

# METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS



## REQUEST FOR QUALIFICATIONS/QUOTATIONS

#22-09

June 10, 2009

### TECHNICAL ASSISTANCE DEVELOPMENT OF A REQUEST OF PROPOSALS FOR A DISTRICT OF COLUMBIA DRINKING WATER QUALITY STUDY

#### **I. Metropolitan Washington Council of Governments**

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

COG provides a focus for action on issues of regional concern such as comprehensive transportation planning, air and water quality management, 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.

**COG has been requested by the District of Columbia government to obtain the services of a highly qualified consultant to prepare a scope of services to be included in a Request for Proposal (RFP) to carry out independent water testing for lead in drinking water in homes in the District of Columbia (the "Drinking Water Quality Study."). The study resulting from issuance of the RFP to be prepared by the selected contractor for this project is intended to assist decision makers and the public by providing reliable and accurate lead in water testing results for District of Columbia drinking water.**

**Important note: The contractor selected under this solicitation is not eligible to participate in the contractor team for the drinking water testing project itself.**

#### **II. Background**

This section provides some background information and set the context for the study.

**Responsibility for the District of Columbia’s Drinking Water** – The drinking water that is delivered to customers in the District of Columbia is produced by the U.S. Army Corps of Engineers Washington Aqueduct (WA). The District of Columbia Water and Sewer Authority (DCWASA) owns and operates the water distribution system. DCWASA has about 130,000 service connections, of which an estimated 35,000 are reportedly lead service lines (LSLs).

**Concerns About Lead in the District’s Drinking Water** – During compliance monitoring for the “Lead and Copper Rule” (LCR), in July 2000 through June 2001, DCWASA exceeded the “action level” (AL) for lead. (The AL is 15-µg/L for lead at the 90th percentile in home tap sampling). The AL continued to be exceeded during subsequent monitoring through the period ending in December 2004.

This exceedance precipitated a series of events including:

- An independent analysis by the US Environmental Protection Agency (EPA) to document and determine to the extent possible, the sources and causes of elevated lead levels at consumers’ taps;
- Testing of and system-wide introduction of the corrosion inhibitor, orthophosphate, at the WA water treatment plant in 2004;
- A program by DCWASA to systematically replace LSLs; and
- Creation of the Water Quality Task Force, chaired by the Director of the District’s Department of the Environment.

**Causes of Elevated Lead Levels** – The study by EPA concluded that a combination of factors contributed to elevated lead levels in the DCWASA system. The primary source of the lead was attributed to the presence of LSLs. The report found that, since the mid-1990s, “three notable occurrences in the DCWASA system likely contributed to elevated lead releases during 2000 through 2004:

- Increased chlorine residual dosing in the mid-1990s;
- pH variations and low operating pH in the distribution system; and
- Conversion from free chlorine to chloramines for final disinfection.”

The chlorine residual had been increased to control coliform occurrence in the water distribution system. Likewise, the switch to chloramines was for public health reasons to lower the occurrence of disinfection byproducts. The study concluded that combined effect of these occurrences was to facilitate the release of lead from LSLs into the water at customers’ taps.

**Process Changes to Address the Problem of Elevated Lead Levels** - DCWASA and WA, together with EPA and technical experts, conducted a series of studies to identify solutions to reduce and control lead levels at the customers’ taps. Beginning on June 1, 2004, DCWASA began a partial system application of the corrosion inhibitor, orthophosphate. Based on the results of this test, beginning on August 23, 2004, WA added orthophosphate at the water treatment facilities to cover the entire DCWASA distribution system. DCWASA’s LCR testing

has been below the lead AL since the first full monitoring period after system-wide application of orthophosphate was begun.

**LSL Replacement** – In 2004, DCWASA began an accelerated LSL replacement program aimed at replacing all of the estimated 35,000 known public lead service lines in the District of Columbia by 2016. In September 2008, after nearly four years of LCL compliance for lead, the program was modified so that:

- Lead lines in public space (between the main and the property line) will continue to be replaced with copper pipe in conjunction with DCWASA’s ongoing water main replacement projects.
- In coordination with the District Department of Transportation street paving schedule, DCWASA will replace the public portion of a lead line only when the customer agrees to have the private side replaced or if that side is already non-lead.
- Where a customer is replacing the private portion of a lead service line, at the customer’s request, DCWASA will replace the public side of the lead line with funds budgeted for this purpose.

**Additional Information** – Much of the above information is available on EPA’s and DCWASA’s web sites. The EPA report cited above may be found at the following web site:

[http://www.epa.gov/safewater/lcrrm/pdfs/report\\_lcrrm\\_elevatedleadindc\\_final.pdf](http://www.epa.gov/safewater/lcrrm/pdfs/report_lcrrm_elevatedleadindc_final.pdf).

Lead-related information within DC-WASA’s web site may be found at:

<http://www.dcwasa.com/lead/default.cfm>.

**Need for the Drinking Water Quality Study** – Despite the LSL replacement program, the process changes and the “below action level” test results since the system-wide addition of orthophosphates, concerns remain regarding the testing results for tap water. These concerns have been discussed by the Water Quality Task Force, a group that is chaired by the Director of the District Department of the Environment (DDOE). The Task Force is comprised of agency officials and community stakeholders concerned about the quality of the District’s drinking water. The Task Force has concluded that an independent Drinking Water Quality Study is needed to address these concerns.

### **III. Objectives**

**Intent of the RFP** – As noted above, COG has been requested by the District of Columbia government to obtain the services of a highly qualified consultant to prepare a Scope of Services to be included in a Request for Proposal (RFP) to carry out independent water testing for lead in drinking water in homes in the District of Columbia (the “Drinking Water Quality Study.”). **The study resulting from issuance of the RFP to be prepared by the selected contractor for this project is intended to assist decision makers and the public by providing reliable and**

**accurate lead in water testing results for District of Columbia drinking water.** Accordingly, the Scope of Services must satisfy the Task force’s intent.

**Intent of the Study** – The Water Quality Task Force has put together a “strawman” proposal for the independent Drinking Water Quality Study. It is included as Attachment D, “Draft proposal: Independent Water Testing.” This represents the current consensus of the Task Force members regarding the scope of the proposed study. The following are key statements in the Task Force’s draft proposal:

- The intent [of the Drinking Water Quality Study] is to answer questions about water quality in the District and to gather data to shed light on outstanding questions of water quality and appropriate testing scenarios.
- The intent is to focus solely on design of the test and to establish sampling and analysis procedures.
- This proposal will not address issues related to policy or protocol changes that may be informed by the results of the study.

The Task Force is expecting a Scope of Services that will result in a study that all stakeholders can agree reflects the condition of the District’s drinking water in terms of lead concentrations. The heart of the study will be the collection and analysis of tap water from a select set of homes. The Draft Proposal in Attachment D spells out the Task Force’s best collective judgment as to the sampling pool and the protocol for collecting samples. **It is a draft, however, and the Task Force is looking to the preparer of the Scope to refine it based on his or her expertise and experience.**

#### **IV. Tasks**

The products of this project will be: (1) a draft Scope of Services and (2) a final Scope of Services to be incorporated in an RFP for selecting a contractor for the Drinking Water Quality Study. The Scope of Services will include a proposed Scope of Work, project deliverables, schedule with appropriate milestones and qualifications of the prospective bidders for the Drinking Water Quality Study.

The schedule for completion of tasks 1 and 2 is 60 days from the Notice to Proceed (NTP). Several key milestones during that 60 day period are:

- Within two weeks of the NTP – an initial meeting with the Contractor, COG and DDOE;
- Within three weeks of the NTP – a meeting with the Contractor, COG, DDOE and representatives of the Task Force as determined by DDOE;
- Approximately 45 days after the NTP – a meeting with the Contractor, COG, DDOE and representatives of the Task Force as determined by DDOE to review the draft Scope of Services;
- 60 days after the NTP – submittal of the final Scope of services to COG

## V. Definitions Used in this Document

COG	The Metropolitan Washington Council of Governments
Consultant/ Contractor	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
DDOE	District of Columbia Department of the Environment
DCWASA	District of Columbia Water and Sewer Authority
EPA	U.S. Environmental Protection Agency
Other Subcontractor	Any additional subcontractor hired by either the contractor or a subcontractor.
Selection Committee	The Committee established to review the proposals received under this solicitation and recommend selection of contractors to the COG Contracting Officers.
Subcontractor	Any subcontractor hired by the contractor.
Task Force	District of Columbia Water Quality Task Force

## VI. Conditions

The following conditions are expected of the firm selected:

1. In case of the failure by the selected firm to perform the duties and obligations imposed by the resulting contract, COG may, upon verbal notice, be confirmed in writing,

- procure the necessary services from other sources and hold the firm responsible for any and all additional expenses occasioned thereby;
2. Any work to be subcontracted by an "other subcontractor" shall be clearly identified and such "other subcontractor" shall be approved by COG prior to contract issuance;
  3. Payment for Federal, state, or foreign taxes is not allowable;
  4. Payment for legal fees of any type is not allowable without prior written approval of COG;
  5. The resulting contract is subject to financial assistance agreements between the District of Columbia and the Metropolitan Washington Council of Governments. All covenants and provisions of that agreement are expressly made a part of the resulting contract.
  6. No information may be released to any party not identified herein without the expressed written authorization of the COG Contracting Officer.
  7. It is understood that funding for the ensuing contract is dependant on COG receiving funding from its sponsoring agency. Should funding from the sponsoring agency be delayed, for any reason, COG shall make a concomitant delay in funding to the contractor.
  8. CONTRACTOR shall be paid at the conclusion of the project.
  9. **CONTRACTOR SHALL NOT BE ELIGIBLE TO SUBMIT A PROPOSAL TO CONDUCT THE WORK PROGRAM BASED ON THE RESULTING RFP.**
  10. See Attachment A, Standard Terms and Conditions

**VII. Period of Performance and Type of Contract**

- a. The period of performance shall be from the date of the Notice to Proceed through September 30, 2009.
- b. The contract will be issued on a fixed price basis. The total budget for this effort shall not exceed twenty three thousand dollars (\$23,000).

**VIII. Content of Proposal**

Individuals or firms interested in providing the services described above, shall submit a proposal following the prescribed format. Adherence to the proposal format by all respondents will ensure a fair evaluation with regard to the needs of COG. Respondents not following the prescribed format may be deemed non-responsive. The letter transmitting the proposal must be signed by an officer of the firm, authorized to bind the

respondent as required by this solicitation. The proposal shall not exceed ten (10) pages in length. The Respondents are discouraged from including company brochures or other non-relevant pre-printed material in their proposals. The proposal should include the following:

Chapter 1. Qualifications of the firm and key personnel

The Contractor shall provide personnel with demonstrated experience in:

- Design of water quality sampling programs following accepted protocols;
- Familiarity with the Lead and Copper Rule (LCR);
- Public health requirements of the Safe Drinking Water Act;
- Relevant laboratory procedures; and
- Report Preparation

The Contractor's personnel shall have excellent skills in writing and editing.

This section shall provide the professional credentials and expertise of the firm(s) and key personnel assigned with the demonstrated experiences stipulated above. Timeliness is a critical component of this solicitation. Respondents shall provide a matrix of personnel by task. Respondents shall provide an affirmative statement that the key personnel provided for this project shall be available for the duration of the project and that the project shall be completed within the time frame shown above.

Although standard personnel resumes may be included as attachments to the proposal, amplification specific to the requirement stipulated herein is required in this section. **The absence of such project specific information shall cause the proposal to be deemed non-responsive.**

Chapter 2. Cost proposals for the contractor and any subcontractor(s).

This section shall provide the total costs, including all expenses, profits and fees to be charged to COG for providing the services described above. The contractor shall complete Attachment C, Cost and Price Analysis Form, and include it in this section.

Chapter 3. References of the contractor and any subcontractor(s).

The proposed contractor and any subcontractor shall provide at least three (3) references who COG may contact regarding similar work performed. Respondents 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.

**IX. Questions**

Technical and procedural questions concerning this project will be addressed at a pre-proposal briefing to be held in COG’s lobby level **Conference Room #1 at 1:30 p.m. on Monday, June 29, 2009**. Please notify Carl Kalish by email, [ckalish@mwkog.org](mailto:ckalish@mwkog.org) if a member of the firm will be in attendance.

**X. Submission Date and Contact**

One original and six (6) copies of the above materials shall be submitted by **2:00 p.m. on Monday, July 13, 2009** to:

Carl R. Kalish  
Director, Purchasing and Facilities  
Metropolitan Washington Council of Governments  
777 North Capitol Street, NE, Suite 300  
Washington, D.C. 20002-4290

Please place the RFQ number on the outside of your submission. **Proposals may not be submitted through fax or other electronic methods.**

**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:

<b>Factor</b>	<b>Points</b>
Experience, Qualifications and Availability of the Key Personnel	75
Cost and Price Analysis	10
DBE Participation	15
<b>Total Points</b>	<b>100</b>

**Disadvantaged Business Enterprise Participation**

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 10% for this project. COG’s DBE Policy may be viewed on its website [www.mwcog.org](http://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).

**SAMPLE DBE PARTICIPATION PLAN**

<b>DBE SUBCONTRACTOR</b>		<b>PERCENTAGE OF CONTRACT</b>
Subcontractor:		
Address:		
Certifying State:	DBE Certification #	
Subcontractor:		
Address:		
Certifying State:	DBE Certification #	
Subcontractor:		
Address:		
Certifying State:	DBE Certification #	

**Firms must submit at a minimum a good faith effort statement (defined in 49 CFR Part 26) for review by COG.** Without the good faith effort statement the proposal may be declared non-responsive and may not be reviewed by the technical selection committee.

Firms that meet the goal established for the proposal will receive 15 selection points (out of a possible 15). Firms that meet less than the DBE participation goal established will be evaluated on the percentage of the goal met, and the extent of their efforts to meet the entire DBE participation goal, but will receive less than the maximum DBE participation evaluation points.

**All proposers shall provide a copy of the certification of DBE ownership for those firms claiming such status. The certification must have been obtained from a Federal, state or local governmental agency that regularly issues such certification. It must have been issued within the past year or must clearly state the effective dates of the certification. Only DBE Certifications will be accepted.**

## **XII. Late Proposals**

**Any proposal received at the address designated in this RFQ 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.

## 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 thereunder 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, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, 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.

**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.

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Typed Name of Vendor

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Typed Name & Title of Authorized Representative

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Signature of Authorized Representative

Date

**ATTACHMENT C - COST AND PRICE ANALYSIS**

**NAME OF FIRM:**

**ADDRESS OF OFFEROR:**

<b>CATEGORY</b>		<b>AMOUNT</b>	
I. DIRECT LABOR	ESTIMATED HOURS	RATE/ HOUR	
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
II. LABOR OVERHEAD	RATE	BASE	_____
III. EQUIPMENT (Identify)			_____
IV. SUPPLIES			_____
V. TRAVEL			_____
VI. CONSULTANTS	AMOUNT		_____
_____			_____
_____			_____
_____			_____
VII. PRINTING/REPRODUCTION			_____
VIII. OTHER DIRECT COSTS (Identify)			_____
IX. INDIRECT COST	RATE	BASE	_____
	_____	_____	_____
	ESTIMATED COST		_____
X. FEE			_____
	TOTAL COST		=====

**TYPED NAME:**

**SIGNATURE:**

**TITLE:**

**DATE:**

**Attachment D**  
**Task Force Background Document on Lead in the District’s Drinking Water**

**DRAFT Proposal: Independent Water Testing**  
**Water Quality Task Force**

This “strawman” proposal is intended to lay out options for the independent study of drinking water quality and to allow discussion among Task Force members. When finalized, the proposal will define specific guidance to be included in the Scope of Work for the independent contractor conducting the testing.

- The terms will not be finalized until all stakeholders on the Task Force have been given the opportunity to comment.
- The intent is to answer questions about water quality in the District and to gather data to shed light on outstanding questions of water quality and appropriate testing scenarios. While the Task Force is guided by the LCR, it also has flexibility to design the proposal to address areas of uncertainty or conflicting interpretations of that rule.
- The intent is to focus solely on design of the test and to establish sampling and analysis procedures; this proposal will not address issues related to policy or protocol changes that may be informed by the results of the study. While the Task Force may discuss policy or procedure options, reaching agreement on those topics is not the objective of today’s meeting.

**SAMPLING POOL**

The study will sample three different sets of homes, and will include homes that have had an Elevated Blood Lead level and water lead levels above 15 ppb. The study is not limited to the total sample size of 100 homes mandated by the LCR. Sample size will be determined in such a way as to ensure statistical significance. We will look into the feasibility and significance of selecting a sample size to provide information that is geographically representative.

- 1) Homes included in the most recent round of DCWASA LCR sampling, to the extent that homeowners are willing to participate. (This may result in a less-than-statistically significant number of samples.)
- 2) Homes selected randomly from the lead service line inventory. This sample should include, through random selection:
  - a. a statistically significant number of partial pipe replacement homes, and
  - b. a statistically significant number of homes with full lead service lines.
- 3) Homes shown via DCWASA’s 2004 customer service sampling program data to have the highest lead levels.

**Second Phase:**

Once homes with lead above the action level have been identified, a more thorough second phase investigation will be conducted in order to get more detail about possible lead sources and

exposure. This investigation would reveal other factors of interest, including plumbing fixture composition.

**Data:**

DCWASA will provide all necessary data to the contractor employed to conduct the study. The contractor will treat sampling location data as confidential.

**SAMPLE COLLECTION**

Homeowners will collect all samples. First and second draw samples will be collected. The contractor will develop sample instructions for the homeowner and provide convenient phone and e-mail support to clarify any questions that a homeowner may have regarding sampling techniques. Centralized training sessions or home visits may also be offered to provide homeowner education and improve sampling protocol compliance.

The Task Force will have the opportunity to review the proposed sampling instructions before they are finalized. Instructions should include a form for owner to fill in, stating how long the water was stagnant before sampling occurred.

Option (cost implications must be considered): Whether to select a group of homes from each category to be tested by a trained sampling technician – to determine what differences there may be between homeowner and technician collected samples. This will be included as an option within the RFP, so that contractors are prompted to provide cost estimates for it. The Task Force can then decide whether it's a worthwhile addition.

**WATER USAGE/SURVEYS**

The sampling will be designed to capture water under normal use conditions. To assess normal conditions in the home, the sampling instructions should include basic survey questions to allow the contractor to determine exposure levels, plumbing fixtures, sources, or other useful information.

**PRE-STAGNATION FLUSHING**

Homeowners will not flush the tap prior to the stagnation period which must precede sample collection.

Option (cost implications must be considered): Collect additional samples at a subset of locations to allow comparison of results with and without a pre-stagnation flushing step.

**SAMPLING PERIOD**

The study will include sampling during warm-weather months, in particular June-September, since these months are likely to represent the worst-case scenario with respect to the leachability of lead.

**STAGNATION TIME**

There will not be an upward limit on stagnation time before sampling. Stagnation time will be recorded with each sample. The water must stagnate for a minimum of six hours before sampling, per the LCR’s guidance.

**QA/QC:**

The contract will require a quality assurance project plan (QAPP).

Sample analysis and quality control will follow EPA protocols and use only state-certified or NELAP accredited laboratories. The protocol will be made public and the Task Force will be given time to review before it is finalized.

Sample analysis will be performed using EPA method 200.8 Revision 5.4. The sample preparation procedure will follow the steps in section 11.2 of the method (“Aqueous Sample Preparation – Total Recoverable Analytes”).

**ADDITIONAL:**

DDOE will thoroughly review the 2005 DC IG report for insights into how conclusions could eventually be expressed. Conclusions may include recommendations on ways District residents can reduce exposure to lead in drinking water.

In addition, DDOE will conduct a brief review of other cities that have investigated lead levels in water.

Peer review will apply to sample pool[s] selection and sampling protocols (as well as to evaluations of the results and plans for second phases).