



REQUEST FOR QUALIFICATIONS

INFORMATION TECHNOLOGY SUPPORT SERVICES

No. 11-007
APRIL 22, 2011

OFFICE OF INFORMATION TECHNOLOGY & FACILITY MANAGEMENT

I. INTRODUCTION

The Metropolitan Washington Council of Governments (COG) is a regional organization of Washington area local governments. COG is composed of 21 local governments including the District of Columbia and jurisdictions in northern Virginia and Maryland, plus area members of the Maryland and Virginia legislatures, the U.S. Senate, and the U.S. House of Representatives.

COG provides a focus for action and develops sound regional responses to such issues as the environment, affordable housing, economic development, health and family concerns, human services, population growth, public safety, and transportation.

Founded in 1957, COG is an independent, nonprofit association. It is supported by financial contributions from its participating local governments, federal and state grants and contracts, and donations from foundations and the private sector. Policies are set by the full membership acting through its board of directors, which meets monthly to discuss area issues.

II. BACKGROUND

In support of its programs and staff, COG maintains an Information Technology infrastructure. That infrastructure is comprised of hardware and software as outlined in Section IV. COG's internal IT staff consists of five (5) members: a Help Desk Technician, a Network Systems Administrator, an Information Technology Manager, a procurement coordinator, and a Director. Contractor staff will report to the IT Manager on a day to day basis.

COG's internal IT staff mostly handles desktop and audiovisual support for the organization. The IT Manager has a supervisory role over desktop support, network

operations and technology training. Contract staff will work closely with IT Manager to ensure high quality support is provided for COG IT services and timely completion of technology projects.

III. SCOPE OF REQUIRED SERVICES

Contract staff shall support COG's existing on-premises infrastructure components that are outlined in Section IV. Support of the infrastructure shall include:

- Following COG Help Desk policies and procedures
- Development of project Statements of Work
- Responding to alert notifications from system monitoring applications
- Prepare regular system performance reports and present recommendations for improvement
- Providing technical support and training to COG employees
- Provide technical expertise and support for regional IT projects in which COG is involved
- Take necessary steps to ensure COG's IT infrastructure is safe from malware and properly maintained and patched
- Ensure that all COG servers are appropriately backed up and can be restored within agreed upon timeframes
- Provisioning of new systems as needed or full-system upgrades of existing systems

In order to provide the support detailed above, Contractor will commit to the following:

- Provide 1 (one) person on-site full time for Tier 3 level support and project-based work to be performed during COG business hours. Tier 3 person must be CCNA certified.
- Provide Tier 3 person with a mobile smartphone that is capable of integrating with COG's Exchange 2007 and Blackberry Enterprise Server environment. Phone will be used for alert notifications and support requests and coordination.
- Provide 1(one) person on-site full time for Tier 2 level support and project-based work to be performed during COG business hours. Tier 2 person must have at least a 4-year degree in Information Technology and proven quality support experience.

- Provide each contract staff employee with 1 (one) technical training class per year of the contract that is mutually agreed upon between the Contractor, contract staff employee, and COG.

Contractor shall also provide certain hosting services. Specifically:

- Hosting of two (2) RICCS servers. Each server shall be hosted in a geographically separated location from the other in a secure, Tier II or higher data center.

It is anticipated that additional projects supporting COG’s member governments will be forthcoming during the life of this contract. Such projects will be offered to Contractor at a negotiated rate. At this time, no guarantees of any additional work can be made, nor should the above statement be construed as a guarantee of additional work or consideration. Contractor shall provide hourly rates for the following services:

- Oracle Database Administrator
- Cisco Call Manager VOIP Administrator
- Cisco (Tandberg) Video Conference Engineer
- Tier 2 Technical Engineer Support for Projects

IV. COG EXISTING ON-PREMISES INFRASTRUCTURE COMPONENTS

Item	Vendor
Network Environment & Services	
ASA 5520 (3)	Cisco
Catalyst 4510 R Core Switch (1)	Cisco
3800 Series Router (2)	Cisco
Xiotech SAN (1)	Xiotech
Fiber Channel Switch (4)	Cisco
InfrastruXure Battery Backup & PDU (1)	APC
KVM (1)	Raritan
PowerEdge Servers (4)	Dell
Proliant Blades (14)	HP
Proliant Servers (6)	HP
Active Directory/Group Policy	Microsoft
File and Print Services	Microsoft
DNS	Microsoft

Item	Vendor
DHCP	Microsoft
RDP	Microsoft
NTS	Microsoft
Static and Dynamic Routing	Cisco
SMTP	Microsoft
Firewall	Cisco
VPN	Cisco
HTTP/S	Mixed
FTP	Mixed
Video Conference	Cisco (Tandberg)
Systems and Application Environment	
Hyper-V Cluster	Microsoft
Exchange 2007 Cluster	Microsoft
Terminal Services	Microsoft
SQL Server 2005 Cluster	Microsoft
Backup Exec	Symantec
CostPoint	Deltek
Blackberry Enterprise Server	RIM
Customer Relationship Management	Microsoft
Endpoint Management	Symantec
Web & Email Filter Appliance	Barracuda
SAS	SAS
ArcGIS	ESRI
SharePoint	Microsoft
System Center Operations Manager	Microsoft
System Center Virtualization Manager	Microsoft
Connect Professional	Adobe
Content Server	OpenText
Oracle	Oracle
IIS	Microsoft

V. TYPE OF CONTRACT AND PERIOD OF PERFORMANCE

Payment shall be based on a fixed monthly price to the selected Contractor based on the scope of services indicated in Section III. This monthly price shall be inclusive of all expenses, profits and fees. The period of performance of the contract will be from July 1, 2011 through June 30, 2012. The ensuing contract may be renewed by COG for four (4) additional option years. The selected contractor will be notified sixty (60) days in advance of the termination date if the contract will be renewed for the ensuing option year.

VI. OTHER CONDITIONS

1. Federal, State, Local or foreign taxes are not allowable.
2. Other than those tasks specifically identified, legal fees of any type are not allowable without prior written approval of COG.
3. In the event the project is terminated by COG, the Contractor will be paid for work actually performed to the effective date of termination.
4. Any work to be subcontracted 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 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, agents or subcontractors in connection with the performance of this work.
6. In case of failure by the Contractor to perform, or have performed, 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 responsible for any and 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 the resulting contract. The Contractor further covenants that in the performance of this contract, no person having any such interest shall be employed

VII. PROPOSAL STRUCTURE

Respondents must follow the prescribed format or they shall be deemed non-responsive. Adherence to the proposal format by all respondents will ensure a fair evaluation and one which can evaluate each response with regard to the needs of COG. The letter transmitting the proposal must be signed by an officer authorized to bind the respondent. Three separate chapters shall be prepared as described in the following section:

Chapter 1: Qualifications of the Firms and Personnel

This section shall provide the professional credentials and experience of the firm, and any subcontractors and the key personnel of all firms proposed for this contract. The absence of such contract specific information shall be considered as non-responsive. Although standard personnel resumes may be included as attachments to the proposal, amplification specific to this RFQ is required in this section. The respondent shall complete a skills matrix for each the two (2) full time positions that shall be provided by the Contractor. The skills matrix is shown below.

If the proposal includes the use of subcontractors, Respondent must identify specific subcontractors and the specific requirements of this RFQ for which each proposed subcontractor would perform services.

Skills Matrix

System or Technical Skill	Basic / Intermediate / Expert	Years of Experience	Last Used
Cisco Firewall			
Cisco Switching			
Cisco VLANs			
Cisco Routing			
Cisco VPN			
Cisco Fiber Channel Switch			
SAN			
Hyper-V			
Video Conference Bridge			
Video Conference Endpoint			
System Center Operations Manager			
System Center Virtualization Manager			
Active Directory			
Group Policy			

DNS			
DHCP			
RDP			
HTTP/S			
FTP			
Exchange 2007			
Terminal Services			
SQL Server 2005			
Backup Exec			
CostPoint			
Blackberry Enterprise Server			
Symantec Endpoint Management			
Barracuda Email Filter			
Barracuda Web Filter			
SAS			
ESRI ArcGIS			
SharePoint			
Oracle 11g			
IIS			

Chapter 2: Cost Proposals

Respondents shall specify the annual price to provide all services required under Section III Scope of Services. This amount shall be inclusive of all expenses, profits and fees. Cost Proposal should follow the template below.

	Initial Contract	1st Optional Extension	2nd Optional Extension	3rd Optional Extension	4th Optional Extension
IT Services:					
Optional Hosting Services:					

Negotiated Contractor Hourly Rate for Project Work

	Bill Rate
Oracle Database Administrator	
Cisco Call Manager VOIP Administrator	
Cisco (Tandberg) Video Conference Engineer	
Tier 2 Technical Engineer Support for Projects	

Chapter 3: References

The proposed Contractor, and any Subcontractor or "Other Subcontractor" shall provide references from a minimum of three (3) current clients in this chapter. Names, titles, addresses, and telephone numbers shall be included for each reference. References shall include work in which key personnel proposed to COG for this program have served. References are preferred from non-profit clients similar in size to COG.

VIII. QUESTIONS

Technical questions concerning the RFQ will be answered at a pre-proposal briefing to be held at COG on May 20, 2011 from 1:00 p.m. to 3:00 p.m., at the Metropolitan Washington Council of Governments, 777 North Capitol Street NE, Meeting Room #1 First Floor, Washington, DC 20002 Please email Thomas Savoie, tsavoie@mwcog.org, if there will be a representative of the firm at the pre-bid briefing. Process questions related to the RFQ should also be emailed to Thomas Savoie.

IX. SUBMISSION AND CONTACT

All respondents shall submit three (3) paper copies and (1) PDF copy on CD of their proposal to:

THOMAS SAVOIE
CONTRACTS AND PURCHASING MANAGER
METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS
777 NORTH CAPITOL STREET, NE, SUITE 300
WASHINGTON, D.C. 20002-4239

Proposals shall be submitted by no later than 2:00 p.m., May 27, 2011. Please place the RFQ number on the outside of your submission. Proposals may not be submitted through email, fax or any other electronic methods.

X. METHOD OF EVALUATING PROPOSAL AND CONTRACTOR SELECTION

Proposal Evaluation

The proposals will be evaluated by a Technical Selection Committee. In evaluating the proposals, the following factors will be considered, with points awarded up to the maximum shown:

FACTORS	POINTS
Cost and Price Analysis	30
Experience of the Contractor(s) and Key Personnel and Availability of Key Personnel	60
DBE Participation	10
Maximum Total Points	100

Disadvantaged Business Enterprise

Disadvantaged Business Enterprise (DBE) participation shall be an integral component of the consultant selection procedure for this RFQ. COG has established a DBE goal of 10% for this project.

Responding firms shall submit with their proposals a DBE Participation Plan to meet this goal. The plan shall identify any DBE (defined in 49 CFR Part 26) that shall be participating in the project. The plan shall include the name and address of the firm, a copy of the firm’s current DBE Certification from any federal, state or local government agency that certifies DBE ownership (please note only DBE certifications will be accepted by COG for this purpose).

SAMPLE DBE PARTICIPATION PLAN

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

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

- Firms that meet the goal established for the proposal will receive 10 selection points (out of a possible 100).
- Firms that meet less than the DBE participation goal established will be evaluated on the percent of the goal met, and the extent of their efforts to meet the entire DBE participation goal, but will receive less than the maximum DBE participation evaluation points.

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

Contractor Selection

The Technical Selection Committee may hold a pre-selection meeting with the top ranked proposers. The final recommendations for selection to the COG Contracting Officer may be made based upon the interviews and/or a best and final offer, submitted by the proposers if required.

XI. LATE PROPOSALS, MODIFICATION OF PROPOSALS AND WITHDRAWAL OF PROPOSAL

1. Any proposal received at the office designated in this RFQ after the exact time specified for receipt will not be considered and will be returned, unopened, to the sender, unless it is the only proposal received.
2. Any modification of a proposal is subject to the same conditions as in paragraph (1) above of this provision.
3. Proposals may be withdrawn by written notice received at any time prior to award.

ATTACHMENT A
STANDARD TERMS AND CONDITIONS

- I. Energy Conservation** – 42 U.S.C. 6321 et seq.
The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
- II. Clean Water Requirements** – 33 U.S.C. 1251 et seq.
1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended. The Contractor agrees to report each violation to COG and understands and agrees that COG will, in turn, report each violation as required to assure notification to appropriate federal agencies including the appropriate EPA Regional Office.
 2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance.
- III. Lobbying** – 31 U.S.C. 1352 et seq.
(To be submitted with each bid or offer exceeding \$100,000)
The undersigned certifies, to the best of his or her knowledge and belief, that:
1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal Loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of and Federal contract, grant, loan, or cooperative agreement.
 2. If any funds or than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions [as amended by “Government wide Guidance for New Restrictions on Lobbying,” 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein as been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et.seq.*)]

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

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

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

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

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

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

of the their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

V. Funding Agency Changes

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

VI. Clean Air – 42 U.S.C. 7401 et seq

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

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

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

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

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

VIII. No Government Obligation to Third Parties

1. The Contractor acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities of COG, the

Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

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

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

X. Termination – 49 U.S.C. Part 18

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

- a. **Termination for Convenience** – COG, by written notice, may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in COG's best interest. If this contract is terminated, COG shall be liable only for payment under

the payment provisions of this contract for services rendered before the effective date of termination.

- b. **Termination for Default [Breach or Cause]** – If the Contractor fails to perform in the manner called for in this contract, or if the Contractor fails to comply with any other provisions of the contract, COG may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contract is in default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by COG that the Contractor had an excusable reason for not performing, such as strike, fire, or flood, events which are beyond the control of the Contractor, COG, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.
- c. COG in its sole discretion may, in the case of termination for breach or default, allow the Contractor ten (10) working days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.
If the Contractor fails to remedy to COG's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within the 10 working days after receipt by Contractor of written notice from COG setting forth the nature of said breach or default, COG shall have the right to terminate the Contract without further obligation to Contractor. Any such termination for default shall not in any way operate to preclude COG from also pursuing all available remedies against Contractor and its sureties for said breach or default.
- d. In the event COG elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by COG shall not limit COG's remedies for any succeeding breach of that or any other term, covenant, or condition of this Contract.

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

1. **Nondiscrimination** – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of Federal law, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin,

sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations.

2. **Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying contract:
 - a. **Race, Color, Creed, National Origin, Sex** – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable Federal Statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of this Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements the funding federal agency may issue.
 - b. **Age** – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and other applicable law, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements the funding federal agency may issue.
 - c. **Disabilities** – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements the funding federal agency may issue.
3. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal Assistance, modified only if necessary to identify the affected parties.

XII. Breaches and Dispute Resolution

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

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

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

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

Rights and Remedies – The duties and obligations imposed by the Contract and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by COG or the Contractor shall constitute a waiver or any right or duty afforded to them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

XIII. Patent and Rights in Data

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

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms

such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

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

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

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

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

(c) For FTA Assisted Contracts - When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall

be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

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

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

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

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

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

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

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

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

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

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

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

XIV. Interest of Members of Congress

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

XV. Interest of Employees of COG

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

XVI. Interest of the Contractor

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

XVII. Allowable Costs

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

XVIII. Covenant Against Contingent Fees

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

XIX. Indemnification

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

XX. Severability

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

XXI. Assignments

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

XXII. Entire Agreement

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

