



# Invitation for Bids

[Non-Federal]

**Title: Cybersecurity Code Analyzer  
Purchase**

**Solicitation No.: 0000008493**

**Contract Type: Firm Fixed Price**

**Contract ID: CIT01222076**

**Posted Date: Oct 05, 2021 12:28, 2021 10:00 AM**

**Pre-Bid Conference Date:**

**Question Due Date:** October 7, 2021

**Due Date: Nov 04, 2021 12:27, 2021 02:00 PM**

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## NOTICE TO BIDDERS

SUBJECT: IFB No. 0000008493

The Washington Metropolitan Area Transit Authority (WMATA) is seeking bids from qualified contractors to provide a static and dynamic code analyzer machines and associated software to allow WMATA IT's Office of Cybersecurity to perform secure code analysis.

If you have any technical, contractual, or administrative questions, please e-mail them to SCaison@wmata.com no later than Close of Business, October 7, 2021. If an amendment(s) is issued resulting from questions and answers, it will be posted on our website. Please adhere to the question deadline for proposing any questions. All questions must be in writing and will be responded through amendment(s).

Your bid must be received with all required submittals as stated below in the IFB, no later than 02:00 PM, Nov 04, 2021ober 28, 2021.

**A public bid opening/bid results will be displayed publicly on the WMATA supplier portal immediately following the closing date and time of the solicitation.**

**Preliminary Bid Opening Link:**

[https://supplier.wmata.com/psp/supplier/SUPPLIER/ERP/c/AUC\\_MANAGE\\_BIDS.WT\\_CL\\_BID\\_OPEN\\_CMP.GBL](https://supplier.wmata.com/psp/supplier/SUPPLIER/ERP/c/AUC_MANAGE_BIDS.WT_CL_BID_OPEN_CMP.GBL)

**IN ORDER TO ENSURE THAT YOUR BID COMPLIES WITH THE AUTHORITY'S PROCUREMENT REGULATIONS AND THAT IT WILL BE ACCEPTABLE TO THE AUTHORITY, THE FOLLOWING FORMS MUST BE COMPLETED & SUBMITTED AS SPECIFIED BELOW WITH YOUR BID:**

PRICE SCHEDULE;

SOLICITATION, OFFER & AWARD FORM;

PRE-AWARD EVALUATION DATA, with schedules, financial data and letter of credit

REPRESENTATIONS AND CERTIFICATIONS;

CERTIFICATE(S) OF INSURANCE

APPENDIX C (IF APPLICABLE)

**FAILURE TO SUBMIT ANY PORTION OF THESE REQUIREMENTS AS SPECIFIED MAY CAUSE YOUR BID TO BE CONSIDERED NONRESPONSIVE AND SUBSEQUENTLY REJECTED.**

Please provide a name and email address of the Point of Contact for your bid submission in case the Contract Administrator has any questions.

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**  
**SOLICITATION, OFFER AND AWARD**

SOLICITATION		
SOLICITATION ID: 0000008493	SOLICITATION TYPE: IFB	Date Issued: Oct 05, 2021 September 28, 2021 10:00 AM
CONTRACT ID: CIT01222076		
ISSUED BY: Irene Mathis, Contracting Officer Caison, Sherry A, Contract Administrator	ADDRESS: Washington Metropolitan Area Transit Authority Office of Procurement 600 5 <sup>th</sup> St. N.W.-3d Floor Washington, DC 20001	CONTACT INFORMATION: Caison, Sherry A Contract Administrator, at <a href="mailto:SCaison@wmata.com">SCaison@wmata.com</a>

All bids are subject to the following:

1. The Solicitation Instructions that are attached.
2. The Terms and Conditions that are attached.
3. The Price Schedule.
4. Such other provisions, representations, certifications, and specifications as are attached or incorporated herein by reference.

BIDDER	
Name and Address (Street, city, county, state,	Email Id
	Phone Number
	DUN & BRADSTREET ID Number
<input type="checkbox"/> Check if remittance is different from above -- enter such address in Schedule	
Name and Title of Person Authorized to Sign Offer (Print or Type)	
Signature	Offer Date

**AWARD (To be completed by WMATA)**

ACCEPTANCE AND AWARD ARE HEREBY MADE FOR THE FOLLOWING ITEM(S):

ITEM NO.	QUANTITY	UNIT	UNIT PRICE

\_\_\_\_\_  
Name of Contracting Officer (Print of Type)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
AWARD DATE

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**

**SOLICITATION, OFFER AND AWARD**

CONTINUATION SHEET

THE UNDERSIGNED ACKNOWLEDGES RECEIPT OF THE FOLLOWING AMENDMENTS

TO SOLICITATION **IFB 0000205**

_____	Amendment Number _____	Dated _____
_____	Amendment Number _____	Dated _____
_____	Amendment Number _____	Dated _____
_____	Amendment Number _____	Dated _____
_____	Amendment Number _____	Dated _____
_____	Amendment Number _____	Dated _____

**Failure to acknowledge receipt of all amendments may render the bid unacceptable.**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Date

# **SOLICITATION INSTRUCTIONS**

## **1. COMMON TERMINOLOGY**

The Washington Metropolitan Area Transit Authority (WMATA) shall use electronic commerce whenever practicable or cost-effective. The use of terms commonly associated with paper transactions (e.g., "copy," "document," "page," "printed," "sealed envelope," and "stamped") shall not be interpreted to restrict the use of electronic commerce. Where necessary, contracting officers may also supplement the electronic transactions by using other media of transmission to meet the requirements of any contract action governed by these procedures (e.g., correspondence by email, or to transmit hard copy of drawings). The term 'solicitation' shall refer to this Invitation for Bid (IFB).

## **2. SUBMITTING ELECTRONIC BIDS**

- a.** Electronic bid submittal through the WMATA Supplier Portal are required. It is important to pay special attention to the solicitation requirements for submitting your bid. Bids will not be permitted after the stated solicitation closing time.
- b.** Bids must be submitted electronically through the Electronic Supplier Portal currently in use by WMATA during the open solicitation period.
- c.** All bids will be submitted in a format that identifies the specific solicitation number and title. All formats are accepted except for ZIP, EXE, DLL and XLSM.
- d.** The electronic bid must contain Bidder's full name, address, phone number, and e-mail address.
- e.** Bidders will be unable to submit a bid, regardless of format, after the established deadline for the solicitation has passed. Please be sure to verify the solicitation bid deadline and review all amendments.
- f.** When bids are submitted electronically, the Office of Procurement & Materials (PRMT) will be notified automatically by a system-generated e-mail, immediately upon receipt. This e-mail will be anonymous so as not to identify the vendor.
- g.** Notices sent out from the electronic solicitation system will be sent from a designated e-mail address. However, each Bidder is responsible for viewing the most current updates and amendments posted on WMATA's Procurement Opportunities webpage. To ensure that all such notices are received, you must make sure that your profile email addresses are up-to-date.
- h.** All solicitation bids will be electronically dated, and time stamped upon receipt by the system currently in use by WMATA.
- i.** Submitted bids will remain unopened by WMATA until the scheduled date and time for opening of the solicitation(s).
- j.** An e-mail notification confirming receipt of the bid will be sent by WMATA's electronic solicitation system to Bidder's designated e-mail.
- k.** WMATA will not be responsible for any delay of delivery, including delays related to e-mail programs, servers, or acts of nature.
- l.** If you have questions concerning the e-procurement process, contact our Procurement IT Team at [prmt\\_suppliersupport@wmata.com](mailto:prmt_suppliersupport@wmata.com) also include the

assigned contract administrator, whose name and contact information are included in the solicitation.

- m. Costs incurred for developing solicitation bids in anticipation of award are the responsibility of Bidder and shall not be charged to WMATA.

### **3. INTRODUCTION**

This solicitation is intended to seek bids from qualified firms and individuals who can satisfy the requirements in order to award a contract to perform services and/or provide the supplies as described in the Statement of Work (SOW).

### **4. GOODS TO BE FURNISHED/SERVICES TO BE SUPPLIED**

In preparing bids, Bidders are advised that:

- a. If "services" are to be performed pursuant to this solicitation, they must be provided in all respects as specified in the Contract and include the services to be furnished, together with any labor, materials or other work necessary for satisfactory and complete performance.
- b. If "supplies" are to be provided pursuant to this solicitation, they must be delivered in all respects as specified in the Contract and include the items to be furnished, together with any labor, service or other work necessary for satisfactory and complete performance.
- c. Contractor agrees that project property will remain available to be used for its originally authorized purpose throughout its useful life or disposition.

### **5. PREPARATION OF BID**

- a. The Bidder shall furnish all information requested by the solicitation and, in so doing, is expected to examine the solicitation and all referenced documents carefully. Failure to do so will be at the Bidder's risk.
- b. Bidder shall sign the solicitation and print or type its name on the Price Schedule and on each continuation sheet if an entry has been made. Erasures or other changes must be initialed by the person signing the bid.
- c. The Bidder must state a definite time for delivery of supplies or for performance of services unless otherwise specified in the solicitation.
- d. In preparing the bid, the Bidder should be aware that all prices for the work shall be deemed to include the cost of all work, labor and materials required by the Contract including, without limitation, delivery charges, insurance, bond premiums or any other expenses required by this Contract, as well as expenses associated with compliance with Federal, state or local laws or regulatory requirements. All prices are deemed to be Free on Board (F.O.B.) Destination.

### **6. EXPLANATIONS TO BIDDERS**

- a. Any explanation desired by an Bidder regarding the meaning or interpretation of the solicitation or Contract including, without limitation, the terms and conditions, technical specifications or Scope of Work, and Contract drawings, must be requested in writing with sufficient time allowed for a reply to reach all Bidders before the date that bids will be opened. Absent extraordinary circumstances, all inquiries must be transmitted in a time frame to ensure the Contracting Officer's receipt at least ten (10) days prior to the date specified in solicitation due date. All such requests must be submitted via e-mail to the



Contract Administrator. Include the solicitation number and Contract title in any correspondence.

- b. Any information that WMATA furnishes to a prospective Bidder relating to this solicitation will be provided in writing to all prospective Bidders in the form of an amendment if, in the Contracting Officer's judgment, the information is necessary to the preparation and/or submittal of bids, or lack of such information would be otherwise prejudicial to other prospective Bidders.
- c. Oral explanations, representations or instructions of any kind relating to the subject matter of this solicitation given at any time before award of the Contract by any employee, officer or agent of WMATA, will not be binding upon WMATA. WMATA does not assume responsibility for the accuracy of any such communication.
- d. The failure of a prospective Bidder to request an explanation will serve to preclude it from claiming any ambiguity, inconsistency or error that should have been discovered by a reasonably prudent Bidder.

**7. AMENDMENTS PRIOR TO DATE SET FOR RECEIPT OF BIDS**

- a. WMATA reserves the right to amend any of the terms of this solicitation or the Contract prior to the date set for the solicitation closing. Copies of any such amendments will be furnished via email to all prospective Bidders.
- b. If, in the Contracting Officer's judgment, any amendment(s) would require material changes in bid quantities and/or price, the date set for bid opening may be postponed for such period that, in the Contracting Officer's opinion, will enable bidders to revise their bids. In such instances, the amendment will include an announcement of the new date for bid opening.
- c. In the event of an amendment, all other terms and conditions of the solicitation shall remain unchanged.

**8. RESPONSIVE BID**

- a. Bidders are advised that a bid that is at variance or noncompliant with any provision of this solicitation, including a qualified or conditional bid, may be rejected as non-responsive.
- b. The Contracting Officer may reject a bid as non-responsive if, in his or her judgment, the prices are materially unbalanced. Prices are materially unbalanced when they are significantly understated for one (1) or more element(s) of work and significantly overstated for the other element(s) of work.
- c. WMATA reserves the right to waive minor errors or omissions in bids and to deem them responsive.

**9. WITHDRAWAL OF BIDS**

Bids to the solicitation may be withdrawn via email to the Contract Administrator if received prior to the due date for bids or proposals. WMATA reserves the right to accept any bid or proposal in its possession as of the due date.

## **10. BID ACCEPTANCE PERIOD AND BIDDER'S DEFAULT'S**

- a.** In order to allow for adequate evaluation, the acceptance period for this solicitation is one hundred twenty (120) calendar days after submittal date and time.
- b.** By submission of its bid, Bidder agrees that it shall be irrevocable and shall remain available to WMATA to award a Contract pursuant to this solicitation for not less than the acceptance period. Bidder's failure to furnish required documents and/or to execute a Contract from WMATA in accordance with its bid, during the acceptance period shall constitute an Bidder's default.
- c.** In the event of an Bidder's default, Bidder shall be liable to WMATA for all associated damages and costs, including without limitation, WMATA's "cost to cover." The "cost to cover" is the difference between the bid price and the price WMATA ultimately pays for the work encompassed in this solicitation, whether through award of a Contract to another Bidder, pursuant to this solicitation or otherwise.

## **11. BID MISTAKE**

- a.** An Bidder who seeks to withdraw its bid subsequent to solicitation closing due to a claimed mistake or error in its preparation shall notify the Contracting Officer, in writing, immediately upon realizing the mistake, but not later than three (3) business days following solicitation closing. Such notification must set forth the details of, and explanation for, the claimed mistake. The Contracting Officer shall evaluate the claimed mistake and determine whether Bidder will be permitted to withdraw its bid.
- b.** For example, one common type of mistake is a mathematical error. In the event of an apparent discrepancy between any unit price and its associated extended price, the unit price will be presumed to be correct. The Contracting Officer may award a Contract to an otherwise low Bidder based upon the unit price, subject to the additional terms of this clause.
- c.** An Bidder claiming a mistake shall, at the Contracting Officer's request, appear before the Contracting Officer to provide testimony and/or documentation that may include Bidder's computation sheets and calculations, to assist in WMATA's determination.
- d.** Nothing contained herein shall preclude the Contracting Officer from allowing an Bidder to cure a deficiency in an otherwise responsive bid/proposal where he or she determines that such deficiency is in the nature of a minor informality or irregularity.

## **12. PRE-AWARD INFORMATION/CONTRACTOR RESPONSIBILITY**

- a.** In order to be eligible for award of a Contract, an Bidder must affirmatively demonstrate to the Contracting Bidder's satisfaction that it is responsible for purposes of contract award. Such demonstration must include a showing that it maintains the requisite integrity, overall technical expertise and experience, (including prior performance on other WMATA contracts or contracts with other government agencies), and sufficient financial resources to perform the Contract in a timely, satisfactory and appropriate manner. Failure to

demonstrate responsibility may result in rejection of Bidder as non-responsible.

- b. Attach as Schedule Five (5) financial statements and letters from banks regarding credit to support your bid to questions regarding financial resources available as working capital for the Contract.
  - i) The Contracting Officer may conduct a pre-award survey and/or take other actions to obtain information regarding the Bidder's responsibility. The bidder shall promptly supply information that the Contracting Officer requests regarding its responsibility, in such manner and form as he or she requests.
  - ii) The Bidder's failure to supply this information or otherwise fully cooperate with WMATA's inquiry may result in a determination that the bidder is not responsible for purposes of this solicitation and thereby ineligible for award.
- c. The Contracting Officer may conduct a pre-award survey and/or take other actions to obtain information regarding the Bidder's responsibility. The bidder shall promptly supply information that the Contracting Officer requests regarding its responsibility, in such manner and form as he or she requests.
- d. The bidder shall furnish Small Business Local Preference Program (SBLPP) documentation (if applicable) as set forth in Appendix C. The Bidder's failure to supply this information or otherwise fully cooperate with WMATA's inquiry may result in a determination that the bidder is not responsible for purposes of this solicitation and thereby ineligible for award.

### **13. PRE-AWARD MEETING**

WMATA reserves the right to require that a pre-award meeting be held with the apparent successful Bidder prior to Contract award to review Bidder's understanding of the Contract's requirements and/or further assist WMATA in determining Bidder's responsibility for purposes of award. The Contractor shall be represented at such meeting by individual(s) fully familiar with the Contractual requirements including, where requested by the Contracting Officer, representative(s) of one or more major subcontractor(s).

### **14. BASIS FOR CONTRACT AWARD**

- a. Award(s) of this Contract will be made based solely on the lowest price as stated in the Price Schedule, to Bidder(s) (i) whose bid is judged to be responsive to the terms of the solicitation and (ii) who demonstrates to the Contracting Officer's satisfaction that it is responsible for purposes of award of this Contract.
- b. Except when awarding a requirements contract, WMATA may make multiple awards if the Contract is being awarded by line item or if the solicitation

indicates the number of low bidders to whom awards may be made. (ex. 2 or 3 lowest bidders)

- c. WMATA reserves the right to reject all bids and cancel this solicitation at any time prior to award.
- d. Award notices posted on WMATA's web page (or supplier portal) and/or emailed to the successful Bidder(s) within the acceptance period shall result in a binding Contract(s) without further action by either party.
- e. The Authority reserves the right to seek additional information or clarification from any bidder regarding any minor nonconformance and/or statement that is found to be ambiguous prior to making an award.

**15. EQUAL EMPLOYMENT OPPORTUNITY**

In order to be eligible for award of a Contract pursuant to this solicitation, Bidder will be required to comply with all applicable Equal Employment Opportunity laws and regulations.

**16. REQUIREMENT FOR COST DATA FOR CONTRACT AWARD**

WMATA may require the apparent awardee to submit cost data in sufficient detail to permit analysis of the cost elements which make up the bid prices. In such instances, the apparent awardee may, at the discretion of WMATA, be subject to audit.

**17. WMATA'S TAX EXEMPT STATUS**

- a. Pursuant to Section 78 of WMATA's Compact, as adopted by the District of Columbia (D.C. Official Code § 9-1107.01 et seq.), the State of Maryland (Md. Transportation Code §10-204), and the Commonwealth of Virginia (Code of Virginia § 33.2-3100 et seq.) and consented to by the U.S. Congress in Pub. L. 89-774, 80 Stat. 1324 as amended, WMATA has been accorded exemption from taxes as follows: "WMATA and the Board shall not be required to pay taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession or supervision, or upon its activities in the operation and maintenance of any transit facility or upon any revenues therefrom, and the property and income derived therefrom shall be exempted from all Federal, State, District of Columbia, municipal, and local taxation. This exemption shall include without limitation, all motor vehicle license fees, sales taxes and motor fuel taxes."
- b. WMATA shall not be required to pay late charges, fines or any other forms of pre-judgment interest.
- c. By submitting the bid, Bidder certifies that none of the taxes that WMATA is exempt from are included in its bid.
- d. WMATA shall not be responsible for social security taxes, other employment taxes, income tax, gross receipts taxes or franchise taxes imposed on the contractor.
- e. The contractor shall notify the Contracting Officer within in 30 days of discovery, (or within 30 days of when an event should have been discovered), of matters that may have resulted in an over charge to WMATA because of inclusion of taxes in the Contract price from which WMATA is exempt under this clause and shall take action as the Contracting Officer directs. WMATA

shall be entitled to a reduction in the Contract price reflecting such amount and a refund of monies paid related to such taxes, plus applicable interest.

#### **18. RESTRICTION ON DISCLOSURE AND USE OF DATA**

WMATA shall provide all reasonable precautions to ensure that proprietary, technical and pricing information remains within the review process. Bidders shall attach to any proprietary data submitted with the bid the following legend:

- a. "The data furnished pursuant to this solicitation shall not be disclosed outside WMATA, be duplicated, or used, in whole or in part, for any purpose other than to evaluate the bid. If a Contract is awarded on the basis of this bid, WMATA shall have the right to duplicate, use, and disclose this data, in any manner and for any purpose consistent with the execution of the Contract.
- b. This legend does not limit WMATA's right to use information contained in this data if WMATA obtains it from another independent, legitimate source.
- c. Except for the foregoing limitations, WMATA, its employees or its agents may duplicate, use, and disclose in any manner and for any purpose whatsoever, all data furnished in bid to this solicitation.

#### **19. ENGLISH AND UNITED STATES CURRENCY**

With respect to both this solicitation and the resultant Contract:

- a. All communications (oral, written, electronic and otherwise including but, not limited to, software coding) shall be in the English.
- b. All pricing shall be in United States dollars.

#### **20. REQUESTS FOR RECORDS**

WMATA regularly receives requests for records from the public. It is WMATA's policy to make official agency records, including electronic records, available to the public, unless specifically prohibited by WMATA's Public Access to Records Policy (PARP) or applicable laws.

- a. "Records" means any existing writings, drawings, maps, recordings, tapes, film, microfilm, correspondence, forms, cards, photographs, optical disks, photo copies, and records stored by computer (electronic records) that are made or received by WMATA in connection with a public contract. A record does not include uncirculated personal notes, papers, electronic records and any other records that were created and retained solely as work papers for personal use of the Contracting Officer, Contract Administrator or other WMATA employee.
- b. After award of this Contract, WMATA will release and/or post the name of the successful Bidder and the amount of the award in the ordinary course of business. This information is available on WMATA's website under "Business with Metro" or directly from the Contract Administrator.
- c. After award of this Contract, the winning bid as incorporated into this Contract may be subject to release by WMATA in the ordinary course of business or in bid to a request for records made pursuant to the PARP.
- d. Upon WMATA's request, the successful Bidder shall provide WMATA with a redacted copy of its bid/proposal. Redactions shall be made only to those portions or pages of the bid/proposal that the successful Bidder claims are confidential. By identifying portions or pages of the bid/proposal as confidential, the successful Bidder warrants that it customarily and actually treats the identified portions or pages as confidential. If the successful Bidder's

bid/proposal is responsive to a PARP request, WMATA will require Bidder to sign a statement affirming that Bidder customarily and actually treats as confidential all information redacted by Bidder. If any of Bidder's redactions are challenged through a PARP appeal or otherwise, the proposer shall assist WMATA in defense of Bidder's redactions and reimburse WMATA for any and all damages, liabilities, fees, and other costs incurred by WMATA in defense of Bidder's redactions.

## **21. NOTICE OF PROTEST POLICY**

- a.** WMATA's procedure for the administrative resolution of protests is set forth in Chapter 17 of WMATA's Procurement Procedures Manual (PPM). The procedures contain strict rules for filing a timely protest, for responding to a notice that a protest has been filed, and other procedural matters.
- b.** The basis on which FTA will review a grantee's protest decision is defined in §17-8 of the PPM. FTA will generally exercise discretionary jurisdiction over cases deemed to involve issues important to the overall third-party contracting program. FTA's decision to decline jurisdiction over a protest does not imply approval of or agreement with the Authority's decision or that FTA has determined that this Contract is eligible for Federal participation.
- c.** Alleged violation must be submitted to the Contracting Officer who will administratively decide the protest.
- d.** The United States District Courts for the Districts of Maryland, Virginia and the District of Columbia, and the local courts in Maryland, Virginia and the District of Columbia have jurisdiction over court actions concerning protest decisions.

# PRE-AWARD EVALUATION DATA

PROJECT DESCRIPTION: \_\_\_\_\_

1. Name of firm \_\_\_\_\_  
\_\_\_\_\_
2. Address: \_\_\_\_\_
3. [ ] Individual [ ] Partnership [ ] Corporation [ ] Joint Venture
4. Date organized \_\_\_\_\_.  
State where incorporated or organized \_\_\_\_\_.
5. Names of officers or partners:
  - a. \_\_\_\_\_
  - b. \_\_\_\_\_
  - c. \_\_\_\_\_
  - d. \_\_\_\_\_
  - e. \_\_\_\_\_
  - f. \_\_\_\_\_
6. How long has your firm been in business under its present name?
7. Attach as Schedule One (1) a list of similar current contracts that demonstrate your firm's technical proficiency, each with contract amount, name of contracting party, character or type of work and percentage of completion.
8. Attach as Schedule Two (2) a list of similar contracts, each with contract amount, name of contracting party, and character or type of work for similar contracts completed in the last two (2) years.
9. In the last two (2) years has your firm been denied an award where it was the bidder? If the answer is yes, attach as Schedule Three (3) the full particulars regarding each occurrence.
10. Has your firm failed to complete, in the last two (2) years, any contract on which it was the bidder?  
If the answer is yes, attach as Schedule Four (4), the full particulars regarding each occurrence.
11. Financial resources available as working capital for the Contract:
  - a. Cash on hand: \$ \_\_\_\_\_
  - b. Sources of credit: \_\_\_\_\_
12. Attach as Schedule Five (5) financial statements and letters from banks regarding credit as required by the "Pre-Award Information" article.
13. What percentage of work (Contract amount) does your firm intend performing with its own personnel? %.
14. Attach as Schedule Six (6), a list of all principal subcontractors and the percentage and character of work (Contract amount) that each will perform. Principal items of work shall include, but not be limited to, those items listed in the "Pre-Award Information" article.
15. If the Contractor or subcontractor is in a joint venture, submit "Pre-Award Evaluation Data" forms for each member of the joint venture.

The above information is confidential and will not be divulged to any unauthorized personnel.

The undersigned certifies to the accuracy of all information.

COMPANY: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_



# **TECHNICAL SPECIFICATIONS -- SCOPE OF WORK**

*1.1. Cybersecurity Code Analyzer Purchase*  
*1.2.*

**PRN ID: CIT0122034**

**SOW ICE ID: SOW0009915**

## Introduction

Washington Metropolitan Area Transit Authority (WMATA) is seeking to purchase a static and dynamic code analyzer machines and associated software to allow WMATA IT's Office of Cybersecurity to perform secure code analysis. The code analyzers will enable ITCS to create a more robust vulnerability management program to proactively identify vulnerabilities as they relate to web applications. The static scanner will allow remediation of defects/misconfigurations while source code is developed, and the dynamic scanner will identify additional vulnerabilities when applications are moved into production through routine checks.

## Background

Currently, WMATA has over seven hundred URLs that require dynamic and static scans to identify vulnerabilities proactively. ITCS has a single license of WebInspect, which is not satisfactory to meet the needs of our growing environment. Additionally, the current license only scans for dynamic vulnerabilities in our environment, which hinders our capabilities to develop secure coding practices as the application is being developed. To fill that void, Fortify, a Static Code Analyzer, will accompany the procurement of the enterprise version of WebInspect. The procurement of both WebInspect Enterprise and Fortify is necessary to effectively reduce our risk landscape while applications are in development and in operation.

Micro Focus is an industry leader in regard to vulnerability scanning tools for web applications. The tool gives security professionals the ability to diagnose successful, hypothetical attacks against their web applications and services and remediate vulnerabilities to block a real hacker.

## Current Scope of Work

WMATA is seeking to procure Micro Focus Dynamic (WebInspect) and Static Code Analyzers that include the following capabilities:

- Centralized Web Application scanner for scheduled scanning and scaling
- Performs dynamic code analyzing for web applications that are in use
- Performs static code analyzing for web applications while they are being developed
- Enable additional capabilities to run compliance reports for PCI and HIPAA

## Technical Specifications

Below are the following Fortify Technical Specifications for the code analyzer purchase:

Line	SKU	Description	Base Quantity	Option Year 1 Quantity	Option Year 2 Quantity
1	SP-AN254	Micro Focus : Fortify Dynamic Only Scan Machine	3	1	0
2	SB-AC594	Micro Focus : Fortify Rules Subscription Support	3	4	4
3	SU-AA001	MicroFocus Enterprise Standard Technical Support	3	4	4
4	SP-AE265	Micro Focus : Security Fortify Static Code Analyzer Flexible Deployment Plan for one Named Contributing Developer Software E-LTU	25	25	0
5	SB-AC594	Micro Focus : Fortify Rules Subscription Support	25	50	50
6	SU-AA001	MicroFocus Enterprise Standard Technical Support	25	50	50
7	SP-AN255	Micro Focus : Fortify Scan Model 1 User Software E-License, perpetual.	8	2	0
8	SB-AC594	Micro Focus : Fortify Rules Subscription Support	8	10	10
9	SU-AA001	MicroFocus Enterprise Standard Technical Support	8	10	10

10	SU-AA065	Micro Focus : Flexible Credits and Premium Support Misc. Flexible Credits for Service Offerings.	75	75	0
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### **Deliverables**

Deliverables for this contract will include the hardware, requested licenses, and support for the WebInspect components as described in the technical specifications above.

### **Performance and Acceptance Criteria**

For all deliverables outlined in the above section, the recipient of all deliverables will acknowledge, in writing, receipt of materials to the deliverer one business day after receipt.

### **Period of Performance**

Work on this engagement shall begin after Notice to Proceed (NTP) is given. The planned period of performance is:

Base year: 1/15/2022 – 1/14/2022

Option year 1: 1/15/2023 – 1/14/2024

Option year 2: 1/15/2024 – 1/14/2025

### **Location of work and any constraints**

- VPN access will be provided as needed upon approval by the WMATA, ITCS Manager.
- Vendor point of contact and hardware shipping address:
  - Stephen McLean-Jackson, Manager
  - Office of Cybersecurity
  - smcleanjackson@wmata.com; 202-641-1242
  - 600 5<sup>th</sup> Street NW, Suite 3A, Washington, DC 20001
  -
- The Vendor Point of Contact shall be responsible for ensuring that meetings with the appropriate stakeholder(s) is set up in a timely manner, and to ensure that feedback on all deliverables is provided in no more than 3 business days.

## PRICE SCHEDULE SHEET

Item No	Item Description	Qty	UOM	Unit Price	Total Price
1	SP-AN254: Micro Focus : Fortify Dynamic Only Scan Machine	EA	1	\$ _____	\$ _____
2	SB-AC594: Micro Focus : Fortify Rules Subscription Support	EA	4	\$ _____	\$ _____
3	SU-AA001: MicroFocus Enterprise Standard Technical Support	EA	4	\$ _____	\$ _____
4	SP-AE265: Micro Focus : Security Fortify Static Code Analyzer Flexible Deployment Plan for one Named Contributing Developer Software E-LTU	EA	25	\$ _____	\$ _____
5	SB-AC594: Micro Focus : Fortify Rules Subscription Support	EA	50	\$ _____	\$ _____
6	SU-AA001: MicroFocus Enterprise Standard Technical Support	EA	50	\$ _____	\$ _____
7	SP-AN255: Micro Focus : Fortify Scan Model 1 User Software E License, perpetual.	EA	2	\$ _____	\$ _____
8	SB-AC594: Micro Focus : Fortify Rules Subscription Support	EA	10	\$ _____	\$ _____
9	SU-AA001: MicroFocus Enterprise Standard Technical Support	EA	10	\$ _____	\$ _____
10	SU-AA065: Micro Focus : Flexible Credits and Premium Support Misc. Flexible Credits for Service Offerings.	EA	75	\$ _____	\$ _____
				<b>Option Yr 1 Total</b>	\$ _____

### OPTION YEAR TWO

Item No	Item Description	Qty	UOM	Unit Price	Total Price
1	SP-AN254: Micro Focus : Fortify Dynamic Only Scan Machine	EA	0	\$ _____	\$ _____
2	SB-AC594: Micro Focus : Fortify Rules Subscription Support	EA	4	\$ _____	\$ _____
3	SU-AA001: MicroFocus Enterprise Standard Technical Support	EA	4	\$ _____	\$ _____
4	SP-AE265: Micro Focus : Security Fortify Static Code Analyzer Flexible Deployment Plan for one Named Contributing Developer Software E-LTU	EA	0	\$ _____	\$ _____
5	SB-AC594: Micro Focus : Fortify Rules Subscription Support	EA	50	\$ _____	\$ _____
6	SU-AA001: MicroFocus Enterprise Standard Technical Support	EA	50	\$ _____	\$ _____

7	SP-AN255: Micro Focus : Fortify Scan Model 1 User Software E License, perpetual.	EA	0	\$ _____	\$ _____
8	SB-AC594: Micro Focus : Fortify Rules Subscription Support	EA	10	\$ _____	\$ _____
9	SU-AA001: MicroFocus Enterprise Standard Technical Support	EA	10	\$ _____	\$ _____
10	SU-AA065: Micro Focus : Flexible Credits and Premium Support Misc. Flexible Credits for Service Offerings.	EA	0	\$ _____	\$ _____
<b>Option Yr 2 Total</b>					\$ _____

**TOTAL BID** \$ \_\_\_\_\_

\_\_\_\_\_  
**Authorized Signature**

\_\_\_\_\_  
**Print (Name/Title)**

\_\_\_\_\_  
**Company Name**

**Date:** \_\_\_\_\_

# **REPRESENTATIONS AND CERTIFICATIONS**

**1. TYPE OF BUSINESS ORGANIZATION**

By submission of this bid, Bidder represents that it operates as [ ] an individual, [ ] a partnership, [ ] a limited liability company, [ ] a joint venture, [ ] a nonprofit organization, or [ ] a corporation, incorporated or organized under the laws of \_\_\_\_\_.

Name	Signature
Title	Company
Date	

**2. AFFILIATION AND IDENTIFYING DATA**

Each Bidder shall complete a, b if applicable, and c below, representing that:

- a. It [ ] is, [ ] is not, owned or controlled by a parent company. For this purpose, a parent company is defined as one that either owns or controls the activities and basic business policies of Bidder. To own another company means that the parent company must own at least a majority, i.e., more than fifty percent (50%), of the voting rights in that company. To control another company, such ownership is not required. If another company is able to formulate, determine or veto Bidder's basic business policy decisions, such other company is considered the parent of Bidder. This control may be exercised through the use of dominant minority voting rights, use of proxy voting, Contractual arrangements or otherwise.
- b. If Bidder is owned or controlled by a parent company, it shall insert in the space below the name and main office address of the parent company:

\_\_\_\_\_  
Name of Parent Company

\_\_\_\_\_  
Main Office Address (including ZIP Code)

- c. If Bidder has no parent company, it shall provide in the applicable space below its own employer's identification number (E.I.N.), (i.e., number used on Federal tax returns or, if it has a parent company, the E.I. N. of its parent company). Bidder E.I. N.: \_\_\_\_\_ or, Parent Company's E.I. N.: \_\_\_\_\_

Name	Signature
Title	Company
Date	

**3. COVENANT AGAINST GRATUITIES**

By submission of this bid, Bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, that in connection with this procurement: Neither it nor any of its employees, representatives or agents have offered or given gratuities (in the form of entertainment, gifts or otherwise) to any Board member, employee or agent of WMATA with the view toward securing favorable treatment in the awarding or administration of this Contract.



Name	Signature
Title	Company
Date	

**4. CONTINGENT FEES**

By submission of this bid, Bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, that in connection with this procurement:

- a. It [ ] has, [ ] has not, employed or retained any company or persons (other than a full-time, bona fide employee working solely for Bidder) to solicit or secure this Contract, and
- b. It [ ] has, [ ] has not, paid or agreed to pay any company or person (other than a full-time, bona fide employee working solely for Bidder) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of this Contract.

Name	Signature
Title	Company
Date	

**5. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION**

- a. By submission of its bid, Bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, that in connection with this procurement:
  - i) The prices in this bid have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other Bidder or with any other competitor;
  - ii) Unless otherwise required by law, the prices that are quoted in this bid have not been knowingly disclosed by Bidder and will not be knowingly disclosed by Bidder prior to award (in the case of a negotiated procurement), directly or indirectly, to any other Bidder or to any competitor; and
  - iii) No attempt has been made or will be made by Bidder to induce any other person or firm to submit or not to submit an bid for the purpose of restricting competition.
- b. Each person signing this bid certifies that:
  - i) He or she is the person in Bidder's organization responsible for the decision regarding the prices being offered herein and that he/she

has not participated, and will not participate, in any action contrary to a) through c) above; or

- ii) He or she is not the person in Bidder's organization responsible for the decision regarding the prices being offered herein, but that he/she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated; and will not participate, in any action contrary to a) through c) above, or and as their agent he or she does hereby so certify.

Name	Signature
Title	Company
Date	

**6. NONDISCRIMINATION ASSURANCE**

- a. By submission of this bid, Bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, in connection with this procurement, that it will not discriminate on the basis of race, color, creed, religion, national origin, sex, age, disability, sexual preference and/or gender identity in the performance of this Contract. Bidder is required to insert the substance of this clause in all subcontracts and purchase orders. The Contractor's failure to carry out these requirements is a material breach of this Contract that may result in the termination of this Contract or such other remedy as WMATA deems appropriate. Bidder further agrees by submitting this bid that it will include this certification, without modification, in all subcontracts and purchase orders.

Name	Signature
Title	Company
Date	

**7. DISCLOSURES OF INTERESTS OF WMATA BOARD MEMBERS**

For purposes of this disclosure, terms in bold are defined by the Code of Ethics for Members of the WMATA Board of Directors, a copy of which is available at [www.wmata.com](http://www.wmata.com). Financial interests include ownership interests and prospective and actual income. Firm includes parents, subsidiaries and affiliates. By submission of this bid, Bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, that to the best of its knowledge, information and belief in connection with this procurement:

- a.  No WMATA Board member, household member or business associate has a financial interest in this firm, in a financial transaction with WMATA to which this firm is a party or prospective party, or in an actual or prospective business relationship with WMATA to which this firm is a party.
- b.  The following WMATA Board member(s), household member(s) or business associate(s) has a financial interest in this firm, in a financial transaction with WMATA to which this firm is a party or prospective party, or in an actual or prospective business relationship with WMATA to which this

firm is a party, Include in "Nature of Interest" below, a description of the financial interest and (1) for ownership interests, the value of the interest, the name and address of the firm in which the interest is held, and the total equity or equivalent interest of the firm; and (2) for income, the amount of all income received by the Board member, household member or business associate in the current and preceding fiscal year for services provided, and the name and address of the firm from which the income was received.

Name of Board Member  
Household Member or  
Business Associate

Nature of Interest

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- c. The certification required by a) and b) above shall be included in all subcontracts. The prime contractor shall furnish copies of certifications to the Contracting Officer and retain a copy for inspection upon his or her request.

Name	Signature
Title	Company
Date	

**8. CRIMINAL BACKGROUND SCREENING CERTIFICATION (QUARTERLY)**

N/A

**9. CERTIFICATION REQUIRED FOR ALL SAFETY-SENSITIVE CONTRACTS**

N/A

**10. NON-DISCLOSURE AND DATA ACCESS SUPPLEMENTAL TERMS**

N/A

# **SPECIAL TERMS AND CONDITIONS**

1. **COMMUNICATIONS WITH WMATA**

Bidder is advised that any and all communications with WMATA relating to this solicitation and made by, or on behalf of, Bidder at any time between release of this solicitation and award of a Contract hereunder must be directed to the Contract Administrator as follows:

Sherry A. Caison, [scaison@wmata.com](mailto:scaison@wmata.com)

A violation of this provision, deemed willful by WMATA, may result in a determination that an Bidder is not responsible, and thus ineligible for award, for purposes of this and/or future Authority solicitations.

2. **PRE-BID CONFERENCE**

For the purpose of clarifying the terms, conditions, and requirements of this solicitation, a pre-bid conference will not be held. To respond to questions by prospective bidders it is requested that bidders submit their questions in writing by COB October 7, 2021.

3. **REQUIREMENTS CONTRACT- N/A**

Not Applicable to this solicitation

4. **INDEFINITE QUANTITY CONTRACT – N/A**

5. **Not Applicable to this solicitation**

6. **ORDERING – N/A**

Not Applicable to this solicitation

7. **ORDER LIMITATIONS – N/A**

Not Applicable to this solicitation

8. **BID GUARANTEE - N/A**

9. **SITE VISIT/INSPECTION BIDDER'S FACILITIES – N/A**

Not Applicable to this solicitation

10. **PERFORMANCE/PAYMENT BONDS – N/A**

Not Applicable to this solicitation

11. **PERIOD OF PERFORMANCE**

The period of performance commences from the date of award or notice to proceed whichever is earlier and continues through the exercise of any option, if applicable.

One Base Year with Two (2) 12-month Options

## 12. OPTIONS-EVALUATION

In awarding this Contract, the Contracting Officer shall evaluate Bids for any option quantities or periods contained in a solicitation in accordance with PPM §§ 4-21 through 4-23.

## 13. OPTIONS- EXERCISE

- a. When exercising an option, the Contracting Officer shall provide written notice to the Contractor within a reasonable amount of time before exercising the option.
- b. When the Contract provides for economic price adjustment and the Contractor requests a revision of the price, the Contracting Officer shall determine the effect of the adjustment on prices under the option before the option is exercised.
- c. In accordance with PPM § 4-23, the Contracting Officer may exercise options only after determining that
  - i) Funds are available;
  - ii) The requirement covered by the option fulfills an existing WMATA need
  - iii) The exercise of the option is the most advantageous method of fulfilling WMATA's needs, when price and other factors are considered;
  - iv) Contractor is not listed in the System for Award Management's Exclusions (See [www.sam.gov](http://www.sam.gov))
  - v) The Contractor's past performance evaluations on other Contract actions have been considered; and
  - vi) The Contractor's performance on this Contract has been acceptable in that it received satisfactory ratings.
- d. The Contracting Officer, after considering price and other factors, shall make the determination on the basis of one (1) of the following:
  - i) A new solicitation fails to produce a better price or a more advantageous bid than that offered by the option. If it is anticipated that the best price available is the option price or that this is the more

advantageous bid, the Contracting Officer should not use this method of testing the market.

- ii) An informal analysis of prices or an examination of the market indicates that the option price is better than prices available in the market or that the option is the more advantageous bid.
  - iii) The time between the award of the Contract containing the option and the exercise of the option is so short that it indicates the option price is the lowest price obtainable or the more advantageous bid. The Contracting Officer shall take into consideration such factors as market stability and comparison of the time since award with the usual duration of Contracts for such supplies or services.
- e. The determination of other factors under subparagraph (d):
- i) Should take into account WMATA's need for continuity of operations and potential costs of disrupting operations; and
  - ii) May consider the effect on DBEs.
- f. Before exercising an option, the Contracting Officer shall make a written determination for the Contract file that the exercise is in accordance with the terms of the option, and the requirements of this clause. To satisfy requirements for full and open competition, the option must have been evaluated as part of the initial competition and be exercisable at an amount specified in or reasonably determinable from the terms of this Contract, such as:
- i) A specific dollar amount;
  - ii) An amount to be determined by applying provisions (or a formula) provided in this Contract, but not including renegotiation of the price for work in a fixed-price type Contract;
  - iii) In the case of a cost-type Contract, if--
    - 1) The option contains a fixed or maximum fee; or
    - 2) The fixed or maximum fee amount is determinable by applying a formula contained in this Contract;
  - iv) A specific price that is subject to an economic price adjustment provision; or
  - v) A specific price that is subject to change as the result of changes to prevailing labor rates provided by the U.S. Secretary of Labor.

- g. The Contract modification or other written document that notifies the Contractor of the exercise of the option shall cite this article as authority.

**14. OPTION FOR INCREASED OR DECREASED QUANTITIES OF SUPPLIES**

- a. WMATA may increase or decrease the quantities of supplies called for in the Price Schedule, at the unit price specified. WMATA may also require the delivery of a numbered line item, identified in the Price Schedule as an option item, in the quantity and at the price stated in the Price Schedule. The Contracting Officer may exercise the option by written notice to the Contractor within a reasonable amount of time before exercising the option. Delivery of the added items shall continue at the same rate as the like items called for under the Contract, unless the parties agree otherwise.

**15. OPTIONS TO EXTEND SERVICES**

- a. WMATA may require continued performance of any services within the limits and at the rates specified in this Contract. These rates may be adjusted only as a result of revisions to the prevailing labor rates provided by the U.S. Secretary of Labor. This option provision may be exercised more than once, but the total extension of performance thereunder shall not exceed six (6) months. The Contracting Officer may exercise the option by written notice to the Contractor within a reasonable amount of time exercising the option.

**16. RIGHT TO EXTEND CONTRACT PERIOD OF PERFORMANCE**

- a. WMATA may unilaterally extend the period of performance for the work under this contract by written notice to the Contractor. The Contractor must accept any reasonable extension and continue performance without interruption. The Contractor's sole remedy following WMATA's exercise of its unilateral right to extend performance is to submit a claim for an equitable adjustment to the Contract price.
- b. If WMATA exercises this unilateral right, the extended contract shall incorporate the new period of performance. Any additional options remaining under the contract will be appended to and remain available through the new period of performance.
- c. The total duration of this contract shall include any extensions as well as option periods. In no event shall the total duration of the contract extend beyond the maximum term permitted by the Federal Transit Administration, if otherwise made applicable to this contract elsewhere.

**17. OPTIONS EXERCISED OUT OF SEQUENCE**

- a. WMATA may exercise options at any time, including during the base period, and in any sequence, even if it varies from the order in which the options appear in the Price Schedule. The Contractor may be entitled to an equitable adjustment in the Contract price, if exercising the option out of sequence causes any undue delay in performance of this Contract. If options are exercised during the base period or out of sequence, any previously agreed to



economic price adjustment for exercise of the option may not apply, at the Contracting Officer's discretion.

## **18. BRAND NAME OR EQUAL**

- a.** If items called for by this solicitation have been identified in the Price Schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bid offering "equal" products, including products of the brand name manufacturer, other than the one described by brand name will be considered for award, if such products are clearly identified in the bids and WMATA determines that they fully meet the salient characteristics (physical, functional, or performance) requirements in the solicitation
- b.** Unless the Bidder clearly indicates in its bids that it is offering an "equal" product, the Bid shall be considered as offering a brand name product referenced in the solicitation.
- c.** If the Bidder proposes to furnish an "equal" product, a description of the product to be furnished shall be placed in the space provided in the solicitation, or such product shall be otherwise clearly identified in its bids. WMATA, at its sole discretion, must be able to determine equality without an extensive evaluation. Thus, if the Bidder has some information demonstrating equality of the proposed equal, such as acceptance by another transit agency, it should submit such documentation with its Bidder.
- d.** CAUTION TO BIDDERS WMATA is not responsible for locating or securing any information that is not identified in its bid and reasonably available to WMATA. The Bidder must furnish as a part of its bid/proposal all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for WMATA's determination.

## **19. INDEMNIFICATION**

- a.** Contractor shall indemnify, defend and hold harmless WMATA, its Board members, employees and agents, from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorneys' fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, and for loss or damage to any property, including the property of the Contractor and WMATA, occurring in connection with, or in any way arising out of the use, occupancy and performance of the work and/or any acts in connection with activities to be performed under this Contract, unless the loss or damage is due to the sole negligence of WMATA. Nothing in the preceding sentence shall be deemed to relieve Contractor from ultimate liability for any of its obligation under this Contract.
- b.** Contractor shall indemnify, defend and hold harmless WMATA, its Board members, employees and agents, against any and all claims, liabilities, losses, demands, damages, penalties, costs, charges, remedial costs, environmental claims, fees or other expenses including attorneys' fees, related to, arising from or attributable to any effluent or other hazardous waste, residue, contaminated soil or other similar material discharged from, removed from, or introduced on, about or under the job site. The foregoing indemnity

does not apply to loss or damage due to preexisting conditions, whether known or unknown.

- c. If any action or proceeding relating to this indemnification is brought against WMATA, then upon written notice from WMATA to the Contractor, the Contractor shall, at its own expense, resist or defend such action or proceeding by counsel approved by WMATA in writing. No approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend the same. WMATA reserves the right to use its own counsel under this indemnity at Contractor's sole cost and expense.
  
- d. Contractor understands and agrees to its responsibility to provide indemnification to WMATA pursuant to this clause. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements. The failure of Contractor's insurance to fully fund any indemnification shall not relieve the Contractor of any obligation hereunder.

**20. LIQUIDATED DAMAGES FOR DELAY – N/A**

Not Applicable to this solicitation

**21. LIVING WAGE**

- a. WMATA's Living Wage Policy and implementing regulations apply with respect to all contracts for services (including construction) awarded in an amount that exceeds \$150,000 in a twelve (12) month period. If this Contract meets those criteria, the following requirements are applicable:

WMATA's living wage rate is \$15.03 per hour and may be reduced by the Contractor's per-employee cost for health insurance.

- b. The Contractor shall:
  - i) Pay WMATA's living wage rate, effective during the time the work is performed, to all employees who perform work under this Contract;
  - ii) Include this "Living Wage" article in all subcontracts that exceed \$150,000 in a twelve (12) month period awarded under this Contract;
  - iii) Maintain payroll records, in accordance with the requirements of this Contract, and include a similar provision in affected subcontracts that requires the subcontractor to maintain its payroll records for the same length of time; and
  - iv) Certify with each monthly invoice that WMATA's living wage rate was paid to affected employees, or if applicable, certify prior to Contract award or Contract extension, if any, that one or more of the exemptions in paragraph (d) below applies.

- v) The Contractor shall not split or subdivide this Contract, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor to avoid compliance with this "Living Wage" article
- c. Exemptions to this "Living Wage" article include:
- i) Contracts and agreements subject to higher wage rates required by Federal law or collective bargaining agreements;
  - ii) Contracts or agreements for regulated utilities;
  - iii) Emergency services to prevent or respond to a disaster or imminent threat to public health and safety;
  - iv) Contractor employees who work less than full time; and
  - v) Contractors who employ fewer than ten (10) employees
- d. WMATA may adjust the living wage rate effective in January of each year. The adjustment will reflect the average living wage rate among Metro's Compact jurisdictions with living wage rates. If after Contract award the living wage rate increases, the Contractor is entitled to an equitable adjustment to the Contract price in the amount of the increase for employees who are affected by the escalated wage.
- e. Failure to comply with WMATA's Living Wage Policy shall result in WMATA's right to exercise available contract remedies, including contract termination, where no fraud is suspected.
- f. If fraud is suspected, WMATA's only remedy prior to adjudication by a court of competent jurisdiction is to report the matter to WMATA's Office of Inspector General (OIG), the U.S. Department of Transportation's Office of Inspector General (DOT-OIG), the Offices of Inspectors General of any state or Federal agency providing funding under this Contract and/or appropriate Federal, state and/or local law enforcement authorities.

## 22. RETAINAGE

No Retainage. No provision of this Contract shall serve to deny Contractor's entitlement to full payment for properly performed work or suitably stored materials. No amounts shall be withheld from any payment request submitted by Contractor based on percentage of the work performed during the period of performance and no amounts shall be assigned to the line items, other than as assigned by Contractor in its payment requests.

## 23. WARRANTY OF SUPPLIES

- a. All workmanship, parts and materials furnished for this Contract shall be unconditionally warranted by the Contractor against failures or defects for a period of one (1) year after WMATA accepts them or places them in service, whichever is earlier. The Contractor shall accept WMATA's records regarding the date the item was accepted or placed in service.
- b. In the event that any work, parts or materials covered by this Warranty fails during the Warranty period, the Contractor shall repair or replace the work within three (3) days without cost or expense to WMATA.
- c. Should the Contractor shall fail to repair or replace any part or do any work in accordance with the terms of this Warranty, or if immediate replacement or work is necessary to maintain operations, WMATA shall have the right to cause such replacement to be made, utilizing its own forces and/or those of third parties as WMATA shall reasonably deem appropriate, at Contractor's expense.
- d. Each piece of equipment, component or part thereof that the Contractor replaces, repairs, adjusts or services in any manner under the terms of this Warranty during the Warranty period shall be reported to the Contracting Officer on WMATA's forms. Each report shall indicate in detail all repairs, adjustments and servicing to each and every component, unit or part thereof.
- e. Any warranty work shall be accomplished with minimum disruption to WMATA's operations and to its maintenance and service facilities. WMATA shall at its sole discretion determine the availability of facilities for warranty work.
- f. The Contractor shall make adequate service facilities available, along with spare parts, for all the items under warranty. Trained technical service personnel shall be available to WMATA sufficient to meet the Contractor's warranty obligations.
  - i) The Contractor shall provide field service representatives who are competent and fully qualified in the maintenance and operation of the warranted items. These field service representatives shall assist WMATA in overcoming any difficulties in the operation or maintenance of the warranted items. They shall further serve as the Contractor's on-site representatives for any component failure claims or warranty claims under this Contract.
  - ii) During the warranty period, a field service representative shall be available within twenty four (24) hours notice.
- g. WMATA's rights set forth in this article shall be in addition to those set forth elsewhere in this Contract or otherwise at law or in equity.

## **24. WARRANTY OF SERVICES**

- a. Definitions.

"Acceptance," as used in this clause, means the act(s) of WMATA's authorized representative by which WMATA approves specific services, in partial or complete performance of the Contract.

- b.** Notwithstanding inspection and acceptance by WMATA or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Contracting Officer shall give written notice of any defect or nonconformance to the Contractor within thirty (30) days from the date of acceptance by WMATA. This notice shall state either -

  - i)** That the Contractor shall correct or re-perform any defective or nonconforming services; or
  - ii)** That WMATA does not require correction or re-performance.
- c.** If the Contractor is required to correct or re-perform, it shall be at no cost to WMATA, and any services corrected or re-performed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or re-perform, the Contracting Officer may, by contract or otherwise, correct or replace the services with similar services and charge the Contractor with the cost, or make an equitable adjustment to the Contract price.
- d.** If WMATA does not require correction or re-performance, the Contracting Officer shall make an equitable adjustment to the Contract price.

**25. CONSULTANT SERVICES – N/A**

Not Applicable to this solicitation

# **STANDARD TERMS AND CONDITIONS**

Complete text for the Standard Terms and Conditions is posted on WMATA's website. You can directly view this information on [Standard Terms and Conditions Ver 090721.pdf](#).

Note: Please indicate any changes to Standard Terms and Clause here.

1. AGREEMENT
2. ARRANGEMENT OF CONTRACTUAL PROVISIONS
3. ORDER OF PRECEDENCE
4. AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR
5. CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)
6. FORCE MAJEURE/EXCUSABLE DELAYS/TIME EXTENSIONS
7. THE WMATA'S DELAY
8. NOTICE TO WMATA OF LABOR DISPUTES
9. NOTIFICATION OF BANKRUPTCY OR INSOLVENCY
10. INSPECTION OF SERVICES
11. INSPECTION OF SUPPLIES
12. ACCEPTANCE OF SUPPLIES
13. MATERIAL & WORKMANSHIP
14. CORRECTION OF DEFICIENCIES
15. FIRST ARTICLE INSPECTION
16. F.O.B. DESTINATION
17. QUALITY ASSURANCE/QUALITY CONTROL
18. CHANGE ORDERS
19. PRICING OF ADJUSTMENTS
20. ACCOUNTING AND RECORD KEEPING FOR ADJUSTMENTS
21. BILLING AND PAYMENT
22. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA -- MODIFICATIONS
23. SUBCONTRACTOR PAYMENTS
24. GARNISHMENT OF PAYMENTS
25. STOP WORK ORDERS
26. TERMINATION FOR DEFAULT
27. TERMINATION FOR CONVENIENCE
28. ASSIGNMENT
29. DISPUTES
30. EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS FOR CONSTRUCTION
31. TITLE AND RISK OF LOSS
32. INAPPLICABILITY OF CLAUSES REQUIRING UNAUTHORIZED OBLIGATIONS
33. PATENT INDEMNITY
34. SET-OFF
35. RIGHTS IN TECHNICAL DATA
36. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT
37. ROYALTY INFORMATION
38. NONDISCRIMINATION ASSURANCE
39. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT- OVERTIME COMPENSATION
40. WALSH-HEALEY PUBLIC CONTRACTS ACT
41. DAVIS-BACON ACT
42. CONVICT LABOR
43. COVENANT AGAINST CONTINGENT FEES
44. SEAT BELT USE POLICY
45. SENSITIVE SECURITY INFORMATION
46. LAWS AND REGULATIONS
47. HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA
48. METRIC SYSTEM
49. MANDATORY DISCLOSURE
50. EMPLOYMENT RESTRICTION WARRANTY
51. GRATUITIES
52. OFFICIALS NOT TO BENEFIT
53. ORGANIZATIONAL CONFLICTS OF INTEREST
54. CONTRACTOR PERSONNEL

55. FALSE STATEMENTS, CLAIMS OR SUBMISSIONS
56. PUBLIC COMMUNICATION
57. FEDERAL, STATE, AND LOCAL TAXES
58. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE
59. SEVERABILITY
60. SURVIVAL
61. GOVERNMENT-WIDE DEBARMENT OR SUSPENSION
62. PROGRESS PAYMENTS
63. SAFETY REQUIREMENTS
64. CRIMINAL BACKGROUND CHECK REQUIREMENT



# **MAPT Cooperative Rider Clause**



The Mid-Atlantic Purchasing Team (MAPT) is the agreement between the Metropolitan Washington Council of Governments (COG) 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").

## **I. Format**

A lead agency format is used to accomplish this work. This Participating Agency, serving as Lead Agency for this procurement, has included this MAPT Cooperative Rider Clause. This allows other public entities to participate pursuant to the following Cooperative Rider Clause Terms and Conditions:

### **A. Terms**

1. Any public entity participating in this procurement ("Participating Agency"), through their use of this Cooperative Rider Clause, agree to the terms and conditions of the resulting contract to the extent that they can be reasonably applied to the Participating Agency.
2. A Participating Agency may also negotiate additional terms and conditions specific to their local requirements upon mutual agreement between the parties.

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

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

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

In order to ride an awarded contract, a COG Rider Clause Approval Form (below) must be completed and approved by the Lead Agency.

## II. Participating Members

### **COG MEMBER GOVERNMENTS**

#### **District of Columbia**

#### **Maryland**

- ✓ Town of Bladensburg
- ✓ City of Bowie
- ✓ City of College Park
- ✓ Charles County
- ✓ City of Frederick
- ✓ Frederick County
- ✓ City of Gaithersburg
- ✓ City of Greenbelt
- ✓ City of Hyattsville
- ✓ Montgomery County
- ✓ Prince George's County
- ✓ City of Rockville
- ✓ City of Takoma Park

#### **Virginia**

- ✓ City of Alexandria
- ✓ Arlington County
- ✓ City of Fairfax
- ✓ Fairfax County
- ✓ City of Falls Church
- ✓ Loudoun County
- ✓ City of Manassas
- ✓ City of Manassas Park
- ✓ Prince William County

#### **Other Local Governments**

- ✓ Town of Herndon
- ✓ Spotsylvania County
- ✓ Stafford County
- ✓ Town of Vienna

#### **Public Authorities/Agencies**

- ✓ Alexandria Renew Enterprises
- ✓ District of Columbia Water and Sewer Authority
- ✓ Metropolitan Washington Airports Authority
- ✓ Metropolitan Washington Council of Governments
- ✓ Montgomery County Housing Opportunities Commission
- ✓ Potomac & Rappahannock Transportation Commission
- ✓ Prince William County Service Authority

- ✓ Upper Occoquan Service Authority
- ✓ Washington Metropolitan Area Transit Authority
- ✓ Washington Suburban Sanitary Commission

#### **School Systems**

- ✓ Alexandria Public Schools
- ✓ Arlington County Public Schools
- ✓ Charles County Public Schools
- ✓ District of Columbia Public Schools
- ✓ Frederick County Public Schools
- ✓ Loudoun County Public Schools
- ✓ City of Manassas Public Schools
- ✓ Montgomery College
- ✓ Montgomery County Public Schools
- ✓ Prince George's County Public Schools
- ✓ Prince William County Public Schools
- ✓ Spotsylvania County Schools
- ✓ Winchester Public Schools

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### **BALTIMORE METROPOLITAN COUNCIL AGENCIES**

- ✓ City of Annapolis
- ✓ Anne Arundel County
- ✓ Anne Arundel County Public Schools
- ✓ Anne Arundel Community College
- ✓ City of Baltimore
- ✓ Baltimore City Public Schools
- ✓ Baltimore County
- ✓ Baltimore County Public Schools
- ✓ Community College of Baltimore County
- ✓ Carroll County
- ✓ Harford County
- ✓ Harford County Public Schools
- ✓ Harford Community College
- ✓ Howard County
- ✓ Howard County Public Schools System
- ✓ Howard Community College
- ✓ Queen Anne's County
- ✓ Queen Anne's County Public Schools

**Approval Form  
Sample**

This form must be executed for any Participating Agency, both within and outside of the Mid-Atlantic Purchasing Team (MAPT) region, to use the MAPT Cooperative Rider Clause to ride solicitations and contracts.

*NOTE: Effective January 1, 2019, MWCOCG does not authorize the use of the MAPT/COG Cooperative Rider Clause without this form being completed and approved.*

-----  
Participating Agency Name \_\_\_\_\_

Contact Person \_\_\_\_\_

Phone \_\_\_\_\_ Email Address \_\_\_\_\_

-----  
**Solicitation/Contract Information:**

Name Solicitation/Contract \_\_\_\_\_

Lead Agency/Contract Holder \_\_\_\_\_

Contact Person \_\_\_\_\_

Solicitation/Contract Number \_\_\_\_\_ Other Reference \_\_\_\_\_

-----  
**Vendor Information:**

Contractor Name \_\_\_\_\_ Address \_\_\_\_\_ City/State/Zip \_\_\_\_\_

Contact Person \_\_\_\_\_ Phone \_\_\_\_\_ Email Address \_\_\_\_\_

See questions on next page.

**Questions** –

**YES**    **NO**

1. Is the Contract active and currently in force?

\_\_\_\_\_

2. Is the Participating Agency's specifications/scope of work the same or very similar to that in the Contract? \_\_\_\_\_

3. Is riding this Contract within the rules and regulations of the Participating Agency and approved by the Participating Agency's Purchasing Department? \_\_\_\_\_

<u>Participating Agency</u>	<u>Mid-Atlantic Purchasing Team</u>
Name _____	Name _____
Title _____	Title _____
Signature _____	Signature _____

Please return to [purchasing@mwcoq.org](mailto:purchasing@mwcoq.org)

# APPENDIX

# **Appendix A - Insurance Requirements**

If you do not currently carry all of the required insurance for this solicitation, a current certificate of insurance (COI) evidencing the insurance you do carry and a letter from your insurance agent/broker stating that 'if our client (you) are awarded the contract, the required coverage will be provided' will suffice.

**[EXHIBIT A**

**1.3. RE: Cybersecurity Code Analyzer**

**Purchase PRN ID: CIT0122034**

**Insurance Doc ID: INS0001105**

1. **General Indemnity.** Contractor shall indemnify, defend and hold harmless the Authority, its directors, officers, employees and agents, from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorney's fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, for loss or damage to any property, including the property of the Contractor and the Authority, and for financial loss to the Authority caused by Contractor's acts, errors or omissions in connection with activities to be performed under this contract.
2. **IP Indemnity.** In addition to and without limiting the generality of the foregoing paragraph, Contractor expressly agrees to, indemnify, defend and hold the Authority and its officers, directors, employees and agents harmless from any and all third-party claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of or relating to any claims that the technical data or use thereof infringe or violate any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right (collectively, "Intellectual Property Rights") of any third party. If Contractor believes at any time that the technical data infringe a third party's Intellectual Property Rights, Contractor may upon receipt of Authority's prior written consent, which Authority shall not unreasonably withhold, (i) replace an infringing item with a non-infringing item that meets or exceeds the performance and functionality of the replaced item; or (ii) obtain for Agency the right to continue to use the infringing item; or (iii) modify the infringing item to be non-infringing, provided that, following any replacement or modification made pursuant to the foregoing, the technical data continues to function in material conformance with the specifications set forth in this Contract. Contractor's failure or inability to accomplish any of the foregoing shall be deemed a material breach of this Contract, and Authority may pursue any rights and remedies available to it under this Contract, including termination.

Contractor shall not be liable under this section for any claim for infringement based solely on the following:

- The Authority's modification of the technical data other than as contemplated by this Contract or as otherwise authorized by Contractor in writing.
- Use of the technical data in a manner other than as contemplated in this Contract or as otherwise authorized by Contractor in writing.
- Use of the technical data in combination, operation, or use of with other products other than as contemplated by this Contract and its specifications or as otherwise authorized by Contractor in writing.

3. **Data Breach.** In addition to any other indemnification obligation contained in this Contract, Contractor shall indemnify, defend and hold the Authority, its officers, directors, employees, and agents, harmless from and against any and all claims, demands, losses, liabilities, costs and expenses, including attorneys' fees and in-house counsel fees, to the extent arising from or alleged to arise from a breach of the Authority's data arising from Contractor's, its employees, agents, or representatives acts or omissions under this Contract.
  
4. If any action or proceeding relating to the indemnification required is brought against the Authority, then upon written notice from the Authority to the Contractor, the Contractor shall, at the Contractor's expense, resist or defend such action or proceeding by counsel approved by the Authority in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend the same. The Authority reserves the right to use its own counsel under this indemnity at Contractor's sole cost and expense.
  
5. Contractor understands and agrees that it is Contractor's responsibility to provide indemnification to the Authority pursuant to this Section. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements and the failure of Contractor's insurance to fully fund any indemnification shall not relieve the Contractor of any obligation assumed under this indemnification.

**I. MINIMUM REQUIRED INSURANCE: MINIMUM LIMITS OF INSURANCE**

<b>INSURANCE TYPE</b>	<b>LIMITS</b>	<b>BASIS</b>
<b>Workers' Compensation</b>	Statutory	
<b>Employers' Liability</b>	\$500,000	Each Accident
	\$500,000	Disease Policy Limit
	\$500,000	Disease Each Employee
<b>Commercial General Liability</b>		
	\$1,000,000	Each Occurrence Limit
	\$2,000,000	General Aggregate Limit
	\$1,000,000	Products-Completed Operations Limit
<b>Technology Errors &amp; Omissions Liability</b>		
	\$2,000,000	Each Claim
<b>Cyber Liability</b>		
	\$2,000,000	Each Claim

**II. MINIMUM REQUIRED INSURANCE: MINIMUM INSURANCE COVERAGES AND COVERAGE PROVISIONS**



- 1) Contractor is required to maintain the insurance outlined in this Exhibit A during the entire period of performance under this contract. Notice to Proceed (NTP) will not be issued until all required insurance has been accepted by WMATA.
- 2) The prescribed insurance coverage and limits of insurance are minimum required coverages and limits. Contractor is encouraged, at its sole cost and expense, to purchase any additional insurance coverages and or limits of insurance that Contractor deems prudent and necessary to manage risk in the completion of this contract.
- 3) Upon written request from WMATA, contractor shall provide copies of any requested insurance policies, including applicable endorsements, within five (5) business days of such request.
- 4) Receipt, review or communications regarding certificates of insurance (COI), insurance policies, endorsements, or other materials utilized to document compliance with these Minimum Insurance Requirements does not constitute acceptance by WMATA.
- 5) Insurance companies must be acceptable to WMATA and must have an A. M. Best rating of at least A- VII.
- 6) Unless otherwise noted, "Claims Made" insurance policies are not acceptable.
- 7) Any insurance policy utilizing a Self-Insured Retention (SIR) requires written approval from WMATA.
- 8) Contractor must incorporate these Minimum Insurance Requirements into contract requirements of all subcontractors of every tier; however, Contractor, at its sole peril, may amend these Minimum Insurance Requirements for its subcontractors, but doing so does not relieve Contractor from its respective liability to WMATA.
- 9) Compliance with these Minimum Insurance Requirements does not relieve Contractor from Contractor's respective liability to WMATA, even if that liability exceeds the Minimum Insurance Requirements.

## **COVERAGE-SPECIFIC REQUIREMENTS**

### ***1.4. Commercial General Liability***

- 1) Commercial General Liability (CGL) shall be written on ISO Occurrence Form CG0001 (12/04) or its equivalent. Equivalency determination shall be made in WMATA's sole and unreviewable discretion.

- 2) Required minimum limits of coverage may be achieved through a combination of the aforementioned CGL coverage form and an Umbrella/Excess Liability coverage form(s), provided that the Umbrella/Excess Liability coverage form(s) provides the same or broader coverage than the prescribed CGL coverage form.
- 3) Policy shall be endorsed with Additional Insured Endorsement(s) in compliance with the "Additional Insured" Section below.
- 4) Policy shall be endorsed with a Waiver of Subrogation Endorsement(s) in compliance with the Waiver of Subrogation" section below.
- 5) The definition of "Insured Contract" shall be modified to provide coverage for contractual liability for any contracts involving construction or demolition operations that are within 50 feet of a railroad, and sidetrack agreements. Evidence of this modification shall be provided to WMATA along with all other required documents.
- 6) Defense Costs (Allocated Loss Adjustment Expense) must be included and outside of the policy limits for all primary liability and Umbrella/Excess Liability policies.

**1.5. Technology Errors and Omissions Insurance**

Contractor must procure and maintain Technology Errors and Omissions insurance covering actual or alleged negligent acts, errors or omissions committed by the Contractor in the provision of information technology services performance of activities under this agreement, regardless of the type of damages. If the insurance is on a claims made basis, Contractor shall maintain continuous insurance coverage during the term of this agreement. The policy retroactive date must coincide with or precede the effective date of Contractor's services under the agreement and shall continue until the termination of the agreement. The policy must allow for reporting of circumstances or incidents that might give rise to future claims, and an extended reporting period of at least one year must be purchased in the event ongoing coverage is not maintained.

**1.6. Cyber Liability Insurance**

Contractor must procure and maintain Cyber Liability insurance providing protection against liability for privacy breaches, system breach, denial or loss of service introduction, implantation, or spread of malicious software code and unauthorized access to or use of computer systems.

**IV. OTHER**

**1.7. Additional Insured**

- 1) Contractor and subcontractors of every tier are required to add WMATA and WMATA Board of Directors as additional insured on all required insurance including excess liability policies, with the exception of Workers' Compensation and Professional Liability.
- 2) Coverage provided to Additional Insured shall be primary and non-contributory to any other insurance available to the Additional Insured, including coverage

afforded to the WMATA as an additional insured by subcontractors, and from other third parties.

- 3) Coverage provided to any Additional Insured shall be for claims arising out of both ongoing operations and products and completed operations hazard.
- 4) Coverage available to any Additional Insured under the products and completed operations hazard can only be limited to the applicable statute of repose in the jurisdiction(s) where the contract scope of work takes place.
- 5) Commercial General Liability and Umbrella/Excess Liability forms must provide defense coverage for additional insureds. The Additional Insured Endorsement shall provide coverage for Ongoing as well as Products and Completed Operations with no limitation on when claims can be made.

**1.8. Waiver of Subrogation**

Contractor and subcontractors of every tier are required to have all insurance policies except Professional Liability endorsed to waive the respective insurance company's rights of recovery against WMATA, and the WMATA Board of Directors.

- 1) Waiver shall be provided on an endorsement that is acceptable to WMATA.

**1.9. Certificate of Insurance (COI)**

Contractor shall provide WMATA an ACORD Certificate of Insurance (COI) and copies of all required endorsements as evidence that the insurance requirements of this Section have been satisfied. Certificates of Insurance shall be sent to WMATA. The Certificate Holder box should read:

Washington Metropolitan Area Transit Authority  
Office of Insurance, Room 8F  
600 Fifth Street, NW  
Washington, DC 20001

Additionally:

- 1) Proposed material modifications to required insurance, including notice of cancellation, must be received by WMATA in writing at least 30 days prior to the effective date of such change or cancellation.
- 2) WMATA's receipt of copies of any COI, policy endorsements or policies does not relieve Contractor of the obligation to remain in compliance with the requirements of this Section at all times. Contractor's failure to comply with these insurance requirements shall constitute a material breach of this Contract.
- 3) Receipt of the COI does not constitute acceptance of the insurance outlined above.

]



**Washington Metropolitan Area Transit Authority**

Contract ID: CIT01222076 Solicitation ID: WMATA-000008493

# **Appendix B**

## **NOTICE OF REQUIREMENTS FOR DISADVANTAGED BUSINESS ENTERPRISE (DBE) -- N/A**



# Appendix B-1

## NOTICE OF REQUIREMENTS FOR SMALL BUSINESS ENTERPRISE (SBE) PROGRAM -- N/A



**Washington Metropolitan Area Transit Authority**

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# **APPENDIX C**

## **Contractor Oversight Certification -- N/A**

## Combined Glossary of Definitions

As used throughout this Contract, except to the extent otherwise expressly specified, the following terms shall have the meanings set forth below:

**Acceptance:** Acknowledgment by WMATA that the supplies, services, or other work conform to the applicable contract requirements.

**Acceptance Period:** The number of days available to WMATA to award a Contract pursuant to this solicitation, during which period bidders may not withdraw their bid.

**Amendment:** Written instructions issued prior to the date set for solicitation opening to clarify, revise, add or delete requirements of the Solicitation.

**Approved equal:** An item approved by WMATA as equivalent to a brand name item originally specified.

**WMATA or Metro:** The Washington Metropolitan Area Transit Authority, created effective February 20, 1967, by Interstate Compact by and between Maryland, Virginia and the District of Columbia pursuant to Public Law 89-774, approved November 6, 1966.

**Board of Directors:** The Board of Directors of the Washington Metropolitan Area Transit Authority.

**Brand name:** Identification of an item that is produced or controlled by one or more entities, including trademarks, manufacturer names, or model names or numbers that are associated with a manufacturer.

**Breach:** An unexcused and unjustifiable failure or refusal of a party to satisfy one (1) or terms of the Contract which, if material, shall constitute a basis for potential default.

**Change or Change Order:** A written alteration issued, upon agreement of both parties or unilaterally by WMATA, to modify or amend the Contract, generally directing changes to the Scope of Work and/or Contract terms.

**Claim:** A written demand or assertion by the Contractor seeking, as a legal right, the payment of money, adjustment or interpretation of Contract terms, or other relief, arising under or relating to this Contract.

**Clarifications:** Exchanges between WMATA and one (1) or more bidders of a limited nature, whereby bidders may be given the opportunity to clarify certain aspects of their bid or to resolve minor irregularities, informalities or clerical errors.

**Constructive Change:** An act or omission by WMATA that, although not identified as a Change Order, does in fact cause a change to the Contract.

**Contract or Agreement:** The written agreement executed between WMATA and the Contractor awarded pursuant to this solicitation.

**Contract Administrator:** WMATA's representative designated to serve as its primary point of contact for pre-award activities relating to the solicitation as well as such post-award activities as are set forth in the Contract.

**Contracting Officer:** An employee with authority duly delegated from the powers of the Chief Procurement Officer to legally bind WMATA by signing a Contractual instrument. The Contracting Officer is WMATA's primary point of contact for pre-award administration, modifications above the limits of the Contracting Officer's Representative, and final settlement.

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**Contracting Officer Representative:** The person to whom the Contracting Officer delegates WMATA and responsibility for post-award execution of the Contract. The Contracting Officer's Representative is WMATA's primary point of contact with its Contractor.

**Contractor:** The individual, partnership, firm, corporation, or other business entity that is contractually obligated to WMATA to furnish, through itself or others, the supplies, services and/or construction services described in the Contract, including all incidentals that are necessary to complete the work in accordance with the contract.

**Contract Price:** The amount payable to the Contractor under the terms and conditions of the Contract based on lump sum prices, unit prices, fixed prices, or combination thereof, with any adjustments made in accordance with the Contract.

**Data:** Recorded information, regardless of form or the media on which it may be recorded, including technical data and computer software.

**Day:** Calendar day, except where the term business day, workday or like term is used.

**Designer:** The individual, partnership, firm, corporation or other business entity that is either the Contractor, or employed or retained by the Contractor, to manage and perform the design services for the Contract.

**Disadvantaged Business Enterprise (DBE):** A for-profit small business concern that has been certified by WMATA to be at least fifty-one percent (51%) owned by one (1) or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty one percent (51%) of the stock is owned by one (1) or more individuals, and whose management and daily business operations are controlled by one (1) or more of the socially and economically disadvantaged individuals who own it.

**Descriptive literature:** Information provided by bidder, such as cuts, illustrations, drawings, and brochures that shows a product's characteristics or construction of a product or explains its operation. The term includes only that information needed to evaluate the acceptability of the product and excludes other information for operating or maintaining the product.

**Directed, ordered, designated, prescribed or words of like importance:** Shall be understood that the direction, requirement, order, designation or prescription of the Contracting Officer is intended and similarly the words approved, acceptable, satisfactory or words of like import shall mean approved by, or acceptable to, or satisfactory to the Contracting Officer, unless otherwise expressly stated.

**Explanation:** Additional information or clarification provided by a WMATA representative to one (1) or more prospective bidder in response to an inquiry relating to the solicitation, that will be binding upon WMATA, only to the extent specified in the Contract.

**Equivalent:** Of equal or better quality and/or performance to that specified in the Contract as determined by WMATA.

**Final Payment:** The last payment to the Contractor for work performed under the Contract.

**Force Majeure:** An unforeseen event or circumstance, beyond the control of, and not occasioned by the fault or neglect of, the Contractor or WMATA, that gives rise to a delay in the progress or completion of the Contract, including, without limitation, acts of God, acts of war or insurrection, unusually severe weather, fires, floods, strikes, freight embargoes or other events or circumstances of like nature.

**FTA:** Federal Transit Administration, an agency within the United States Department of Transportation that provides financial and technical assistance to local public transit agencies.



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**Government:** The Government of the United States of America.

**Industry Standards:** Drawings, documents, and specifications or portions thereof published by industry organizations. Industry Standards are not part of this Contract unless specifically listed as such in the Scope of Work.

**Legal Requirements:** All Federal, state and local laws, ordinances, rules, orders, decrees, and regulatory requirements such as: building codes, mechanical codes, electrical codes, fire codes, Americans with Disabilities Act Accessibility Guidelines (ADAAG), and other regulations of any government or quasi-government entity that are applicable to this Contract.

**Milestone:** A specified date in the Contract by which the Contractor is required to complete a designated portion or segment of the work.

**Minor Irregularity:** A variation from the solicitation contained in a solicitation that does not affect the price or other material term of the Contract and does not confer a competitive advantage or benefit not enjoyed by other bidders or adversely impact WMATA's interests.

**Notice to Proceed:** Written notice issued by WMATA establishing the date on which the Contractor may commence work and directing the Contractor to proceed with all or a portion of the work.

**Bidder:** A party submitting a bid to this solicitation.

**Option:** A unilateral right in the Contract by which, for a specified time, WMATA may elect to purchase, at a predetermined price, additional supplies, services and/or work called for by the Contract or to extend the term of the Contract.

**Organizational conflict of interest:** A circumstance in which, because of other activities or relationships, a person, corporation or other business entity is unable or potentially unable to render impartial assistance or advice to WMATA, or its objectivity in performing the Contract is or might be otherwise impaired, or it has an unfair competitive advantage.

**Period of Performance:** The time allotted in the Contract for completion of the work. The period of performance begins upon the effective date of Contract execution and ends on the last date for complete performance of the final option. The period of performance incorporates the milestones established for the Contract.

**Pre-award Survey:** An evaluation of a prospective Contractor's capability to perform a proposed Contract, including an assessment of matters relating to its responsibility.

**Product Data:** Information furnished by the Contractor to describe materials used for some portion of the work, such as written or printed descriptions, illustrations, standard schedules, performance charts, instructions, brochures, and diagrams.

**Records:** Books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

**Safety Sensitive:** FTA regulations at 49 C.F.R. § 655.4 define "safety sensitive functions" as any of the following duties when performed by WMATA as a grant recipient, or any of its contractors: (a) Operating a revenue service vehicle, including when it is not in revenue service; (b) Operating a nonrevenue service vehicle, when required to be operated by the holder of a commercial driver's license (CDL); (c) Controlling dispatch or movement of a revenue service vehicle; (d) Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service; and (e) Carrying a firearm for security purposes. WMATA's definition of safety sensitive

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functions extends beyond FTA's requirements and includes (f) Employees and contractors who maintain escalators and elevators (including repairs, overhauls and rebuilding) and (g) Station managers.

**Services:** The performance of work by a person or legal entity under contract with WMATA, including without limitation: maintenance; overhaul; repair; servicing; rehabilitation; salvage; modernization or modification of supplies, systems or equipment; routing, recurring maintenance of real property; housekeeping; operation of WMATA-owned equipment, facilities and systems; communication services; Architect-Engineering services; professional and consulting services; and transportation and related services.

**Small Business Enterprise Set-Aside:** Competitive procurement(s), less than \$500,000, exclusively for SBE certified bidders.

**Supplies:** The end item(s) required to be furnished by the Contractor in fulfillment of its obligation under this Contract as well as any and all related services and required performance.

**Statement of Work/Scope of Work (SOW):** The portion of a contract or solicitation that describes specifically what is to be done by the Contractor. It may include specifications, performance outcomes, dates and time of performance, quality requirements, etc.

**Solicitation:** Invitation for Bids (IFB) or Request for Proposal (RFP)

**Shop Drawings:** Fabrication, erection, layout, setting, schematic, and installation drawings that the Contractor prepares for permanent structures, equipment, and systems it designed to comply with this Contract.

**Similar:** Generally, the same but not necessarily identical; details shall be worked out in relation to location and relation to other parts of the work.

**Site:** The areas that are occupied by or used by the Contractor and subcontractors during performance of the Contract.

**Small Business Enterprise (SBE):** A for profit small business concern that has been certified by WMATA to be at least fifty one percent (51%) owned by one (1) or more individuals who are economically disadvantaged.

**Small Business & Local Preference Program:** Board mandated small business contracting program for WMATA funded contracts with firm(s) located in the District of Columbia, Maryland or Virginia.

**Subcontract:** An agreement between the Contractor and another party, or between other subcontractors at any tier, to perform a portion of the Contract through the acquisition of specified supplies, materials, equipment or services.

**Subcontractor:** An individual, firm, partnership, or corporation that has a contractual obligation with the Contractor or other subcontractors.

**Submittal:** Written or graphic document or samples prepared for the work by the Contractor or a subcontractor and submitted to WMATA, including shop drawings, product data, samples, certificates, schedules of material, or other data.

**Substantial Completion:** Work or a portion thereof that has progressed to the point where it is sufficiently complete in accordance with the Contract (including receipt of test and inspection reports) so that it , can be utilized for the purpose for which it is intended, and only incidental work remains for physical completion in accordance with the Contract.

**Washington Metropolitan Area Transit Authority**



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**Substitution:** An item offered by the Contractor of significant difference in material, equipment, or configuration, that functionally meets the requirements of the Contract, but is submitted in lieu of item specified therein.

**Utility:** A public and/or private facility or installation, other than WMATA's facility, that relates to (1) the conveyance and supply of water, sewage, gas, chemicals, steam, petroleum products, and other piped installations, or (2) electrical energy, telephone, radio, television, and cellular or wireless communications.

**Utility Standards:** Drawings and specifications for utilities published or issued by municipalities or utility companies.

**WMATA Safety Manual:** A compilation of the appropriate safety and reporting requirements for the project as specified in the Contract.

**WMATA Safety and Security Certification Program Plan:** A compilation of the appropriate system safety and security certification requirements for the project.

**Work:** All of the services of any kind, as well as any and all goods, supplies, equipment, labor, and material, of any type and nature to be furnished and/or performed pursuant to this Contract to accomplish the Contract's stated objectives in a timely and fully satisfactory manner.