



Metropolitan Washington
Council of Governments

REQUEST FOR PROPOSAL (RFP) NO. 22-014

**EQUIPMENT PROCUREMENT, DELIVERY, AND INSTALLATION
FOR AMTRAK ENGINE REPOWER PROJECT FOR
THE METROPOLITAN WASHINGTON REGION II**

Proposers shall submit an electronic copy of their proposal to the COG LOCKBOX system, as per the submission instructions in Section XIV of this RFP.

Pre-Proposal Meeting: **May 19, 2022, 9:00 AM EDT**

Submission Due Date: **June 7, 2022, 2:00 PM EDT**

Questions regarding the RFP shall be submitted as directed in Section XIV, Paragraph I.

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I. SUMMARY

Services requested	Parts and service requirements for repowering of two (2) switcher locomotive engines
Contract type	Fixed-Price
Number of contracts	One
Duration of contract	Through September 30, 2022, extended as necessary
Payment method	Net 30
Planned duration of RFP advertisement	4 weeks
Start of advertisement period for RFP	May 10, 2022
Pre-Proposal Conference Date	May 19, 2022
Deadline for questions about RFP	10 business days before deadline
Deadline for COG responses to questions	5 business days before deadline
Deadline for proposals	June 7, 2022

II. INTRODUCTION

- A. The Metropolitan Washington Council of Governments (“COG”) is the regional organization of 24 of the Washington metropolitan 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, including coordinating public safety programs 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.
- B. COG has received Grant No. 2019-1914-AQD-G001 (“Grant”) from the District of Columbia Department of Energy and Environment (“DOEE”) to reduce emissions from non-road diesel locomotive switcher engines operating in the Washington, DC region. All terms of Grant shall apply to the ensuing contract between COG and the selected Proposer.
- C. COG is partnering with the National Railroad Passenger Corporation (“Amtrak”) to complete this repower project.
- D. Emission reductions shall be achieved through the application of Engine Repowers. A total of two (2) engines in two (2) switcher locomotives will be repowered during the period of performance.

III. DEFINITIONS

- A. Throughout this Request for Proposals (“RFP”), the following definitions shall hold:
1. *Contracting Officer*. The Executive Director of the Metropolitan Washington Council of Governments or their designee.
 2. *Contractor*. An individual or organization awarded a prime contract based on this solicitation.

3. *Electronic Payment.* The payment of money to a vendor by electronic means, including by means of a purchase card (P-card) or Automated Clearing House (ACH) funds transfer method.
4. *Proposer.* The party of interest submitting a proposal in response to this RFP.
5. *Subcontractor.* An individual or business firm contracted to perform part or all of a Contractor's contract.
6. *Technical Selection Committee.* The Committee established to review proposals received in response to this solicitation and which recommends selection of contractors to the COG Contracting Officer.

IV. TECHNICAL SPECIFICATIONS

- A. The Contractor must fulfill the parts and service requirements for implementation of switcher locomotive diesel engine repowers. Specifically, the Contractor must fulfill the requirements of Amtrak Specification Number 1027, Repower SW1000, SW1500, SSB1200 to Gen Set, as provided in Attachment F.
- B. Attachment H adds context and information to the requirements in Specification 1027, Section 3.11.2 PTC and Event Recorder, concerning parts and equipment to be provided by Amtrak.
- C. Specifications referenced in Specification 1027 are attached to this RFP as Attachment I in .zip format.
- D. The preferred option for repowering is to replace the existing diesel engines with new gen sets.
- E. The Contractor must provide customer management and operator training, operator's manuals, and issue a warranty for parts and service. The Contractor must provide assistance in coordinating and managing the implementation of the control technologies. The Contractor must provide a replacement parts list or parts manual, which includes prices and any discounts offered.
- F. Certified engine configurations or verified technologies must be used for this project. Technologies are verified under EPA or the Retrofit Verification Program specified below. See: www.epa.gov/verified-diesel-tech/verified-technologies-list-clean-diesel for an updated list of EPA's verified technologies and <https://ww2.arb.ca.gov/diesel/verdev/vt/cvt.htm> for a list of CARB's verified technologies. New engines must meet or exceed EPA Tier IV Certification levels.

G. The engines to be repowered are:

Unit Number	Unit Model	Year Built	Engine Make	Horsepower	Engine Displacement
540	SW1500	1973	EMD	1500	149L
569	SW1000	1973	EMD	1000	84L

V. REQUIREMENTS

- A. Amtrak will be responsible for transporting the locomotives to and from the mutually agreed upon service location/job site and is responsible for the risk of loss or damage for each of the switcher locomotives while in transit to and from the Contractor's facility.
- B. The Contractor must provide for storage of the locomotives during the course of the repower work. The Contractor is responsible for the risk of loss or damage for the switcher locomotives and improvements while they are located on the Contractor's premises.
- C. The Contractor must provide necessary engineering staff, facilities, and equipment to satisfy the repower requirements outlined in Attachment F. Please note that certain equipment will be provided by Amtrak, as given in Attachment I.
- D. The Contractor must cooperate with COG and Amtrak to ensure that the necessary inspections, tests and trials are conducted to the satisfaction of Amtrak, as outlined in the Attachment F.
- E. All parts and service costs for items required to complete the engine repower and return the locomotive to commercial service should be included in the response. The Contractor must provide written justification for any parts and services that are deemed necessary to complete the engine repower. Only those costs for parts and services that are deemed necessary to complete the engine repower shall be covered. If Contractor identifies other related work that is required, the Contractor must receive written permission prior to performing any other related work (e.g., replacing other parts). COG shall not be held liable for any other work performed outside the scope of the Contract without prior approval by the COG Project Manager. The Contractor is required to provide all incidental hardware required for installation.
- F. The Contractor is responsible for handling any modifications to the locomotives to facilitate any required changes required for compatibility with the new engines.
- G. New devices or other controls required to complete the repower should be specified and included in the response, if applicable.
- H. Contractor must retain all usable parts from the removed engines (e.g., alternator, starter motor, etc.) and shall provide a credit on the final invoice to COG in an amount not to exceed the value of the core charge for all parts retained, if any.

- I. All work performed shall comply with all requirements stated in this RFP and any applicable, federal, state and local government safety and environmental regulations. All work and components must meet the requirements specified in the Attachment F.
- J. As set forth in greater detail in Section X of this RFP, the Contractor warrants to COG and Amtrak that the services and equipment to be provided will be of the highest quality, complying with specifications and free from all defects whatsoever in workmanship and materials. The Contractor shall make any replacements and/or adjustments required because of any such defects promptly without cost to COG or Amtrak, and to the satisfaction of COG and Amtrak.
- K. The Contractor must allow Amtrak access to the locomotive at mutually agreed times throughout the repowering process.
- L. Unless an alternative method for engine disposal is mutually agreed to by COG, Amtrak, and the Contractor, the Contractor shall scrap engines removed from the locomotive(s). Drilling a hole in the engine block and manifold while retaining possession of the engine is an acceptable scrapping method. Other methods may be considered. Evidence of appropriate disposal must be included in the final report to be submitted by COG to the EPA.
- M. Contractor shall obtain and pay for permits prior to commencing work, if required.
- N. Contractor must outline worksite employee safety plans and procedures including any certifications and independent assessments. Work area must be kept free from debris as much as possible while performing work at the Contractor's place of business and on Amtrak or Union Station/Ivy City terminal property, if applicable. Contractor must remove all debris generated by the work from Amtrak or Union Station/Ivy City terminal property, if applicable, daily.
- O. It is the sole responsibility of the Contractor and its employees to safeguard their own materials, tools and equipment. Neither COG nor Amtrak shall assume any responsibility for vandalism, loss or theft of material, tools and equipment.
- P. The Contractor must certify that the diesel retrofit devices are compatible with the locomotive equipment as set forth in this RFP. Contractor must submit Original Equipment Manufacturer (OEM) concurrence that the devices installed will not affect OEM warranties on the non-road locomotive equipment that are still under warranty. The Contractor must warrant the work performed and other components affected by the use of the devices for at least two (2) years against any performance issues of the engine or other components of the equipment due to the presence of its installation, as set forth in greater detail in Section IX of this RFP.
- Q. Quotes must include all warranty costs. A copy of the warranty quote shall be included with the submission. Effective date of warranty shall be the day the locomotive equipment is placed back in service and the work performed has been accepted. Contractor must respond directly to Amtrak on all warranty claims.
- R. Contractor must provide COG with information on the post-retrofit NO_x and Particulate Matter (PM_{2.5}) emission rate levels, in terms of grams per brake horsepower-hour (g/bph-hr).

- S. Contractor must retain and maintain copies of all documents and records relating to work performed under the Contract for at least (3) three years after the date of termination or expiration of the Contract. The records must be made available to the COG Project Manager (and Amtrak) at the termination of the Contract.

VI. PERIOD OF PERFORMANCE

- A. The Period of Performance for this work shall be from the execution of the awarded contract and end upon delivery and acceptance of both switcher locomotives by Amtrak.
- B. An amendment extending the Grant, if necessary, shall be executed based upon the agreed-to timeline in the successful Proposal.
- C. It is desired that the delivery and acceptance of the locomotives shall be no later than September 30, 2023.

VII. PRE-PROPOSAL CONFERENCE DATES

- A. A pre-proposal conference shall be held on May 19, 2022. All interested parties must send an email RSVP to purchasing@mwkog.org no later than 2:00 pm Eastern Time on May 17, 2022 in order to attend the conference, stating the number of anticipated attendees (to a maximum of three per Proposer).
- B. Proposers who attended the pre-proposal conference for COG RFP 22-002 on April 5, 2022 do **not** need to attend the May 17, 2022 pre-proposal conference, but they may do so at their discretion.
- C. Proposers who attend neither pre-proposal conference will not be considered responsive.

VIII. QUESTIONS CONCERNING THIS RFP

- A. All questions concerning this RFP must be submitted in writing, via email to purchasing@mwkog.org with a courtesy copy to cpipinou@mwkog.org, no later than 2:00pm Eastern Time, 10 business days before the due date of proposals.
- B. Answers shall be provided via addendum no later than 5 business days before the due date of proposals.

IX. PRICES/BILLING

- A. Unless stated otherwise below, all prices offered by Proposers shall be firm against any increase for the duration of the initial contract period.
- B. All equipment and service costs required to complete the requested work and return the engines to service should be included in Proposer's response to the RFP.
- C. Only those costs for parts and services that are deemed necessary to supply the equipment and installation requirements of this RFP shall be reimbursed. COG shall not be liable nor responsible for other parts provided or work performed without prior written approval.

- D. The Proposer must provide the fully burdened rates of the individuals that will be proposed for the project. The proposed key personnel cannot be substituted without the advance written authorization of the COG Contracting Officer.
- E. Proposer must also provide any other direct costs, i.e., engineering drawings, travel, printing, etc. that they reasonably anticipate will be charged to this project. In the event that the cost proposal exceeds the available funding, the Proposer must provide detailed costs for all work that is necessary to complete the repowering for each locomotive, so that Amtrak and COG have the opportunity to identify additional funds and/or modify the any resultant contract amount accordingly.
- F. As an addendum to the cost proposal, Proposer must include any work, maintenance or other services that are necessary, but that they will not provide and that, therefore, become the responsibility of Amtrak.
- G. Delivery charges, fees, insurance, expenses, and/or overhead shall be included in the total price. Legal fees, of any type, are not allowable without prior written approval of COG.
- H. Contractor shall set up its billing system to ensure that invoices do not include sales tax. COG, and any other using Agencies, will provide certificates of exemption for sales tax upon request.
- I. For all transactions, the successful Proposer shall have a valid W-9 form on file with COG.
- J. Payments shall be made via Electronic Payment, as defined above. Additional details can be found below at Attachment A, Paragraph XIII.

X. WARRANTIES

- A. Proposer shall warrant that the services and equipment provided to be of the highest quality, complying with specifications and free from all defects whatsoever in workmanship and materials and as set forth herein. Proposer shall make any replacements and/or adjustments made necessary because of such defects promptly and to the satisfaction of, and without any cost to, COG or Amtrak.
- B. The Proposer shall certify that the diesel retrofit devices that it provides are compatible with the equipment listed in this RFP. The Proposer must submit OEM concurrence that the devices installed will not affect OEM warranties on the equipment and engines that are still under warranty with their proposal. Further, the successful Contractor shall warrant the work performed and other components affected by the use of the devices against any performance issues of the engine or other components of the vehicle due to the presence of its installation, as outlined herein.
- C. Proposals shall include all warranty costs. A copy of the warranty proposal shall be included with the submission. Effective date of warranty shall be the day Amtrak places the equipment in service and has accepted the work performed. Proposer shall describe how warranty claims and work will be handled consistent with contract provisions.
- D. Proposer shall represent and warrant that all Supplies furnished (including replacement supplies furnished under this warranty): (1) are new (unless otherwise

specified); (2) are merchantable and of good quality, free from defects in design, material and workmanship; (3) are suitable for their intended purpose; (4) conform with all requirements of the Contract Documents; (5) conform to any samples provided, drawings and specifications; (6) are adequately contained, packaged, marked and labeled; (7) conform with all applicable laws and regulations; and (8) will be delivered free and clear from any security interest, lien, encumbrance or other rights of third parties. Proposer further represents and warrants that: (1) it has the authority to enter into this Contract without breaching any contractual obligation or statutory duty owed to another; (2) it shall perform the Services with promptness, diligence, and in accordance with the highest professional standards in the industry; (3) it shall comply with all requirements of the Contract; and (4) in performing the Services, it shall use adequate numbers of qualified individuals with suitable training, education, experience and skills, and that it shall perform the Services in a manner consistent with the required level of quality and performance. These warranties are in addition to all other express, implied or statutory warranties. Any Supplies or Services not conforming to these standards shall be considered defective.

- E. Contractor warrants that all Supplies furnished, and all Services performed by Contractor are guaranteed against defects for a period of two (2) years from the date of final acceptance of the last of the Supplies/Services (“Warranty Period”), or for such longer period as provided elsewhere herein.
- F. If a defect arises during the Warranty Period, Amtrak shall promptly, following discovery of the defect, notify Contractor and COG. At no charge to COG or Amtrak, Contractor shall repair or replace any defective supplies or correct any defective services within seventy-two (72) hours after notice from COG or Amtrak. If Contractor fails to respond within said 72hour period, Amtrak or a third party retained by Amtrak may repair or replace the defective supplies or correct the defective services. Any such repair, replacement or correction by Amtrak or such third party shall in no way alter or void Contractor’s warranties under this Contract and Contractor shall remain obligated for such throughout the entire Warranty Period. Contractor shall reimburse COG or Amtrak for all costs and expenses incurred by COG or Amtrak within thirty (30) days after receipt of an invoice. Any items repaired, replaced or corrected during the Warranty Period shall be subject to the terms of this section to the same extent as those delivered initially, except that the Warranty Period will extend until termination of the original Warranty Period or six (6) months from repair, replacement or correction, whichever is later. Contractor acknowledges that, during the Warranty Period (and at all other times), the Supplies may be installed and maintained by Amtrak or third parties on its behalf. Contractor further agrees that proper installation and maintenance based on Contractor’s documentation will not void or otherwise alter the warranties hereunder.
- G. Instead of requiring the repair or replacement of the defective supplies or the correction of defective services, Amtrak may decide to retain the defective supplies or services, and COG on behalf of Amtrak will reduce the Contract Price by an equitable amount.
- H. Contractor represents and warrants that it will use commercially reasonable efforts to ensure that no viruses or similar items (“viruses”) are coded or introduced into any Amtrak software or computer system used by Amtrak. Contractor agrees that, in the event that a virus is found to have been introduced, Contractor will take all reasonable action at its own expense to eliminate the virus and reduce the effects of the virus on Amtrak’s operations. Contractor further agrees to cooperate with Amtrak to mitigate

and restore any loss of data or operational efficiency. Contractor further represents and warrants that it will not insert any time-bombs, drop-dead or disabling devices, back doors or similar items or invoke any code which could have the effect of disabling or otherwise shutting down any portion of Amtrak’s software or computer system.

- I. During the Warranty Period, Contractor shall perform failure analyses to determine the cause and frequency of defects. Contractor shall submit the failure analyses and all related information and materials to Amtrak. Such failure analyses shall be performed and submitted to Amtrak within thirty (30) days from the date Contractor becomes aware of each defect.
- J. If, at any time during the Warranty Period, Contractor’s failure analyses reveal that cumulative defects of any kind in identical components or systems within the Supplies exceed the applicable percentage for such component or system shown in the table below, Contractor shall develop, subject to Amtrak’s and COG’s approval, a “Modification Program” with respect to all such components or systems. Contractor shall submit any Modification Program plan to Amtrak for approval within fourteen (14) days after request from Amtrak. Contractor shall institute any Modification Program within three (3) days of Amtrak’s approval of such Modification Program plan. Each Modification Program shall ensure that all pertinent components or systems on a fleet-wide basis are no longer defective or at risk of defect or failure, and are otherwise cured, at no additional cost to Amtrak.

If the Total Number of Components or Systems is:	Then the Applicable Failure Threshold Percentage Triggering a Modification Program is:
30 or Less	20%
31-100	15%
101-250	10%
251-500	7.5%
501 or over	5%

- K. In the event that the repair or correction of any such defects requires the removal of the Supplies or any components thereof and such removal renders any other component or equipment of Amtrak inoperable or unfit for safe and efficient operation in regular service, Amtrak shall so notify Contractor. Contractor shall furnish to Amtrak, within twenty-four (24) hours after such notice, an adequate number of spare components for use by Amtrak to enable the other component or equipment to be operated safely while the correction of the defect is being done. Contractor shall maintain a sufficient quantity of spare components so as to be able to comply with this requirement without delay.
- L. Any warranty periods offered by subcontractors or required by the Contract Documents that are longer than the Warranty Period as described above shall take precedence.
- M. The warranties of Contractor and remedies of Amtrak and COG shall not be deemed to be exclusive and shall survive acceptance and payment. The warranties shall run to Amtrak, its successors, assigns, customers and users of the Supplies/Services ordered under this Contract.

XI. ADDITIONAL INSURANCE REQUIREMENTS

- A. Upon Contract Award, and before beginning any work, the Contractor shall, at its own cost, obtain, certify, and maintain comprehensive insurance for protection from claims under all of the insurance requirements listed in this section.
- B. All insurance coverage procured by Contractor shall be provided by insurance companies approved by COG and having policyholder ratings no lower than "A" and financial ratings not lower than "VIII" in the Best's Insurance Guide, latest edition in effect as of the date of the Contract, and subsequently in effect at the time of renewal of any policies required by the Contract Documents. Subject to the provisions of Article 57, Contractor shall procure and maintain, at its own cost and expense, during the entire period of performance under the Contract, including the Warranty Period, the types of insurance specified below. All insurance shall be placed with insurance carriers acceptable to COG and authorized to do business in the jurisdiction(s) where Work is to be performed and in the District of Columbia. COG shall have the right to review and reasonably approve all insurance policies. However, COG's acceptance, acquiescence or failure to object to Contractor's submitted insurance policies shall in no way relieve Contractor from responsibility for obtaining insurance policies complying with the terms of this Contract. Contractor shall furnish COG with a certificate or certifications of insurance giving evidence of the required insurance prior to commencement of any portion of the Work pursuant to this Contract and on an annual basis thereafter. In no event shall Work be performed until the required certificates of insurance have been furnished. If the insurance provided is not in compliance with the requirements listed below, COG shall have the right to stop Work until proper evidence of all required insurance is provided. Contractor shall have no right to an adjustment of the Contract Period or the Contract Amount based on COG's exercise of such right, and any delay in the completion of any portion of the Work caused by COG's exercise of such right to stop Work shall be an unexcused delay. Contractor shall require all Subcontractors to carry the insurance specified herein, or Contractor may, at its option, provide the insurance for any or all Subcontractors, and if so, the evidence of insurance submitted shall so stipulate. All insurance shall provide for thirty (30) days prior written notice to be given to COG in the event coverage is changed or the policy is canceled or not renewed. Unless otherwise specifically provided to the contrary, all insurance coverages specified herein shall name COG and Amtrak as additional insureds and shall include waivers of subrogation rights against COG and Amtrak, their employees and agents. Except as otherwise expressly provided herein, Contractor's insurance obligations under this Article shall not be construed to limit COG's rights whether in warranty, contract or any other applicable legal theory which may arise under provisions of the Contract or at law or in equity.
- C. Workers' Compensation Insurance. A policy complying with the requirements of the statutes of the jurisdictions in which the Work shall be performed, covering all employees of Contractor. Employers' Liability coverage with limits of liability of not less than \$1,000,000 for each accident or illness shall be included. COG and Amtrak shall not be named as an additional insured under this policy.
- D. Commercial General Liability Insurance. (Acquisition of Rolling Stock Exposure.) A policy issued to and covering liability imposed upon Contractor arising out of the Equipment design, manufacturing, and testing, and all other Work to be performed and all obligations assumed by Contractor under the terms of this Agreement. Products/Completed Operations Liability, Independent Contractors Liability,

Contractual Liability (with railroad exclusions deleted), and Personal Injury/ Advertising Liability coverages are to be included. COG and Amtrak are to be named as an additional insured with respect to operations to be performed. The policy shall contain a cross liability endorsement. Coverage under this policy shall have combined single limits for bodily injury (including disease or death) and property damage (including loss of use) of not less than \$20,000,000 per occurrence and \$20,000,000 in the annual aggregate.

- E. Automobile Liability Insurance. A policy issued to and covering the liability of Contractor arising out of the use of all owned, non-owned, hired, rented or leased vehicles which bear, or are required to bear, license plates according to the laws of the jurisdiction in which they are to be operated, and which are not covered under Contractor's Commercial General Liability Insurance. The policy shall name COG and Amtrak as an additional insured with respect to operations to be performed in connection with this Agreement and shall contain a waiver of subrogation against COG and Amtrak, their employees and agents. Coverage under this policy shall have combined single limits of liability of not less than \$1,000,000 per occurrence.
- F. Railroad Protective Liability Insurance (Design and Testing Exposures). With respect to Contractor's or any Subcontractors' design and testing work activities within fifty (50) feet vertically or horizontally of railroad tracks, Contractor shall procure and maintain Railroad Protective Liability Insurance, written on the AAR-AASHTO (ISO/RIMA) occurrence-based form (a claims made form is not acceptable), in the name of Amtrak (National Railroad Passenger Corporation). The policy shall have limits of liability of not less than \$10,000,000 per occurrence and \$20,000,000 in the aggregate. Additionally, Policy Endorsement CG 28 31 - Pollution Exclusion Amendment, is required to be endorsed onto the policy. Endorsement CG 28 31 - Pollution Exclusion Amendment must be included. If equivalent or broader wording is not contained in the policy form, the following endorsement must also be included:
- "It is agreed that "Physical Damage to Property" means direct and accidental loss of or damage to all property owned by Amtrak and/or all property in the care, custody and control of Amtrak."
- G. All Risk Property Insurance covering damage to or loss of all remaining personal property of Contractor, its contractors and subcontractors used during Operations including, but not limited to, tools, equipment, construction trailers and their contents and temporary scaffolding at the project site, whether owned, leased, rented or borrowed for the full replacement cost value. Insurance policies of Contractor, its contractors and subcontractors, covering tools, equipment and other personal property will include a waiver of subrogation and any other rights of recovery in favor of Amtrak and Contractor.
- H. Installation Floater Insurance (applicable where Contractor will install materials). The policy shall be issued with coverage on an all-risk and on a completed value basis, including labor, materials in place, on site, in storage, off-site, or in transit. Contractor, COG and Amtrak shall be named as loss payees, as respects their interest in the covered property. If Contractor or subcontractor carries a blanket policy for this exposure, the project work shall be excluded by endorsement so there will be no duplication of costs for coverage.
- I. Contractor's Pollution Liability Insurance. A policy is required covering the liability of Contractor arising out of any sudden and/or non-sudden pollution or impairment of the

environment, including clean-up costs and defense, that arise from the Operations of Contractor, with Amtrak and, as appropriate CUSCO or WTC, and all commuter agencies and railroads that operate over the property or tracks at issue named as additional insureds. Coverage under this policy shall have limits of liability of not less than \$2 million each occurrence. The coverage shall be maintained during the term of the project, and for at least two (2) years following Amtrak's acceptance of the completion of all Operations to be performed.

- J. Pollution Legal Liability Insurance. A policy is required if any hazardous material or waste is to be transported or disposed of off of the jobsite. Contractor, its subcontractor or transporter, as well as the disposal site operator, shall maintain this insurance. Contractor shall designate the disposal site, and must provide a certificate of insurance from the disposal facility to Amtrak. The policy shall name Amtrak and, as appropriate CUSCO or WTC, and all commuter agencies and railroads that operate over the property or tracks at issue as additional insureds, with limits of liability of not less than \$2 million per claim.
- K. Further, any additional insurance coverages, permits, licenses and other forms of documentation required by the United States Department of Transportation, the Environmental Protection Agency and/or related state and local laws, rules and regulations shall be obtained by Contractor.
- L. Professional Liability Insurance (for design work related to the work). A policy issued to and covering the liability of Contractor or Design Subcontractor for engineering and design errors and omissions in the performance of this Contract. Contractor or Design Subcontractor shall maintain such coverage during the term of this Contract and for at least three (3) years following completion and acceptance of the Project. This insurance shall have limits of liability of not less than \$2,000,000 per occurrence and in the aggregate. The deductible amount shall not exceed \$250,000.
- M. Contractor's Equipment Insurance. A policy issued to and covering Contractor's interest in the equipment used in performance of the Agreement, including Amtrak's equipment in the care, custody and control of the Contractor. The insurance shall provide coverage on an all-risk basis and shall have limits adequate to cover the full replacement value of the equipment.
- N. Claims Made Insurance. If any liability insurance specified above, other than Railroad Protective Liability insurance, is written on a claims-made basis, then in addition to the coverage requirements above, such policy shall provide that:
 - 1. The retroactive date shall coincide with or precede Contractor's start of work (including renewal policies or replacement policies).
 - 2. The policy shall allow for the reporting of circumstances or incidents that might give rise to future claims.
- O. In addition, if any liability insurance specified above, other than Railroad Protective Liability insurance, is written on a claims-made basis, Contractor shall use its best efforts to maintain for at least six (6) years following completion and acceptance of the Project, the insurance covering liability resulting from the Work or the obligations assumed in this Agreement, with endorsements naming COG and Amtrak as an additional insureds and continuing the waiver of subrogation against COG and Amtrak. Further, if such insurance is canceled for any reason, Contractor shall purchase an

extended reporting provision that shall continue for at least six (6) years after completion and acceptance of the Project to report claims arising from Work performed in connection with this Agreement. If Contractor fails to maintain the insurance or bond required by the Contract Documents, without the written consent of COG, then Contractor shall pay all costs incurred by COG and Amtrak, including, but not limited to, reasonable attorneys' fees.

XII. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

- A. Disadvantaged Business Enterprise (“DBE”) participation shall be an integral component of the Contractor selection process for this RFP. COG's DBE Policy may be viewed on its website www.mwcog.org. Responding firms 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 participating 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 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.
- C. **DBE Assurance** – 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 such other remedy as the recipient deems appropriate.
- 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 between 2 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

- E. Failure to have DBE participation does NOT disqualify a firm from being awarded a contract.

XIII. EVALUATION AND SCORING CRITERIA

- A. The proposals will be evaluated by a Technical Selection Committee made up of subject matter experts.

- B. In evaluating the proposals, the following factors will be considered, with points awarded up to the maximum shown:

Factor	%
Experience of Proposer and Key Personnel to repower switcher locomotive diesel engines	25
Experience of Proposer and Key Personnel to provide training and continued product support	15
Ability to provide the necessary facilities and equipment to complete the project	10
Compatibility with existing switcher equipment and maintenance/operations at the Union Station Terminal and Ivy City Rail Yard	5
DBE Participation	15
Cost Analysis	30
TOTAL	100

XIV. PROPOSAL INSTRUCTIONS

- A. The written proposal shall be organized to match these headings. Proposals not following the prescribed format below will be deemed nonresponsive.

File 1: Narrative and Technical Proposal [not to exceed 10 MB]

Note: No pricing information is to be included in File 1.

1. Letter of Interest
2. Table of Contents
3. Executive Summary
4. Qualification of the Firms and Personnel
 - a. Describe: 1) the firm's experience with repowering switcher locomotive diesel engines with replacement genset technology and/or diesel engines comparable to the existing engines; 2) experience in training and ability to provide on-going product support; and 3) the ability to provide the specified facilities and equipment to complete the repowering work.
 - b. Proposer must describe fully its company's personnel, capabilities and equipment to perform the work and stipulate relevant experience and references to illustrate its ability to complete the work. Proposer must fully describe their company's workforce composition, capabilities, and outline any organize labor affiliations and designations within the company. Although standard personnel resumes may be included as

attachments to the proposal, amplification specific to this RFP is required in this section. The absence of information specific to the requirements of this project shall be considered as nonresponsive.

- c. Proposer must describe fully any proposed entities that will be involved in completing the proposed work, including engineering consultants and service facility/location or subcontractors.
- d. Project staff and team members must hold any state or federal licenses required to perform all project related task and work. List all state, federal, and professional certifications and licenses for assigned project staff and team members. Where timely completion of this project is critical, the Proposer must stipulate its ability to meet the deadlines presented herein.

5. Narrative

- a. Proposer shall describe how and where (on-site or off-site) repair/warranty work related to this project will take place.
- b. Proposer shall describe the anticipated timeline for completing the repowering work, once the unit or units are received at the Proposer's facility.
- c. Proposer shall describe what kind of reporting and data logging will be provided to COG.
- d. Proposer is required to furnish with its proposal literature and detailed information properly bound and labeled showing full illustrations and detailed technical information on the equipment and devices proposed. Contractor must show the manufacturer's code and catalog number of the items offered.
- e. Proposer shall explain the training and on-going product support that it will provide or that will be available to Amtrak. Details shall include proposed dates, times, locations and length of training and the qualifications of the instructor. Training shall be in a location convenient to Amtrak.
- f. As an addendum to the narrative, Proposer must include any work, maintenance or other services that are necessary, but that they will not provide and that, therefore, become the responsibility of Amtrak.

6. References

- a. The Proposer, for itself and for any Subcontractor or "Other Subcontractor" must provide a list, as well as references, of similar work completed or in progress for other clients. Preferred references will be from recent work, conducted within the last two to three years. References shall include complete contact information. References must include work in which key personnel proposed to COG for this project have served.

- b. Attachment C shall be attached to this section with the contact information of the references.

File 2: Forms [not to exceed 10 MB]

7. Proposal Form (Section XIII) completed and signed.
8. Attachments D and E completed and signed where necessary. If subcontracted vendors are incorporated into the proposal, Attachment D must be completed for any such subcontractors.
9. Certifications for any qualified DBE vendors referenced in Attachment E.

File 3: Pricing Proposal [not to exceed 10 MB]

10. Attachment G, Pricing Proposal, in Excel format.
- B. The requested Letter of Interest must be signed by an authorized principal or agent of the contractor, and provide an overview of Proposer's offer, as well as a name, title, phone number, and email address of the person to whom questions may be directed concerning the proposal.
- C. Proposers must include the additional documentation specified below in their RFP submission or they may be determined to be non-responsive and disqualified.
1. Please complete attached PROPOSER REFERENCES, including three (3) other clients who are being, or have been, provided by the Proposer with similar products, services, and scope of work (Attachment C).
 2. Each Proposal shall be accompanied by a NON-COLLUSION AFFIDAVIT regarding price fixing, gratuities, bribery, and discriminatory employment practices. When the Proposer is a corporation, a duly authorized representative shall execute the affidavit (Attachment D).
 3. Each Proposal shall be accompanied by a DBE PLAN GOALS SUBMISSION FORM, even if Proposer is not a DBE and does not intend to include DBE subcontractors (Attachment E).
- D. All Proposals must be completed by responsible company officials and submitted to the COG LOCKBOX on or before the due date and time.
- E. Proposals will not be accepted if submitted through hard copy, mail, courier, fax, email, or any other electronic method except as described below. Proposals submitted through any method other than the COG LOCKBOX system will be rejected.
- F. Bidders shall submit one electronic copy to the COG LOCKBOX system in the following fashion:
1. *Registration.* To utilize the LOCKBOX service, bidder must be registered on the Mid-Atlantic Purchasing Team Vendor Registration System ("VRS") portal at

<https://mwcog.net>. If bidder is not registered, please do this before accessing the LOCKBOX.

2. To register:
 - a. Go to the portal at <https://mwcog.net> and click the Vendors listing the left menu on the page.
 - b. Click Register and fill out the form. NOTE: Bidder will need its company information including its TIN/EIN number if bidder is a company or bidder's SSN if bidder is a sole proprietor.
 - c. Registering will give bidder access to the LOCKBOX solicitations.
- G. *Submission.* Once registered in the VRS system go to the website at <https://mwcog.net> and click on Solicitation Listings tab.
 1. Select "Metropolitan Washington Council of Governments" from the list.
 2. Those solicitations utilizing the VRS Lockbox service will be highlighted with a LOCKBOX button.
 3. Click on the LOCKBOX button.
 4. If Proposer is interested in submitting a response to this solicitation, click on the REQUEST button. After providing the VRS vendor ID and VIN, bidder will receive a one-time use bid id and password by email which will then give them access to the solicitation documents.
 5. Proposer's credentials may be used for the following:
 - a. To upload bidder's formal proposal response and any additional attachments to the lockbox (before the closing time for the solicitation).
 - i. Please limit size of individual files to 10 MB.
 - b. To withdraw Proposer's formal response should bidder desire to cancel its submission or to replace an already uploaded copy with a modified version.
 - c. To verify that the document in the lockbox is the one Proposer uploaded.
 6. If no vendor ID is provided, Proposer will be directed to the registration page.
 7. If Proposer wants to ensure that their company details are correct prior to uploading the proposal, then logon to VRS using bidder's VRS vendor ID and VIN then jump to the vendor summary page in VRS to make any changes desired.
 8. To return to the COG solicitation page, after registering or updating Proposer's company details, click SOLICITATION LISTINGS button on the VRS home page followed by clicking on the VIEW SOLICITATIONS button for COG on the PENDING SOLICITATIONS page.

9. Please do not wait until the last moment to register. If problems occur during registration or submission, please contact COG's provider at customerservice@eepex.com with a copy to purchasing@mwkog.org.
- H. All questions regarding discrepancies, omissions, specifications, instructions, or the required forms may be directed via email no later than ten (10) working days in advance of the deadline to purchasing@mwkog.org.
- COG will post any addendum necessary to address questions no later than five (5) workdays before the due date of proposals.
- I. It is the responsibility of the Proposer to check if any addenda have been issued. Addenda will be posted at <https://www.mwkog.org/purchasing-and-bids/cog-bids-and-rfps/>.
- J. Proposal responses should indicate that proposers have reviewed the latest addenda on the Proposal Form via the Proposal Form Checklist.
- K. Proposers must acknowledge their understanding of all terms listed in this RFP by signing the Proposal Form as part of their submission.
- L. Any variation to the solicitation specifications should be noted by the Proposer/Contractor as an exception with an explanation attached to the Proposal Form.
1. Exceptions taken do not obligate COG to change the specifications.
 2. In some cases, exceptions may result in the Proposer to be disqualified or result in a lower score in the evaluation process.
 3. Failure to report exceptions with the submission may result in disqualification.

(Remainder of page intentionally left blank. Proposal form begins on following page.)

XV. PROPOSAL FORM

TO: Metropolitan Washington Council of Governments

Date _____

Required Document Checklist

Items	Acknowledgment/Attached	
Attachment A: COG Standard Terms and Conditions (acknowledged)	YES_____	NO_____
Attachment B: Additional Terms and Conditions (acknowledged)	YES_____	NO_____
Attachment C: Proposer’s Experience/References (completed form)	YES_____	NO_____
Attachment D: Non-Collusion Affidavit (completed form)	YES_____	NO_____
Attachment E: DBE Plan Goals Submission (completed form)	YES_____	NO_____
Attachment F: Amtrak Specification 1027 (acknowledged)	YES_____	NO_____
Attachment G: Additional Pricing Forms (completed forms)	YES_____	NO_____
Attachment H: Addendum to Specification 1027 (acknowledged)	YES_____	NO_____
Attachment I: Referenced Additional Specifications (acknowledged)	YES_____	NO_____
Exceptions Taken (Yes or No, see below)	YES_____	NO_____

If any exceptions are taken, including the Terms and Conditions, please attach them on separate sheet(s) at the end of the proposal submission. **It is imperative that exceptions be indicated with the submission in order to evaluate the responsiveness of the proposal.*

Addendums (if applicable)	Acknowledgement	
Addendum #1	YES_____	NO_____
Addendum #2	YES_____	NO_____
Others _____	YES_____	NO_____

Payment

Can accept electronic payments via purchasing card	YES_____	NO_____
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(Signatures to follow on next page.)

Signature Section

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.

SIGNATURE: _____

NAME: _____

COMPANY: _____

ADDRESS: _____

TELEPHONE: _____

EMAIL: _____

ATTACHMENT A: COG STANDARD TERMS AND CONDITIONS

NOTE: COG will not negotiate Terms and Conditions at the time of contract award. Exceptions to the Terms and Conditions MUST be made as part of the Proposal. Failure to do so may disqualify the Proposer now or at a later time.

This document sets out provisions generally applicable to Metropolitan Washington Council of Governments ("COG") 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.

Proposers are categorized as Subrecipients in this section.

I. Energy Conservation - 42 U.S.C. § 6321 et seq.

The SUBRECIPIENT 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.

A. The SUBRECIPIENT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended. The SUBRECIPIENT 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.

B. The SUBRECIPIENT 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.

(Regarding each bid or offer exceeding \$100,000)

A. In signing the proposal form above the proposer certifies, to the best of his or her knowledge and belief, that:

B. 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.

C. If any funds other 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 (b) herein has 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.*)]

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

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

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

V. Funding Agency Changes

The SUBRECIPIENT 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. SUBRECIPIENT failure to comply shall constitute a material breach of this Contract.

VI. Clean Air - 42 U.S.C. § 7401 et seq.

- A. 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.
- B. The SUBRECIPIENT 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 SUBRECIPIENT 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.
- C. The SUBRECIPIENT 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

- A. The Recycled Products requirements apply to all contracts for items designated by the EPA, when COG or the SUBRECIPIENT 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.
- B. The SUBRECIPIENT 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 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

VIII. No Government Obligation to Third Parties

- A. The SUBRECIPIENT 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 SUBRECIPIENT, or any other person (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B. The SUBRECIPIENT 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 SUBRECIPIENT that will be subject to its provisions.

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

- A. The SUBRECIPIENT 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 SUBRECIPIENT 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 SUBRECIPIENT 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 SUBRECIPIENT or to the extent the Federal Government deems appropriate.
- B. The SUBRECIPIENT 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 SUBRECIPIENT, to the extent the Federal Government deems appropriate.
 - C. The SUBRECIPIENT 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 SUBRECIPIENT who will be subject to the provisions.

X. Insurance Requirements

- A. For its activities and operations, Contractor shall obtain, and at all times keep in effect, Commercial General Liability Insurance in the amounts listed below. The insurance shall include coverage for personal injury and claims of discrimination and civil rights violations. All such insurance shall name MWCOG as ADDITIONAL INSURED. A copy of the certificate of insurance shall be filed with MWCOG before any services are rendered. Contractor shall maintain coverage in the amounts of \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$500,000 for property damage. Coverage shall be written on an occurrence form (Accord Form).
- B. Contractor shall obtain, and at all times keep in effect, automobile insurance on all vehicles used in this Contract. Contractor's automobile insurance shall include coverage 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 performance of this Contract. All such insurance shall name MWCOG and/or its individual members, their employees, and agents as ADDITIONAL INSURED.
- C. Contractor shall, upon request, provide MWCOG with certification of Workers' Compensation Insurance, with employer's liability at least the minimum amount required by the governing jurisdiction's law, in effect for each year of this Contract.
- D. Contractor shall obtain and maintain at all times during the prosecution of the work under this Agreement professional liability insurance. Limits of liability shall be \$1,000,000 per claim and \$2,000,000.00 aggregate.
- E. 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.

- F. When insurance coverage is renewed, Contractor shall provide new certificates of insurance to all contracting agencies and MWCOG prior to expiration of current policies.

XI. 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 SUBRECIPIENT 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 SUBRECIPIENT fails to perform in the manner called for in this Contract, or if the SUBRECIPIENT 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 SUBRECIPIENT setting forth the manner in which the Contract is in default. The SUBRECIPIENT 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 SUBRECIPIENT had an excusable reason for not performing, such as strike, fire, or flood, events which are beyond the control of the SUBRECIPIENT, COG, after setting up a new delivery of performance schedule, may allow the SUBRECIPIENT 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 SUBRECIPIENT 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 SUBRECIPIENT fails to remedy to COG's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within the ten (10) working days after receipt by the SUBRECIPIENT 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 the SUBRECIPIENT. Any such termination for default shall not in any way operate to preclude COG from also pursuing all available remedies against the SUBRECIPIENT and its sureties for said breach or default.

- D. In the event COG elects to waive its remedies for any breach by the SUBRECIPIENT 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.

XII. 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

A. 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 SUBRECIPIENT 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 SUBRECIPIENT agrees to comply with applicable federal implementing regulations. The clauses of Appendix A and E of the U.S. DOT Standard Title VI Assurances (USDOT 1050.2A) are incorporated herein by reference.

B. **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to the underlying contract:

1. Race, Color, Creed, National Origin, Sex

In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, the SUBRECIPIENT 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 C.F.R. 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 SUBRECIPIENT 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 SUBRECIPIENT agrees to comply with apprenticeship. In addition, the SUBRECIPIENT agrees to comply with any implementing requirements the funding federal agency may issue.

2. 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 SUBRECIPIENT agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the SUBRECIPIENT agrees to comply with any implementing requirements the funding federal agency may issue.

3. Disabilities

In accordance with section 102 of the Americans with Disabilities Act, as

amended, 42 U.S.C. § 12112, the SUBRECIPIENT 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 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the SUBRECIPIENT agrees to comply with any implementing requirements the funding federal agency may issue.

- C. The SUBRECIPIENT 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.

XIII. Breaches and Dispute Resolution.

A. 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 SUBRECIPIENT mails or otherwise furnishes a written appeal to the Executive Director or his/her designee. In connection with any such appeal, the SUBRECIPIENT 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 SUBRECIPIENT, and the SUBRECIPIENT shall abide by the decision.

B. Performance During Dispute

Unless otherwise directed by COG, the SUBRECIPIENT shall continue performance under this Contract while matters in dispute are being resolved.

C. 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.

D. Remedies

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between COG and the SUBRECIPIENT arising out of or relating to this agreement or its breach may be submitted by the parties for arbitration if the parties mutually agree, otherwise, such claims, counterclaims, disputes and other matters shall be decided by a court of competent jurisdiction within the District of Columbia.

E. 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 SUBRECIPIENT 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.

XIV. 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; CDs or flash drives (thumbdrives) containing data; and any other 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) 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 M.2.a and M.2.b 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.
 - i. Any subject data developed under that contract, whether or not a copyright has been obtained; and
 - ii. Any rights of copyright purchased by the Purchaser or the SUBRECIPIENT using federal assistance.

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 the SUBRECIPIENT 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 SUBRECIPIENT status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the SUBRECIPIENT 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 the 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 SUBRECIPIENT 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.

XV. 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.

XVI. 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 (1) year thereafter, shall have any personal interest, direct or indirect, apart from his or her official duties, in this Contract or the proceeds thereof.

XVII. Interest of the SUBRECIPIENT

The SUBRECIPIENT 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 SUBRECIPIENT further covenants that, in the performance of this Contract, no person having any such interest shall be employed.

XVIII. Payment

Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after COG's receipt of a proper invoice from the Contractor.

Electronic Payment means the payment of money to a vendor by electronic means, including by means of a Purchase Card (P-card) or Automated Clearing House (ACH) funds transfer method.

COG has implemented a P-Card Program utilizing MASTERCARD networks. Purchases from this contract will be made utilizing COG's P-Card.

Contractors will receive payment from the P-Card in the same manner as other credit card purchases. The payments typically are transferred within 48 hours.

Accordingly, contractors must presently have the ability to accept these P-Cards or take whatever steps necessary to implement their ability before the start of the contract term, or contract award by the COG. COG reserves the right to revise this program as necessary.

In rare cases, ACH transactions will be acceptable as a form of payment to our vendors. Please keep in mind the turn-around time on ACH transactions can be as long as 30 days.

XIX. Allowable Costs

Only those costs which are consistent with Title 2 Part 200 of the Code of Federal Regulations shall be reimbursed under this Contract.

XX. Covenant Against Contingent Fees

The SUBRECIPIENT 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 SUBRECIPIENT upon contracts or sales secured or made through a bona fide established commercial or selling agency maintained by the SUBRECIPIENT for the purpose of securing business.

XXI. Indemnification

The SUBRECIPIENT, acting as an independent SUBRECIPIENT, 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.

XXII. 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 of 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.

XXIII. Assignments

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

XXIV. 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.

XXV. 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
 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, web pages, 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 [SUBRECIPIENT 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 SUBRECIPIENT or other party.

XXVI. COG's Policies and Procedures

When federal law, or any grant conditions, certifications or assurances require COG to utilize competitive procurement procedures for selection of a SUBRECIPIENT, COG's policies and procedures shall govern every aspect of the SUBRECIPIENT selection process, e.g., the solicitation, evaluation, award, and post-award process (including, without limitation, any protest of an award, and the terms and conditions under which a contract may be approved, executed and administered). Any SUBRECIPIENT and potential SUBRECIPIENT will be provided with a copy of such policies and procedures, on request.

XXVII. COG's Information Technology Policy

Contractors that must access COG's Information Technology systems or require a COG login account to perform their duties must adhere to COG's Information Technology Policies and Procedures. Such contractors will receive a copy of the policies and procedures prior to receiving access to COG's IT systems.

XXVIII. COG's Facilities, Policies, and Procedures

Contractors that must use any of COG's facilities or equipment must adhere to COG's Facilities, Policies and Procedures. Contractors that utilize any AV or IT equipment through the use of COG's facilities shall also comply with COG's IT Policy. Such contractors will receive a copy of all relevant procedures prior to receiving access to COG's IT systems.

XXIX. Additional Requirements

In addition to the terms and conditions expressly referenced in this Contract, the SUBRECIPIENT acknowledges and agrees that the terms and conditions of any federal or state grant that provides funding for this Contract, in whole or in part, shall apply to and shall govern the parties' rights and obligations under this Contract and shall be deemed additional terms, conditions and requirements of this Contract.

XXX. DBE Assurance

The SUBRECIPIENT shall not discriminate on the basis of race, color, national origin,

or sex in the performance of this Contract. The SUBRECIPIENT shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of USDOT-assisted contracts. Failure by the SUBRECIPIENT to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the COG deems appropriate.

XXXI. Audits

Per the Enhanced Mobility Circular, COG as the Designated Recipient for Enhanced Mobility funds will collect A-133 audit reports from the SUBRECIPIENT receiving more than \$750,000 in federal funds. At a minimum, the SUBRECIPIENT is required to bring to COGTPB's attention any audit findings relevant to its use of FTA funds. The SUBRECIPIENT is not subject to A-133 audit requirements and may require additional monitoring, in a format elected by COG, to ensure compliance.

XXXII. FFATA Reporting

- A. The Federal Funding Accountability and Transparency Act ("FFATA") requires prime recipients of federal grants and contracts to report sub-award and executive compensation data. COG is the prime recipient of federal awards for the purposes of this policy and is responsible for reporting sub-award data.
- B. COG and first-tier sub-awardees are required to maintain current registration in the System for Awards Management ("SAM") as well as obtain a DUNS number. COG is responsible for filing the report in the FSRS system, not sub-awardees. However, sub-award recipients must provide the following information to COG before they will be eligible to receive the sub-award:
 1. The entity's information
 2. Description and/or title of the sub-award (including NAICS code or CFDA number)
 3. Date and amount of award
 4. Location of the entity receiving the award and the primary location of performance under the award, including the city, state, congressional district, and country
 5. Active and current SAM unique identifier
 6. DUNS number
 7. Names and total compensation of the five (5) highest paid officers/executives of the sub-recipient if all three criteria are met:
 - a) Federal awards make up 80% or more of the SUBRECIPIENT's annual gross revenues
 - b) The SUBRECIPIENT's annual gross revenue from federal awards is \$25 million or more

- c) The SUBRECIPIENT's officer names are not publicly available and the public does not have access to data on executive compensation of the entity through the Securities and Exchange Commission (SEC) as described in further detail in OMB Guidance on Sub-award and Executive Compensation Reporting (August 27, 2010)

(COG, as the prime recipient of the federal award, must also report its own executive compensation data by the end of the month following the award if the same criterion noted above is met.)

XXXIII. Priority of Requirements

In the event of a conflict between or among any of the terms, conditions and requirements applicable to this Contract, the conflict shall be resolved by giving weight in accordance with the following priorities, in the order as stated below:

1. Terms and conditions of any grant that provides funding for this Contract, in whole or in part;
2. Terms and conditions set forth or referenced within this Contract;
3. Terms and conditions and representations set forth or referenced within Attachments A and F to this Contract;
4. Terms, conditions, specifications, and requirements set forth within any solicitation (e.g., RFP or IFB) pursuant to which this Contract was awarded;
5. Offers, representations, promises, terms and conditions set forth with the bid or proposal submitted in response to any solicitation (e.g., RFP or IFB) pursuant to which this Contract was awarded.

(Updated 5/20/2021)

ATTACHMENT B: ADDITIONAL TERMS AND CONDITIONS

These additional terms and conditions shall apply to any Contract awarded as a result of this RFP. In the event of any conflict between this Attachment and Attachment A of the RFP, this attachment shall prevail.

I. Force Majeure.

- A. In the event that either party's failure to perform or delay arises out of unforeseeable causes beyond its control and without its fault or negligence, including but not limited to events such as: acts of God or the public enemy, acts of a governmental authority acting in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, unusually severe weather, war, terrorism, riots, earthquakes, strikes or embargoes (a "force majeure event"), the time for performance of its obligations under this Contract may be extended proportionately. Neither party shall be liable for any default, damage or loss resulting from such delay or failure, **provided** that the party promptly (within five days) notifies the other of the delay or failure and takes effective measures by all available means to overcome the delay and reduce its effects. Neither party shall be liable to the other for any losses, injury, damages of any kind, additional payments or increased costs arising from force majeure events. Default or delay of any subcontractor or supplier shall not excuse timely performance by Contractor, unless such default was caused by a force majeure event beyond the control and without the fault or negligence of either Contractor or the subcontractor or supplier and Contractor could not obtain the supplies or services from another source within the time required to perform or deliver under the Contract. Where Contractor's failure to perform or delay extends for more than thirty (30) days, COG may terminate the Contract without liability.

II. Confidentiality.

- A. Contractor agrees that all information furnished or disclosed by Contractor, its employees, agents or representatives to Amtrak or COG in connection with the Contract (1) is furnished or disclosed as part of consideration of the Contract; (2) subject to federal law, shall not be treated as confidential or proprietary information of Contractor, its employees, agents or representatives unless otherwise agreed in writing by the Contracting Official; and (3) subject to third party copyright restrictions, may be used, copied or disclosed by Amtrak or COG for any purpose. Contractor expressly waives all claims against Amtrak and COG and releases Amtrak and COG relating to the use, copying or disclosure of such information by Amtrak or COG, their assigns, or intended beneficiaries.
- B. No employee, agent, or representative of Amtrak or COG, other than the Contracting Official, is authorized to accept any information which Contractor considers to be proprietary or confidential. Only the Contracting Official has authority to enter into an agreement, which shall be in writing, to provide for the confidential treatment of, or limit disclosure of, information furnished or disclosed to Amtrak or COG by Contractor, its employees, agents or representatives.
- C. Contractor agrees that it, its employees, subcontractors, agents and/or representatives shall not disclose, without the prior written consent of the Contracting Official, any information relating to the Contract to any third party. In addition, they shall not make any news releases, articles, brochures, advertisements, speeches or other information releases relating to the Contract without the prior approval of the Contracting Official.

- D. Contractor agrees that it, its employees, subcontractors, agents and/or representatives will keep confidential any financial information, employee information, customer or marketing information, business plans, designs, drawings, specifications, engineering data, technical information, policies, procedures, processes, analyses or proprietary information which either (1) is furnished by Amtrak or COG; or (2) is, or will become as a result of the Contract, the property of Amtrak or COG. Contractor further agrees not to disclose such items or any information contained therein to third parties and to use such items and information solely for the benefit of Amtrak or COG in the performance of the Contract or other written orders of Amtrak or COG. Upon completion or termination of the Contract, or as otherwise requested by Amtrak or COG, Contractor shall immediately return all such items and information to Amtrak or COG or make other disposition thereof as directed by Amtrak or COG, respectively.
- E. Contractor shall fully indemnify Amtrak and COG against any and all actions, claims, liability, costs, damages, and expenses suffered or incurred in connection with or arising out of any breach by Contractor of any of the provisions of this section. Contractor acknowledges that a breach of its obligations hereunder cannot be compensated adequately by an award of damages or other pecuniary remedy, and that Amtrak and COG shall also be entitled in the event of any such breach to the remedies of injunction, specific performance or other equitable relief.
- F. Contractor agrees that, in the event any confidential information of Amtrak or COG is sought by subpoena or other process, Contractor will promptly give notice of such subpoena or process to Amtrak and COG, pursuant to the notification provisions herein, before responding to such subpoena or process.
- G. This Confidentiality section shall survive the termination or expiration of the Contract.

III. Intellectual Property Rights.

- A. Trademarks. Contractor shall not use Amtrak's or COG's trade name, logo, trademark or service marks in any context in connection with any product, equipment, promotion or publication without the prior written consent of Amtrak or COG, respectively. Contractor agrees to comply with Amtrak or COG, as applicable, instructions regarding trade dress, packaging, trade names, trademarks, service marks or other indicia of origin which shall appear on any items to be delivered under this Contract.
- B. Patent Rights; Copyrights. All written or fixed media material, discoveries, inventions, and designs (whether or not patentable), developed, conceived or reduced to practice by Contractor or its employees in connection with the performance of this Contract, shall be promptly disclosed to Amtrak and COG and shall become the property of Amtrak. The parties agree that all copyrightable material to be delivered to Amtrak is "works made for hire" under the federal copyright laws. In the event Contractor or a third party is deemed to be the author for copyright purposes of any materials that are used in the performance of this Contract, Contractor shall assign or cause such third party to assign the copyright in such materials to Amtrak. Amtrak shall have the right, at its own expense, to obtain and to hold in its own name patents, copyrights or such other protection as may be appropriate for any inventions that become the property of Amtrak hereunder. Contractor and its employees shall, upon request, cooperate and execute all papers necessary to assign any copyrights to Amtrak or to perfect Amtrak's right to own, use and protect Amtrak's proprietary rights under this section, including patent applications and assignments thereof. The decision whether to file and/or prosecute applications for patents or copyright registrations and/or to maintain patents

or other proprietary rights shall be made solely by Amtrak.

- C. Pre-existing Materials of Contractor. Contractor hereby grants to Amtrak a non-exclusive, irrevocable, perpetual, worldwide, fully paid-up license to use, execute, reproduce, modify, display, distribute copies of and prepare derivative works based on materials, including any modifications thereto, owned and developed independently by Contractor or a third party prior to the preparation of its proposal used to perform Services and provide Supplies under this Contract. Contractor or the third party shall retain its ownership interest in such pre-existing materials.
- D. This Intellectual Property Rights section shall survive expiration or termination of the Contract for any reason.

IV. Ethical Business Practices.

- A. Contractor shall not offer to any Amtrak or COG employee, agent or representative any cash, gift, entertainment, commission, or kickback for the purpose of securing favorable treatment with regard to award or performance of this Contract or any other contract.
- B. Contractor agrees that it shall neither solicit nor accept any cash, gift, entertainment, commission, or kickback from a vendor, subcontractor or any other person or entity for the purpose of securing favorable treatment with regard to award or performance of any subcontract or contract issued in connection with the Contract.
- C. Contractor agrees that it shall not knowingly (1) employ the services of any Amtrak or COG employee or member of an employee's immediate family as a consultant, subcontractor, or otherwise, in connection with the performance of its obligations under the Contract, or (2) purchase any material or services required to perform the Contract from any entity owned or controlled (including a substantial financial interest) by an Amtrak or COG employee or member of an employee's immediate family.
- D. Contractor agrees that it shall direct any officer, employee, agent, or representative of Contractor ("Contractor Agents") to comply with the obligations stated in the foregoing subsections (A)-(C). Contractor further agrees that Contractor shall be responsible for ensuring compliance by the Contractor Agents.

V. Conflict of Interest.

- A. Conflict of interest means that because of activities or relationships with other persons or entities, (1) the person or entity is unable to render impartial assistance or advice to Amtrak and COG, (2) the person's or entity's objectivity in performing the work under the Contract is or might be otherwise impaired, or (3) the person or entity has, or attempts to create, an unfair competitive advantage. Contractor hereby affirmatively represents that it does not and will not have a conflict of interest in performing the work for Amtrak and COG pursuant to the Contract. Contractor agrees not to (a) engage in activities, or (b) initiate or maintain relationships with persons or entities where such activities or relationships create a conflict of interest. Contractor shall use its best efforts to identify and prevent potential subcontractor conflicts of interest. Contractor shall inform COG and Amtrak of any activity or relationship that Contractor has reason to believe may create a conflict of interest.
- B. Contractor represents that it is not a party to any existing agreement which would prevent Contractor from entering into and performing this Contract.

VI. Suspension of Work.

- A. After operations have begun, Contractor shall not suspend work without prior written permission of COG. When under suspension, the work shall be put in proper and satisfactory condition, and properly protected as directed by COG. In all cases of suspension, the work shall not be resumed until permitted by written order of COG.
- B. COG reserves the right at any time during performance of the work, to suspend operations thereon, or upon any part thereof, either for a specified amount of time or indefinitely, by giving Contractor five (5) days written notice. In the event that work is suspended by COG for more than sixty (60) days cumulatively, the amount of compensation due Contractor from COG may be adjusted for any increase in the cost of performance of the work (excluding profit) necessarily caused by such suspension. However, no adjustment shall be made for any suspension to the extent that (1) performance would have been suspended for any other cause, including the fault or negligence of Contractor; (2) the cumulative total of suspended days is sixty (60) days or less; or (3) equitable adjustment is provided for or excluded under any other provision of the Contract.
- C. No claim under this section shall be allowed unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, but no later than the date of final payment under the Contract.

VII. Changes.

- A. Any amendment or change to the terms of the Contract must be in a form and manner prescribed by COG. Any attempt on the part of Contractor to alter the terms of the Contract without the approval of COG shall be void.
- B. COG may, at any time, by written change order and without notice to the sureties, if any, direct changes within the general scope of the Contract. No Amtrak employee, agent or representative is authorized to do so, unless expressly authorized in writing by COG.
- C. If any such change order causes an increase or decrease in the cost of, or time required for delivery of, the Supplies (or performance of the Services), Contractor shall notify the COG in writing within twenty (20) days of receipt of the change order and shall negotiate in good faith with COG, as appropriate, an equitable adjustment to the price and/or schedule. If Contractor includes the cost of property made obsolete or excess as a result of a change order in Contractor's claim for adjustment, COG shall have the right to prescribe the manner of disposition of such property. Any claim for adjustment is deemed to be waived if Contractor does not notify COG of the need for such an adjustment within twenty (20) days of receipt of the change order.
- D. Failure of the parties to agree to any adjustment shall be considered a "Dispute" under Section 13 of COG's Standard Terms and Conditions. Pending negotiation of the equitable adjustment and/or the final resolution of any related dispute, Contractor shall proceed diligently as directed by COG.
- E. Any modification to the Contract by COG to incorporate changed or extra work is subject to post-award audit to verify the accuracy of cost or pricing data provided by Contractor.
- F. Any claim for additional costs shall be considered for reimbursement only if such costs are: (1) satisfactorily documented to be necessary, reasonable, and actually incurred in

connection with the Contract; (2) allowable under 48 CFR Chapter I, Part 31 (Federal Acquisition Regulations); and (3) consistent with generally accepted accounting principles and procedures.

VIII. Audits and Inspection Records.

- A. Per the Enhanced Mobility Circular, COG as the Designated Recipient for Enhanced Mobility funds will collect A-133 audit reports from the CONTRACTOR receiving more than \$750,000 in federal funds. At a minimum, the CONTRACTOR is required to bring to COG TPB's attention any audit findings relevant to its use of FTA funds. The CONTRACTOR is not subject to A-133 audit requirements and may require additional monitoring, in a format elected by COG, to ensure compliance. The following additional audit requirements shall apply.
- B. Contractor acknowledges and agrees that COG and Amtrak and Amtrak's Office of Inspector General (OIG) may inspect, copy and/or audit Contractor's data and records (in hard copy and/or electronic format) related in any way to the Contract, including without limitation, all data and records relating to: (1) support for any proposal, change order, or request for equitable adjustment submitted to COG and Amtrak by Contractor; (2) Contract compliance and performance, including any work or deliverables in progress; (3) compliance with applicable provisions of Amtrak's federal grant, regulations and statutes; and (4) support for all direct and indirect costs or prices charged to COG and Amtrak. Contractor agrees to maintain all such data and records throughout the term of the Contract and until three (3) years after final payment under the Contract and agrees to cooperate with all audit activities.
- C. In connection with audit and inspection activities, COG and Amtrak and Amtrak's OIG shall be afforded, upon request, (1) access to Contractor's facilities and to Contract work or deliverables in progress, (2) the opportunity to interview Contractor's employees concerning any matter relating to the Contract, and (3) adequate and appropriate workspace.
- D. Contractor agrees to reimburse COG and Amtrak, within sixty (60) calendar days after receipt of a written request, the full amount of any undisputed audit findings or questioned costs, unless otherwise agreed by Amtrak in the course of post-audit negotiations with Contractor.
- E. Contractor shall include the provisions of this clause in every subcontract or purchase order exceeding \$100,000, as well as a provision requiring all subcontractors to include these provisions in any lower tier subcontracts or purchase orders exceeding \$100,000. Contractor shall be responsible for subcontractor or lower tier subcontractor's compliance with this clause.
- F. Nothing in this Contract shall be construed to limit the rights, obligations, authority, or responsibilities of Amtrak's Office of the Inspector General pursuant to the Inspector General Act of 1978, as amended, including the right to seek information by subpoena.

IX. Indemnification.

- A. In addition to the indemnification provision in the COG Standard Terms and Conditions, the following shall apply to the extent it is more protective of COG and Amtrak. Contractor agrees to defend, indemnify and hold harmless COG and Amtrak, its officers, directors, employees, agents, successors, assigns and subsidiaries (collectively

“Indemnified Parties”), from and against any claims, losses, liabilities (including without limitation environmental liabilities), penalties, fines, causes of action, suits, costs and expenses incidental thereto, (including costs of defense and attorneys’ fees) (collectively “Claims”), which any of the Indemnified Parties may hereafter incur, be responsible for or pay as a result of breach of warranty, injury or death of any person, or damage to or loss (including loss of use) of any property, including property of the parties hereto, arising out of or in any degree directly or indirectly caused by or resulting from the Supplies or Services, or from activities of, or work performed by Contractor, Contractor’s officers, employees, agents, servants, subcontractors, or any other person acting for or with the permission of Contractor under the Contract, or as a result of Contractor’s failure to perform its obligations in compliance with the Contract Documents.

- B. In addition to the foregoing, Contractor agrees to defend, indemnify and hold harmless the Indemnified Parties, irrespective of any negligence or fault on the part of the Indemnified Parties, from and against any Claims which any of the Indemnified Parties may hereafter incur, be responsible for or pay as a result of injuries (including death) to any of Contractor’s employees, agents or subcontractors.
- C. Indemnity for Infringement. Contractor warrants that in performing its obligations hereunder, Contractor shall not infringe or misappropriate any U.S. or foreign patent, copyright, trade secret or other intellectual property right of a third party. Contractor shall, at its own expense, defend, indemnify, and hold harmless the Indemnified Parties from and against all Claims based upon a claim that the Supplies, products or services provided pursuant to the Contract, or the use thereof, infringes any patent, copyright, royalty, trademark or service mark or other third party proprietary right, or involves the wrongful use of any trade secret or confidential information; provided that COG or Amtrak has given Contractor (1) written notice of such Claims, (2) reasonable assistance in defense or settlement as requested by Contractor, at Contractor’s sole expense, and (3) the right to control the defense or settlement of such Claims.
- D. The indemnification obligations under this section shall not be limited by the existence of any insurance policy procured or maintained by Contractor or by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor and shall survive the termination of the Contract.

X. Entry onto Premises.

- A. If Contractor finds it necessary to enter upon Amtrak’s or COG’s premises in connection with the Contract, Contractor shall take all necessary precaution to prevent injury to persons, damage to property or interference with Amtrak’s or COG’s operations. Contractor shall cooperate fully with COG and Amtrak and its other contractors on the premises and shall not commit or permit any act that will interfere with COG or Amtrak’s operations on the premises or with any other contractors’ operations.

XI. Safety; Security.

- A. Contractor agrees, at its sole cost, to comply with all Amtrak safety and security requirements while performing work under the Contract. The specific requirements may include: conducting of background investigations on Contractor personnel who meet certain criteria; participation in safety and security training; wearing of appropriate identification; and barring from Amtrak property of Contractor personnel who have been convicted or found not guilty by reason of insanity of certain disqualifying criminal

offenses which are set forth herein.

- B. Contractor shall comply with the applicable provisions of Amtrak Policy 7.39 (Contractor Background Check), a copy of which is incorporated herein by reference.

XII. Inspection, Rejection, Acceptance.

- A. Contractor shall provide and maintain an inspection and quality control system acceptable to COG and Amtrak covering the Supplies (including all raw materials and components). Records of all inspections and quality control work by Contractor shall be kept complete and available to COG during the performance of the Contract and to COG and Amtrak for a period of five (5) years after final payment. Inspection and test requirements specifically required by the Contract are for the benefit of Amtrak and COG and do not relieve Contractor of its responsibility to provide a product which complies strictly with all requirements of the Contract.
- B. COG and Amtrak shall have the right to inspect and test, or witness testing of the Supplies (1) at any time prior to shipment, and (2) within a reasonable time after arrival at their designated destination. COG's or Amtrak's making or failure to make an inspection or test of the Supplies does not relieve Contractor of its obligation to furnish the Supplies strictly in accordance with the terms of the Contract, and shall not operate as a waiver of any rights of COG or Amtrak under the Contract.
- C. COG's payment for or acceptance of nonconforming Supplies, shall not relieve Contractor of its obligation to furnish the remainder of the Supplies strictly in accordance with the terms of the Contract, and shall not operate as a waiver by COG of any Contract requirements nor serve to establish any course of performance regarding subsequent deliveries under the Contract. COG shall be entitled to offset from amounts owing to Contractor an equitable amount for acceptance of nonconforming Supplies. This right shall apply even though the nonconformity may be discovered substantially after delivery.
- D. If, during COG or Amtrak's own test or inspection of Supplies, any condition is uncovered which indicates nonconformance with any requirement of the Contract, Contractor is financially responsible for correcting the condition. If any Supplies are defective in materials or workmanship, or otherwise not in conformity with the requirements of the Contract, COG shall have the right, in addition to its normal legal and equitable rights, to reject same for full credit or to require that such Supplies be corrected or replaced promptly with satisfactory materials or workmanship. Unless Contractor corrects or replaces such Supplies within the established delivery schedule, COG may (1) require the delivery of such Supplies at a reduction in price which is equitable under the circumstances, or (2) suspend performance and obtain substitute supplies until Contractor has corrected any nonconformity, and Contractor agrees to reimburse COG for any excess costs for obtaining substitute supplies, or (3) terminate the Contract for default as provided under the Termination for Default section hereof. In addition to COG's other rights, COG may charge Contractor all expenses of unpacking, examining, repackaging and reshipping such nonconforming supplies.
- E. Discovery in one unit or item of a defect in material or workmanship or failure to conform to the requirements of the Contract may be cause for rejection of the entire shipment. COG may require repair or replacement of nonconforming supplies at no increase in the Contract price. COG shall exercise its rights within a reasonable time after discovery of the defect or nonconformance.

- F. Acceptance by COG of the Supplies occurs at the time of Amtrak's satisfactory inspection and testing of the Supplies or within thirty (30) days of their arrival at the designated destination, whichever first occurs. Acceptance shall not be conclusive as to latent defects, defects concealed by fraud, gross mistakes, or as otherwise provided in the Contract.
- G. Use of the word "Supplies" in this Section shall be deemed to include "Services" where appropriate.

XIII. Buy American Requirements.

- A. Pursuant to 49 U.S.C. § 24305 (f), if the value of the Contract is one million dollars (\$1,000,000) or more, Amtrak can only obtain: (a) unmanufactured articles, material and supplies which have been mined or produced in the United States, or (b) manufactured articles, materials and supplies which are manufactured in the United States substantially from articles, material, and supplies mined, produced or manufactured in the United States. Accordingly, all articles, material, or supplies to be delivered under this Contract must meet these requirements, unless a waiver is obtained from the Secretary of the Department of Transportation. Components of unknown origin are considered to have been mined, produced or manufactured outside the United States.
- B. Contractor hereby certifies that the Supplies to be furnished pursuant to this Contract comply with these requirements.

XIV. Bonds.

- A. Contractor shall submit all required performance and payment bonds to COG within ten (10) days after the Notice of Award is issued and prior to execution of the Contract. COG may require additional bond protection in the event that the Contract price is increased as a result of changes made at any time during the term of the Contract.
- B. All bonds required by the Contract shall be written in a form acceptable to COG and Amtrak and by a good and sufficient United States surety(ies) acceptable to COG and Amtrak, registered in the U.S. Department of Treasury's Circular TD 570, licensed to do business in all states in which the work is performed, and carrying a financial rating from A.M. Best Company's Key Rating Guide of A VIII or better. The bonds must reference the Contract Number. The bond shall include a requirement that the surety agree that (1) no change, extension of time, alteration, addition, omission, or other modification of the terms of the Contract or the work to be performed shall in any way affect its obligation on the bond, and (2) the surety waives notice of any such change, extension of time, alteration, addition, omission or other modification. All bonds are subject to review by COG and Amtrak and must have properly executed powers of attorney attached and seals affixed. Bonds must be properly countersigned where state law so requires.

XV. Performance and Payment Bonds

- A. Contractor shall furnish and maintain a properly executed performance bond (AIA Form A312 - 2010) naming COG as Owner as security for the faithful performance of Contractor's obligations under the Contract, in an amount equal to 100% of the Contract price. The performance bond shall remain in effect until acceptance of the Supplies and Services by COG.

- B. Contractor shall furnish and maintain a properly executed payment bond (AIA Form A312 - 2010) naming COG as Owner as security for the payment of all persons or entities performing labor or furnishing materials in connection with the Contract, in the amount equal to 100% of the Contract price. The payment bond shall remain in effect until one year following acceptance of the Supplies and Services by COG.

XVI. Maintenance Bond

- A. At least sixty (60) days prior to the delivery of the last item under this Contract, Contractor shall furnish and maintain a properly executed maintenance bond naming Amtrak and COG as obligees, in an amount equal to 100% of the Contract price, in order to secure Contractor's faithful performance of its warranty obligations under the Contract. Contractor shall maintain such maintenance bond in effect throughout the warranty period.

XVII. Amtrak and COG Property

- A. Title to all property provided by Amtrak to Contractor for its use in performance of this Contract shall remain with Amtrak. Contractor shall properly maintain such property and shall be responsible for all loss or damage thereto. Contractor shall properly mark and segregate any such property from its own. Amtrak and COG shall have the right to inspect such property at any time. All Amtrak property shall be returned promptly to Amtrak upon termination of the Contract or as otherwise directed by COG or Amtrak.

XVIII. Special Tooling

- A. If the costs of special tooling or test equipment used in the performance of the Services or the manufacture of Supplies furnished hereunder have been included in the price of the Contract (or allocated to this Contract and others placed by COG), title to such special tooling or test equipment shall vest in Amtrak upon completion of the Contract.

XIX. COG Technical Representative

- A. COG may designate representative(s) to act as the project manager for one or more contract administration functions not involving a change in contract scope, price, terms or conditions of the Contract. Such designation will be in writing and will contain specific instructions as to the extent to which the project manager may take action on behalf of COG's Contracting Officer, including handling requested technical change orders to the specifications. Such designation will not contain authority to sign contractual documents, nor will it authorize the COTR to order Contract changes, modify Contract terms, or create any liability on the part of COG different from that set forth in the Contract.

XX. Laws, Regulations, and Permits

- A. Contractor represents and warrants that it shall comply with all laws, regulations, codes, ordinances, rules or orders of any governmental entity or public authority ("Laws") applicable to the performance of its obligations under the Contract. Contractor shall, without additional cost to Amtrak and COG, obtain all necessary permits or licenses required for the performance of its obligations hereunder.

ATTACHMENT C: PROPOSERS EXPERIENCE/REFERENCES

Name of Proposer _____

The Proposer, for itself and for any Subcontractor, must provide a list, as well as references, of similar work completed or in progress for other clients. Preferred references will be from recent work, conducted within the last two to three years. References shall include complete contact information. Names, titles, addresses, and telephone numbers shall be included for each reference. References must include work in which key personnel proposed to COG for this project have served.

A Proposer, which, in the sole judgment of COG, lacks sufficient specific experience, may be deemed non-responsible, and may not be considered for award of subsequent contract(s)

1) Firm Name _____

Contact Name _____

Address _____

Telephone Number _____ Email Address _____

2) Firm Name _____

Contact Name _____

Address _____

Telephone Number _____ Email Address _____

3) Firm Name _____

Contact Name _____

Address _____

Telephone Number _____ Email Address _____

ATTACHMENT D: NON-COLLUSION AFFIDAVIT

DATE _____

TO: Metropolitan Washington Council of Governments,
777 North Capitol Street, NE, Suite 300
Washington, DC 20002

To Whom It May Concern:

This is to certify that the undersigned Proposer has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this Proposal submitted to the Metropolitan Washington Council of Governments & Mid-Atlantic Purchasing Team.

In addition, the Proposer also certifies that they are in good standing and not on any debarred lists with any government agency including Local, Federal and State Governments.

Bid _____

Name of Proposer _____

Signature

Title of Authorized Representative

ATTACHMENT E: DBE PLAN SUBMISSION

DBE Participation YES ___ NO ___ (Please Check One)

PROPOSER	Name: _____	
Total Proposed Budget	Value: \$ _____	
DBE Plan	Yes ___ No ___	
Check if Prime Contractor is a DBE _____. Certification Form Must Be Attached to this form.	Certification # _____	Expiration Date: _____
DBE Certification	State: _____	Certification Type: DBE (must be DBE)
	Certifying Agency: _____	
<i>Copy for additional DBE subcontractors</i>		
DBE SUBCONTRACTOR 1	Name: _____	
Street Address	_____	Tax ID #: _____
City, State, Zip	_____	Website: _____
POINT OF CONTACT	Name: _____	Title: _____
	Email: _____	Telephone: _____
Subcontract Value	Cost \$ _____	Percentage of total ____%
DBE Performance Period	Start ___/___/___	End ___/___/___
DBE Certification	State: _____	Certification Type: DBE (must be DBE)
	Certifying Agency: _____	
Certification Form Must Be Attached to this form	Certification # _____	Expiration Date: _____
<i>Copy for additional DBE subcontractors</i>		
DBE SUBCONTRACTOR 2	Name: _____	
Street Address	_____	Tax ID #: _____
City, State, Zip	_____	Website: _____
POINT OF CONTACT	Name: _____	Title: _____
	Email: _____	Telephone: _____
Subcontract Value	Cost \$ _____	Percentage of total ____%
DBE Performance Period	Start ___/___/___	End ___/___/___

RFP 22-014 AMTRAK ENGINE REPOWER II

DBE Certification	State: _____	Certification Type: DBE (must be DBE)
	Certifying Agency: _____	
Certification Form Must Be Attached to this form	Certification # _____	Expiration Date: _____

Copy for additional DBE subcontractors

DBE SUBCONTRACTOR 3	Name: _____	
Street Address		Tax ID #: _____
City, State, Zip		Website: _____
POINT OF CONTACT	Name: _____	Title: _____
	Email: _____	Telephone: _____
Subcontract Value	Cost \$ _____	Percentage of total _____%
DBE Performance Period	Start ___/___/___	End ___/___/___
DBE Certification	State: _____	Certification Type: DBE (must be DBE)
	Certifying Agency: _____	
Certification Form Must Be Attached to this form	Certification # _____	Expiration Date: _____

Copy for additional DBE subcontractors

DBE SUBCONTRACTOR 4	Name: _____	
Street Address		Tax ID #: _____
City, State, Zip		Website: _____
POINT OF CONTACT	Name: _____	Title: _____
	Email: _____	Telephone: _____
Subcontract Value	Cost \$ _____	Percentage of total _____%
DBE Performance Period	Start ___/___/___	End ___/___/___
DBE Certification	State: _____	Certification Type: DBE (must be DBE)
	Certifying Agency: _____	
Certification Form Must Be Attached to this form	Certification # _____	Expiration Date: _____

Copy for additional DBE subcontractors