



**REQUEST FOR PROPOSALS NO. 23-006**

**RADIOISOTOPE IDENTIFICATION DEVICES**

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

**Submission Deadline:** March 8, 2023, 2:00 PM EDT

**In-Person Demonstration Date:** March 20, 2023

Questions regarding the RFP shall be submitted as directed in Section VII.

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**I. SUMMARY**

Product requested	Type II Radioisotope Identification Devices
Contract type	Firm fixed price
Number of contracts	One
Payment method	Net 30
Planned duration of RFP advertisement	Four (4) weeks
Start of advertisement period for RFP	February 17, 2023
Deadline for questions about RFP	Five (5) business days before deadline for technical documentation
Deadline for COG responses to questions	Three (3) business days before deadline for technical documentation
Written Proposal Due Date	March 8, 2023
Invitations for Demonstrations	March 13, 2023
In-Person Demonstrations for Qualified Proposers	March 20, 2023 Alternate date: March 23, 2023
Award Date	No later than April 3, 2023

**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](http://www.mwcog.org).
- B. The mission of the District of Columbia Homeland Security and Emergency Management Agency (HSEMA) is to lead the planning and coordination of homeland security and emergency management efforts to ensure that the District of Columbia is prepared to prevent, protect against, respond to, mitigate, and recover from all threats and hazards. HSEMA serves as the State Administrative Agency for the National Capital Region’s Homeland Security Grant Programs (HSGP) from Department of Homeland Security (DHS). HSEMA also applied for and received the Securing the Cities funding on behalf of the region. As part of the program, the Metropolitan Washington Council of Governments (COG) is serving as the purchasing agent for regional equipment used to reduce the risk of a successful deployment of a radiological/nuclear terrorist weapon against a major metropolitan area in the United States by establishing sustainable capability within Global Nuclear Detection Architecture (GNDA) partner agencies across the NCR and other related pathways to detect, analyze, and report nuclear and other radioactive materials out of regulatory control within their jurisdictions. COG has coordinated with the NCR PRND/STC Executive Steering Committee and the NCR PRND/STC Equipment Subcommittee to identify the equipment to be purchased and gained approval from the grantor.

### III. SPECIFICATIONS OF DEVICES

- A. Instruments and accessories must meet or exceed all of the specifications listed below:

<b>Application</b>	Isotope identification, spectral analysis, dose rate meter, source locator
<b>Alarm type</b>	Audio through speaker and/or headphone jack and visual on screen
<b>Battery lifetime</b>	Standard rechargeable (8 hr nominal) and adapter for alkaline batteries. Must be "hot-swappable" if battery life is less than 8 hours.
<b>Gamma Detector</b>	Nal or LaBr3 no smaller than 1.0" in. x 1.0" in. x 1.0"
<b>Neutron Detector</b>	He3, Li6, ZnS or equivalent capability to detect and measure neutron radiation
<b>Energy Range</b>	Low: No higher than 20 keV High: No less than 3 MeV
<b>Display Type</b>	LCD high brightness color display with bright, backlit numbers/letters for easy readability.
<b>Displayed Units</b>	Units auto scale and display CPS and dose rate.
<b>Inputs</b>	Well-spaced keypad for simple one-handed use with protective gloves
<b>Libraries</b>	User configurable libraries compliant with ANSI standards for RIIDs.
<b>Outputs</b>	Data transferrable by USB thumb drive, WiFi connection or USB cable to a web browser interface. Data interface and data is compliant with ANSI N42.42-2006.
<b>Operating temperature</b>	Low: No higher than 0° F High: No lower than 120° F
<b>Weight</b>	Not more than 7.0 lbs (including batteries)
<b>Dimensions (L x W x H)</b>	Not to exceed 10 in. x 6 in. x 6 in.
<b>Environmental protection</b>	IP65
<b>Other</b>	Comprehensive warranty contract covering all aspects including required calibration and annual software/hardware updates of the device for 5 years from the date of accepted delivery by the end user.
<b>Other</b>	Ergonomic handle and balanced design allowing for extended use
<b>Other</b>	Includes Pelican or equivalent protective case that will store the alkaline battery adapter, power supply, USB memory card reader (if applicable), spare memory card (if applicable), communication cables (if applicable), radioactive stabilization source (if applicable), and all accessories specified above

#### IV. DELIVERY INSTRUCTIONS

- A. Equipment shall be delivered directly to each receiving participating agency:

Number of RIIDs and accessories	Agency	Address
1	Alexandria Fire Department	5255 Eisenhower Ave Alexandria, VA 22304
4	Arlington County Police Department	1425 North Courthouse Rd Arlington, VA 22201
2	Charles County Sheriff's Office	6855 Crain Highway La Plata, MD 20646
3	Fairfax County Police Department	3911 Woodburn Rd. Annandale, VA 22003
4	Prince George's County Fire & EMS Department	14901 Health Center Drive Bowie, MD 20716
3	Prince William County Police Department	8900 Freedom Center Boulevard Manassas, VA 20109
2	University of Maryland Police Department	7569 Baltimore Avenue College Park, MD 20742
4	Washington Metropolitan Area Transit Authority	600 Fifth Street NW Washington, DC 20001

- B. All equipment must be delivered by grant period of performance end date of May 31, 2023.

#### V. EVALUATION AND SCORING CRITERIA

- A. Proposer must include the necessary technical documentation as part of their initial submission that demonstrates that the proposed equipment meets the specifications of the RFP. Failure to include such documentation may result in the Proposal being determined to be non-responsive.
- B. Upon review of the submissions, qualified Proposers shall be invited to present a demonstration of their proposed devices to the technical selection committee. The demonstration shall be no longer than thirty (30) minutes in length. Demonstrations will be held at COG's offices, located at 777 North Capitol Street NE, Washington, DC 20002, on March 20, 2023, with an alternate date of March 24, 2023. Proposers are required to RSVP no later than March 13, 2023.
- C. Following the demonstrations, a determination shall be made as to award of contract. Award of contract shall be made based upon the following criteria:

Factor	%
Device Meets the Specifications	30
Ability of Proposer to Meet the Required Timeline	25
Evaluation of Devices at Demonstration	25
Price	20
<b>Total</b>	<b>100</b>

**VI. 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. Pricing shall be valid for one (1) year from date of award in the event of a follow-up order.
- C. 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.
- D. Contractor shall set up its billing system to ensure that invoices do not include sales tax. COG, and any Participating Agencies, will provide certificates of exemption for sales tax upon request.
- E. For all transactions, the successful Proposer shall have a valid W-9 form on file with COG and the Participating Agency.

**VII. GENERAL CONDITIONS FOR ORDERS**

- A. Proposers shall accept orders via emailed purchase order.
- B. 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.
- C. COG has implemented a P-Card Program utilizing MASTERCARD networks. Purchases from this contract may be made utilizing COG's P-Card.
- D. 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.
- E. Accordingly, vendors 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.
- F. 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.

**VIII. QUESTIONS CONCERNING THIS RFP**

- A. All questions concerning this RFP must be submitted in writing, via email to [purchasing@mwcog.org](mailto:purchasing@mwcog.org) with a courtesy copy to [cpipinou@mwcog.org](mailto:cpipinou@mwcog.org), no later than 2:00pm Eastern Time, 5 business days before due date of the proposals.
- B. Answers shall be provided no later than 3 business days before the due date of the proposals.

**IX. PROPOSAL SUBMISSION INSTRUCTIONS**

- A. A Proposal shall consist of the following documents:
1. Completed Proposal Form (Section X, below), including pricing.
  2. Technical Documents, demonstrating the proposed equipment meets the requirements of the specification. The Technical Documents must not include pricing information.
- B. All Proposals must be completed by responsible company officials and submitted to the COG LOCKBOX on or before the due date and time.
- C. 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.
- D. Proposers shall submit one electronic copy to the COG LOCKBOX system in the following fashion.
1. *Registration.* To utilize the LOCKBOX service, Proposer must be registered on the Mid-Atlantic Purchasing Team Vendor Registration System (“VRS”) portal at <https://mwcog.net>. If Proposer 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: Proposer will need its company information including its TIN/EIN number if Proposer is a company or Proposer’s SSN if Proposer is a sole proprietor.
    - c. Registering will give Proposer access to the LOCKBOX solicitations.
- E. *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, Proposer will receive a one-time use 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 Proposer's formal proposal response and any additional attachments to the lockbox (before the closing time for the solicitation).
  - b. Please limit size of individual files to 10 MB.
  - c. To withdraw Proposer's formal response should Proposer desire to cancel its submission or to replace an already uploaded copy with a modified version.
  - d. 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 Proposer'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](mailto:customerservice@eepex.com) with a copy to [purchasing@mwkog.org](mailto:purchasing@mwkog.org).
- F. All questions regarding discrepancies, omissions, specifications, instructions, or the required forms may be directed via email no later than five (5) working days in advance of the deadline to [purchasing@mwkog.org](mailto:purchasing@mwkog.org).
- COG will post any addendum necessary to address questions no later than three (3) workdays before the due date of proposals.
- G. 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/>.
  - H. Proposal responses should indicate that Proposers have reviewed the latest addenda on the Proposal Form via the Proposal Form Checklist.
  - I. Proposers must acknowledge their understanding of all terms listed in this RFP by signing the Proposal Form as part of their submission.
  - J. Any variation to the solicitation specifications should be noted by the vendor/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.)***



**X. PROPOSAL FORM**

TO: Metropolitan Washington Council of Governments

Date \_\_\_\_\_

**Pricing Form**

Description	Unit Price	Quantity	Total
Type II Radioisotope Identification Devices, with accessories		23	

**Addendums (if applicable)**

Addendum #1

**Acknowledgement**

YES \_\_\_\_\_ NO \_\_\_\_\_

Addendum #2

YES \_\_\_\_\_ NO \_\_\_\_\_

Addendum #3

YES \_\_\_\_\_ NO \_\_\_\_\_

Others \_\_\_\_\_

YES \_\_\_\_\_ NO \_\_\_\_\_

**Attachments (if applicable)**

**Acknowledgement**

Attachment A: COG Standard Terms and Conditions

YES \_\_\_\_\_ NO \_\_\_\_\_

Attachment B: Cooperative Purchasing Program Rider Clause

YES \_\_\_\_\_ NO \_\_\_\_\_

**Exceptions to Specifications**

Exceptions Taken (Submit with this form)

YES \_\_\_\_\_ NO \_\_\_\_\_

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

**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: \_\_\_\_\_

TITLE: \_\_\_\_\_

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.

**I. Amendment**

This Contract constitutes the entire agreement between the parties and all other communications prior to its execution, whether written or oral, with reference to the subject matter of this Contract are superseded by this Contract. No amendment to this Contract shall be binding unless in writing and signed by the parties.

**II. Bankruptcy**

Upon filing for any bankruptcy proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the Contractor must notify COG immediately. Upon learning of the actions herein identified, COG reserves the right at its sole discretion either to cancel the Contract or to affirm the Contract and hold the Contractor responsible for damages. The exercise of this right is in addition to any other rights COG may have as provided in this agreement or by law.

**III. Compliance with Law**

The Contractor hereby represents and warrants that:

- A. It has the power and authority to enter into and perform the Contract, that the Contract, when executed and delivered, shall be a valid and binding obligation of Contractor, enforceable in accordance with its terms.
- B. Its performance under the Contract shall be in a good and workmanlike manner and in accordance with all applicable professional standards.
- C. It is qualified to do business in the jurisdictions covered by the Contract and that it will take such action as, from time-to-time hereafter, may be necessary to remain so qualified.
- D. It is not in arrears in the payment of any obligations due and owing to any agency involved in this agreement, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract.
- E. It shall comply with all federal, state and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract.
- F. It shall obtain, at its expense, all licenses, permits, insurance and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

**IV. Contingent Fee Prohibition**

The Contractor, architect or engineer (as applicable) warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, architect or engineer, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation or other entity, other than a bona fide employee or agent, any commission, percentage, brokerage or contingent fee or other consideration contingent on the making of this Contract.

**V. Counterparts**

This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute one and the same instrument.

**VI. Force Majeure**

Neither COG and/or its members nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, declaration of emergency, or war where such cause was beyond, respectively, COG's and/or its members or Contractor's reasonable control. COG and/or its members and Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

**VII. Governing Law**

This Contract shall be governed by and construed in accordance with the laws of the District of Columbia without regard to principles of conflicts of law.

**VIII. Indemnification**

The Contractor shall protect, hold free and harmless, defend and indemnify COG and its members including their officers, agents and employees from all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments (including attorney's fees) resulting from injury to, or death of, any person or damage to property of any kind, which injury, death or damage arises out of, or is in any way connected with the performance of the work or failure to perform its obligations under this Contract.

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

**IX. Independent Contractor**

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

- B. Contractor represents and warrants that Contractor is not an employee of COG and/or members, is not currently employed by the Federal Government, and is not an officer, employee or agent of COG and/or members.
- C. Contractor shall be responsible for all federal or state taxes applicable to any compensation or payments paid to Contractor under this Contract. Contractor is not eligible for any federal Social Security, unemployment insurance, or workers' compensation benefits from compensation or payments paid to Contractor under this Contract.
- D. Contractor agrees to immediately provide COG and/or members notice of any claim made against Contractor by any third party. Contractor also agrees not to assign to any third party, without COG's written consent, any obligation of COG to indemnify Contractor for any actions under this Contract.

#### **X. Insurance Requirements**

- A. Contractor shall obtain, and at all times keep in effect, Commercial General Liability Insurance in the amounts listed below for its activities and operations. The insurance shall include coverage for personal injury, discrimination and civil rights violation claims. All such insurance shall name COG, individual members, their employees, and agents as ADDITIONAL INSURED. A copy of the certificate of insurance shall be filed with COG and/or members prior to the time any services are rendered. Contractor shall maintain coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 general aggregate and \$500,000 for property damage. Coverage shall be written on an occurrence form.
- B. Contractor shall obtain, and at all times keep in effect, automobile insurance on all vehicles used in this Contract with COG and/or members to protect Contractor against claims for damages resulting from bodily injury, including wrongful death, and property damage that may arise from the operations of any owned or hired automobiles used by Contractor in connection with the carrying out of this Contract. All such insurance shall name COG and/or individual members, their employees, and agents as ADDITIONAL INSURED.
- C. Contractor shall, upon request, provide COG and/or members with certification of Workers' Compensation Insurance, with employer's liability in the minimum amount required the governing jurisdiction's law in effect for each year of this Contract.
- D. 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 COG 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 prior to expiration of current policies to all contracting agencies.

#### **XI. Nondiscrimination**

- A. A contractor who is the recipient of COG and/or member funds, or who proposes to perform any work or furnish any goods under this Contract shall not discriminate against any worker,

employee or applicant because of religion, race, sex, age, sexual orientation, physical or mental disability, or perceived disability.

- B. Contractor further agrees that this provision will be incorporated in all sub-contracts entered into in connection with this Contract.

## **XII. Ownership of Documents and Materials**

- A. The Contractor agrees that all documents and materials, including but not limited to, reports, drawings, studies, specifications, estimates, maps, photographs, designs, graphics, mechanicals, artwork, and computations prepared by or for the Contractor under the terms of this Contract shall at any time during the performance of the services be made available to COG and/or members upon request and shall become and remain the exclusive property of COG and/or members upon termination or completion of the services. These jurisdictions shall have the right to use the same without restriction or limitation and without compensation to the Contractor other than that provided in this Contract. COG and/or members shall be the owner for the purposes of copyright, patent or trademark registration.
- B. If the Contractor obtains or uses for purposes of this Contract, or subcontracts for, any design, device, material, or process covered by letters of patent for copyright, it shall provide an assignment to COG and/or members of ownership for purposes of copyright, patent or trademark and of all right to possess and to use such design, device, material or process and a legally sufficient agreement with the patentee or owner, and a copy of such agreement shall be filed with COG and/or members.
- C. The Contractor shall indemnify and save harmless COG and/or members from any and all claims for infringement by reason of the use of any such patented design, device, materials, or process, or any trademark or copyright, and shall indemnify, protect and save harmless COG and/or members, their officers, agents, and employees with respect to any claim. Action, costs or infringement, for royalties or user fees, arising out of purchase or use of materials, construction, supplies, equipment or services covered by this Contract.

## **XIII. Payments**

Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after 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.

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.

In some 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.

## **XIV. Records**

- A. Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other

records pertinent to this Contract in such a manner as to clearly document Contractor's performance hereunder.

- B. Contractor acknowledges and agrees that the COG and/or members and their duly authorized representatives shall have access to such fiscal records and all other books, documents, papers, plans, and writings of the Contractor that are pertinent to this Contract. All such fiscal records, books, documents, papers, plans, and writing shall be retained by Contractor and kept accessible for a minimum of three (3) years, except as required longer by law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Contract, whichever date is later.
- C. All subcontracts shall also comply with these provisions.

#### **XV. Remedies**

- A. Corrections of errors, defect and omissions. Contractor agrees to perform the work as may be necessary to correct errors, defects, and omissions in the services required under this Contract, without undue delays and without cost to COG and/or members. The acceptance of the work set forth herein by COG and/or members shall not relieve the Contractor of the responsibility of subsequent corrections of such errors.
- B. Set Off. COG and/or members may deduct from and set-off against any amounts due and payable to the Contractor any back-charges, penalties, or damages sustained by COG and/or members, their agents, employees of recipients of its services, by virtue of any breach of this Contract by the Contractor or by virtue of the failure or refusal of the Contractor to perform the services or any part of the services in a satisfactory manner. Nothing herein shall be construed to relieve the Contractor of liability for additional costs resulting from a failure to satisfactorily perform the services.
- C. Cumulative. All rights and remedies of COG/ members and Contractor shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of the COG and/or members by law.

#### **XVI. Responsibility of Contractor**

- A. The Contractor shall perform the services with the standard of care, skill, and diligence normally provided by a Contractor in the performance of services similar the services hereunder.
- B. Notwithstanding any review, approval, acceptance or payment for the services by COG, the Contractor shall be responsible for the professional and technical accuracy of its work, design, drawings, specifications and other materials furnished by the Contractor under this Contract.
- C. If the Contractor fails to perform the services, or any part of the services, in conformance with the standard set forth in subparagraph A above, it shall, if required by COG and/or members, perform at its own expense and without additional cost to COG and/or members, those services necessary for the correction of any deficiencies or damages resulting, in whole or in part, from the Contractor's failure. This obligation is in addition to and not in substitution for any other remedy available to COG and/or members under the "Remedies" paragraph, or otherwise available by law.

**XVII. Severability/Waiver**

- A. COG and/or members and Contractor agree that, if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- B. The failure of either party to enforce any provision of this Contract shall not constitute a waiver by that party of that or any other provision of this Contract.

**XVIII. Subcontracting or Assignment**

The benefits and obligations hereunder shall inure to and be binding upon the parties hereto and neither this Contract nor the services to be performed hereunder shall be subcontracted, or assigned or otherwise disposed of, either in whole or in part, except with the prior written consent of COG and/or members. COG and/or members have the right to withhold such consent for any reason COG and/or members deem appropriate.

**XIX. Survival**

The terms, conditions, representations, and all warranties contained in this Contract shall survive the termination or expiration of this Contract.

**XX. Termination**

- A. If the Contractor fails to fulfill its obligations under the Contract properly and on time, or otherwise violates any provision of the Contract, COG and/or members may terminate the Contract by written notice to the Contractor.
- B. The notice shall specify the acts or omissions relied upon as cause for termination.
- C. All finished or unfinished work provided by the Contractor shall, at COG's and/or members option, become COG's and/or member's property. COG and/or members shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and COG and/or members can affirmatively collect damages.

**XXI. Termination of Contract for Convenience**

- A. The performance of work under this Contract may be terminated by COG and/or members, in whole or in part, upon written notice to the Contractor, when COG and/or members determines such termination is in the best interest of COG and/or members. The termination for convenience is effective on the date specified in COG's and/or members written notice.
- B. COG and/or members will pay for all reasonable costs allocable to the Contract for work or costs incurred by the Contractor up to the date of termination. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination.

**XXII. Termination of Multi-Year Contract**

- A. If COG and/or members fail to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either COG's and/or members rights or the Contractor's rights under any termination clause in this Contract.
- B. The effect of termination of the Contract hereunder will be to discharge both the Contractor and COG and/or members from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. COG and/or members shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

**XXIII. Time is of the essence**

Time is of the essence in Contractor's performance of each and every obligation and duty under this Contract.

**XXIV. Whole Contract**

This Contract constitutes the complete and exclusive statement of the Contract between the parties relevant to the purpose described herein and supersedes all prior agreements or proposals, oral or written, and all other communication between the parties relating to the subject matter of this Contract.

*(Revised 5/20/2021)*



**ATTACHMENT B: COOPERATIVE PURCHASING PROGRAM RIDER CLAUSE**

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

**I. Format**

COG serves as the Lead Agency of this procurement and has included this Cooperative Rider Clause indicating its willingness to allow other public entities to participate in this procurement ("Participating Agency") pursuant to the following Terms and Conditions:

**II. Terms**

- A. A Participating Agency, through their use of this Cooperative Rider Clause, agree to the terms and conditions of the resulting contract to the extent that they can be reasonably applied to the Participating Agency.
- B. A Participating Agency may also negotiate additional terms and conditions specific to their local requirements upon mutual agreement between the parties.

**III. Other Conditions - Contract and Reporting**

- A. The resulting contract shall be governed by and "construed" in accordance with the laws of the State/jurisdiction in which the Participating Agency is officially located.
- B. Contract obligations rest solely with the Participating Agency only.
- C. Contractor must provide semi-annual contract usage reporting information to COG, including but not limited to quantity, unit pricing and total volume of sales by entity on demand and without further approval of Participating Agency:

*Semi-annual reporting Due Dates beginning from Contract execution:*

- November 30, covering May 1 – October 31
  - May 31, covering November 1 – April 30
- D. Contractor is required to report any Participating Agency that is added to the contract and a **COG Rider Clause Approval Form** must be filled out by the Participating Agency and approved by COG (see sample form on pages 27-28).
- E. Contractor must provide to COG a semi-annual administrative fee of two percent (2.0%) on all gross sales pursuant to this contract beyond the initial order as set forth in this RFP, at the time of the semi-annual report submission due dates listed above.
- F. Significant changes in total contract value may result in further negotiations of contract pricing with the Lead Agency and any Participating Agency.
- G. Although Participating Members (see next page) are the priority of this rider clause, organizations not on this list are permitted to use this clause by mutual agreement and approval by COG.

## II. Participating Members

### COG Member Governments

- **District of Columbia**

- **Maryland**

- Town of Bladensburg
- City of Bowie
- City of College Park
- Charles County
- City of Frederick
- Frederick County
- City of Gaithersburg
- City of Greenbelt
- City of Hyattsville
- City of Laurel
- Montgomery County
- Prince George's County
- City of Rockville
- City of Takoma Park

- **Virginia**

- City of Alexandria
- Arlington County
- City of Fairfax
- Fairfax County
- City of Falls Church
- Loudoun County
- City of Manassas
- City of Manassas Park
- Prince William County

- **Other Local Governments**

- Town of Herndon
- Spotsylvania County
- Stafford County
- Town of Vienna

- **Public Authorities/Agencies**

- Alexandria Renew Enterprises
- District of Columbia Water and Sewer Authority
- Metropolitan Washington Airports Authority
- Montgomery County Housing Opportunities Commission
- Potomac & Rappahannock Transportation Commission/ Omni Ride
- Prince William County Service Authority
- Upper Occoquan Service Authority

- Washington Metropolitan Area Transit Authority
- Washington Suburban Sanitary Commission

- **School Systems**

- Alexandria Public Schools
- Arlington County Public Schools
- Charles County Public Schools
- District of Columbia Public Schools
- Frederick County Public Schools
- Loudoun County Public Schools
- City of Manassas Public Schools
- Montgomery College
- Montgomery County Public Schools
- Prince George's County Public Schools
- Prince William County Public Schools
- Spotsylvania County Schools
- Winchester Public Schools

- **State Agencies**

- Maryland-National Capital Park and Planning Commission

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### BALTIMORE METROPOLITAN COUNCIL

- City of Annapolis
- Anne Arundel County
- Anne Arundel County Public Schools
- Anne Arundel Community College
- City of Baltimore
- Baltimore City Public Schools
- Baltimore County
- Baltimore County Public Schools
- Community College of Baltimore County
- Carroll County
- Harford County
- Harford County Public Schools
- Harford Community College
- Howard County
- Howard County Public Schools System
- Howard Community College
- Queen Anne's County
- Queen Anne's County Public School

**COG Rider Clause  
Approval Form**

This form must be executed for any Participating Agency, both within and outside of the Metropolitan Washington Council of Governments (COG) region, to use the COG Cooperative Rider Clause to ride solicitations and contracts.

*NOTE: Effective January 1, 2019, COG does not authorize the use of the MAPT/COG Cooperative Rider Clause without this form being completed and approved.*

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Participating Agency Name \_\_\_\_\_

Contact Person \_\_\_\_\_

Phone \_\_\_\_\_ Email Address \_\_\_\_\_

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Solicitation/Contract Information:

Name Solicitation/Contract \_\_\_\_\_

Lead Agency/Contract Holder \_\_\_\_\_

Contact Person \_\_\_\_\_

Solicitation/Contract Number \_\_\_\_\_ Other Reference \_\_\_\_\_

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Vendor Information:

Contractor Name \_\_\_\_\_

Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Contact Person \_\_\_\_\_

Phone \_\_\_\_\_ Email Address \_\_\_\_\_

See questions on next page.

**Questions -**

YES    NO

- |   |       |       |
|---|-------|-------|
| 1. Is the Contract active and currently in force?   | _____ | _____ |
| 2. Is the Participating Agency's specifications/scope of work the same or very similar to that in the Contract?   | _____ | _____ |
| 3. Is riding this Contract within the rules and regulations of the Participating Agency and approved by the Participating Agency's Purchasing Department? | _____ | _____ |

**Participating Agency**

**Metropolitan Washington  
Council of Governments**

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_