



**REQUEST FOR INFORMATION (RFI) NO. 18-008  
Water & Wastewater Treatment Chemicals**

**Addendum No. 1**

This Addendum No. 1 extends the end date for submissions to this RFI from Wednesday, March 14, 2018 to **2:00 EDT, Friday, March 23, 2018.**

All other terms and conditions of the RFP remain unchanged.



Metropolitan Washington  
**Council of Governments**

**REQUEST FOR INFORMATION FOR RFP NO. 18-008**

**Water & Wastewater Treatment Chemicals**

Cooperative Purchasing Program  
c/o Rick Konrad

**Offerors shall submit one (1) electronic copy to**

Email: [rkonrad@mwkog.org](mailto:rkonrad@mwkog.org)

Contracts and Purchasing Manager  
c/o Rick Konrad  
Metropolitan Washington  
Council of Governments  
777 North Capitol Street, NE, Suite 300  
Washington, DC 20002

Submission Date: March 14, 2018

Time: 2:00 PM EDT

**CHEMICALS FOR WATER AND WASTEWATER TREATMENT  
Request for Information and Expression of Interest**

**Metropolitan Washington Council of Governments**

**I. Introduction**

- A. In an upcoming procurement, Metropolitan Washington Council of Governments (COG), acting on behalf of its Participating Agencies as Lead Agency, will be soliciting competitive Proposals for products and/or services, which may be purchased by the Agencies during the contract term.
- B. This Request for Information (RFI) is to solicit qualifications and interest from possible proposers for the procurement of various types of **Water and Wastewater Treatment Chemicals** for various water and wastewater treatment Agencies (Participating Agencies) within the counties, cities and towns in the Metropolitan Washington region, including the District of Columbia, Virginia and Maryland.
- C. The resulting contract from the upcoming RFP will be for the period of one (1) year and with four (4) options for a renewal period of one (1) additional year each.
- D. COG will help identify the qualified, responsible bidders and, upon issuance of a RFP, will help determine the responsive best Proposal(s) based on scoring criteria including price, qualifications, supply chain security, and references.
- E. RFI submissions should include filling out all attachments in this document as well as Table 1 (separate Excel file). Also provide additional information on the company's qualifications to provide these products to Participating Agencies.
- F. **No** pricing information is requested at this time.
- G. Companies which fail to respond to this RFI could be disqualified from submitting a proposal for this solicitation (RFP 18-008).
- H. Upon award of the RFP, contracts will be executed between the Participating Agencies and the winning Proposer(s). COG reserves the right to accept or reject any and all Proposals or portions thereof, to waive any informalities in the solicitation, and to recommend awards that appear to be in the best interest of the Participating Agencies.
- I. Potential Proposers are requested to make RFI submissions to the COG Contract and Purchasing Manager not later than **2:00 PM EDT on March 14, 2018**.
- J. This contract award will be open to all Participating Agencies in the COG region and includes a rider clause (Attachment E) that allows those Agencies to use this procurement or the resulting contract to make purchases in accordance with their own

policies.

- K. Potential Proposers are requested not to contact the Participating Agencies directly. Potential Proposers are requested to only contact COG *in writing* with questions regarding this RFI.

Contact information is listed below:

Rick D. Konrad  
Cooperative Purchasing Program Manager  
777 North Capitol Street, NE, Suite 300  
Washington, DC 20002-4239  
Email [rkonrad@mwkog.org](mailto:rkonrad@mwkog.org)

## II. LIST OF POSSIBLE PARTICIPATING AGENCIES:

- A. Alexrenew (Alexandria)
- B. City of Bowie
- C. Fairfax County
- D. Fort Detrick
- C. City of Frederick
- D. Frederick County
- E. City of Leesburg
- F. Loudoun County
- G. Prince William County Service Authority
- H. City of Purcellville
- I. Stafford County

## III. LIST OF POTENTIAL CHEMICALS

- A. Please see Table 1 (separate Excel attachment). Fill out Table 1 and return with your submission.
- B. Please indicate any special conditions or additional information needed to provide a proposal for the proposed RFP.
- C. Chemicals will have detailed specifications in the RFP documents.
- D. Please provide information on how each chemical can be provided with the size and

type of packaging. (Example – tanker truck per gallon, gallon container, 55-gallon drum, totes).

- E. The vendor is asked to provide specification cut sheets for all chemicals that may be proposed in their submission.

**Attachment A**  
**PROPOSER QUALIFICATION FORM**

1. NAME OF PROPOSER: \_\_\_\_\_
2. PERMANENT MAILING ADDRESS: \_\_\_\_\_
3. YEAR & STATE INCORPORATED OR FORMED:  
\_\_\_\_\_
4. DUN AND BRADSTREET D-U-N-S # \_\_\_\_\_
5. HOW MANY YEARS HAVE YOU ENGAGED IN BUSINESS UNDER YOUR PRESENT FIRM  
NAME: \_\_\_\_\_ YEARS \_\_\_\_\_
6. GENERAL CHARACTER OF WORK PERFORMED BY YOUR COMPANY:  
\_\_\_\_\_  
\_\_\_\_\_
7. HAVE YOU EVER DEFAULTED ON A CONTRACT? ☐ YES ☐ NO  
IF YES, WHY? \_\_\_\_\_  
\_\_\_\_\_
8. HAVE YOU BEEN SUED? ☐ YES ☐ NO  
IF YES, WHEN AND FOR WHAT REASON? WHAT WAS THE OUTCOME OF THE SUIT?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
9. ATTACH A LISTING BY PRODUCT LINE OF ALL MANUFACTURERS FOR WHOM YOUR  
COMPANY IS AN AUTHORIZED DEALER/DISTRIBUTOR/RESALER
10. NAME OF BANKS WITH WHICH YOU DO BUSINESS:  
\_\_\_\_\_  
\_\_\_\_\_
11. DO YOU GRANT THE AWARDED AUTHORITY PERMISSION TO CONTACT THIS (THESE)

MANUFACTURERS AND LENDING INSTITUTION(S)?     ☐ YES     ☐ NO

USE ADDITIONAL ATTACHMENTS TO ANSWER THE ABOVE QUESTIONS, IF NEEDED.

By signing this form, you acknowledge compliance with all terms and conditions of this RFI.

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_ Company/Entity: \_\_\_\_\_

**Attachment B**

**CONTACT INFORMATION FORM**

**Proposing Company/Entity Name**\_\_\_\_\_

**Contact for RFI/RFP**

Name \_\_\_\_\_

Title \_\_\_\_\_

Phone number \_\_\_\_\_

Email address \_\_\_\_\_

**Sales Representative Contact**

Name \_\_\_\_\_

Title \_\_\_\_\_

Phone number \_\_\_\_\_

Email address \_\_\_\_\_

Area covered: \_\_\_\_\_ (“all”, or list)

**Service/Support Representative Contact**

Name \_\_\_\_\_

Title \_\_\_\_\_

Phone number \_\_\_\_\_

Email address \_\_\_\_\_

Area covered: \_\_\_\_\_ (“all", or list)

Use additional sheet for more sales/support representatives



**Attachment C**  
**Non-Collusion Affidavit**

**I. INSTRUCTIONS FOR NON-COLLUSION AFFIDAVIT**

- A. This Non-Collusion Affidavit is material to any contract awarded pursuant to this RFI and the proposed RFP.
- B. This Non-Collusion Affidavit must be executed by the member, officer or employee of the proposer who makes the final decision on prices and the amount quoted in the proposal.
- C. Bid rigging and other efforts to restrain competition, and the making of false sworn statements in connection with the submission of this type of proposal are unlawful and may be subject to criminal prosecution.
- D. The person who signs the affidavit should examine it carefully before signing and assure himself or herself that each statement is true and accurate, making diligent inquiry, as necessary, of all other persons employed by or associated with the proposer with responsibilities for the preparation, approval or submission of the proposal.
- E. In the case of a proposal submitted by a joint venture, each party to the venture must be identified in the proposal documents, and an affidavit must be submitted separately on behalf of each party.
- F. The term "complementary proposal" as used in the affidavit has the meaning commonly associated with that term in the solicitation process, and includes the knowing submission of proposals higher than the proposal of another firm, any intentionally high or noncompetitive proposal, and any other form of proposal submitted for the purpose of giving a false appearance of competition.
- G. Failure to submit an affidavit with the proposal in compliance with these instructions may result in disqualification of the proposal (see next page).

**II. NON-COLLUSION AFFIDAVIT**

For RFP No. 18-008

State of \_\_\_\_\_: County of \_\_\_\_\_:

I state that I am \_\_\_\_\_ (*Title*) of \_\_\_\_\_ (*Name of Firm*) and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors, and, officers. I am the person responsible in my firm for the price(s) and the amount of this future offering.

I state that:

(1) The price(s) and amount of this proposal will be arrived at independently and without consultation, communication or agreement with any other contractor, proposer or potential proposer.

(2) Neither the price(s) nor the amount of this proposal, and neither the approximate price(s) nor approximate amount of this proposal, will be disclosed to any other firm or person who is a proposer or potential proposer, and they will not be disclosed before RFP opening.

(3) No attempt will be made to induce any firm or person to refrain from offering a proposal on this RFP, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.

(4) The proposal of my firm will be made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal.

(5) \_\_\_\_\_ its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last four (4) years been convicted or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as follows:

I state that \_\_\_\_\_ understands and acknowledges that the above representations are material and important, and will be relied on by Metropolitan Council of Governments in awarding the contract(s) for which this proposal is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from COG and the Participating Agency of the true facts relating to the submission of this proposal.

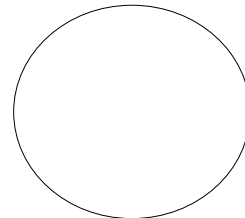
\_\_\_\_\_  
(Signature)\_\_\_\_\_  
(Signatory's Name)\_\_\_\_\_  
(Signatory's Title)

SWORN TO AND SUBSCRIBED

BEFORE ME THIS \_\_\_\_\_ DAY

OF \_\_\_\_\_ 2018

\_\_\_\_\_  
Notary Public My Commission Expires \_\_\_\_\_



**Attachment D**

**PROPOSER'S EXPERIENCE/REFERENCES**

Name of Proposer \_\_\_\_\_

REFERENCES are to be provided from three (3) other clients who are being or have been provided by the Proposer similar products, services and scope of work.

Complete contact information for each reference, including name, telephone number, mailing address and E-mail address, must be included with the Proposal.

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

1) Firm Name \_\_\_\_\_

Contact Name \_\_\_\_\_

Mail Address \_\_\_\_\_

\_\_\_\_\_

Telephone Number \_\_\_\_\_ Email Address \_\_\_\_\_

-----

2) Firm Name \_\_\_\_\_

Contact Name \_\_\_\_\_

Mail Address \_\_\_\_\_

\_\_\_\_\_

Telephone Number \_\_\_\_\_ Email Address \_\_\_\_\_

\_\_\_\_\_

3) Firm Name \_\_\_\_\_

Contact Name \_\_\_\_\_

Mail Address \_\_\_\_\_

\_\_\_\_\_

Telephone Number \_\_\_\_\_ Email Address \_\_\_\_\_

## Attachment E

### Cooperative Rider Clause

The Metropolitan Washington Council of Governments ("COG") is offering this solicitation to aggregate the public entity and non-profit purchasing volumes in the Maryland, Virginia and Washington, D.C. region ("region").

COG is the Lead Participating Agency in this procurement and has included this Cooperative Rider Clause in this solicitation indicating its willingness to allow other public entities to participate pursuant to the following Terms and Conditions:

#### A. Terms

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

#### B. Other Conditions - Contract and Reporting

1. The contract resulting from this solicitation shall be governed by and "construed in accordance with the laws of the State/jurisdiction in which the Participating Agency officially is located;
2. To provide to COG contract usage reporting information, including but not limited to quantity, unit pricing and total volume of sales by entity, as well reporting other Participating Agencies added on the contract, on demand and without further approval of contract participants;
3. Contract obligations rest solely with the Participating Agencies only;
4. Significant changes in total contract value may result in further negotiations of contract pricing with the Lead Agency and Participating Agencies.

In pricing and other conditions, Proposers are urged to consider the broad reach and appeal of Metropolitan Washington region with public and non-profit entities in this region.

A list of the participating members of COG can be found at the following web links  
[www.COG.org/purchasing-and-Proposals/cooperative-purchasing/member-links/](http://www.COG.org/purchasing-and-Proposals/cooperative-purchasing/member-links/)

Other agencies in the region may be permitted to ride this contract, including, but not limited to, the Baltimore Metropolitan Council members. [www.baltometro.org/our-work/cooperative-purchasing/brcpc-representatives](http://www.baltometro.org/our-work/cooperative-purchasing/brcpc-representatives)

**Attachment F****Terms and Conditions (for review)**

This document sets out provisions generally applicable to Metropolitan Washington Council of Governments ("MWCOC") and our Participating Agencies' contracts. The provisions herein do not constitute a complete agreement, and must be appended to a document, executed by all parties, which identifies the specific work to be performed, compensation, term, incorporated attachments, and special conditions, if any. This document and the Contract are intended to be complementary and shall be construed accordingly.

However, should there be a direct contradiction between the terms and conditions contained herein and the Contract, then the Contract shall govern and control those contradictory terms and conditions. As used herein, the term "MWCOC" includes MWCOC, its various Participating Agencies, employees or agents as may be appropriate. The term "Contract" shall include a document entitled "agreement" or any other title on a document that is denoting a contract.

- I. Amendment. This Contract constitutes the entire agreement between the parties and all other communications prior to its execution, whether written or oral, with reference to the subject matter of this Contract are superseded by this Contract. No amendment to this Contract shall be binding unless in writing and signed by the parties.
- II. Bankruptcy. Upon filing for any bankruptcy proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the Contractor must notify MWCOC immediately. Upon learning of the actions herein identified, MWCOC reserves the right at its sole discretion either to cancel the Contract or to affirm the Contract and hold the Contractor responsible for damages. The exercise of this right is in addition to any other rights MWCOC may have as provided in this agreement or by law.
- III. Compliance with Law. The Contractor hereby represents and warrants that:
  - A. It has the power and authority to enter into and perform the Contract, that the Contract, when executed and delivered, shall be a valid and binding obligation of Contractor, enforceable in accordance with its terms;
  - B. Its performance under the Contract shall be in a good and workmanlike manner and in accordance with all applicable professional standards;
  - C. It is qualified to do business in the jurisdictions covered by the Contract and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
  - D. It is not in arrears in the payment of any obligations due and owing to any agency involved in this agreement, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
  - E. It shall comply with all federal, state and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
  - F. It shall obtain, at its expense, all licenses, permits, insurance and governmental approvals, if any, necessary to the performance of its obligations under this Contract.
- IV. Contingent Fee Prohibition. The Contractor, architect or engineer (as applicable) warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, architect or engineer, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation or other entity, other than a bona fide employee or agent, any commission, percentage, brokerage or contingent fee or other consideration contingent on the making of this Contract.
- V. Counterparts. This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute one and the same instrument.

- VI. Force Majeure. Neither MWCOG and/or its members nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, declaration of emergency, or war where such cause was beyond, respectively, MWCOG's and/or its members or Contractor's reasonable control. MWCOG and/or its members and Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- VII. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the District of Columbia or the Participating Agencies required jurisdiction without regard to principles of conflicts of law.
- VIII. Indemnification. The Contractor shall protect, hold free and harmless, defend and indemnify MWCOG and its Participating Agencies including their officers, agents and employees from all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments (including attorney's fees) resulting from injury to, or death of, any person or damage to property of any kind, which injury, death or damage arises out of, or is in any way connected with the performance of the work or failure to perform its obligations under this Contract.

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

- IX. Independent Contractor.
- A. Contractor shall perform the work required by this Contract as an "Independent Contractor." Although MWCOG and/or members reserves the right to determine the delivery schedule for the work to be performed and to evaluate the quality of the completed performance, MWCOG and/or members cannot and will not control the means or manner of the Contractor's performance. The Contractor shall comply promptly with any requests by MWCOG and/or members relating to the emphasis or relative emphasis to be placed on various aspects of the work or to such other matters pertaining to the work under this Contract. Contractor is responsible for determining the appropriate means and manner of performing the work.
  - B. Contractor represents and warrants that Contractor is not an employee of MWCOG and/or members, is not currently employed by the Federal Government, and is not an officer, employee or agent of MWCOG and/or members.
  - C. Contractor shall be responsible for all federal or state taxes applicable to any compensation or payments paid to Contractor under this Contract. Contractor is not eligible for any federal Social Security, unemployment insurance, or workers' compensation benefits from compensation or payments paid to Contractor under this Contract.
  - D. Contractor agrees to immediately provide MWCOG and/or members notice of any claim made against Contractor by any third party. Contractor also agrees not to assign to any third party, without MWCOG's written consent, any obligation of MWCOG to indemnify Contractor for any actions under this Contract.
- X. Insurance Requirements.
- A. Contractor shall obtain, and at all times keep in effect, Commercial General Liability Insurance in the amounts listed below for its activities and operations. The insurance shall include coverage for personal injury, discrimination and civil rights violation claims. All such insurance shall name the Participating Agency, individual members, their employees, and agents as ADDITIONAL INSURED. A copy of the certificate of insurance shall be filed with MWCOG and/or Participating Agencies prior to the time any services are rendered. Contractor shall maintain coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 general aggregate and \$500,000 for property damage. Coverage shall be written on an occurrence form.

- B. Contractor shall obtain, and at all times keep in effect, automobile insurance on all vehicles used in this Contract with MWCOG and/or members to protect Contractor against claims for damages resulting from bodily injury, including wrongful death, and property damage that may arise from the operations of any owned or hired automobiles used by Contractor in connection with the carrying out of this Contract. All such insurance shall name MWCOG and/or individual members, their employees, and agents as ADDITIONAL INSURED.
  - C. Contractor shall, upon request, provide MWCOG and/or members with certification of Workers' Compensation Insurance, with employer's liability in the minimum amount required the governing jurisdiction's law in effect for each year of this Contract.
  - D. All insurance policies shall have a minimum 30 days' notice of cancellation. Immediate written notice to MWCOG and members involved in the contract shall be required in the event of cancellation or restriction by the insurance company of any insurance policy referred to in this section.
  - E. When insurance coverage is renewed, Contractor shall provide new certificates of insurance prior to expiration of current policies to all contracting agencies.
- XI. Nondiscrimination. A contractor who is the recipient of MWCOG and/or member funds, or who proposes to perform any work or furnish any goods under this Contract shall not discriminate against any worker, employee or applicant because of religion, race, sex, age, sexual orientation, physical or mental disability, or perceived disability. Contractor further agrees that this provision will be incorporated in all sub-contracts entered into in connection with this Contract.
- XII. Ownership of Documents and Materials.
- A. The Contractor agrees that all documents and materials, including but not limited to, reports, drawings, studies, specifications, estimates, maps, photographs, designs, graphics, mechanicals, artwork, and computations prepared by or for the Contractor under the terms of this Contract shall at any time during the performance of the services be made available to MWCOG and/or members upon request and shall become and remain the exclusive property of MWCOG and/or members upon termination or completion of the services. These jurisdictions shall have the right to use the same without restriction or limitation and without compensation to the Contractor other than that provided in this Contract. MWCOG and/or members shall be the owner for the purposes of copyright, patent or trademark registration.
  - B. If the Contractor obtains or uses for purposes of this Contract, or subcontracts for, any design, device, material, or process covered by letters of patent for copyright, it shall provide an assignment to MWCOG and/or members of ownership for purposes of copyright, patent or trademark and of all right to possess and to use such design, device, material or process and a legally sufficient agreement with the patentee or owner, and a copy of such agreement shall be filed with MWCOG and/or members.
  - C. The Contractor shall indemnify and save harmless MWCOG and/or members from any and all claims for infringement by reason of the use of any such patented design, device, materials, or process, or any trademark or copyright, and shall indemnify, protect and save harmless MWCOG and/or members, their officers, agents, and employees with respect to any claim. Action, costs or infringement, for royalties or user fees, arising out of purchase or use of materials, construction, supplies, equipment or services covered by this Contract.
- XIII. Payments. Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after MWCOG's and/or members receipt of a proper invoice from the Contractor.
- XIV. Records. Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance hereunder. Contractor acknowledges and agrees that the MWCOG and/or members and their duly authorized representatives shall have access to such fiscal records and all other books, documents, papers, plans, and writings of the Contractor that are pertinent to



this Contract. All such fiscal records, books, documents, papers, plans, and writing shall be retained by Contractor and kept accessible for a minimum of three (3) years, except as required longer by law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Contract, whichever date is later. All subcontracts shall also comply with these provisions.

XV. Remedies.

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

XVI. Responsibility of Contractor.

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

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

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



## RFI FOR RFP 18-008 WATER & WASTEWATER TREATMENT CHEMICALS

- XIX. Survival. The terms, conditions, representations, and all warranties contained in this Contract shall survive the termination or expiration of this Contract.
- XX. Termination. If the Contractor fails to fulfill its obligations under the Contract properly and on time, or otherwise violates any provision of the Contract, MWCOG and/or members may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at MWCOG's and/or members option, become MWCOG's and/or member's property. MWCOG and/or members shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and MWCOG and/or members can affirmatively collect damages.
- XXI. Termination of Contract for Convenience. The performance of work under this Contract may be terminated by MWCOG and/or members, in whole or in part, upon written notice to the Contractor, when MWCOG and/or members determines such termination is in the best interest of MWCOG and/or members. The termination for convenience is effective on the date specified in MWCOG's and/or members written notice. MWCOG and/or members will pay for all reasonable costs allocable to the Contract for work or costs incurred by the Contractor up to the date of termination. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination.
- XXII. Termination of Multi-Year Contract. If MWCOG and/or members fail to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either MWCOG's and/or members rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and MWCOG and/or members from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. MWCOG and/or members shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.
- XXIII. Time is of the essence. Time is of the essence in Contractor's performance of each and every obligation and duty under this Contract.
- XXIV. Whole Contract. This Contract constitutes the complete and exclusive statement of the Contract between the parties relevant to the purpose described herein and supersedes all prior agreements or proposals, oral or written, and all other communication between the parties relating to the subject matter of this Contract.

*(Revised 8/22/2017)*