



REQUEST FOR PROPOSAL
RFP# 17-021

July 7, 2017

SECURING THE CITIES (STC) REGIONAL PROGRAMMATIC SUPPORT

I. METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS

The Metropolitan Washington Council of Governments (COG) is the regional organization of 23 of the Washington area's major local governments and their governing officials, plus area members of the Maryland and Virginia legislatures and the U.S. Senate and House of Representatives. COG provides a focus for action on issues of regional concern 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 STC Program seeks to design and implement or enhance existing architectures for coordinated and integrated detection and interdiction of nuclear materials that are out of regulatory control and may be used as a weapon within high-risk metropolitan areas. The District of Columbia has a requirement for a Regional Program Manager and Administrative Coordinator for the Securing the Cities (STC) Program to provide executive management expertise in support of the regional implementation of the STC Program.

The NCR is the political epicenter for a multitude of both Federal and local government entities. Additionally, the NCR contains several learning institutions, sports and recreation venues and tourist attractions. The entire NCR is served by a complex transportation system which includes two airports, an underground rail system, and a major train and bus station. All of the reasons mentioned make the NCR one of the most likely potential targets of both an act of foreign and/or domestic terrorism.

III. OBJECTIVES

The National Capital Region (NCR) is committed to preserving life and to promoting health and safety through pre-hospital treatment and transportation, fire prevention, fire suppression and rescue, law enforcement, and attentiveness to homeland security threats. With that said we strive through training, purchasing state of the art equipment, and utilizing

the latest technological innovations to protect the citizens and avoid unnecessarily placing our responders at risk. Our role as the fire and emergency medical services departments, and law enforcement agencies requires us to perform early detection of radiological hazards and request the necessary local, state, and federal resources to further investigate and mitigate the accidental or intentional release of radiological materials.

IV. SCOPE OF WORK

1. Regional Program Manager

The Regional Program Manager (PM) will oversee the development and sustainment of the STC Radiological/Nuclear (rad/nuc) detection capability for the National Capital Region (NCR). The PM will be responsible for all aspects of planning, coordination, and execution of the regional STC program.

a) The PM will be expected to:

- i. Oversee the coordination of and attend meetings the STC Working Group, serve as the liaison between the NCR and the Domestic Nuclear Detection Office (DNDO), complete all progress reports and reports to governmental bodies, and resubmit the Cooperative Agreement continuation application each year
- ii. Oversee the STC Working Group, governance structure, and processes to ensure effective program implementation and attainment of STC program goals
- iii. Establish business rules for effectively and efficiently conducting STC Program related business among the STC regional partners.
- iv. Establish standard processes for drafting, routing and review of all STC documents at the subcommittee level and ensure that they are followed by all participating agencies/members
- v. Identify tasks and sub-tasks associated with each element in the Implementation Schedule and provide the STC Project Manager with a list of these tasks/sub-tasks and status on a monthly basis
- vi. Ensure action items and areas of concern are addressed
- vii. Identify key issues and collaborate with STC subcommittee chairs in advance of each subcommittee meeting to generate a focused prioritized agenda and action item list for subcommittee members to ensure that meetings are effective working meetings
- viii. Work to ensure that subcommittee meetings end with clear guidance to members regarding tasks, deadlines, and required deliverables for the next meeting
- ix. Assist state and local agencies in developing effective and executable written operational plans and protocols

- x. Oversee the stakeholders' effective selection and employment of radiation detection systems
- b) Provide **up to two** candidates that possess the following skills and abilities:
- i. Bachelors or Masters level degree
 - ii. 20 + years relevant experience, at least 5 of which were in support of NCR first responders projects
 - iii. Demonstrated outstanding leadership and management skills at the executive management level
 - iv. Demonstrated ability to lead and manage people from diverse educational and operational/professional backgrounds
 - v. Demonstrated outstanding organizational management and problem solving skills and the ability to identify requirements, issues, and develop standard processes and effective solutions in a timely manner
 - vi. Demonstrated ability to manage budgets in the \$10M range
 - vii. Demonstrated knowledge of administrative, training, and operational processes and issues affecting first responders
 - viii. Demonstrated ability to assimilate new information and ideas regarding technology, radiation fundamentals and operations and effectively manage others who are more knowledgeable in these areas
 - ix. Knowledgeable in the area of DHS grants application and approval process
 - x. Excellent communication, writing, and organizational skills

2. Administrative Coordinator (AC)

The Administrative Coordinator (AC) will assist with all administrative and coordinating matters related to the STC Program.

a) The AC will be expected to:

- i. Coordinate meetings of the STC Working Group and assist in developing the subcommittee agenda
- ii. Record tasks and sub-tasks associated with each element in the STC Implementation Schedule and provide the PM with a list of these tasks/sub-tasks and status on a regular basis as determined by the PM
- iii. Coordinate with the PM to ensure follow-up on action items and areas of concern

- iv. Record key issues and collaborate with STC subcommittee chairs in advance of each subcommittee meeting to generate a focused prioritized agenda and action item list for subcommittee members to ensure that meetings are effective working meetings
- v. Work to ensure that subcommittee meetings end with clear guidance to members regarding tasks, deadlines, and required deliverables for the next meeting through effective note taking
- vi. Perform other administrative tasks determined by the PM
- vii. Support in the development and maintenance of budgets

b) Provide **up to two** candidates that possess the following skills and abilities:

- i. Bachelor's Degree or demonstrated 4-7 years of experience
- ii. Demonstrated ability to organize, prioritize, and manage multiple complex tasks
- iii. Demonstrated problem solving skills
- iv. Excellent communication, writing, and organizational skills
- v. Experience working in a complex stakeholder environment
- vi. Experience in the public sector
- vii. Ability to organize and prioritize multiple complex projects

c) Project Management Requirements

i. *Project Management Plan*

a. *Develop a Project Management Plan that is accepted by the HSEMA Task Manager that defines the following (determined during and immediately after the Project Kick-Off Meeting): Purpose*

- *Project Objectives*
- *Project Success Criteria*
- *Project Deliverables and Milestones*
- *Managerial Process, including Staffing Plan and Work Plan*
- *Roles and Responsibilities*
- *Close-Out*

b. *Update grant required project management plan document to reflect deliverables, milestones, and timeline agreed upon in the Project Management Plan*

- ii. *Reports – Complete the following reports using templates and deadlines provided by the Task Lead*
 - a. *Weekly – Status of and work completed on deliverables and meetings held*
 - b. *Monthly – Status of and work completed on deliverables, hours worked by project team on each deliverable, and status of budget compared to proposed budget*
 - *Input on this monthly report will also be used for invoicing requirements*
 - c. *Quarterly – Status of spending and completion of each deliverable included on the grant required project management plan document*
 - d. *Close-Out – Status of projects and close-out requirements and best practices and lessons learned from processes used to complete deliverables*
- iii. *Meetings – Participate in the following meetings as directed by the Task Lead*
 - a. *Weekly (30-60 minutes) – Conference call or meeting with Task Lead and associated task order teams on the status of the deliverables and barrier identification*
 - b. *Monthly (1 hour) – In-Progress Review with Senior Leadership to discuss progress, barriers, and budget issues*
 - c. *Close-Out (1 hour) – Discussion of deliverables, best practices, and lessons learned*
- iv. *Manage each task in accordance with the processes (inputs, tools and techniques, and outputs) outlined in A Guide to the Project Management Body of Knowledge (PMBOK Guide) – Fifth Edition*

d) Quality Assurance/Quality Control

- i. *Institute a comprehensive QA/QC process that ensures that deliverables are:*
 - a. *Technically sound through a comprehensive technical editing process*
 - b. *508 compliant*
 - c. *Adhere to the following standards:*
 - *Applicable federal, regional, and District doctrine*
 - *EMAP*

- *NIMS*
- *SEMS*
- *Most recent versions of Comprehensive Planning Guide (CPG) 101, 201, and 301 (Interim)*
- *FEMA Operational Planning Manual*

3. Specific Planning Support Requirements

- a) Demonstrated experience developing documentation for and presenting information to diverse audiences;
- b) Effective written and oral communication skills;
- c) Strong research and analytical skills;
- d) Ability to communicate effectively with site and food vendors;
- e) Ability to work within a budget; and
- f) Professionalism and discretion
- g) Knowledge of response agencies in major metropolitan areas of the US
- h) Knowledge of government response plans
- i) Familiarity with law enforcement and first responder procedures with respect to the PRND mission area
- j) Strong computer skills. Knowledge of Microsoft Office Programs (Excel, Word and PowerPoint)
- k) Knowledge and familiarity with MS Office Project Management or similar tools
- l) *See specific skills and abilities outlined for each position in the Detailed Description*

4. Deliverables

- a) Provide one (1) full time STC Regional Program Manager
- b) Provide one (1) full time STC Administrative Coordinator
- c) STC Implementation Plan
- d) Task Order Project Management Plan
- e) Update grant required PMP

V. DEFINITIONS USED IN THIS DOCUMENT

COG	The Metropolitan Washington Council of Governments
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
Technical 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.

VI. SPECIAL CONDITIONS

The following conditions apply to the Contractor selected:

1. Federal, state or foreign taxes are not allowable.
2. Legal fees of any type are not allowable without prior written approval of COG Contracting Officer.
3. In the event the project is terminated by administrative action, the Contractor will be paid for work actually performed to the date of termination.
4. Any work to be subcontracted to a Subcontractor shall be clearly identified and such Subcontractor shall be approved by COG prior to contract issuance.
5. The Contractor, acting as an independent contractor, shall defend and 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.
6. In case of failure by the Contractor and/or Subcontractor to perform the duties and obligations imposed by the resulting contract, COG may, upon verbal notice, to be confirmed in writing, procure the necessary services from other sources and hold the Contractor and/or Subcontractor responsible for all additional costs occasioned thereby.
7. The Contractor covenants that it presently has no interest, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. The Contractor further covenants that in the performance of this contract, no person having any such interest shall be employed.

8. It is understood that funding for the ensuing contract is contingent upon COG receiving funds from the sponsoring agency. Should funding from the sponsoring agency be delayed, for any reason, COG shall make a concomitant delay in funding to the Contractor.
9. Payment will be made to the Contractor within 30 days following the receipt of a correct invoice from the contractor and approval of the COG Project Manager. Contractor shall submit its final invoice within 30 days after expiration of the contract.
10. In submitting a proposal in response to this RFP, and in performing services under any contract resulting from this RFP, the successful Contractor shall be bound by, and comply with, all the terms, conditions, and requirements contained within Attachments A and B.
11. Cellular communication devices are a requirement for both FTE's

VII INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS

1. COG intends to award a single contract resulting from this solicitation to the responsible Contractor whose proposal conforms to the solicitation and will be most advantageous to COG and its members, including cost, technical and other requirements specified herein.
2. COG may award a contract based on initial offers received without discussion. Therefore, each initial offer should contain the Offeror's best terms from a price and technical standpoint. COG may communicate with Offerors to clarify, verify or obtain additional information about its past performance or experience.

VIII PERIOD OF PERFORMANCE AND TYPE OF CONTRACT

1. The period of performance shall begin once the Executive Director of COG has signed a contract with a two (2) year base period and three (3) potential one year option periods.
2. The Contract will be issued as a labor hour contract, not to exceed \$324,480.00 per year.

IX. CONTENT OF PROPOSAL

All Contractor must submit their proposals following the prescribed format. Adherence to the proposal format by all Offerors will ensure a fair evaluation regarding the needs of COG. Offerors not following the prescribed format will be deemed non-responsive. The letter transmitting the proposal must be signed by an officer authorized to bind the Offeror. The proposal must include the following:

Section 1. Qualifications of the firm and key personnel

This section shall provide the professional credentials and expertise of the Offeror and key personnel assigned to this project.

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

Section 2. Proposed method to accomplish the work

In this section of the proposal, Offerors must provide a detailed description of their approach for accomplishing the tasks specified herein. This section shall include a work plan, schedule, and a project management plan that will detail all lines of authority and communication which will support all the project requirements and logically lead to the deliverables required in this RFP. A matrix shall be provided which will identify, by task, key personnel assignments and the number of anticipated hours for those personnel by task.

Timely completion of the tasks outlined for this PROJECT is of critical importance. Offerors are to provide a brief description of their current projects and the availability of key personnel proposed in this PROJECT.

Section 3. Cost proposals for the Offeror and any Subcontractor(s).

This section shall provide the total costs by work task, including all expenses, profits and fees to be charged to COG for providing the services described above.

Section 4. References of the Contractor and any Subcontractor(s)

The proposed Contractor and any Subcontractor shall provide at least three (3) references who COG/TPB may contact regarding similar work performed. Offerors 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.

X. PROPOSAL QUESTIONS

Technical questions concerning the RFP must be submitted in writing to the COG Project Manager, Dave McMillion, at dmcmillion@mwkog.org and with a courtesy copy to Tracy Birkett at tbirkett@mwkog.org.

Procedural or administrative questions must be submitted in writing to Tracy Birkett at tbirkett@mwkog.org

XI. SUBMISSION DATE AND CONTACT

Proposals shall be received by no later than 2:00 p.m., Monday, July 17, 2017.

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

Offerors shall submit one (1) original and five (5) copies of their proposal, and one “soft” copy on CD/DVD to:

Tracy Birkett
Contracts and Procurement
Metropolitan Washington Council of Governments
777 North Capitol Street, N.E., Suite 300
Washington, D.C. 20002-4290

XII. METHOD OF PROPOSAL EVALUATION AND SELECTION

The proposals will be evaluated by a technical selection committee. The selection committee may hold, at COG’s option, a pre-selection meeting with the top-ranked Offerors. 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 Offerors, if required by the selection committee. In evaluating the proposals, the following factors will be considered, with points awarded up to the maximum shown:

Factor	Points
Understanding and methodology used for the project	30
Demonstrated knowledge and experience of Key Personnel and availability of Key Personnel	30
Cost and Price Analysis	25
DBE Participation	15
Total Points	100

XIII. LATE PROPOSALS

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

XIV. DISADVANTAGED BUSINESS ENTERPRISE

Disadvantaged Business Enterprise (“DBE”) participation shall be an integral component of the Contractor selection process for this RFP. COG has established a DBE goal of 15% for this project. COG's DBE Policy may be viewed on its website www.mwcog.org. Responding firms shall submit with their proposals a DBE Participation Plan to meet this goal. The plan shall identify any DBE (defined in 49 CFR Part 26) that shall be participating in the project. The plan shall include the name and address of the firm, a copy of the firm's current DBE Certification from any federal, state or local government agency that certifies DBE ownership (please note only **DBE** certifications will be accepted by COG for this purpose).

COG, in accordance with Title VI of the Civil Rights Act of 1964 and 78 Stat. 252, 42 USC 2000 d – 42 and Title 49, Code of Federal Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered pursuant to this advertisement will afford minority business enterprises full opportunity to submit bids in response to this invitation, and will not discriminate on the grounds of race, color, sex, or national origin in consideration for an award.

DBE Assurance – The Contractor or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

A total of 15 possible points (out of a maximum of 100 points) may be awarded for DBE participation, as measured in dollars, either as the Contractor or "Subcontractor". In the event of a tie score between two or more proposals, the proposal with the largest percentage of DBE participation, as measured in dollars, will be awarded the contract. DBE points are to be awarded as follows:

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

SAMPLE DBE PARTICIPATION PLAN

DBE SUBCONTRACTOR	PERCENTAGE OF CONTRACT
Subcontractor:	
Address:	

Certifying State:	DBE Certification #	
Subcontractor:		
Address:		
Certifying State:	DBE Certification #	
Subcontractor:		
Address:		
Certifying State:	DBE Certification #	

The Metropolitan Washington Council of Governments, in accordance with Title VI of the Civil Rights Act of 1964 and 78 Stat. 252, 42 USC 2000d and Title 49, Code of Federal Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered pursuant to this advertisement will afford minority business enterprises full opportunity to submit bids in response to this invitation, and will not discriminate on the grounds of race, color, sex or national origin in consideration for an award.

Federal Law – CFR Part 26.37 (Monitoring Performance) requires the Metropolitan Washington Council of Governments to include a monitoring and enforcement mechanism to ensure that work committed to DBEs at task order award is performed by DBE's. To comply with this requirement, the awarded vendor is required to provide Rick Konrad, COG Contracts Manager: (1) a quarterly DBE payment schedule for the project within 10 days of being awarded a COG Contract/Task Order (consistent with the DBE dollar value included in the Proposal/Task Order), (2), quarterly DBE payment documentation (culled out on the invoice to include the percentage of work) is required by the 20th day of the month following the 3 month period the work was performed, and (3), documents verifying that the DBE vendor was paid the amount specified in the Proposal/Task Order within 30 days after the contract ends. Vendors failing to provide COG required DBE documentation or meet DBE monthly payments will not be allowed to bid on any COG projects/task orders until any deficiency is corrected. Vendors who fail to meet the total DBE payment for any project will be suspended from bidding on any COG contracts/task orders for six months. All questions on these requirements should be sent to Rick Konrad at rkonrad@mwkog.org.

ATTACHMENT A
STANDARD TERMS AND CONDITIONS

1. **Energy Conservation.** 42 U.S.C. § 6321 *et seq.*
The SUBRECIPIENT agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

2. **Clean Water Requirements.** 33 U.S.C. § 1251 *et seq.*
 - a. The SUBRECIPIENT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended. The SUBRECIPIENT agrees to report each violation to COG and understands and agrees that COG will, in turn, report each violation, as required, to assure notification to appropriate federal agencies including the appropriate EPA Regional Office.

 - b. The SUBRECIPIENT also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance.

3. **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:

- a. 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.

- b. If any funds other 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 (b) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995. (P.L. 104-65, to be codified at 2 U.S.C. § 1601 *et seq.*)]

- c. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

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

_____ Signature of SUBRECIPIENT Authorized Official

_____ Name and Title of SUBRECIPIENT Authorized Official

_____ Date

4. Access to Records and Reports. 49 U.S.C. § 5325

- a. The SUBRECIPIENT agrees to provide COG, and if applicable the state or federal funding agency, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the SUBRECIPIENT which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transactions.
- b. The SUBRECIPIENT agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. The SUBRECIPIENT agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) 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 the SUBRECIPIENT agrees to maintain same until COG, the applicable state or federal funding agency, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

5. Funding Agency Changes.

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

6. 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.

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

7. Recycled Products. 42 U.S.C. § 6962

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

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

8. No Government Obligation to Third Parties.

- a. The SUBRECIPIENT acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities of COG, the SUBRECIPIENT, or any other person (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

- b. The SUBRECIPIENT agrees to include the above clause in each subcontract financed in whole or in part with federal assistance. It is further agreed that the clause shall not be modified, except to identify the SUBRECIPIENT that will be subject to its provisions.

9. **Program Fraud and False or Fraudulent Statements and Related Acts.**

31 U.S.C. § 3801 *et seq.*

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

10. **Termination.** 49 U.S.C. Part 18

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

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

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

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

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

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

11. 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

- a. **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of federal law, the SUBRECIPIENT agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the SUBRECIPIENT agrees to comply with applicable federal implementing regulations.

- b. **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to the underlying contract:

- i. **Race, Color, Creed, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, the SUBRECIPIENT agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal

Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq. (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect activities undertaken in the course of this Project. The SUBRECIPIENT agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the SUBRECIPIENT agrees to comply with apprenticeship. In addition, the SUBRECIPIENT agrees to comply with any implementing requirements the funding federal agency may issue.

ii. **Age.** In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and other applicable law, the SUBRECIPIENT agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the SUBRECIPIENT agrees to comply with any implementing requirements the funding federal agency may issue.

iii. **Disabilities.** In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the SUBRECIPIENT agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the SUBRECIPIENT agrees to comply with any implementing requirements the funding federal agency may issue.

c. The SUBRECIPIENT also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance, modified only if necessary to identify the affected parties.

12. **Breaches and Dispute Resolution.**

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

his/her designee shall be binding upon the SUBRECIPIENT, and the SUBRECIPIENT shall abide the decision.

- b. **Performance During Dispute.** Unless otherwise directed by COG, the SUBRECIPIENT shall continue performance under this Contract while matters in dispute are being resolved.
- c. **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.
- d. **Remedies.** Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between COG and the SUBRECIPIENT arising out of or relating to this agreement or its breach may be submitted by the parties for arbitration if the parties mutually agree, otherwise, such claims, counterclaims, disputes and other matters shall be decided by a court of competent jurisdiction within the District of Columbia.
- e. **Rights and Remedies.** The duties and obligations imposed by the Contract and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by COG or the SUBRECIPIENT shall constitute a waiver or any right or duty afforded to them under the Contract, nor 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.

13. **Patent and Rights in Data.**

- a. **Rights in Data.** The following requirements apply to each contract involving experimental, developmental or research work:
 - i. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; CDs or flash drives (thumbsticks/thumbdrives) containing data; and any other information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
 - ii. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

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

(1) Any subject data developed under that contract, whether or not a copyright has been obtained; and

(2) Any rights of copyright purchased by the Purchaser or the SUBRECIPIENT using federal assistance.

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

i. 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 the SUBRECIPIENT agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until the federal funding agency is ultimately notified.

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

iii. The SUBRECIPIENT also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with federal assistance.

14. **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.

15. 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 (1) year thereafter, shall have any personal interest, direct or indirect, apart from his or her official duties, in this Contract or the proceeds thereof.

16. Interest of the SUBRECIPIENT.

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

17. Allowable Costs.

Only those costs which are consistent with Title 2 Part 200 of the Code of Federal Regulations shall be reimbursed under this Contract.

18. Covenant Against Contingent Fees.

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

19. Indemnification.

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

20. 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 of 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.

21. Assignments.

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

22. 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.

23. 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 (i) when necessary to fulfill COG's information-gathering and data collection responsibilities, or (ii) 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:
 - i. 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.
 - ii. The party(ies) working with COG shall demonstrate adherence to a federal or applicable state standard for protecting confidential or personal information.
 - iii. 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.

- iv. COG shall retain control over and ownership of all surveys, web pages, 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.
- v. 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.
- vi. If information collected or stored by or through the survey, website or other data collection shall be stolen or handled incorrectly, the parties) 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.
- vii. The project documents shall provide that other parties working with COG on the survey, website or other data collection or storage shall indemnify COG with at least the following commitment:

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

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

24. COG's Policies and Procedures.

When federal law, or any grant conditions, certifications or assurances require COG to utilize competitive procurement procedures for selection of a SUBRECIPIENT, COG's policies and procedures shall govern every aspect of the SUBRECIPIENT selection process, e.g., the solicitation, evaluation, award, and post-award process (including, without limitation, any protest of an award, and the terms and conditions under which a contract may be approved, executed and administered). Any SUBRECIPIENT and potential SUBRECIPIENT will be provided with a copy of such policies and procedures, on request.

25. COG's Information Technology Policy.

Contractors that must access COG's Information Technology systems or require a COG login account to perform their duties must adhere to COG's Information Technology Policies and Procedures. Such contractors will receive a copy of the policies and procedures prior to receiving access to COG's IT systems.

26. COG's Facilities, Policies, and Procedures.

Contractors that must use any of COG's facilities or equipment must adhere to COG's Facilities, Policies and Procedures. Contractors that utilize any AV or IT equipment through the use of COG's facilities shall also comply with COG's IT Policy. Such contractors will receive a copy of all relevant procedures prior to receiving access to COG's IT systems.

27. Additional Requirements.

In addition to the terms and conditions expressly referenced in this Contract, the SUBRECIPIENT acknowledges and agrees that the terms and conditions of any federal or state grant that provides funding for this Contract, in whole or in part, shall apply to and shall govern the parties' rights and obligations under this Contract and shall be deemed additional terms, conditions and requirements of this Contract.

28. DBE Assurance.

The SUBRECIPIENT or _____ shall not discriminate based on race, color, national origin, or sex in the performance of this Contract. The SUBRECIPIENT shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of USDOT-assisted contracts. Failure by the SUBRECIPIENT to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the COG deems appropriate.

29. Audits.

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

30. FFATA Reporting.

The Federal Funding Accountability and Transparency Act ("FFATA") requires prime recipients of federal grants and contracts to report sub-award and executive

compensation data. COG is the prime recipient of federal awards for the purposes of this policy and is responsible for reporting sub-award data.

COG and first-tier sub-awardees are required to maintain current registration in the System for Awards Management ("SAM") as well as obtain a DUNS number. COG is responsible for filing the report in the FSR system, not sub-awardees. However, sub-award recipients must provide the following information to COG before they will be eligible to receive the sub-award:

- a. The entity's information;
- b. Description and/or title of the sub-award (including NAICS code or CFDA number);
- c. Date and amount of award;
- d. Location of the entity receiving the award and the primary location of performance under the award, including the city, state, congressional district, and country;
- e. Active and current SAM unique identifier;
- f. DUNS number;
- g. Names and total compensation of the five (5) highest paid officers/executives of the sub-recipient if all three criteria are met:

- (1) Federal awards make up 80% or more of the SUBRECIPIENT's annual gross revenues; and
- (2) the SUBRECIPIENT's annual gross revenue from federal awards is \$25 million or more; and
- (3) the SUBRECIPIENT's officer names are not publicly available and the public does not have access to data on executive compensation of the entity through the Securities and Exchange Commission (SEC) as described in further detail in OMB Guidance on Sub-award and Executive Compensation Reporting (August 27, 2010).

(COG, as the prime recipient of the federal award, must also report its own executive compensation data by the end of the month following the award if the same criterion noted above is met.)

31. Priority of Requirements.

In the event of a conflict between or among any of the terms, conditions and requirements applicable to this Contract, the conflict shall be resolved by giving weight in accordance with the following priorities, in the order as stated below:

- a. Terms and conditions of any grant that provides funding for this Contract, in whole or in part;
- b. Terms and conditions set forth or referenced within this Contract;
- c. Terms and conditions and representations set forth or referenced within Attachments A and B to this Contract;
- d. Terms, conditions, specifications, and requirements set forth within any solicitation (e.g., RFP or IFB) pursuant to which this Contract was awarded;
- e. Offers, representations, promises, terms and conditions set forth with the bid or proposal submitted in response to any solicitation (e.g., RFP or IFB) pursuant to which this Contract was awarded.

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

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

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

Vendor understands that a false statement on this certification may be grounds for rejection of any submitted proposal or quotation or termination of any award. In addition, under 18 U.S.C. § 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