalties or user fees, arising out of purchase or use of materials, construction, supplies, equipment or services covered by this Contract.
- XIII. Payments. Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after MWCOCG's and/or members receipt of a proper invoice from the Contractor.
- XIV. Records. Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance hereunder. Contractor acknowledges and agrees that the MWCOCG and/or members and their duly authorized representatives shall have access to such fiscal records and all other books, documents, papers, plans, and writings of the Contractor that are pertinent to this Contract. All such fiscal records, books, documents, papers, plans, and writing shall be retained by Contractor and kept accessible for a minimum of three (3) years, except as required longer by law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Contract, whichever date is later. All subcontracts shall also comply with these provisions.
- XV. Remedies.
- A. Corrections of errors, defect and omissions. Contractor agrees to perform the work as may be necessary to correct errors, defects, and omissions in the services required under this Contract, without undue delays and without cost to MWCOCG and/or members. The acceptance of the work set forth herein by MWCOCG and/or members shall not relieve the Contractor of the responsibility

- of subsequent corrections of such errors.
- B. Set Off. MWCOG and/or members may deduct from and set-off against any amounts due and payable to the Contractor any back-charges, penalties, or damages sustained by MWCOG and/or members, their agents, employees of recipients of its services, by virtue of any breach of this Contract by the Contractor or by virtue of the failure or refusal of the Contractor to perform the services or any part of the services in a satisfactory manner. Nothing herein shall be construed to relieve the Contractor of liability for additional costs resulting from a failure to satisfactorily perform the services.
- C. Cumulative. All rights and remedies of MWCOG/ members and Contractor shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of the MWCOG and/or members by law.
- XVI. Responsibility of Contractor.
- A. The Contractor shall perform the services with the standard of care, skill, and diligence normally provided by a Contractor in the performance of services similar the services hereunder.
- B. Notwithstanding any review, approval, acceptance or payment for the services by MWCOG, the Contractor shall be responsible for the professional and technical accuracy of its work, design, drawings, specifications and other materials furnished by the Contractor under this Contract.
- C. If the Contractor fails to perform the services, or any part of the services, in conformance with the standard set forth in subparagraph A above, it shall, if required by MWCOG and/or members, perform at its own expense and without additional cost to MWCOG and/or members, those services necessary for the correction of any deficiencies or damages resulting, in whole or in part, from the Contractor's failure. This obligation is in addition to and not in substitution for any other remedy available to MWCOG and/or members under the "Remedies" paragraph, or otherwise available by law.
- XVII. Severability/Waiver. MWCOG and/or members and Contractor agree that, if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid. The failure of either party to enforce any provision of this Contract shall not constitute a waiver by that party of that or any other provision of this Contract.
- XVIII. Subcontracting or Assignment. The benefits and obligations hereunder shall inure to and be binding upon the parties hereto and neither this Contract nor the services to be performed hereunder shall be subcontracted, or assigned or otherwise disposed of, either in whole or in part, except with the prior written consent of MWCOG and/or members. MWCOG and/or members have the right to withhold such consent for any reason MWCOG and/or members deem appropriate.
- XIX. Survival. The terms, conditions, representations, and all warranties contained in this Contract shall survive the termination or expiration of this Contract.
- XX. Termination. If the Contractor fails to fulfill its obligations under the Contract properly and on time, or otherwise violates any provision of the Contract, MWCOG and/or

members may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at MWCOC's and/or members option, become MWCOC's and/or member's property. MWCOC and/or members shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and MWCOC and/or members can affirmatively collect damages.

- XXI. Termination of Contract for Convenience. The performance of work under this Contract may be terminated by MWCOC and/or members, in whole or in part, upon written notice to the Contractor, when MWCOC and/or members determines such termination is in the best interest of MWCOC and/or members. The termination for convenience is effective on the date specified in MWCOC's and/or members written notice. MWCOC and/or members will pay for all reasonable costs allocable to the Contract for work or costs incurred by the Contractor up to the date of termination. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination.
- XXII. Termination of Multi-Year Contract. If MWCOC and/or members fail to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either MWCOC's and/or members rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and MWCOC and/or members from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. MWCOC and/or members shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.
- XXIII. Time is of the essence. Time is of the essence in Contractor's performance of each and every obligation and duty under this Contract.
- XXIV. Whole Contract. This Contract constitutes the complete and exclusive statement of the Contract between the parties relevant to the purpose described herein and supersedes all prior agreements or proposals, oral or written, and all other communication between the parties relating to the subject matter of this Contract.

(Revised 8/22/2017)

Attachment CMWCOG COOPERATIVE RIDER CLAUSE

The MWCOG Cooperative Purchasing Program works to aggregate the public entity and non-profit purchasing volumes in the National Capital Region of Maryland, Virginia and Washington, D.C.

A. Format

MWCOG serves as the Lead Agency of this Procurement and has included this Cooperative Rider Clause indicating its willingness to allow other public entities to participate in this Procurement pursuant to the following Terms and Conditions:

B. Terms

1. Participating Agencies, through their use of this Cooperative Rider Clause, agree to the terms and conditions of this Procurement to the extent that they can be reasonably applied to the Participating Agency.
2. Participating Agencies may also negotiate additional terms and conditions specific to their local requirements upon mutual agreement between the parties. Contract obligations rest solely with the Participating Agencies.
3. The resulting Contract shall be governed by and "construed" in accordance with the laws of the State/jurisdiction in which the Participating Agency is officially located.

C. Other Conditions - Contract and Reporting

1. Public entities desiring to participate in this Procurement must receive written approval from MWCOG in the form of a MWCOG Rider Clause Approval Form signed by the public entity and MWCOG;
2. Contractor must provide semi-annual contract usage reporting information to MWCOG, including but not limited to quantity, unit pricing and total volume of sales by agency/entity, as well reporting other Participating Agencies added on the Contract, on demand and without further approval of Participating Agencies;

Semi-annual reporting Due Dates beginning from Contract execution:

- November 30, covering May 1 – October 31
 - May 31, covering November 1 – April 30
3. Contractor must provide to MWCOG a semi-annual administrative fee of 2% on all gross sales at the time of the semi-annual report submission due dates listed above; and
 4. Significant changes in total contract value may result in further negotiations of contract pricing with the Lead Agency and Participating Agencies.

Contract usage reporting information and requests for MWCOG Rider Clause Approval Forms shall be submitted to MWCOG's Contracts and Purchasing inbox at purchasing@mwkog.org.