

Request for Proposals - Clean Products Market Analysis

(RFP 17-004)

The objective of this RFP is to select a qualified contractor to evaluate whether air pollution emissions reductions are achieved across the entire region due to market forces when regulations requiring cleaner products have only been adopted in part of the region, and to create documentation needed to achieve State Implementation Plan ("SIP") credit if such additional reductions exist.

COG identified several product regulations that have been adopted or are being considered for adoption by some, but not all, jurisdictions across the region including adoption of Ozone Transport Commission ("OTC") model rules. The categories evaluated included Architectural and Industrial Maintenance ("AIM") Coatings, Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations ("MMVER") and low sulfur home heating oil. It was found that the low sulfur fuels and MMVER have different regulations adopted across the region. MWAQC plans to use the project data to submit a request to EPA as needed for credit under the SIP.

Contact Information:

Technical questions concerning the RFP must be submitted in writing to Amanda Campbell (acampbell@mwkog.org) in COG's Department of Environmental Programs.

Procedural or administrative questions must be submitted in writing to Contracts and Procurement Analyst II, Alieu Turay at (aturay@mwkog.org).

Proposals must be received by no later than 2:00 p.m. Friday, September 30, 2016.

Dates:

9/6/2016 - 9/30/2016

Files:

RFP 17-004 Consumer Products Market Analysis



REQUEST FOR PROPOSAL
RFP No. 17-004

August 8, 2016

CLEAN PRODUCTS MARKET ANALYSIS
FOR POSSIBLE NATIONAL AMBIENT AIR QUALITY STANDARDS STATE IMPLEMENTATION PLAN ("SIP")
CREDIT

I. METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS

The Metropolitan Washington Council of Governments ("COG") is the regional organization of the Washington area's major local governments and their governing officials, plus area members of the Maryland and Virginia legislatures, the Council of the District of Columbia, and the U.S. Senate and House of Representatives.

COG provides a focus for action on issues of regional concern such as comprehensive transportation planning, air and water quality management, environmental monitoring, tracking economic development and population growth and their effects on the region, coordinating public safety programs, and promoting child care and housing for the region. COG is supported by financial contributions from its participating local governments, federal and state government grants and contracts, and through grants and contracts from foundations and the private sector.

The [Metropolitan Washington Air Quality Committee](#) ("MWAQC") is the entity certified by the Mayor of the District of Columbia and the Governors of Maryland and Virginia to prepare [air quality plans](#) for the DC-MD-VA Metropolitan Statistical Area under Section 174 of the federal Clean Air Act Amendments of 1990. MWAQC members are elected officials of COG member jurisdictions; the air management and transportation directors of the District of Columbia, Maryland, and Virginia; members of the Maryland and Virginia General Assemblies; and the chair of the Transportation Planning Board. In executing its responsibilities, MWAQC coordinates air quality planning activities among COG, other external committees, and the Transportation Planning Board; and adopts an air quality plan for transmittal to the District of Columbia, Maryland, Virginia, and the US Environmental Protection Agency ("EPA"). The MWAQC Technical Advisory Committee ("TAC") advises and assists MWAQC in planning for and maintaining the region's air quality.

II. PROJECT BACKGROUND

The objective of this RFP is to select a qualified contractor to evaluate whether air pollution emissions reductions are achieved across the entire region due to market forces when regulations requiring cleaner products have only been adopted in part of the region, and to create documentation needed to achieve State Implementation Plan ("SIP") credit if such additional reductions exist.

COG identified several product regulations that have been adopted or are being considered for adoption by some, but not all, jurisdictions across the region including adoption of Ozone Transport Commission ("OTC") model rules. The categories evaluated included Architectural and Industrial Maintenance ("AIM") Coatings, Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations ("MMVER") and low sulfur home heating oil. It was found that the low sulfur fuels and MMVER have different regulations adopted across the region.

MWAQC plans to use the project data to submit a request to EPA as needed for credit under the SIP.

| | Ozone Transport Commission (OTC) Model Rules | | | Other Rules |
|----------------------|--|--|--------------------------|------------------------|
| State | MMVER (Autobody) | Consumer Products | AIM Coatings | Low Sulfur Heating Oil |
| District of Columbia | 2009 rule under review | 2006 (Phase II) rule adopted 2013 update under review | 2014 update under review | Adopted |
| Maryland | 2009 rule adopted | 2006 (Phase II) rule adopted 2013 update under review | 2014 update under review | Adopted |
| Virginia | 2001 rule adopted | 2006 (Phase II) rule adopted | 2001 rule adopted | No Action to date |

III. SCOPE OF SERVICES

Clean Products Market Study

The OFFEROR must fulfill all of the tasks as specified below.

Task 1. Develop and Propose Approach

The OFFEROR must develop and propose an approach to assess the market for MMVER autobody coatings and low sulfur fuels in the MWAQC region. The OFFEROR shall propose an approach to determine whether or not products sold in the region contain the same formulation across the region when subject to different state (District of Columbia, Maryland, Virginia) regulations. The OFFEROR shall quantify the proportion of the regional market where cleaner product formulations are being used where not formally required by law and the resulting reduction in regulated air emissions as compared to what the product mix would have been if the market forces had not resulted in the use of cleaner products.

The OFFEROR shall also ascertain what the EPA requires to achieve credit and assess whether necessary information is available to satisfy the EPA's requirements for credit for cleaner products sold across the region despite differing local regulations under the ozone or fine particulate matter SIP.

The approach must provide sufficient detail in a Draft Technical Memorandum so that the methodology is thoroughly clear to COG and complies with EPA requirements.

The OFFEROR shall present the approach to:

- COG by Week 4 of the contract period
TAC at their next meeting following presentation to COG

The OFFEROR shall revise the Technical Memorandum as directed by COG and TAC and submit a Final Technical Memorandum to COG.

Deliverables: Draft Technical Memorandum and Final Technical Memorandum of Approach to Clean Products Market Study.

Task 2. Conduct Survey and Analyze Results

The OFFEROR shall conduct the evaluation and analyze results to determine whether cleaner products are distributed throughout the region despite only being subject to stricter air quality regulations in a part of the region.

The OFFEROR shall document results in a Technical Report and in a slide presentation. Analysis will include the list of vendors contacted, the approximate market share of each vendor, and their responses. Presentations include the following:

- One presentation for COG staff between weeks 8-10 of the project period
- One presentation at TAC meeting between weeks 9-12 of the project period
- One presentation at MWAQC meeting between weeks 9-16 of the project period

The OFFEROR shall revise its Technical Report to respond to feedback from staff and committee members. The Technical Report shall be in a format that can be directly submitted to EPA along with a request from MWAQC/State Air Agencies for SIP credit under the applicable National Ambient Air Quality Standard.

Deliverables: Draft and Final Technical Report and slide presentation.

Task 3. Develop EPA Submittal Documentation

If results of the analysis completed under Task 2 show potential for receiving SIP credit for these products, the OFFEROR shall, upon agreement in writing to OFFEROR by COG, develop a documentation package to submit to EPA for SIP credit, following EPA's requirements for such documentation.

Deliverables: Draft and Final Submission Package for EPA SIP Credit

Project Milestones

| | |
|-----------|--|
| Week 1 | Sign Contract and kick-off meeting with COG staff |
| Week 4 | Present Approach to COG |
| Week 8-10 | Present results to COG |
| Week 9-12 | Present results to TAC |
| Week 9-16 | Present results to MWAQC and Final Deliverables to COG |

Milestone schedule may be refined at the beginning of the project period as agreed by COG and the OFFEROR.

Requirements

- Conduct meetings in person, by phone, or by email. OFFEROR should budget for 2 in-person meetings.
- Conduct all research using own resources.
- Participate in project calls with COG.
- Provide regular updates on project progress.

IV. DEFINITIONS USED IN THIS DOCUMENT

| | |
|----------------------------|---|
| COG | The Metropolitan Washington Council of Governments |
| Contractor/OFFEROR | The term used throughout this document to describe the individual or organization awarded the prime contract based on this solicitation |
| Contracting Officer | The Executive Director of the Metropolitan Washington Council of Governments |
| DBE | Disadvantaged Business Enterprise – The presumptive groups shown in 49CFR26 |
| MWAQC | Metropolitan Washington Air Quality Committee |
| MWAQC TAC | Metropolitan Washington Air Quality Committee Technical Advisory Committee |
| Selection Committee | The Committee established to review the proposals received under this solicitation and recommend selection of Contractor(s) to the COG Contracting Officers |
| SIP | State Implementation Plan |
| Subcontractor/Subrecipient | Any subcontractor hired by the contractor |

V. CONDITIONS

The following conditions apply to the Contractor/ OFFEROR selected:

- a. Federal, State, or foreign taxes are not allowable.
- b. Legal fees of any type are not allowable without prior written approval of the COG Contracting Officer.
- c. In the event the project is terminated by administrative action, the Contractor/ OFFEROR will be paid for work actually performed to the date of termination.
- d. Any work to be subcontracted to a "Subcontractor" shall be clearly identified and such "Subcontractor" shall be approved by COG prior to contract issuance.
- e. The Contractor/ OFFEROR, acting as an independent contractor, shall hold COG harmless from and shall be solely responsible, where found liable, for the payment of any and all claims for loss, personal injury, death, property damage, or otherwise, arising out of any act of omission or negligence of its employees or agents in connection with the performance of this work.
- f. In case of failure by the Contractor/ OFFEROR and/or Subcontractor to perform the duties and obligations imposed by the resulting contract, COG may, upon verbal notice, to be confirmed in writing, procure the necessary services from other sources and hold the Contractor and/or Subcontractor responsible for any and all additional costs occasioned thereby.
- g. The Contractor/ OFFEROR covenants that it presently has no interest, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree

with the performance of services required to be performed under this contract. The Contractor/ OFFEROR further covenants that in the performance of this contract, no person having any such interest shall be employed.

- h. It is understood that funding for the ensuing contract is contingent upon COG receiving funds from the sponsoring agency. Should funding from the sponsoring agency be delayed, for any reason, COG shall make a concomitant delay in funding to the Contractor/ OFFEROR.
- i. Payment will be made to the Contractor/ OFFEROR 30 days following the receipt of correct invoice from the contractor and approval of the COG Project Manager. Contractor/ OFFEROR shall submit its final invoice within 30 days after expiration of the contract.

VI. INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS

- a. COG is the procuring entity, and this procurement transaction will, in all aspects, be governed by COG's own procurement policy and procedures. A copy of COG's procurement policy is available on its website COG's website www.mwcog.org .
- b. COG intends to award a contract based on time and materials. OFFEROR is expected to propose the amount needed to fund the scope of work specified in this RFP up to a maximum of \$50k. OFFEROR should specify the amount requested for each task in the Scope of Services and Tasks.
- c. COG may award a contract on the basis of initial offers received, without discussion. Therefore, each initial offer shall contain the OFFEROR(S)'s best terms from a price and technical standpoint. COG may communicate with OFFEROR(S) in order to clarify, verify or obtain additional information about the OFFEROR(S)'s past performance or experience; however, if discussions are conducted with any OFFEROR(S), COG will follow the process set forth within its procurement policy relative to the conduct of competitive negotiations.

VII. TYPE OF CONTRACT AND PERIOD OF PERFORMANCE

COG intends to issue a time and materials contract with a not-to-exceed amount to be based on the final award/selected proposal.

The period of performance shall begin upon execution of contract and will conclude on December 31, 2016. The period of performance may be modified upon written agreement by COG and OFFEROR.

Payments will be made based on receipt of invoices from selected Contractor/ OFFEROR, which may be submitted monthly. Invoices must be accompanied by a progress report documenting activities completed and percent of total work complete.

VIII. CONTENT OF PROPOSAL

OFFEROR must follow the prescribed format or they shall be deemed nonresponsive. Adherence to the proposal format by all respondents will ensure a fair evaluation and one which can evaluate each response with regard to the needs of COG. The letter transmitting

the proposal must be signed by an officer authorized to bind the OFFEROR as required by this RFP. Four (4) separate chapters shall be prepared as described in the following section:

Chapter 1: Proposed method to accomplish the work

In this section of the proposal, OFFEROR shall provide a detailed description of their approach for accomplishing all tasks specified above, including a work plan, a management plan and schedule. Timely completion of project tasks is an important selection consideration. OFFEROR shall provide a brief description of their current projects and the availability of key personnel proposed in this project.

Chapter 2: Qualifications of the Firms and Personnel

This section shall provide the professional credentials and experience of the firm, and any subcontractors and the key personnel of all firms proposed for this contract. The absence of such contract specific information shall be considered as nonresponsive. Although standard personnel resumes may be included as attachments to the proposal, amplification specific to this RFP, including conducting market surveys and conducting EPA compliant air quality research is required in this section.

Chapter 3: Cost Proposals

OFFEROR shall provide the fully burdened rates of the individuals that shall be proposed for the project for each task, along with the number of hours requested. It is understood that the proposed key personnel may not be substituted without the advanced written authorization of the COG Contracting Officer. OFFEROR shall also provide an estimate of any other direct costs, i.e. travel, printing, etc. that it reasonably anticipates shall be charged to this project.

Chapter 4: References

OFFEROR, and any Subcontractor or "Other Subcontractor" shall provide a listing, 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 will include complete contact information. Names, titles, addresses, and telephone numbers shall be included for each reference. Please indicate which references correspond to each of the key personnel proposed to COG for this project.

IX. QUESTIONS

Technical questions concerning the RFP must be submitted in writing to Amanda Campbell (acampbell@mwcog.org) in COG's Department of Environmental Programs.

Procedural or administrative questions must be submitted in writing to Alieu Turay at (aturay@mwcog.org).

X. SUBMISSION DATE AND CONTACT

Proposals must be received by no later than 2:00 p.m. August 22, 2016.
Please place the RFP number on the first page of your submission.

OFFERORs must submit one (1) original copy and one (1) soft copy on CD or USB to:

Alieu Turay
 Contracts and Procurement Analyst II
 Metropolitan Washington Council of Governments
 777 North Capital Street, N.E., Suite 300
 Washington, D.C. 20002

XI. METHOD OF PROPOSAL EVALUATION AND SELECTION

The proposals will be evaluated by a contractor selection committee. The selection committee may hold, at COG’s option, a pre-selection meeting with the top ranked respondents. The final recommendation for selection to the COG Contracting Officer may be made based upon interviews and/or a best and final offer submitted by the respondents, if required by the selection committee. In evaluating the proposals, the following factors will be considered, with points awarded up to the maximum shown:

| FACTOR | POINTS |
|---|------------|
| 1. Cost and Price Analysis | 10 |
| 2. Experience of the OFFEROR(s) and Key Personnel in conducting market surveys and other analyses compliant with EPA requirements for credit under the National Ambient Air Quality Standards and Availability of Key Personnel | 40 |
| 3. Understanding of the Requirements of the RFP, Technical Quality of the Proposal and Project Approach | 35 |
| 4. DBE Participation | 15 |
| Maximum Total Points | 100 |

XII. LATE PROPOSALS

Any proposal received at the address designated in this RFP after the exact time specified for receipt, will not be considered unless it is the only proposal received. Any modifications to a proposal will be subject to these same conditions.

XIII. DISADVANTAGED BUSINESS ENTERPRISE

Title VI Compliance - DBE – The Metropolitan Washington Council of Governments, 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.

The Disadvantaged Business Enterprise (DBE) participation shall be an integral component of the consultant selection procedure 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 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). 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 two or more proposals, the proposal with the largest percentage of DBE participation, as measured in dollars, will be awarded the contract. DBE points are to be awarded as follows:

PARTICIPATION POINTS

| | |
|-------------|----|
| 10% to 14% | 3 |
| 15% to 19% | 6 |
| 20% to 24% | 9 |
| 25% to 34% | 12 |
| 35% or more | 15 |

SAMPLE DBE PARTICIPATION PLAN

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

ATTACHMENT A
STANDARD TERMS AND CONDITIONS

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.

1. 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.
2. 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.

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

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

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

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

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

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

_____ Signature of SUBRECIPIENT Authorized Official

_____ Name and Title of SUBRECIPIENT Authorized Official

_____ Date

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

1. 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.
2. 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.
3. The SUBRECIPIENT agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case SUBRECIPIENT agrees to maintain same until COG, the applicable state or federal funding agency, the Comptroller General, or any of the their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

V. Funding Agency Changes

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

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

1. The 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.
2. 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

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.

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 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

VIII. No Government Obligation to Third Parties

1. The 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.
2. 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.

1. 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.
2. 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.
3. 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. 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 10 working days after receipt by 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 SUBRECIPIENT. Any such termination for default shall not in any way operate to preclude COG from also pursuing all available remedies against SUBRECIPIENT and its sureties for said breach or default.

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

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

1. **Nondiscrimination** – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of Federal law, the 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.
2. **Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying contract:
 - a. **Race, Color, Creed, National Origin, Sex** – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, the 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 CFR Parts 60 et seq., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable Federal Statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of this Project. The 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 any implementing requirements the funding federal agency may issue.

- b. **Age** – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and other applicable law, the 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.
 - c. **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 CFR 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.
 3. 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.

XII. Breaches and Dispute Resolution

Disputes – Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the COG Executive Director or his/her designee. This decision shall be final and conclusive unless within ten (10) working days from the date of receipt of its copy, the 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 the decision.

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

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

Remedies – Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between COG and the 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.

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, not shall any such action or failure to act constitute an approval of or acquiescence in any breach there under, except as may be specifically agreed in writing.

XIII. Patent and Rights in Data

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

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; CDs or flash drives (thumbsticks/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 (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
2. Any rights of copyright purchased by the Purchaser or 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 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 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.

XIV. Interest of Members of Congress

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

XV. Interest of Employees of COG

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

XVI. Interest of the 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.

XVII. 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.

XVIII. 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.

XIX. 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.

XX. Severability

It is understood and agreed by the parties that if any of these provisions shall contravene, or be invalid under, the laws of the particular state, county or jurisdiction where used, such contravention or invalidity shall not invalidate the whole agreement, but the Contract shall be construed as if not containing the particular provision or provisions held to be invalid in the said particular state, county or jurisdiction and the rights and obligations of the parties shall be construed and enforced accordingly.

XXI. Assignments

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

XXII. Entire Agreement

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

XXIII. Confidential or Personal Data

- a. COG respects the privacy or business interests involved in confidential or personal data. It is COG's policy to obtain confidential or personal data or store or allow storage of such

data only 1) when necessary to fulfill COG's information-gathering and data collection responsibilities, or 2) in conjunction with COG projects. COG intends to minimize risk of disclosure of such confidential or personal data.

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

The [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.

XXIV. 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.

XXV. 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.

XXVI. DBE Assurance

The SUBRECIPIENT or 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 CFR 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.

XXVII. Audits

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

XXVIII. FFATA Reporting

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.

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:

- The entity's information;
- Description and/or title of the sub-award (including NAICS code or CFDA Number);
- Date and amount of award;
- Location of the entity receiving the award and the primary location of performance under the award, including the city, state, congressional district, and country;
- Active and current SAM unique identifier;

- DUNS number;
- Names and total compensation of the five (5) highest paid officers/executives of the sub-recipient *IF* all three criteria are met:

- 1) Federal awards make up 80% or more of sub-recipient's annual gross revenues; and
- 2) SUBRECIPIENT's annual gross revenue from federal awards is \$25 million or more; and
- 3) 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 (Aug. 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.)

XXIX. 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 B 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.

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

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

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

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

Typed Name of Vendor

Typed Name & Title of Authorized Representative

Signature of Authorized Representative Date

ATTACHMENT C
CONTACT INFORMATION SHEET

(THIS PAGE MUST BE COMPLETED AND SUBMITTED WITH THE PROPOSAL)

RFP/RFQ No.: _____ Federal Tax ID No.: _____

Name of Offeror: _____

Address of Offeror: _____

Telephone No.: _____ Fax No.: _____ Website: _____

Name of Authorized Representative: _____

Mailing Address (If different from Above): _____

Telephone No.: _____ Mobile No.: _____ Other: _____

Email Address: _____

Name of Contact Person for this RFP/RFQ: _____

Title of Contact Person: _____

Telephone No.: _____ Mobile No.: _____ Other: _____

Email Address: _____