

METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS



REQUEST FOR PROPOSALS RFP No. 15-008

November 12, 2014

**Consultant Support for Solar Photovoltaic Market Development Activities
in the National Capital Region (NCR)**

I. INTRODUCTION

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

II. BACKGROUND

The purpose of this project is to support COG member governments and communities in the National Capital Region (NCR) in their efforts to foster solar photovoltaic (solar PV) market development. COG is a member of a project team that has received grant funding from the U.S. Department of Energy (U.S. DOE) SunShot Initiative Rooftop Solar Challenge to implement projects that foster market development, lower non-system costs, and streamline governmental processes in order to promote the deployment of distributed rooftop solar PV systems in residential and commercial sectors.

III. OBJECTIVES

This project is to assist local governments and communities in the National Capital Region (NCR) prepare for, launch and implement residential and commercial aggregation (e.g., solarize or solar cooperative programs) through provision of support to solar

procurement service providers, solarize, and solar cooperative program administrators for the region.

IV. SCOPE OF SERVICES

COG is seeking one or more Consultants, who may be organizations, firms or consortiums, hereinafter referred to as “Consultant(s)”, with experience launching and managing solar procurement support services, including solarize or solar cooperative initiatives in NCR.

The selected Consultant(s) shall:

1. Develop and utilize new or existing marketing and outreach materials and conduct training sessions to educate government officials, residents, businesses, non-profit organizations, community institutions such as churches, and other stakeholders about residential and commercial aggregation for procurement of solar photovoltaic systems.
2. Recruit and secure pledges from residents and businesses (participants) to participate in solarize or solar cooperative initiatives in their community.
3. Organize solarize or solar cooperative initiatives and activities.
4. Assist or lead activities to develop or promote solar potential mapping studies or on-line tools.
5. Develop innovative approaches, such as but not limited to, solar PV procurement/on-line portals to support residential and commercial aggregation.
6. Support participating communities with identification and evaluation of financing options for the deployment of solar PV systems. Examine and recommend opportunities to use shared savings agreements, shared commissions/fees, or other similar approaches to support future solar market development efforts or reduce costs for customers.
7. Provide recommendations to COG and participating local governments on additional measures and approaches that can be implemented to further foster solar PV market development, to remove governmental or other barriers to solar PV deployment, and to reduce non-system costs for solar PV installations.
8. Ensure that all written materials used for the solarize or solar cooperative initiatives meet the needs and requirements of the participating local government and COG.
9. If agreed to by the individuals involved, share data on business and residents that agree to participate in a solarize or solar cooperative initiative with COG and community government representatives to enable tracking and follow-up efforts.

Once they have completed the requirements of a contract(s) pursuant to this RFP, Consultants may provide additional services in the participating communities. Any of the services shall be separate and apart from this procurement and COG shall have no involvement in them, including but not limited to any contracts related to them.

All services under any contract awarded as a result of this solicitation will be accomplished on a task order basis. Actual task orders with a specifically defined scope of work will be developed when particular work or services are needed. There is no guarantee that any Consultant will be awarded any task order or any particular work or services. COG may award contracts to more than one Consultant.

COG will develop a description of services that are to be the subject of a particular task order, and will then notify the Consultant of the need for such services. COG will invite Consultants to perform the services based on the information provided in response to this solicitation.

Consultant(s) must develop a work and cost plan for each task order. COG will issue a purchase order to proceed with the task order upon acceptance of the work and cost plan. A Consultant shall not commence the service under any task order until a purchase order has been executed by the COG Contracting Officer.

Consultant(s) shall be paid by task order. Consultant's payment for services pursuant to this procurement or any task order shall be limited to that payment(s) authorized by COG for completion of the task order, Consultant's payments for the work performed under the task order or Scope of Services shall be limited to payment(s) from COG and Consultant shall not seek or accept payments from third parties for such work.

Consultant(s) will be required to regularly track progress and make progress reports, to COG throughout the duration of each project. The Consultant(s) will be required to effectively manage the work and complete tasks in a timely and cost effective manner.

Community Eligibility:

Task Orders under this solicitation will be limited to communities that are participants (or commit to become active participants) in the U.S. Department of Energy SunShot Initiative Rooftop Solar Challenge II. Consultants that are working with eligible communities should identify such communities in their proposal and may request support from COG. Whether or not Consultants are working in eligible communities, COG may, upon agreement with the Consultant, assign the Consultant to support the launch of new solar initiatives in other communities. The communities currently participating in the Rooftop Solar Challenge II are:

- Arlington County, VA
- Bowie, MD
- Bladensburg, MD
- College Park, MD
- Greenbelt, MD
- Fairfax County, VA
- Montgomery County, MD
- Prince George's County, MD
- Rockville, MD
- Washington, DC.

- To join the Rooftop Solar Challenge II, communities must complete a solar market baseline assessment. Communities should contact COG staff to receive the requisite information.

Consultant Selections:

A Technical Selection Committee comprised of COG staff and local government representatives will review and select one or more Consultants. Consultant(s) will be selected based on the offeror(s)'s experience, proposed methods, in-kind resources to be provided, and cost.

V. DEFINITIONS

- a. Contracting Officer - The Executive Director of the Metropolitan Washington Council of Governments.
- b. Consultant(s) – An individual or organization awarded the prime contract based on this solicitation.
- c. Subcontractor - An individual or business firm contracting to perform part or a Consultant's entire contract.
- d. Technical Selection Committee - The Committee established to review proposals received in response to this solicitation and which recommends selection of contractors to the COG Contracting Officer.

VI. PERIOD OF PERFORMANCE

The Period of Performance shall commence as of the date of a fully executed contract and end by December 31, 2015.

VII. TYPE OF CONTRACT

COG anticipates awarding contracts to one or more Consultant(s), who will then be eligible to receive work on a task-order basis.

VIII. SPECIAL CONDITIONS

- i) The following conditions apply to the Consultant(s) selected:
- ii) Federal, State, or foreign taxes are not allowable.
- iii) Legal fees of any type are not allowable without prior written approval of COG Contracting Officer.
- iv) In the event the project is terminated by administrative action, the Consultant will be paid for work actually performed prior to the date of termination.

- v) Any work to be subcontracted to a "Subcontractor" shall be clearly identified and such "Subcontractor" shall be approved by COG prior to contract issuance pursuant to this RFP.
- vi) Consultant, 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.
- vii) In case of failure by the Consultant 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 Consultant and/or Subcontractor responsible for any and all additional costs occasioned thereby.
- viii) Consultant covenants that it presently has no interest, and 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 any contract awarded as the result of this procurement. The Consultant further covenants that in the performance of this contract, no person having any such interest shall be employed.
- ix) It is understood that funding for performance of work and services under any contract awarded as a result of this procurement shall be and remain contingent upon COG receiving grant funds to support payment for such performance. Should funding from the source of grant funding for a particular task order be delayed, for any reason, COG shall be entitled to withhold payment to a Consultant for the corresponding delay in COG's receipt of grant funding.
- x) Payment will be made to the Consultant 60 days following the receipt of a correct invoice from the Consultant and approval of the COG Project Manager. Consultant shall submit monthly invoices that will include all work to include that of subcontractors and its final invoice within 30 days after expiration of the contract.

IX. INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFEROR(S)

COG is the procuring entity, and this procurement transaction will, in all aspects, and as required by the applicable grant conditions, be governed by COG's own procurement policy and procedures. A copy of COG's procurement policy is available to any potential offeror(s), by request. COG intends to award one or more contracts resulting from this solicitation to qualified, responsible offeror(s) whose proposals conform to the requirements of this RFP and whose proposals are most advantageous to COG. The final recommendation for selection to the COG Contracting Officer may be made based upon discussions and/or a best and final offer submitted by the offeror(s), if recommended by the Technical Selection Committee.

COG may award a contract on the basis of initial offers received, without discussion. Therefore, each initial offer should 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.

Each offeror submitting a proposal in response to this RFP should include a Statement of Work ("SOW") that includes information demonstrating the offeror's knowledge of the NCR.

Late Proposals

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

Procedural, technical or administrative questions must be directed to jduressa@mwkog.org by November 19, 2014

SUBMISSION DATE AND CONTACT

Proposals shall be submitted by no later than 2:00 p.m. on November 26, 2014. Please place the RFP number on the outside of your submission.

Offeror(s) shall submit one (1) original and five (5) copies of their proposal and one (1) CD or USB drive with the complete proposal to:

Jalene Duressa
Contracts and Purchasing Assistant
Metropolitan Washington Council of Governments,
777 North Capitol Street, NE, Suite 300
Washington, DC 20002

X. PROPOSAL FORMAT AND CONTENT

Offeror(s) shall submit the following material in response to this solicitation:

1. The firm(s) submitting the proposal.
2. The principal employees to provide service under this solicitation.
3. The scope of services proposed to be provided.
4. The areas within the COG region that the offeror(s) is able to provide the requested services, and, if applicable, communities with which offeror(s) has agreed to work.
5. In-kind services, and the value of such services, to be provided by the offeror(s).

6. Cost proposal for the required tasks under Part IV of this solicitation. This may be provided on a task or time of service basis. Any time of service basis should estimate the number of hours anticipated to complete the task in each eligible participating community.

Proposals should provide a narrative description of special experience, capabilities and technical resources that will be contributed to this project by the offeror. The following points should also be addressed in the narrative description:

1. A brief description of the Consultant's background and organizational history, including number of years in business and number of years performing services required by this RFP;
2. Experience with solar market development for jurisdictions with population and government of similar type and size;
3. Experience successfully completing solar market development projects in the National Capital Region.

PROPOSAL DOCUMENT ORGANIZATION

Offeror(s) shall submit a cover letter, addressed to: George Hohmann, COG Contracts and Purchasing Manager (address above), signed by an authorized principal or agent of the offeror(s), which provides an overview of the offeror(s)'s proposal, as well as, the name, title and phone number of the person to whom questions may be directed to concerning the proposal. The letter should also include a statement by the offeror(s) accepting all terms and conditions contained in this RFP. The written proposal shall be organized to match the headings delineated below:

- A. Letter of Interest
- B. Table of Contents
- C. Executive Summary
- D. Team Competence
- E. Resumes of Key Project Staff
- F. Price Proposal

Offeror's and Subcontractor(s) References

The offeror(s) and any subcontractor(s) shall provide at least three (3) references whom COG may contact regarding similar work performed. Offeror(s) may provide letters of reference from previous relevant clients. Names, titles, addresses and telephone numbers shall be included for each reference. All three of these references shall include work in which the key personnel proposed to COG have been assigned.

XI. METHOD OF PROPOSAL EVALUATION AND SELECTION

The proposals will be evaluated and ranked by a Technical Selection Committee based on the evaluation factors in the Chart following this section. COG intends to award one or more contracts resulting from this solicitation to qualified, responsible offeror(s) whose proposals conform to the requirements of this RFP and whose proposals are most advantageous to COG. The final recommendation for selection to the COG Contracting Officer may be made based upon discussions and/or a best and final offer submitted by the offeror(s), if recommended by the Selection Committee. In evaluating the proposals, the following factors will be considered, with points awarded up to the maximum shown:

Factors	Points
Technical Approach and understanding of the Project.	45
Technical Expertise - Qualifications, Credentials and Availability of the Key Personnel	30
Cost & Price	10
DBE Participation (see Section XIII)	15
Total Points	100

XII. EQUAL EMPLOYMENT OPPORTUNITY

The terms and conditions set forth within Exhibits A and B, attached to this RFP, are incorporated by reference as if set forth herein verbatim. In submitting a proposal in response to this RFP, and in performing services under any contract resulting from this RFP, the successful Consultant(s) shall be bound to comply with all of the terms, conditions and requirements referenced within Exhibits A and B.

In connection with the execution of a Contract, the Consultant(s) shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age or national origin. Such actions 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 of training, including apprenticeship.

No qualified disabled applicant for employment, or employee, shall, on the basis of disability be subjected by the Contractor to discrimination in employment under any program or activity that receives or benefits from financial assistance under this

Contract. Contractor shall make reasonable accommodation to the known disabilities of an otherwise qualified applicant for employment, or current employee, unless the Contractor can demonstrate to COG that the accommodation would impose an undue hardship on the operation of the PROJECT. Reasonable accommodation shall be as defined in Title 49, Code of Federal Regulations, Part 27.33.

XIII. DISADVANTAGED BUSINESS ENTERPRISE

The Disadvantaged Business Enterprise (DBE) participation shall be an integral component of the consultant selection procedure for this RFP. COG has established a DBE goal of 19% for this Project. COG's DBE Policy may be viewed on its website www.mwcog.org. Offeror(s) 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 Consultant 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:

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

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

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

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

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

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

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

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

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

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

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

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

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

V. Funding Agency Changes

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

VI. Clean Air – 42 U.S.C. 7401 et seq

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

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

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

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

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

VIII. No Government Obligation to Third Parties

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

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

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et. seq. and all appropriate federal agency regulations apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract of the Federally assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or caused to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor or to the extent the Federal Government deems appropriate.
2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n) (1) on the Contractor, to the extent the Federal Government deems appropriate.
3. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

X. Termination – 49 U.S.C. Part 18

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

- a. **Termination for Convenience** – COG, by written notice, may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in COG's best interest. If this contract is terminated, COG shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- b. **Termination for Default [Breach or Cause]** – If the Contractor fails to perform in the manner called for in this contract, or if the Contractor fails to comply with any

other provisions of the contract, COG may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contract is in default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by COG that the Contractor had an excusable reason for not performing, such as strike, fire, or flood, events which are beyond the control of the Contractor, COG, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

- c. COG in its sole discretion may, in the case of termination for breach or default, allow the Contractor ten (10) working days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If the Contractor fails to remedy to COG's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within the 10 working days after receipt by Contractor of written notice from COG setting forth the nature of said breach or default, COG shall have the right to terminate the Contract without further obligation to Contractor. Any such termination for default shall not in any way operate to preclude COG from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- d. In the event COG elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by COG shall not limit COG's remedies for any succeeding breach of that or any other term, covenant, or condition of this Contract.

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

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

- rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements the funding federal agency may issue.
- b. **Age** – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and other applicable law, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements the funding federal agency may issue.
 - c. **Disabilities** – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements the funding federal agency may issue.
3. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal Assistance, modified only if necessary to identify the affected parties.

XII. Breaches and Dispute Resolution

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

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

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

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

Rights and Remedies – The duties and obligations imposed by the Contract and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by COG or the Contractor shall constitute a waiver or any right or duty afforded to them under the Contract, 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; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

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

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

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

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

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

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

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

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

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

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

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

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

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

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

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

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

XIV. Interest of Members of Congress

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

XV. Interest of Employees of COG

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

XVI. Interest of the Contractor

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

XVII. Allowable Costs

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

XVIII. Covenant Against Contingent Fees

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

XIX. Indemnification

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

XX. Severability

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

XXI. Assignments

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

XXII. Entire Agreement

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

XXIII Confidential or Personal Data

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

- 7) The project documents shall provide that other parties working with COG on the survey, website or other data collection or storage shall indemnify COG with at least the following commitment:

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

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

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 contractor, COG's policies and procedures shall govern every aspect of the contractor 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 contractor and potential contractor 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 SUBGRANTEE 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. 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 assigning 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 Attachment A to this CONTRACT;
- 3) Terms and conditions set forth or referenced within Parts I and II of 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.

**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: _____