



Metropolitan Washington
Council of Governments



Mid-Atlantic Purchasing Team

A Partnership Between the Baltimore Metropolitan Council
and the Metropolitan Washington Council of Governments

INVITATION TO BID NO. 17-012

Contract for Emergency Medical Service –
Medical Supplies

Rick Konrad, *Cooperative Purchasing Program Manager*
Email: rkonrad@mwkog.org

**Offerors shall submit one (1) original and three (3) copies
of their written proposal and one (1) CD or USB with the
complete proposal to:**

Rick Konrad
Cooperative Purchasing Manager
Metropolitan Washington Council of Governments,
777 North Capitol Street, NE, Suite 300
Washington, DC 20002

Submission Date: 12/22/2016

Time: 2:00 PM EDT

INVITATION TO BID

ITB- 17- 012

Emergency Medical Service - Medical Supplies

Metropolitan Washington Council of Governments

I. Introduction

1. Mid-Atlantic Purchasing Team (MAPT) is a partnership between the Metropolitan Washington Council of Governments (MWCOG) and the Baltimore Metropolitan Council (BMC) to provide a "Government-to-Government" procurement service for States, State Agencies, Local Governments, Districts, Authorities, and qualifying Not-for-Profit Corporations (Agencies).
2. In this procurement, MWCOG, acting on behalf of its member Agencies as Lead Agency, is soliciting competitive bids for products and/or services, which may be purchased by the Agencies during the contract term.
3. This Invitation to Bid (ITB) is being offered for the procurement of Emergency Medical Services Medical Supplies including supplies and medications used by Municipal Emergency Response Ambulance, Health, and School departments (Agencies) within the counties, cities and towns in the combined regions of Metropolitan Washington including the District of Columbia, Virginia, Maryland and Metropolitan Baltimore, a one-year period.
4. MWCOG will identify the responsible and responsive low bidder(s). Contracts will be executed between the respective Agencies and the bidder(s) determined by MWCOG to be the lowest responsible and responsive bidder(s). [If more than one bidder "ties" as lowest responsible and responsive bidder, then more than one award may be made.] MWCOG reserves the right to accept or reject any and all bids or portions thereof, to waive any informalities in bidding, and to recommend awards to the member Agencies pursuant to this solicitation.
5. Qualified businesses are requested to submit bids to the MWCOG Cooperative Purchasing Program Manager not later than **2:00 PM EDT on December 22, 2016**. At which time bids will be opened in the presence of witnesses.
6. **This (ITB) is open to all Agencies in the MWCOG/MAPT regions and includes a rider clause that allows those Agencies to use this procurement or the resulting contract(s) by other Agencies to make purchases in accordance with their own policies.**
7. Bidders are requested **not** to contact the Agencies participating in the bid/award directly. Bidders are requested to only contact MWCOG in **writing** with questions regarding this ITB.

Contact information is listed below:

Rick D. Konrad

Cooperative Purchasing Program Manager
777 North Capitol Street, NE, Suite 300
Washington, DC 20002-4239
Email rkonrad@mwkog.org

8. Participating Agencies on this ITB currently include:

- Charles County EMS (Volunteers)
- Carroll Community College
- Howard County
- Anne Arundel County

II. **BID INSTRUCTIONS**

The successful bidder(s) shall meet the following criteria:

1. Bidder must include the documentation as specified or may be determined to be non-responsive and could be rejected pursuant to MWCOC Procurement Policy. See also the Bidder's Checklist on the Bid Form.
 - 1.1 Bidder must have at least five (5) years of experience in the supply and delivery to public safety organizations of medical supplies and equipment. Please complete attached BIDDER QUALIFICATION FORM (Attachment A).
 - 1.2 The CONTACT INFORMATION FORM shall be filled out in full and submitted as part of this bid (Attachment B).
 - 1.3 Each bid shall be accompanied by a NON-COLLUSION AFFIDAVIT regarding price fixing, gratuities, bribery, debarment and discriminatory employment practices. When the bidder is a corporation, a duly authorized representative shall execute the affidavit (Attachment C).
 - 1.4 References are to be provided from three (3) clients who are being, or have been, provided similar products and services from the bidder (Attachment D).
 - 1.5 All bids are to be submitted using the BID REPLY LABEL on the outside of the solicitation package to identify the bid (Attachment E)
 - 1.6 Accord Form – Proof of Insurance pursuant to Terms and Conditions (Attachment G).
 - 1.7 Bid Form(s) including all prices pursuant to the instructions below. Bids shall be entered/typed in the attached Excel spreadsheet (Bid Form Price Sheet A). Interlineations are **not** permitted. (All exceptions, changes and additions shall be added to the **Bid Form B** (Exceptions) spreadsheet or on a separate worksheet with the item listed with its corresponding item number from Bid Sheet A between line items 1-957.

2. Bid submissions must be in the digital Microsoft Excel spreadsheet format provided (BID FORM PRICE SHEET A & B). Any other submissions will **not** be accepted. Bids submitted which offer price proposals that differ in any way from the format presented on the BID FORM PRICE SHEET A and B may be considered invalid bids.
3. All bids must be signed by responsible company officials and delivered in a sealed envelope no later than the time and date indicated herein. Bids received after the time and date indicated will be returned unopened.
4. Award will be made to the lowest responsive and responsible bidder. Bidders must be responsive, i.e. meet the requirements of experience and qualifications and the requirements of this ITB. Assessment of lowest price means the lowest price per item (BID FORM PRICE SHEET A) and the highest quoted discount off their standard catalogue price for EMS items not listed in this ITB (Four [4] copies of each catalogue must be provided).
5. Multiple bidders may be awarded portions of the items covered by this ITB. Where stated some awards may be done based on groups of products rather than individual items. **Agencies have the right to contract for the bids** awarded in their entirety, in segments or by individual item.
6. Substitutions
 - 6.1 Because of the distinct disparity in quality and, more importantly, the cost of certain products and when it has been determined that no other manner of description suffices, proprietary specification (brand names) have been used for some items.
 - 6.2 The use of brand names in no way precludes any bidder from submitting alternative equivalent items for those items as long as the brand substitution is clearly indicated and added to Bid Form B; **except:**

WHERE A BRAND NAME IS SPECIFIED, AND INDICATED by “**NO SUBS**”, only that brand and part number will be accepted. This requirement is due to training and public safety issues.
7. Items are listed in the BID FORM PRICE SHEET A in the desired quantity. i.e. by “each”, “box” “case”. It is very important that prices are entered for the corresponding quantity. If the bidder does not offer the requested item in the quantity specified, that line item should be left blank, or if a different quantity is available, add it as an alternative on Bid Form B. Where no shipping/packing quantity is indicated the bidder is permitted to fill in their shipping quantity and stock number on Bid Form A in the squares that are light orange.
8. Clarifications via Addenda
 - 8.1 Questions regarding discrepancies, omissions, specifications, bid instructions, or the bid form may be directed **in writing only** at least seven (7)

business days before the bid opening to Rick Konrad, at rkonrad@mwkog.org.

- 8.2 Exceptions taken do not obligate MWCOG to change the specifications. If no changes are needed, then no addendum will be issued.
 - 8.3 MWCOG will notify all bidders in writing, by addendum issued at least five (5) business days before the bid opening of any updated interpretations, specifications, or instructions.
 - 8.4 It is the responsibility of the bidder to check and see if addenda have been issued on the MWCOG Website at www.mwkog.org/purchasing-and-bids/cog-bids-and-rfps/
 - 8.5 Bid responses should indicate that bidders have reviewed the latest addenda on the bid form.
9. MWCOG shall recommend the award of contract(s) to the lowest, responsible and responsive bidder(s). All final award determinations are made by MWCOG in consultation with the Agencies named in section I.8 above. Each Agency will issue and manage its own contracts and purchase orders.
 10. Bidders must acknowledge their understanding of the all terms listed in this ITB by signing the Bidder Qualification Form (Attachment A) and the Bid Form and returning these documents with their submission.
 11. MWCOG, as Awarding Authority, reserves the right to cancel this ITB, or reject in whole or in part any all bids, if MWCOG determines that cancellation or rejection serves the best interests of the Agencies.
 12. MWCOG will award or reject in whole all bids within 30 days of the bid opening, unless MWCOG extends said period in its sole discretion.
 13. Bids are due at the designated time and date and should be submitted in the following formats:

In a sealed envelope with the Bid Reply Label affixed to the outside submit one (1) original and three (3) complete paper copies of the Bid AND one (1) digital copy of the complete bid with including the BID FORM PRICING SHEET A in Microsoft Excel format.

 - 13.1 The BID FORM PRICING SHEET A can be scanned/converted into PDF format.
 - 13.2 The digital copies can be one (1) CD or one (1) USB memory stick.
 14. At any point during the award period, problems or concerns shall be addressed to MWCOG. As the administrator of the regional procurement program, MWCOG should be notified immediately of any problems that any bidder has with the program or any problems that the bidder experiences with any Agency. MWCOG will attempt to

resolve the problem as quickly as possible.

III. GENERAL CONDITIONS

1. Because all orders will be on an “as needed” basis, bidders must be familiar with the geographical proximity of the area for delivery purposes and be able to provide prompt customer service to Agencies. Contact information for the bidder’s company representative must be included on the CONTACT INFORMATION FORM (Attachment B).
2. Due to the importance of product quality and manufacturer support and certification, bidders must be able to show they are a licensed distributor for products as appropriate.

3. PURCHASE AND DELIVERY TERMS

- 3.1 No minimum order quantity.
- 3.2 Successful bidders shall accept orders via mail, facsimile, email, telephone and online web form from the Agency if accompanied by a Purchase Order number or a P-card number. All orders shall be complete, labeled and packaged adequately to ensure safe handling and proper delivery.
- 3.3 No separate charges for freight and delivery.
- 3.4 Delivery will be to each Agency as designated in the resulting contract.
- 3.5 All orders processed via mail, facsimile, email, telephone, and online web form shall be delivered to the specified destination within five (5) business days after receipt of order.
- 3.6 Failure to meet delivery date and provide product(s) as specified may result in written termination of the respective contract. Time is of the essence.
- 3.7 If the Agency requests same-day or expedited delivery, the bidder may pass those costs to the requesting Agency with prior written approval.
- 3.8 If the bidder cannot meet the delivery requirement, either standard or expedited, each Agency reserves the right to obtain the product from any source. The extra cost of procuring the product may be charged against the bidder and deducted from any monies due or which may become due from the Agency.
- 3.9 Further, if the bidder is unable to meet the delivery requirement and supply the requested product within the designated time due to factory delay, strike or any unforeseen circumstances, the bidder must notify the ordering Agency representative of the delay and the anticipated delivery date. Failure to comply with this requirement will result in a poor performance rating which will be

considered in making subsequent awards.

- 3.10 Freight terms for all orders requested "delivered" shall be FOB destination Freight Prepaid. All delivery charges, fees, insurance, expenses, and/or overhead shall be included within bid price. No taxes will be included in the price.
- 3.11 Any damaged shipments shall be replaced solely at the bidder's expense. This shall include pick-up of damaged product and delivery of replacement product. Replacement product shall be delivered within five (5) business days from receipt of notification of damage.
- 3.12 All orders shall be accepted between the hours of 7:30 a.m. and 3:00 p.m., Monday through Friday, except on Agency holidays.
- 3.13 A packing slip shall accompany all deliveries. The packing slip must include the Agency's Purchase Order or P-card number. Any delivery that does not identify the respective Agency's purchase order number will be rejected. On the packing slip, the bidder shall obtain a signature from the Agency employee for all items delivered. The bidder will be required to furnish proof of delivery in case of dispute.
- 3.14 All "drop shipments" (direct from a manufacturer or wholesaler) must adhere to the terms specified within this solicitation (See Section III.3).

4. PERFORMANCE

- 4.1 Bidders with a documented record of poor performance may be replaced by the next competitive bidder.

5. PRICES / BILLING

- 5.1 All prices bid shall be firm against any increase for one (1) year from the effective date of the contract.
- 5.2 For each subsequent renewal term, the bidder shall notify the Agency at least 45 calendar days prior to the increase in price taking effect and submit a request for a price increase by furnishing bona-fide manufacturer's documents or a price list reflecting the changes. Increases shall be limited to the **actual** cost increase to the bidder (See also Section III.9).
- 5.3 Price increase requests may be denied if not supported with appropriate price increase justification.
- 5.4 Each Agency reserves the right to accept or reject a price increase within 14 calendar days of written request for a price increase. If the price increase is rejected, the specific item will be canceled. If the price increase is approved, the price will remain firm for the renewal term for which it was requested

- 5.5 The bidder shall setup its billing system to ensure that all Agency invoices **do not** include sales tax. Agencies will provide certificate of exemption for sales tax upon request.
- 5.6 **INVOICE PROCEDURE FOR SUCCESSFUL CONTRACTORS:** To facilitate prompt payment, invoices must contain the commodity and/or service descriptions as per the Bid Pricing Sheet with unit and total pricing. Invoices failing to contain the required line item detail, including contract line number and unit pricing, may be returned for correction. **Please submit a sample invoice with the bid response.**
- 5.7 The bidder shall assign a dedicated key account representative and provide their contact information for customer service and invoice issues. Include the name and contact information of the assigned representative in the Contact Information Form (Attachment B).
- 5.8 Bidders are encouraged to submit any additional pricing discounts on items not listed herein. PLEASE STATE PERCENTAGES OFF FOR ITEMS PURCHASED THROUGH A CATALOG AND IDENTIFY THE CATALOG BY NAME at the end of Bid Price Sheet A. (Four (4) sample catalogs shall be included for each type of catalogue.)

6. RETURN MERCHANDISE

- 6.1 Agencies should call the bidder to receive a return authorization number before returning items. Non-returnable items include special orders, items that have been marked or engraved, broken packaging, items not sent back in original packaging, customized items, clothing that has been worn or hemmed, any sterile product that has been opened.
- 6.2 Items that are close to expiration may be returned for credit. The Return Policy will include preloaded drugs, ampoules, and vials purchased from the bidder which may be returned for full credit provided the medication is received by the bidder less than 70 days and more than 10 days before the expiration date. IV and irrigating fluids, Insta-Glucose, Epi-Pens, OTC medications, and IV Catheters are not returnable. An open credit will be issued to the Agency's account upon receipt of eligible drugs. In these instances, the Agencies must pay return shipping charges for returns.
- 6.3 In no instances shall bidder deliver any items under this procurement that expire **prior** to one (1) year from date of delivery without written approval from the ordering Agency.

7. COOPERATIVE PURCHASE

- 7.1 MWCOG as an agent to MAPT member Agencies reserves the right to extend all of the terms, conditions, specifications, and unit or other prices of any contract

resulting from this bid to any and all public bodies, subdivisions, school districts, community colleges, colleges, and universities, including non-public schools. This is conditioned upon mutual agreement, based on the attached Rider Clause (Attachment F), of all parties pursuant to special requirements which may be appended thereto.

7.2 The bidder agrees to notify MWCOG of the Agencies that desire to use any contract resulting from this bid and to provide reporting as required pursuant to this procurement (Section III.8).

7.3 The MWCOG and MAPT assume no authority, liability, or obligation, on behalf of any other Agency that may use any contract resulting from this ITB. All purchases and payment transactions will be made directly between the contractor and the requesting Agency. Any exceptions to this requirement must be specifically noted in the bid response.

8. PARTICIPATION AND SALES REPORTING

8.1 The bidder agrees to provide summary information on the purchases by MWCOG Agencies through the purchasing program associated with this procurement on a quarterly basis to allow MWCOG to monitor the program's use and benefit to its Agencies.

Semi-Annual reporting Due Dates:

July 29, 2017- covering Jan 1 – June 30

January 29, 2017 – covering Aug 1 – Dec 31

8.2 The semi-annual report will provide sales data broken down by item, quantity, unit cost and total cost for each individual agency within the timeframe laid out above. Bidder shall establish an accounting system or process that will enable the tracking and reporting of sales to participating Agencies under this ITB.

8.3 The bidder shall report all participants that choose to ride the procurement to MWCOG within 30 days of their first purchase and they will be added to the above reporting matrix.

9. CONTRACT TERMS

9.1 If MWCOG, at its sole discretion, notifies the bidder(s) of the intention to extend the contract for up two (2) additional years [in one (1) year increments], at least 30 days prior to the extension, the bidder shall notify all Agencies participating in the award of any price increases which shall take effect in the next year at least 45 days prior to the end of the contract period (pursuant to Section III.5.2 & III.5.4).

9.2 Notification shall be in writing and shall identify what items, the new price, and the amount of increase specified as a percentage (%).

- 9.3 Agencies reserve the right not to renew the contract if the price increases on 50% or more of the items on the supply list by 5% or more.
10. The award and resultant contract(s) shall be non-exclusive. Each Agency shall determine its method of purchasing supplies from the bidder(s) who are subject to this award.
11. The bidder shall assign a salesperson/customer services representative to address product quality and delivery issues. Include the name and contact information of the assigned representative in the Contact Information Form (Attachment B).
12. Bidders are advised that the items on the product list are the most commonly used and ordered items. The successful bidder(s) shall be required to provide the specified item at the specified price. If quantities are to be limited, the bid shall specify what the limited quantities are separately under Exceptions at the end of the Bid Form Price Sheet. Limiting quantities may void award of the item in determining the bid award(s).
13. VOLUNTEER FIRE DEPARTMENT PROCUREMENT
- 13.1 Bidders shall extend the same prices, terms and conditions to all Volunteer Fire Departments and EMS Companies requiring these commodities and/or services.
- 13.2 Each Volunteer Fire Department is responsible for payment of invoices from its purchases. All purchase and payment transactions will be made directly between the bidder and the Volunteer Fire Department.
14. PROCUREMENT CARD
- 14.1 The Agency retains the option to use the Agency procurement card for the purchase of supplies or services listed in the respective contract in lieu of issuing a purchase order.
- 14.2 No procurement card transaction shall take place without the authorization of the cardholder and it shall not exceed the limit placed on the cardholder's procurement card.
- 14.3 The bidder may process a payment in the credit card network ONLY upon shipment of supplies or performance of the services ordered by the Agency.
- 14.4 For partial shipments or performance, the bidder may process a payment only for the amount shipped or completed and NOT for the entire amount ordered by the Agency. Upon shipment or completion of the remaining order, the bidder may process a payment request to the credit card network for the remainder of the order.
- 14.5 The bidder may not charge the Agency for any fees related to the use of a

procurement card.

- 14.6 For all transactions, the bidder shall have a valid W-9 form on file with each participating Agency.

IV. SPECIFICATIONS

1. These specifications intend that the bidder shall furnish, and any Agency shall purchase, EMS Medical Supplies in accordance with the resulting contract(s) as each Agency may require during the specified period of time. The quantities, if shown, are approximate and are for the purposes of bid evaluation.
2. Each Agency reserves the right to order supplies as required during the contract period. Each Agency also reserves the right not to order supplies bid upon if the Agency does not require such supplies during the contract period.
3. See the separate Excel BID FORM PRICE SHEET A for list of required products and quantities.

V. BID FORM

TO: Metropolitan Washington Council of Governments,
 777 North Capitol Street, NE, Suite 300
 Washington, DC 20002

Date _____

BID – Emergency Medical Services - Medical Supplies

Attach BID FORM PRICE SHEET A to this page and submit with bid.

Addendums acknowledged (if applicable) -

Addendum #1 YES ___ NO ___ N/A ___

Addendum #2 YES ___ NO ___ N/A ___

Addendum #3 YES ___ NO ___ N/A ___

Addendum #4 YES ___ NO ___ N/A ___

Others _____

Bidders Check List Required Forms _____ Included

One (1) original and three (3) paper copies of the bid _____

One (1) digital copy (CD or Memory Stick) _____

Attachment A – Bidder Qualification Form _____

Attachment B – Contact Information Form _____

Attachment C – Non Collusion Affidavit _____

Attachment D – References _____

Attachment E – Bid Reply Label (affixed to outside of bid submission) _____

Attachment F – Rider Clause (acknowledged) _____

Accord Form – Proof of Insurance _____

Licensed Distributor documentation as appropriate _____

Sample Invoice _____

Excel Price Sheets (completed electronically as per Bid Instructions) _____

Exceptions YES _____ NO _____

*If yes please attach all on separate sheet(s) at the end of the bid submission.

Catalogues provided (4) each YES ____ NO ____ N/A ____

I have read, understood, and agreed to the terms and conditions of all contents of this Bid. The undersigned agrees to furnish the commodity or service stipulated in this Bid as stated above.

SIGNATURE: _____

NAME: _____

COMPANY: _____

ADDRESS: _____

TELEPHONE: _____ FAX: _____

EMAIL: _____

Attachment A

BIDDER'S QUALIFICATION FORM

1. NAME OF BIDDER: _____

2. PERMANENT MAILING ADDRESS: _____

3. YEAR & STATE INCORPORATED: _____

4. HOW MANY YEARS HAVE YOU ENGAGED IN BUSINESS UNDER YOUR PRESENT FIRM

NAME: _____ YEARS _____

5. GENERAL CHARACTER OF WORK PERFORMED BY YOUR COMPANY:

6. HAVE YOU EVER DEFAULTED ON A CONTRACT? YES NO

IF YES, WHY? _____

7. ATTACH A LISTING BY PRODUCT LINE OF ALL MANUFACTURES FOR WHOM YOUR COMPANY IS AN AUTHORIZED DEALER/DISTRIBUTOR/RESALER

8. NAME OF BANKS WITH WHICH YOU DO BUSINESS:

9. DO YOU GRANT THE AWARDED AUTHORITY PERMISSION TO CONTACT THIS (THESE) MANUFACTURERES AND LENDING INSTITUTION(S)? YES NO

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

Name: _____ Date: _____

Title: _____ Company: _____

Attachment B

CONTACT INFORMATION FORM

Bidding Company Name _____

Bidding Process Company Contact

Name _____

Title _____

Phone number _____

Email address _____

Sales Representative Company Contact

Name _____

Title _____

Phone number _____

Email address _____

Area covered: _____
("all", or list)

Service/Support Representative Company Contact

Name _____

Title _____

Phone number _____

Email address _____

Area covered: _____
("all", or list)

Use additional sheet for more sales/support representatives

Attachment C

NON-COLLUSION AFFIDAVIT

DATE _____

TO: Metropolitan Washington Council of Governments,
777 North Capitol Street, NE, Suite 300
Washington, DC 20002

To Whom It May Concern:

This is to certify that the undersigned bidder has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this Bid submitted to the Metropolitan Washington Council of Governments & Mid-Atlantic Purchasing Team.

In addition, the bidder also certifies that it is in good standing and not on any debarred lists with any government agency, including Local, Federal and State governments.

Bid _____

Name of Bidder _____

Signature

Title of Authorized Representative

Sworn to and subscribed before me this _____ day of _____, 20____

My commission expires _____, 20____.

Notary Public

(Notary Seal)

Attachment D

BIDDER'S EXPERIENCE/REFERENCES

Name of Bidder _____

Each bidder must submit below a minimum of three (3) references each, from current or past clients, for whom bidder has similar experience and scope of work.

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

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

1) Company Name _____

Contact Name _____

Mail Address _____

Telephone Number _____ Email Address _____

2) Company Name _____

Contact Name _____

Mail Address _____

Telephone Number _____ Email Address _____

3) Company Name _____

Contact Name _____

Mail Address _____

Telephone Number _____ Email Address _____

Attachment E

BID REPLY LABEL

SECURE TO THE OUTSIDE OF YOUR RESPONSE ENVELOPE.

| | |
|--|--|
| <u>INVITATION TO BID</u> | |
| NO. 17-024 | |
| Submission Date: ----- Time: ----- | |
| For Emergency Medical Service - Medical Supplies | |
| TO: | Rick Konrad Cooperative Purchasing Program Manager Metropolitan Washington Council of Governments, 777 North Capitol Street, NE, Suite 300 Washington, DC 20002 |

Attachment F

Rider Clause

The Mid-Atlantic Purchasing Team (MAPT) is the agreement between the Metropolitan Washington Council of Governments ("MwCOG") and the Baltimore Metropolitan Council ("BMC") to aggregate the public entity and non-profit purchasing volumes in the Maryland, Virginia and Washington, D.C. region ("region").

Format

A lead agency format is used to accomplish this work. MwCOG is the Lead Agency in this procurement and has included this MAPT Cooperative Rider Clause in this solicitation indicating its willingness to allow other public entities to participate pursuant to the following Terms and Conditions:

1. Terms

- 1.1 Participating entities, through their use of the Cooperative Rider Clause, agree to the terms and conditions of the resulting contract to the extent that they can be reasonably applied to the participating entity.
- 1.2 Participating entities may also negotiate additional terms and conditions specific to their local requirements, upon mutual agreement between the parties.

2. Other Conditions - Contract and Reporting

- 2.1 The contract resulting from this solicitation shall be governed by and "construed in accordance with the laws of the State/jurisdiction in which the participating entity officially is located;
- 2.2 To provide to MwCOG and/or BMC contract usage reporting information, including but not limited to, quantity, unit pricing and total volume of sales by entity, as well reporting other participating entities added on the contract, on demand and without further approval of contract participants;
- 2.3 Contract obligations rest solely with the participating entities only;
- 2.4 Significant changes in total contract value may result in further negotiations of contract pricing with the lead agency and participating entities.

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

A list of the participating members of the Mid-Atlantic Purchasing Team can be found at the following web links www.mwcog.org/purchasing-and-bids/cooperative-purchasing/member-links/ and <http://www.baltometro.org/our-work/cooperative-purchasing/brcpc-representatives>

Attachment G

Terms and Conditions

Revised 9/1/2016

This document sets out provisions generally applicable to Metropolitan Washington Council of Governments (“MWCOG”) and Mid-Atlantic Purchasing Team (“MAPT”) cooperative procurement contracts. The provisions herein do not constitute a complete agreement, and must be appended to a document, executed by all parties, which identifies the specific work to be performed, compensation, term, incorporated attachments, and special conditions, if any. This document and the Contract are intended to be complementary and shall be construed accordingly. However, should there be a direct contradiction between the terms and conditions contained herein and the Contract, then the Contract shall govern and control those contradictory terms and conditions. As used herein, the term "MWCOG" includes the MWCOG, MAPT, its various members, agencies, employees or agents as may be appropriate. The term “Contract” shall include a document entitled “agreement” or any other title on a document that is denoting a contract.

Amendment This Contract constitutes the entire agreement between the parties. All other communications prior to execution, whether written or oral, with reference to the subject matter of this Contract are superseded by this Contract. No amendment to this Contract shall be binding unless in writing and signed by an authorized representative of the parties.

Bankruptcy Upon filing for any bankruptcy proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the Contractor must notify MWCOG immediately. Upon learning of the actions herein identified, MWCOG reserves the right, at its sole discretion, to either cancel the Contract or to affirm the Contract and hold the Contractor responsible for damages. The exercise of this right is in addition to any other rights MWCOG may have as provided in this agreement or by law.

Compliance with Law The Contractor hereby represents and warrants that:

- A. It has the power and authority to enter into and perform the Contract, that the Contract, when executed and delivered, shall be a valid and binding obligation on the Contractor and enforceable in accordance with its terms;
- B. Its performance under the Contract shall be in a good and workmanlike manner and in accordance with professional standards;
- C. It is qualified to do business in the jurisdictions covered by MAPT and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- D. It is not in arrears in the payment of any obligations due and owing to any agency involved in this agreement, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- E. It shall comply with all federal, state and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract;
- F. It shall obtain, at its expense, all licenses, permits, insurance and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

Contingent Fee Prohibition The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor to solicit or secure this Contract, and that it has not paid or agreed to pay any person,

partnership, corporation or other entity, other than a bona fide employee or agent, any commission, percentage, brokerage or contingent fee or other consideration contingent on the making of this Contract.

Counterparts This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute one and the same instrument.

Force Majeure Neither MWCOG and/or MAPT members nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, declaration of emergency, or war where such cause was beyond, respectively, MWCOG's and/or MAPT members or Contractor's reasonable control. MWCOG and/or MAPT members and Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

Governing Law This Contract shall be governed by and construed in accordance with the laws of the jurisdiction with whom the agreement is executed without regard to principles of conflicts of law.

Indemnification The Contractor shall protect, hold free and harmless, defend and indemnify MWCOG and MAPT members including their officers, agents and employees from all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments (including Attorney's fees) resulting from injury to, or death of, any person or damage to property of any kind, which injury, death or damage arises out of, or is in any way connected with the performance of the work or failure to perform its obligations under this Contract.

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

Independent Contractor

- A. Contractor shall perform the work required by this Contract as an "Independent Contractor." Although MWCOG and/or MAPT members reserve the right to determine the delivery schedule for the work to be performed and to evaluate the quality of the completed performance, MWCOG and/or MAPT members cannot and will not control the means or manner of the Contractor's performance. The Contractor shall comply promptly with any requests by MWCOG and/or MAPT members relating to the emphasis or relative emphasis to be placed on various aspects of the work or to such other matters pertaining to the work under this Contract. Contractor is responsible for determining the appropriate means and manner of performing the work.
- B. Contractor represents and warrants that Contractor is not an employee of MWCOG and/or MAPT members, is not currently employed by the Federal Government, and is not an officer, employee or agent of MWCOG and/or MAPT members.
- C. Contractor shall be responsible for all federal and/or state taxes applicable to any compensation or payments paid to Contractor under this Contract. Contractor is not eligible for any federal Social Security, unemployment insurance, or workers' compensation benefits from compensation or payments paid to Contractor under this Contract.
- D. Contractor agrees to immediately provide MWCOG and/or MAPT members notice of any claim made against Contractor by any third party. Contractor also agrees not to assign to any third party, without MWCOG's written consent, any obligation of MWCOG to indemnify Contractor for

any actions under this Contract.

Insurance Requirements

- A. Contractor shall obtain, and at all times keep in effect, Commercial General Liability Insurance in the amounts listed below for its activities and operations. The insurance shall include coverage for personal injury, discrimination and civil rights violation claims. All such insurance shall name MWCOG, individual MAPT members, their employees, and agents as ADDITIONAL INSURED. A copy of the certificate of insurance shall be filed with MWCOG and/or MAPT members prior to the time any services are provided. Coverage shall be in the amount, no less than, \$1,000,000 per occurrence, \$2,000,000 general aggregate and \$500,000 for property damage. Coverage shall be written on an occurrence form.
- B. Contractor shall obtain, and at all times keep in effect, automobile insurance on all vehicles used in this Contract with MWCOG and/or MAPT members to protect Contractor against claims for damages resulting from bodily injury, including wrongful death, and property damage that may arise from the operations of any owned or hired automobiles used by Contractor in connection with the carrying out of this Contract. All such insurance shall name MWCOG and/or individual MAPT members, their employees, and agents as ADDITIONAL INSURED.
- C. Contractor shall keep in effect for each year of this Contract, and upon request, provide MWCOG and/or MAPT members with certification of Workers' Compensation Insurance, with employer's liability at least in the minimum amount required by the law of the jurisdiction of the contracting agency.
- D. All insurance policies shall have a minimum 30 days' notice of cancellation. Immediate written notice to MWCOG and MAPT members involved in the contract shall be required in the event of cancellation or restriction by the insurance company of any insurance policy referred to in this section.
- E. When insurance coverage is renewed, Contractor shall provide new certificates of insurance prior to expiration of current policies to all contracting agencies.

Nondiscrimination The Contractor shall not discriminate against any worker, employee or applicant on the basis of religion, race, sex, age, sexual orientation, physical or mental disability, or perceived disability. Contractor further agrees that this provision will be incorporated in all sub-contracts entered into in connection with this Contract.

Ownership of Documents and Materials

- A. The Contractor agrees that all documents and materials, including but not limited to, reports, drawings, studies, specifications, estimates, maps, photographs, designs, graphics, mechanicals, artwork, and computations prepared by or for the Contractor under the terms of this Contract shall at any time during the performance of the services be made available to MWCOG and/or MAPT members upon request and shall become and remain the exclusive property of MWCOG and/or MAPT members upon termination or completion of the services. These jurisdictions shall have the right to use the same without restriction or limitation and without compensation to the Contractor other than that provided in this Contract. MWCOG and/or MAPT members shall be the owner(s) for the purposes of copyright, patent or trademark registration.
- B. If the Contractor obtains or uses for purposes of this Contract, or subcontracts for, any design, device, material, or process covered by letters of patent for copyright, it shall provide an

assignment to MWCOG and/or MAPT members of ownership for purposes of copyright, patent or trademark. Additionally, Contractor shall assign to MWCOG and/or MAPT members all rights to possess and to use such design, device, material or process and a legally sufficient agreement with the patentee or owner, and a copy of such agreement shall be filed with MWCOG and/or MAPT members.

- C. The Contractor shall indemnify and hold harmless MWCOG and/or MAPT members from any and all claims for infringement by reason of the use of any such patented design, device, materials, or process, or any trademark or copyright, and shall indemnify, protect and hold harmless MWCOG and/or MAPT members, their officers, agents, and employees with respect to any claim or action. Contractor shall be responsible for all costs for infringement and royalties or user fees, arising out of purchase or use of materials, construction, supplies, equipment or services covered by this Contract.

Payments - Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after MWCOG's and/or MAPT members receipt of a proper invoice from the Contractor. Any delay in funding to MWCOG and/or MAPT members shall result in a concomitant delay in payment to the Contractor.

Records Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance hereunder. Contractor acknowledges and agrees that MWCOG and/or MAPT members and their duly authorized representatives shall have access to such fiscal records and all other books, documents, papers, plans, and writings of the Contractor that are pertinent to this Contract. All such fiscal records, books, documents, papers, plans, and writing shall be retained by Contractor and kept accessible for a minimum of three (3) years, unless required longer by law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Contract, whichever date is later. All subcontracts shall also comply with these provisions.

Remedies

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

Responsibility of Contractor

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

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

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

Survival The terms, conditions, representations, and all warranties contained in this Contract shall survive the termination or expiration of this Contract.

Termination If the Contractor fails to fulfill its obligations under the Contract properly and on time, or otherwise violates any provision of the Contract, MWCOG and/or MAPT members may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at MWCOG and/or MAPT members' option, become MWCOG and/or MAPT member's property. MWCOG and/or MAPT members shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the MWCOG and/or MAPT members can affirmatively collect damages.

Termination of Contract for Convenience The performance of work under this Contract may be terminated by MWCOG and/or MAPT members, in whole or in part, upon written notice to the Contractor, when MWCOG and/or MAPT members determines such termination is in their best interest. The termination for convenience is effective on the date specified in the MWCOG and/or MAPT members' written notice. MWCOG and/or MAPT members will pay for all reasonable costs allocable to the Contract for work or costs incurred by the Contractor up to the date of termination. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination.

Termination of Multi-Year Contract If MWCOG and/or MAPT members fail to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either MWCOG and/or MAPT members' rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and MWCOG and/or MAPT members from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. MWCOG and/or MAPT members shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

Time is of the essence Time is of the essence in Contractor's performance of each and every obligation and duty under this Contract.

Whole Contract This Contract constitutes the complete and exclusive statement of the Contract between the parties relevant to the purpose described herein and supersedes all prior agreements or proposals, oral or written, and all other communication between the parties relating to the subject matter of this Contract.