



WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
600 Fifth Street, NW, Washington, DC 20001-2651

AMENDMENT OF SOLICITATION / MODIFICATION OF CONTRACT

1. AMENDMENT/MODIFICATION A001	2. EFFECTIVE DATE May 18, 2015		
3. ISSUED BY PURCHASING SECTION Tamika Stidham Contract Administrator 600 5 th St NW Washington, DC 20001	4. ADMINISTERED BY (If other than block 3)		
5. CONTRACTOR NAME AND ADDRESS (Street, city, county, state, and Zip Code)	6. FORM TYPE (Check only one) <input checked="" type="checkbox"/> AMENDMENT OF SOLICITATION NO. <u>CQ15160</u> DATE <u>5/18/15</u> (See block <input type="checkbox"/> MODIFICATION OF CONTRACT/ORDER NO. _____ DATE _____ (See block 9)		
7. THIS BLOCK APPLIES ONLY TO AMENDMENTS OF SOLICITATIONS <input checked="" type="checkbox"/> The above numbered solicitation is amended as set forth in block 10. The hour and date specified for receipt of Offers _____ is extended, _____ is not extended. Offerors must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation, or as amended, by one of the following methods; (a) By signing and returning _____ copy of this amendment; (b) by acknowledging receipt of this amendment on each copy of the offer submitted; or (c) by separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE ISSUING OFFICE PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If, by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided such telegram makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.			
8. ACCOUNTING AND APPROPRIATION DATA (If required)			
9. THIS BLOCK APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS (a) <input type="checkbox"/> This Change Order is issued pursuant to _____ The Changes set forth in block 10 are made to the above numbered contract/order. (b) <input type="checkbox"/> The above numbered contract/order is modified to reflect the administrative changes (such as changes in paying office, appropriation data, etc.) set forth in block 10. (c) <input type="checkbox"/> This Supplemental Agreement is entered into pursuant to authority of _____ It modifies the above numbered contract as set forth in block 10.			
10. DESCRIPTION OF AMENDMENT/MODIFICATION The purpose of this amendment is to: 1. Update the General Insurance Requirements listed in Part II, Section II – Special Provisions, Paragraph 15. Updated requirements are listed on the attached sheet entitled “Washington Metropolitan Area Transit Authority Indemnification and Insurance Requirements for Contracts.” 2. Clarifications to questions received by prospective proposers are listed on the attached memorandum. 3. All other terms and conditions remain unchanged. <small>Except as provided herein, all terms and conditions of the document referenced in block 6, as heretofore changed, remain unchanged and in full force and effect.</small>			
11. <input checked="" type="checkbox"/> CONTRACTOR/OFFEROR IS REQUIRED TO SIGN THIS MODIFICATION AND RETURN _____	<input type="checkbox"/> CONTRACTOR/OFFEROR IS NOT REQUIRED TO SIGN THIS DOCUMENT		
12. NAME OF CONTRACTOR/OFFICE BY _____ (Signature of person authorized to sign)	15. WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY BY  (Signature of Contracting Officer)		
13. NAME AND TITLE OF SIGNER (Type or print)	14. DATE SIGNED	16. NAME OF CONTRACTING OFFICER (Type or print) <u>George Lewis</u>	17. DATE SIGNED <u>5-18-15</u>

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
INDEMNIFICATION AND INSURANCE REQUIREMENTS
FOR CONTRACTS**

DATE: MAY 15, 2015 (REVISED)
TO: PRMT – T. STIDHAM
FROM: RISK – K. BROWN
RE: CQ15160 FLUID ANALYSIS (BMNT)

Indemnification

1. 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, and for loss or damage to any property, including the property of the Contractor and the Authority, 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 the Authority. Nothing in the preceding sentence shall be deemed to relieve Contractor from ultimate liability for any obligation of Contractor under this Contract.
2. Contractor shall indemnify, defend and hold harmless the Authority, its directors, officers, 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; provided, however, that the foregoing indemnity does not apply to loss or damage due to preexisting conditions, whether known or unknown.
3. 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.
4. 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.

Minimum Insurance Requirements (revised August, 2014)

Article 1. General Insurance Requirements

Contractor shall procure, at its sole cost and expense the insurance outlined in this Section as follows:

- 1) Contractor is required to maintain the insurance coverage(s) outlined in this Section for a period of time commencing the sooner of the execution of this contract, or the start of Work, without interruption. The coverages shall be maintained in force and effect for 3 years after final completion and acceptance of the Work, with the exception of Professional Liability. Professional Liability insurance requirements are outlined in Article 6.
- 2) The insurance coverage and limits of insurance outlined in this Section are minimum coverage 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 and all policy(s), including all endorsement(s), within 5 business days of such request.
- 4) Insurance Policies must be written on admitted paper, (unless otherwise indicated herein) with an insurance company acceptable to WMATA.
- 5) Unless otherwise noted, "Claims Made" insurance policies are not acceptable.
- 6) Any insurance policy utilizing a Self-Insured Retention (SIR) requires approval from WMATA.
- 7) Contractor is required to incorporate these minimum Insurance Requirements into contract requirements of all Sub-Contractors of every tier.

Article 2. Workers' Compensation and Employer's Liability

Required Minimum Limits of Coverage:

Workers' Compensation	Statutory	
Employers' Liability	\$1,000,000	Each Accident
	\$1,000,000	Disease Policy Limit
	\$1,000,000	Disease Each Employee

Required Minimum Coverage(s):

- 1) Workers' Compensation Statutory Coverage must be provided on an "All States" basis.
- 2) Contractor and Sub-Contractors of any tier performing work within 500 feet of navigable water must have their Workers' Compensation Policy endorsed to provide coverage for both Jones Act Liability and Longshore and Harbor Workers' Compensation Act Liability.

Article 3. Commercial General Liability

Required Minimum Limits of Coverage:

\$2,000,000	Each Occurrence Limit
\$2,000,000	General Aggregate Limit
\$2,000,000	Products and Completed Operations Limit

Required Minimum Coverage(s):

- 1) Commercial General Liability (CGL) coverage form shall be 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 umbrella excess liability coverage form(s), provided that the umbrella excess liability coverage form(s) provide 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" Article 9 of this Section. Commercial General Liability and Umbrella Excess Liability forms must provide defense coverage for additional insureds.
- 4) Policy shall be endorsed with a waiver of subrogation endorsement(s) in compliance with the "Waiver of Subrogation" Article 10 of this Section.
- 5) Defense costs (Allocated Loss Adjustment Expense) must be included and in excess of the policy limits for all primary and Umbrella Excess Policies.
- 6) The additional insured endorsement shall include Products and Completed Operations Coverage with no limitation on when claims can be made. The coverage provided by the additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured Form CG 20 10 11 85 or CG 20 26 11 85 as determined by WMATA.

Article 4. Railroad Protective Liability Insurance (RRP)

NOT REQUIRED

Article 5. Business Auto Liability

Required Minimum Limits of Coverage:

\$5,000,000	Combined Single Limit
-------------	-----------------------

Required Minimum Coverage(s):

- 1) Business Auto Liability shall be written on ISO Business Auto Coverage Form CA 00 01 03 06, or its equivalent. Equivalency determination shall be made in WMATA's sole and unreviewable discretion.
- 2) Policy shall be endorsed with Additional Insured Endorsement(s) in compliance with the "Additional Insured" Article 9 of this Section.
- 3) Policy shall be endorsed with a Waiver of Subrogation Endorsement(s) in compliance with the "Waiver of Subrogation" Article 10 of this Section.
- 4) Business Auto Liability minimum Combined Single Limit requirements may be obtained through the combination of a Primary Business Auto Liability policy and an umbrella excess liability policy provided that the umbrella excess liability policy complies with items 1 through 3 above.

Article 6. Professional Errors and Omissions Insurance (Performing Tests and Reporting Analysis)

Professional Errors and Omissions Insurance with minimum limits of \$2,000,000 per claim covering actual or alleged negligent acts, errors or omissions committed by the Contractor in the 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.

Article 7. Contractor's Pollution Liability Insurance

Should Contractor, any Sub-Contractor, of any tier, or any supplier, be required by this contract to perform moving, removal, or handling of any hazardous materials, Contractor is required to maintain contractor's pollution liability Coverage as follows:

- 1) Minimum Policy Limits of \$3,000,000 each claim.
- 2) Coverage can be written on an "Occurrence" or "Claims Made" Basis.
- 3) Coverage can be written on "Non-Admitted" paper.
- 4) Policy shall be endorsed with additional insured endorsement(s) in compliance with the "Additional Insured" Article of this Section 9.
- 5) Policy shall be endorsed with a waiver of subrogation endorsement(s) in compliance with the "Waiver of Subrogation" Article of this Section 10.

Article 8. Builders' Risk

NOT REQUIRED

Article 9. Additional Insured(s)

Contractor and Sub-Contractors of every tier are required to add WMATA, its independent contractors, and the WMATA Board of Directors as additional insured(s) on all insurance policies purchased by Contractor and Sub-Contractors of every tier, with the exceptions of Workers' Compensation and Professional Liability.

- 1) Coverage provided to any Additional Insured shall be primary and non-contributory to any other insurance available to the Additional Insured.
- 2) Coverage provided to any Additional Insured shall be for claims arising out of both ongoing operations and products and completed operations hazard.
- 3) 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 where the contract scope of work takes place. The coverage provided by the additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured Form CG 20 10 11 85 or CG 20 26 11 85 as determined by WMATA.
- 4) Coverage available to the additional insureds is not limited to the minimum limits of coverage outlined in this document.

Article 10. Waiver of Subrogation

Contractor and Sub-Contractors of every tier are required to have all insurance policies purchased by Contractor and Sub-Contractors of every tier, endorsed to waive the insurance company's rights of recovery against WMATA, its independent contractors and the WMATA Board of Directors.

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

Article 11. Certificate of Insurance (COI)

Contractor shall provide WMATA an ACORD Certificate of Insurance (COI) as evidence that the insurance requirements of this Section have been satisfied. Certificates of Insurance shall be emailed to COI@WMATA.COM.

The cert holder box should read:

Washington Metropolitan Area Transit Authority
Office of Insurance, Room 8F

600 Fifth Street, NW
Washington, DC 20001

Additionally;

- 1) Satisfactory COI delineating all required insurance coverage requirements under this Section shall be delivered before the execution of this Contract by WMATA.
- 2) COI shall state the RFP# and the name of your WMATA Procurement contact.
- 3) Failure to provide satisfactory evidence of all required insurance may result in Contractor and/or subcontractors of every tier being denied access to work locations, including, but not limited to WMATA properties.
- 4) COI reflect total limits of insurance purchased by Contractor for the types of insurance required under this Contract.
- 5) Proposed material modifications to insurance required under this Section must be received by WMATA at least 30 days prior to the effective date of the proposed modifications to such insurance.
- 6) 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 so comply, and to continuously comply with these insurance requirements shall constitute a material breach of this Contract.
- 7) The ACORD COI shall specifically delineate the following:
 - a. Who is an Additional Insured under the policies delineated in this Section.
 - b. That each additional insured(s) as required under this Section is an additional insured on a primary and non-contributory basis.
 - c. That each additional insured(s) is an additional insured for ongoing operations of the Contractor in addition to the products and completed operations coverage.
 - d. That coverage providing a waiver of subrogation to each Additional Insured is compliant with the Waiver of Subrogation article of this Section.
 - e. That the issuing insurance company will mail written notice of cancellation of any of the required insurance policies to WMATA within 30 days of Cancellation. Use of "will endeavor to" as respects this requirement is not acceptable and must be deleted. Such notice shall be sent to:

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

Article 12 - Additional Insurance

- a. **MCS-90 Endorsement** for work involving the transportation or disposal of any hazardous material or waste off the jobsite. If the MCS-90 Endorsement is required, minimum auto liability limits of \$5,000,000 per occurrence are also required.
- b. **Non-Owned Disposal Site (NODS) Endorsement** providing coverage for the Contractor's legal liability arising out of pollution conditions at the designated non-owned disposal site.

M E M O R A N D U M

SUBJECT: Clarification#1

DATE: May 18, 2015

FROM: PRMT – Tamika Stidham

TO: Offerors



Refer to RFP CQ15160:

The solicitation is amended to reflect the following updates:

- Section 2, Paragraph 15 “General Insurance Requirements” has been amended
- All other terms and conditions of RFP CQ15160 remain unchanged.

Solicitation RFP CQ15160 is further amended to provide clarity and answers to the following questions/statements:

- 1) **Article 5** requires \$5,000,000 for auto liability and we currently carry \$2,000,000. However there is no need to have any additional insurance as we do not operate any vehicle on your premises.

WMATA’s Response: Auto liability limit of \$5,000,000 is required when contractor pollution liability and endorsement MCS-90 are required.

- 2) **Article 6** should not apply to us.

WMATA’s Response: The scope of work is testing and analyzing fluid samples. This will apply under this contract.

REVISED Article 6

Professional Errors and Omissions Insurance with minimum limits of \$2,000,000 per claim covering actual or alleged negligent acts, errors or omissions committed by the Contractor in the 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.

- 3) **Article 7** Pollution Liability: It appears their intent is to require the coverage for contractors doing cleanup/disposal work on their property. As we have nothing to do with their property, this should not be our requirement.

WMATA's Response: Contractor's Pollution Liability insurance is being required as relates to, but not limited to, handling and disposal of hazardous materials. Our intention is that the Contractor or Subcontractor is insured for this exposure.

- 4) **Article 12** Should be removed since we are not doing cleanup, removal or hauling of waste from their premises.

WMATA's Response: Article 12 a. and b. are required.

- 5) On page 83 Physical Properties and page 84 Diesel Fuel Others for Viscosity @ 400°C and 1000°C – these temperatures should be 40°C and 100°C

WMATA's Response: This was a typographical error. The correct temperature is "40°C and 100°C".

- 6) On page 83 under Additional Tests - Total Acid Number should indicate for Hydraulic and Transmission Fluids only

WMATA's Response: Constituents of used and new oils may have acidic properties that include but are not limited to inorganics (to include synthetic oils and lubricants), organic acids (a by-product of oil oxidation possibly causing internal component corrosion), detergents (to include weak acid soap salts) and other inhibitors thereby causing oil degradation. Additionally TAN (Total Acid Number) is listed under Item #3, entitled "Additional Tests" meaning the Authority *has the option* to request for this test; thereby not being limited to "Hydraulic and Transmission Fluids only."

- 7) On page 83 under Additional Tests - Total Base Number should indicate for Engines only

WMATA's Response: Constituents of used and new oils may have acidic properties that include but are not limited to inorganics (to include synthetic oils and lubricants), organics, detergents and other inhibitors thereby causing oil degradation. Additionally TBN (Total Base Number) is under Item #3, entitled "Additional Tests" meaning the Authority *has the option* to

request for this test; thereby not being limited to “engines only.” *Note: “Engines Only” TBN is measured solely by ASTM D 4739 vs. TBN for “non-engine” lubricants such as “new oil” that is also included in the Authority’s Fluid Analysis samples.*

- 8) On page 84 under Diesel Fuel Others - Cetane – should be Cetane Index

WMATA’s Response: Correct, with test methodology and specifics being that relative to ASTM D 4737. “Index” is duly noted and has been added reflecting “Cetane Index.”

- 9) On the Price Schedule Sheet, page 6, I am to provide a unit price for each category. The first line item is quantity 9,000 “Engine Oil and A/C Motor”. Do you want the test package to include ALL test specifications listed on page 83 (#1 Elements, #2 Physical Properties and #3 Additional tests)?

WMATA’s Response: Yes.

- 10) The next line item is quantity 9,000 “Transmission Fluid”. Would the test package include **ALL** test specifications listed on page 83 (#1 Elements, #2 Physical Properties and #3 Additional tests)?

WMATA’s Response: Yes. Transmission Fluid test requirements are as listed on page 83, items #1, #2 and #3.

- 11) For the line quantity 150 “Diesel Fluid”, Would the test package include #4 Diesel Fuel – Elements AND Diesel Fuel Others?

WMATA’s Response: Page 85 should read “Diesel Exhaust Fluid” (*aka DEF*).

WMATA’s Response: Diesel Exhaust Fluid (DEF) test requirements are as listed on page 85, items #8 and #9.

WMATA’s Response: Diesel Fuel test requirements are as listed on page 84, items #4 and #5.

We appreciate your participation in this important WMATA contract. Should you have any questions, please contact the Contract Administrator, Ms. Tamika Stidham at tstidham@wmata.com (preferred) or (202)962-6496.