

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES



INVITATION FOR BIDS

Solicitation Number: DCAM-16-CS-0146

**2017 PRESIDENTIAL INAUGURATION VIEWING STAND
Open Market**

Date Issued:	September 2, 2016
Pre-bid Conferences	Tuesday September 6, 2016 3:00pm – 5:00pm Capitol Hill Conference Room 1250 U Street, 4th Floor
	Wednesday September 7, 2016 3:30pm – 5:30pm Capitol Hill Conference Room 1250 U Street, 4th Floor
Deadline for Questions	4:00pm Friday September 9, 2016
Bid Submission Due:	September 16, 2016 at 2:00 p.m.
Bid Opening Date:	September 16, 2016 at 3:00 p.m.
Delivery of Bids:	Department of General Services Contracts and Procurement Division Attention: James Marshall Frank D. Reeves Center 2000 14 th Street NW, 8 th Floor Washington, DC 20009

EXECUTIVE SUMMARY

The District of Columbia Department of General Services (“Department” or “DGS”), Contracts and Procurement Division, is issuing an Invitation for Bid (“IFB”) to engage a highly qualified contractor to furnish all supervision, labor, materials and equipment necessary to construct the 2017 Presidential Inaugural Reviewing Stands as set forth in Section B, Scope of Work, and **Attachment A**, 2017 Presidential Inaugural Viewing Stands Drawings and Specifications.

A.1 Contract Type

The contract awarded pursuant to this IFB will be a fixed price type of contract.

A.2 Form of Contract

The Contract resulting from this IFB (the “Contract”) shall include:

- (a) The Award/Signature Page (**Attachment K**)
- (b) Acknowledgement of Amendments (See Award/Signature Page Section 13)
- (c) The IFB pages 2 – 61
- (d) 2017 Presidential Inauguration Viewing Stand Drawings and Specifications (**Attachment A**)
- (a) The Contractor’s Offer Letter and Bid Form (**Attachment B**)
- (b) Bidder/Offeror Certification Form (**Attachment C**)
- (c) Subcontracting Plan Form (**Attachment E**)
- (d) 2016 Living Wage Act Notice and Fact Sheet (**Attachment F**)
- (e) First Source Employment Agreement Form (**Attachment G**)
- (f) Davis Bacon Wage Determination (**Attachment H**)
- (g) Standard Contract Provisions (Construction Contract) (**Attachment L**)

A.3 Contractor's Compensation

Bidders shall submit an Offer Letter and Bid Form (**Attachment B**) to include the fixed lump sum price to complete the work. The lump sum price will be the Contractor’s sole method of compensation and as such shall be sufficient funding to cover all of the costs necessary to fully complete the Project, including, but not limited to, labor, materials, trade, subcontractor costs, insurance and bonding, home office overhead, travel and profit. The lump sum price shall also include sufficient funding for items that are not specifically identified in the Scope of Work or the 2017 Presidential Inauguration Viewing Stand Drawings and Specifications but which are reasonably inferable therefrom.

A.4 Procurement Schedule

The schedule for this procurement is as follows:

- Issue IFB September 2, 2016
- Pre-Bid Conferences September 6, 2016 3:00pm – 5:00pm
September 7, 2016 3:30pm – 5:30pm
- Deadline for Questions 4:00pm September 9, 2016
- Bids Due Date September 16, 2016 at 2:00 p.m.
- Bid Opening Date September 16, 2016 at 3:00 p.m.
- Estimated Notice of Award September 23, 2016

A.5 Project Schedule

- Mobilize to Lafayette Square: November 4, 2016
- Mobilize to 1350 Pennsylvania Avenue: December 5, 2016
- Structural Footers in place at Lafayette Square: November 11, 2016
- Presidential bubble glass: December 30, 2016
- Substantial Completion: January 6, 2017
- Final Completion: January 13, 2017
- Disassembly February 28, 2017

A.6 Attachments: The following documents are attached to the IFB and are hereby incorporated herein (the “Contract Documents”):

Attachment A	<p>2017 Presidential Inauguration Viewing Stand Drawings and Specifications</p> <ul style="list-style-type: none">- Mayor Viewing Stand Permit documents- Media Viewing Stand Permit documents- Presidential Viewing Stand Permit documents- 2017 Presidential Inaugural Stands drawing list- 2017 Presidential Stands – specifications manual- Lafayette Park – Site fencing/security plan- National Park Services – Maintenance and Construction Requirements- Mayor – 1350 Pennsylvania Avenue traffic plan from 2013 <p>Attachment A will be provided on Compact Disk (CD) to potential Bidders at the Pre-bid conferences. Potential Bidders shall be required to complete once the 2017 Presidential Inauguration Viewing Stand Drawings and Specifications Non-Disclosure Form (Attachment M) has been completed. Potential Bidders may also contact Farhad Rezaei, Contract Specialist, by phone at 202 671-2255 or by email at farhad.rezaei@dc.gov to obtain a CD</p>
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Attachment B	Form of Offer Letter and Bid Form
Attachment C	Bidder/Offeror Certification Form
Attachment D	Tax Affidavit
Attachment E	Subcontracting Plan Form
Attachment F	2016 Living Wage Act Notice and Fact Sheet
Attachment G	First Source Employment Agreement Form
Attachment H	Davis Bacon Wage Determination
Attachment I	Bid Bond Form
Attachment J	Bid Guaranty Certification
Attachment K	Award/Signature Page
Attachment L	Standard Contract Provisions (Construction Contract)
Attachment M	2017 Presidential Inauguration Viewing Stand Drawings and Specifications Non-Disclosure Form

SECTION B SCOPE OF WORK

B.1 Objectives

The District of Columbia Department of General Services (“DGS” or the “Department”) is seeking a highly qualified contractor to furnish all supervision, labor, materials and equipment necessary to construct the 2017 Presidential Inaugural Reviewing Stands as set forth in the Scope of Work below and the 2017 Presidential Inauguration Viewing Stands Drawings and Specifications (**Attachment A**). In addition, the Contractor shall comply with the National Park Service’s Maintenance and Construction Requirements and the Lafayette Park – Site fencing/security plan provided by the Secret Service (**Attachment A**). The 2017 Presidential Inauguration Viewing Stands Drawings and Specifications **Attachment A** will be made available on Compact Disk to potential Bidders upon execution of the non-disclosure agreement (**Attachment M**).

B.2 Summary

The Inaugural Reviewing Stands construction shall include but not be limited to the professional construction of Presidential Inauguration Parade Reviewing Stands for the President, Media and DC Mayor in three locations (the “Stands”). Such work shall include, but is not limited to, all required painting, appurtenances, mechanical, electrical, carpentry, building insulation, handrails and railings, testing and inspections, masonry unit assemblies, exterior fabric screen, earthwork structures, handrails, guardrails and balustrades. The Presidential Stands from the 2013 inauguration were disassembled and stored offsite. The Contractor shall retrieve the stored materials for the Stands from offsite storage, relocate to the project site and complete assembly and installation of the Stands at the project site, as well as complete disassembly of the stands and return to storage after the event. Some new construction, in addition to the reassembly of existing components, will be required.

B.2.1 Mayoral Stands

The Mayoral Stands will be located on the steps of the John A. Wilson Building and are comprised of three tiers. These stands are a combination of steel and wood framing with a flat rubber roof. Heating, television, and lighting requirements are included.

B.2.2 Presidential Stands

The Presidential Stands will be located in President’s Park and comprised of three tiers. Glass and armor plating will be provided by the Secret Service for installation by the Contractor, and heating is required. DGS will provide the Presidential Seal and structural steel to be installed on these stands.

B.2.3 Media Stands

The Media Stands will be located across from the Presidential Stands and are comprised of three tiers. These stands shall include heavier electrical requirements.

B.2.4 Time is of the Essence

Given the highly visible and important nature of this project, the Department is seeking a qualified Contractor with the requisite experience and capacity to complete the work within the given timeline. All on-site construction work shall begin on November 4, 2016 at the Presidential and Media locations, and December 5, 2016 at the DC Mayor location. **Substantial completion of construction is required by January 6, 2017, with all punch list work completed by January 13, 2017 in order to be ready for the 2017 Presidential Inauguration.**

Contractor shall achieve substantial completion status by providing DGS with all Final Inspection certificates.

Complete disassembly, disposal, recycling, and removal of all materials including complete site restoration of the affected project area, in accordance with this Statement of Work and the Drawings & Specifications, shall be performed after the inaugural event and within the contract period of performance which ends February 28, 2017.

B.2.5 Coordination of Work

Completion of this project shall require constant and careful coordination with at least the following entities: DGS; National Park Service (“NPS”); United States Park Police; Secret Service; Metropolitan Police Department (“MPD”); District Department of Transportation (“DDOT”); PEPCO; and the Department of Consumer and Regulatory Affairs (“DCRA”).

B.3 Staff and Supervision

B.3.1 Key Staff

The Contractor shall provide at a minimum the following Key Staff with the requisite qualifications to successfully complete the Project in accordance with the requirements and time constraints:

- a) Project Executive;
- b) Project Manager (to be devoted full-time 100% to this project);
- c) General Superintendent (to be devoted full-time 100% to this project); and
- d) Three (3) Site Foremen/Superintendents (1 each per site to be devoted full-time 100% to this project).

B.3.2 Other Staff and Subcontractors

The Contractor shall ensure the resources needed to provide at a minimum the following trades:

- a) Carpentry (must have access to a minimum of 35 workers);
- b) Painting (must have access to a minimum of 15 workers);
- c) Electrical (must have access to a minimum of 15 workers); and
- d) Scaffolding (must have access to a minimum of 18 workers).

B.4 Schedule

- B.4.1** The Contractor shall, before commencing work on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of partial payments until the Contractor submits the required schedule.
- B.4.2** The Contractor shall furnish sufficient forces, construction plant and equipment, and shall work such hours as necessary to insure prosecution of work in accordance with the approved schedule. If, in the opinion of the Contracting Officer, the Contractor falls behind in the scheduled progress or fails to achieve any of the key milestone dates set forth below, the Contractor shall take such steps as may be directed by the Contracting Officer to return the project to the planned schedule, without additional cost to the Government. Without limiting the generality of the preceding sentence, the Contracting Officer shall have the authority to require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained. The Contractor acknowledges that the rights conferred on the Contracting Officer by this section are: (i) a material inducement to the District; and (ii) above and beyond those normally conferred upon an Owner. The Contractor further acknowledges that it has included in its pricing sufficient funding to address the Contracting Officer's discretion under this section. The provisions of this subparagraph shall not be construed as prohibiting work on Saturdays, Sundays and holidays and, for work performed in the District of Columbia, Presidential Inauguration Day, if the Contractor so elects and if approved.
- B.4.3** Failure of the Contractor to comply with the requirements of the Contracting Officer under this heading shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

B.4.4 The Contractor shall meet the following key milestone dates:

- a) Mobilize to Lafayette Square: November 4, 2016
- b) Mobilize to 1350 Pennsylvania Avenue: December 5, 2016
- c) Structural Footers in place at Lafayette Square: November 11, 2016
- d) Presidential bubble glass: December 30, 2016
- e) Substantial Completion: January 6, 2017
- f) Final Completion: January 13, 2017

B.5 Specifications and Drawings for Construction

B.5.1 The Contractor shall keep on the site of the work a copy of the Drawings & Specifications, and of approved shop drawings, product data and samples and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between the Drawings & Specifications, or in case of discrepancy either within the figures, within the drawings, or within the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information he considers necessary, unless otherwise provided.

B.5.2 Shop drawings means drawings submitted to the Government by the Contractor, subcontractor, any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract.

- a) The Contractor shall:
 - i. Check all drawings furnished immediately upon receipt;
 - ii. Compare all drawings and verify the figures before laying out the work;
 - iii. Promptly notify the Contracting Officer of any discrepancies;
 - iv. Be responsible for any errors that might have been avoided by complying with this paragraph; and
 - v. Reproduce and print contract drawings and specifications as needed.
 1. In general
 - a. Large scale drawings shall govern small scale drawings; and
 - b. The Contractor shall follow figures marked on drawings in preference to scale measurements.
 2. Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the Drawings & Specifications, or that are customarily performed,

shall not relieve the Contractor from performing such omitted or misdescribed details of the work. The Contractor shall perform such details as if fully and correctly set forth and described in the Drawings & Specifications.

3. The work shall conform to the Drawings & Specifications included as part of this contract.
4. The Contractor shall submit to the Contracting Officer for approval shop drawings, product data and samples as required under the various sections of this Project Manual. The Contractor shall coordinate all such submittals, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings, product data, or samples submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for re-submission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such submittals, nor from responsibility for complying with the requirements of this contract.

B.6 Conformance with Laws Policies, and Regulations:

It shall be the responsibility of the Contractor to perform the requirements of the contract in conformance with the Department's Procurement Regulations (27 DCMR § 4700 *et seq.*) and all statutes, laws, codes, ordinances, regulations, rules, requirements and orders of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the Contractor to determine the Department's procurement regulations, statutes, laws, codes, ordinances, regulations, rules, requirements and orders that apply and their effect on the Contractor's obligations thereunder.

B.6.1 Living Wage Act

The Living Wage Act is applicable to this Contract. As such, the Contractor and its subcontractors shall comply with the wage and reporting requirements imposed by that Act (**Attachment F**).

B.6.2 Davis-Bacon Act

The Davis-Bacon Act is applicable to this Project. As such, the Contractor and its trade subcontractors shall comply with the wage and reporting requirements imposed by this Act. Applicable wage determination rates are attached hereto as **Attachment H**.

B.6.3 Apprenticeship Act

The Apprenticeship Act shall comply with this contract and the Contractor and all of its trade subcontractors shall be required to comply with that act. In addition, thirty-five percent (35%) of all apprentice hours worked on the Project shall be worked by District residents.

B.6.4 Licensing, Accreditation and Registration:

The Contractor and all of its subcontractors shall comply with all applicable District of Columbia, state and federal licensing, accreditation, and registration requirements and standards necessary for the performance of the contract.

B.6.5 Standard Contract Provisions:

The Standard Contract Provisions for use with Specifications for District of Columbia Government Construction Projects is incorporated into this IFB (**Attachment L**)

B.7 General Conditions

B.7.1 Liquidated Damages

- a) If the Contractor fails to deliver substantially complete stands no later than January 6, 2017, the Contractor shall pay liquidated damages to the Government in the amount of \$4,344.00 for each calendar day of delay. The foregoing liquidated damages shall only be excused if there is a Substantial Force Majeure Event and which cannot be overcome through the use of commercially reasonable best efforts. As used in the preceding sentence, the term “Substantial Force Majeure Event” shall mean only the following: (i) civil unrest; (ii) acts of war or terrorism; (iii) pandemics; or (iv) weather events that occur less frequently than once every fifty (50) years in the Washington, DC metropolitan area according to NOAA data.
- b) If the Contractor removes or reassigns any of the key personnel (excluding, however, instances where such personnel become unavailable due to death, disability, or separation from the employment of the Contractor or any affiliate of the Contractor) without the prior written consent of the Department, the Contractor shall pay to the Department the sum of Fifty Thousand Dollars (\$50,000) as liquidated damages. These liquidated damage amount shall not bar recovery of any other damages, costs or expenses other than the Department’s internal administrative costs. In addition, the Department shall have the right, to be exercised in its sole discretion, to remove, replace or to reduce the scope of services of the Contractor in the event that a member of the key personnel has been removed or replaced by the Contractor without the consent of the Department.

B.7.2 Advertising

- a) Due to the sensitive nature of this project, the selected Contractor is prohibited from including or otherwise using its participation in the project or its association with the Inauguration, the United States Secret Service, United States Park Police, National Park Service in any advertising or promotional materials (including, but not limited to, print media, advertisements, announcements or websites) without the express prior approval of the Contracting Officer prior to publication. Without limiting the generality of the foregoing, the selected Contractor shall not: (i) make any representation through advertising, web or otherwise that suggests or is could be reasonably expected to suggest sponsorship, approval or endorsement of any product or service by the District of Columbia or Federal Government, or any Department, Agency or instrumentality thereof; or (ii) include images of the White House, John A. Wilson building, or any other related building or government property in the advertising or promotional materials
- b) The Contractor, by signing the contract for this project, agrees to comply with the foregoing and to submit any proposed advertising or promotional copy connected in any manner with this contract and/or the White House, Lafayette Park, the John A. Wilson Building, or any other related building or government property to the Contracting Officer for approval prior to publication.

B.7.3 Disclosure of Information to the General Public

- a) Promptly after receiving any request from the general public for information on or data derived from this contract, the Contractor shall notify DGS Capital Construction Services Division. The Contractor shall cooperate with DGS in compiling or collecting information or data if DGS determines the information or data to be releasable.
- b) General public, as defined in this Statement of Work, are those groups or individuals who are not authorized by law or regulation to have access to the contract documents.
- c) This condition is not intended to prevent the Contractor from providing contract information or data which the Contractor is required to provide in order to conduct its business, such as insurance, banking, subcontracting.

B.7.4 Dissemination of Contract Information

- a) Unless otherwise provided in this contract, the Contractor, or any subcontractor at any tier to this contract, shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the results of, conclusions made pursuant to, or performance under this contract without prior written consent of the DGS Contracting Officer, until such time as the Government may have released such information to the public.

B.7.5 Confidentiality Requirement

- a) The Contractor agrees that any information supplied by the DGS or its Federal Stakeholders to the Contractor shall be considered confidential and/or proprietary, and

agrees to hold such information in confidence. The Contractor further agrees not to disclose such information to a third party without the prior written consent of a DGS Contracting Officer.

B.7.6 Personal Identity Verification of Contractor Personnel

- a) By entering into this contract, the Contractor agrees to comply with all federal laws that apply to the Contractor's activities, including immigration laws, employing only individuals who are eligible to work in the United States and maintaining a signed copy of I-9 Employment Eligibility Verification for each employee.
- b) The Employment Eligibility Verification Program (E-Verify), operated by the Department of Homeland Security and the Social Security Administration, allows U.S. employers to verify name, date of birth, and Social Security Number, as well as immigration information for non-citizens, against Federal databases in order to verify employment eligibility. The Contractor, and its subcontractor(s), shall use this program to verify the employment eligibility of their personnel performing work under this contract. Information about the program can be obtained at www.dhs.gov/E-Verify or by calling 1-888-464-4218.
- c) Upon award of this contract, a copy of the E-Verify case details document evidencing "employment authorized" (final verification result) shall be provided with each request for a DGS ID badge. In the absence of a case details document evidencing "employment authorized" (final verification result), the Contractor/Subcontractor shall provide a 'User Audit Report' showing information concerning the individual named on the request for a DGS ID badge.
 1. The Federal Stakeholders do not follow the exceptions to the E-Verify federal contractor rule which exclude certain Contractor employees from E-Verify Program verification. The Contractor, and its Subcontractors, are required to use E-Verify for *all* employees working on this contract.
- d) The Contractor, and its Subcontractor(s), shall insert these provisions in all subcontracts when the subcontractor is required to have physical access to a DGS facility or access to a DGS information system. The Contractor shall require all subcontractors to comply with these provisions and submit the documentation noted above when subcontractor employee badge requests are made.
- e) DGS reserves the right to monitor compliance with the terms of these provisions without notice and at any time during the period of performance under this contract.

B.7.7 Transmission or Posting of Drawings/Specifications

- a) Due to security issues, the Contractor is strictly prohibited from placing or transmitting drawings and specifications on the internet or modem without express permission from DGS.

B.7.8 Site Mobilization

- a) Contractor is to provide one (1) site trailer for use by DGS COTR or Contracting Officer only. The configuration of this trailer should allow for 10-12 project team members to gather for weekly progress meetings.
 - a. The trailer should be heated and have access to electricity and hi-speed internet connectivity.
 - i. Use of cellular internet devices is not permitted unless approved in advance and in writing by the Contracting Officer, in his or her sole and absolute discretion, due to security configuration in the Lafayette Park site.

B.8 Special Qualifications

The Contractor shall meet the following the following minimum special qualifications and provide the information described below with the Contractor's submission (See Section F.5 k):

- 1) Prime Contractor Corporate Experience and Expertise
 - a) Prime Contractors and the key personnel proposed for this project must demonstrate at a minimum an appropriate level of corporate experience and a documented pattern of past successes on relevant construction projects. Because of the statutory requirement that the 2017 Presidential Inaugural takes place at noon on January 20th, 2017, there is zero tolerance for failure to achieve substantial completion of the Inaugural Reviewing Stands on the scheduled date of January 6, 2017. Before making a contract award, the government must have an extremely high level of confidence that the chosen Contractor will successfully complete construction of the Inaugural Stands on time.
 - i. Provide descriptions of three (3) current or completed contracts performed by the prime Contractor and its key personnel within the past ten (10) years from the date of this solicitation which are similar in size, scope, complexity, and importance to the work contemplated by this solicitation, and which involve one or more of the following characteristics:
 - 1. Erection and subsequent removal of similar structures as provided in this solicitation;
 - 2. High profile projects of national and/or global notoriety, significance, and importance; and
 - 3. Complex projects leading up to a set event date or unmovable deadline. Complex projects are defined as those projects characterized by a very complicated or involved arrangement of parts requiring the use of multi-trade staff to accomplish it; and which may have also experienced extreme weather

conditions and/or tight security restrictions placed on the project site.

- ii. For each project presented, please provide at a minimum the following information:
 - 1. Project identification, location;
 - 2. Owner or contracting agency name, address, telephone number and other pertinent contact information (i.e. email address) to allow for independent verification by DGS;
 - 3. Photograph of project;
 - 4. Date of award and completion;
 - 5. Contract award amount/final amount and description of any differences between the award amount and the final amount;
 - 6. Key personnel/subcontractors involved;
 - 7. Detailed description of the project explaining its relevancy to this project; include any notable problems or issues that were encountered and how they were addressed, timeliness of completion and degree of client satisfaction; describe work done by each major subcontractor (if any) and how your company managed each subcontractor relationship to ensure successful completion; and
 - 8. Point of contact at agency/owner and phone number.

2) Key Subcontractor Corporate Experience and Expertise

- a) Prime Bidder's Key Subcontractor(s), if any, performing the (1) carpentry / woodworking; (2) painting; (3) electrical; and (4) scaffolding shall provide the information described below:

- i. Provide descriptions of three (3) current or completed contracts or subcontracts performed by the Key Subcontractor within the past ten (10) years from the date of this solicitation. Each project shall include at a minimum the following information:
 - 1. Project identification, location;
 - 2. Owner or contracting agency name, address, telephone number and other pertinent contact information (i.e. email address) to allow for independent verification by DGS;
 - 3. Photograph of project;
 - 4. Date of award and completion;
 - 5. Contract award amount/final amount and description of any differences between the award amount and the final amount;
 - 6. Key personnel/subcontractors involved;
 - 7. Detailed description of the project explaining its relevancy to this project; include any notable problems or issues that were encountered and how they were addressed, timeliness of completion and degree of client satisfaction; describe work done by each major subcontractor (if any) and how your

company managed each subcontractor relationship to ensure successful completion; and

8. Point of contact at agency/owner and phone number.

SECTION C ECONOMIC INCLUSION

C.1 Preference for Small, Local and Disadvantaged Business Enterprises

Under the provisions of the “Small and Certified Business Enterprise Development and Assistance Act of 2014”, D.C. Official Code § 2-218.01 et seq., as amended (“Act”, as used in this Section C), the District shall apply preferences in evaluating bids from businesses that are certified by the Department of Small and Local Business Development (DSLBD) pursuant to Part D of the Act.

C.1.1 Application of Preferences

Under the provisions of the Act, preferences shall be given to Contractors that are certified by the Department of Small and Local Business Development as being a small business enterprise, having resident business ownership, having a longtime resident business, being a local business enterprise, being a disadvantaged business enterprise, or being a local business enterprise with its principal office located in an enterprise zone. (A copy of the certification acknowledgment letter must be submitted with the Contractor’s Bid.) A percentage reduction in price shall be granted to each bidder as follows:

- (a) Three (3) percent reduction for a small business enterprise (SBE);
- (b) Five (5) percent for a resident-owned business (RBO);
- (c) Ten (10) percent for a longtime resident business (LRB);
- (d) Two (2) percent for a local business enterprise (LBE);
- (e) Two (2) percent for a local business enterprise with its principal office located in an enterprise zone (DZE);
- (f) Two (2) percent for a disadvantaged business enterprise (DBE);
- (g) Two (2) percent for veteran-owned business (VOB); and
- (h) Two (2) percent for local manufacturing business enterprise (LMBE).

C.1.2 Maximum Preference Points Awarded

Notwithstanding the availability of the preceding preferences, the maximum total preference to which a certified business enterprise (CBE) is entitled under the Act is twelve per cent (12%) for Bids submitted in response to this IFB. There will be no preference awarded for subcontracting by the prime contractor with CBEs.

C.1.3 Preferences for Certified Joint Ventures

A certified joint venture will receive preferences as determined by DSLBD in accordance with D.C. Official Code § 2-218.39a (h).

C.1.4 Verification of Contractor’s Certification as a Certified Business Enterprise

Any bidder seeking to receive preferences on this solicitation must be certified at the time of submission of its Bid. The CO will verify the Contractor’s certification with DSLBD, and the Contractor should not submit with its bid any additional documentation regarding its certification as a certified business enterprise.

- (a) Any vendor seeking certification in order to receive preferences under this solicitation should contact the:
 - Department of Small and Local Business Development
 - ATTN:** CBE Certification Program
 - 441 Fourth Street, NW, Suite 850N
 - Washington DC 20001
- (b) All vendors are encouraged to contact DSLBD at (202) 727-3900 if additional information is required on certification procedures and requirements.

C.2 LSDBE Utilization

C.2.1 The mandatory subcontracting requirements are as follows:

- (a) Unless the Director of the Department of Small and Local Business Development (DSLBD) has approved a waiver in writing in accordance with D.C. Official Code § 2-218.51, for all contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted to qualified small business enterprises (SBEs).
- (b) If there are insufficient SBEs to completely fulfill the requirement of paragraph (a)(1), then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any qualified certified business enterprises (CBEs); provided, however, that all reasonable efforts shall be made to ensure that SBEs are significant participants in the overall subcontracting work.
- (c) A prime contractor that is certified by DSLBD as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of sections C.2.1 (a) and C.2.1 (b) of this clause.
- (d) Except as provided in C.2.1 (e) and C.2.1 (f), a prime contractor that is a CBE and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A CBE prime contractor that performs less than 35% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- (e) A prime contractor that is a certified joint venture and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A certified joint venture prime contractor that performs less than 50% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- (f) Each CBE utilized to meet these subcontracting requirements shall perform at least 35% of its contracting effort with its own organization and resources.
- (g) A prime contractor that is a CBE and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the on-site work with its own organization and resources if the contract is \$1 million or less.

- (h) A list of Certified Business Enterprises can be found on the District of Columbia, Department of Small and Local Business Development website at <http://dslbd.dc.gov/DC/DSLBD>, click on “Doing Business in the District”, click on “Find CBE Certified Contractors.”

C.2.2 Subcontracting Plan

If a bidder is required by law to subcontract under this Contract, it must submit a subcontracting plan in accordance with D.C. Official Code § 2-218.46 (d). The plan shall be submitted as part of the bid and may only be amended with the prior written approval of the Contracting Officer (CO) and Director of DSLBD. Any reduction in the dollar volume of the subcontracted portion resulting from an amendment of the plan shall inure to the benefit of the District. Each subcontracting plan shall include the following:

- (a) The name and address of each subcontractor;
- (b) A current certification number of the small or certified business enterprise;
- (c) The scope of work to be performed by each subcontractor; and
- (d) The price that the prime contractor will pay each subcontractor.

C.2.3 Copies of Subcontracts

Within twenty-one (21) days of the date of award, the Contractor shall provide fully executed copies of all subcontracts identified in the subcontracting plan to the CO, Project Manager, District of Columbia Auditor and the Director of DSLBD.

C.2.4 Subcontracting Plan Compliance Reporting

If the Contractor has a subcontracting plan required by law for this contract, the Contractor shall submit a quarterly report to the CO, City Administrator (CA), District of Columbia Auditor and the Director of DSLBD. The quarterly report shall include the following information for each subcontract identified in the subcontracting plan:

- (a) The price that the prime contractor will pay each subcontractor under the subcontract;
- (b) A description of the goods procured or the services subcontracted for;
- (c) The amount paid by the prime contractor under the subcontract; and
- (d) A copy of the fully executed subcontract, if it was not provided with an earlier quarterly report.

C.2.4.1 If the fully executed subcontract is not provided with the quarterly report, the prime contractor will not receive credit toward its subcontracting requirements for that subcontract.

C.2.5 Annual Meetings

Upon at least 30-days written notice provided by DSLBD, the Contractor shall meet annually with the CO, Project Manager, District of Columbia Auditor and the Director of DSLBD to provide an update on its subcontracting plan.

C.2.6 Notices

The Contractor shall provide written notice to the DSLBD and the District of Columbia Auditor upon commencement of the contract and when the contract is completed.

C.2.7 Enforcement and Penalties for Breach of Subcontracting Plan.

C.2.7.1 Contractor shall be deemed to have breached a subcontracting plan required by law, if the contractor (i) fails to submit subcontracting plan monitoring or compliance reports or other required subcontracting information in a reasonably timely manner; (ii) submits a monitoring or compliance report or other required subcontracting information containing a materially false statement; or (iii) fails to meet its subcontracting requirements.

C.2.7.2 A contractor that is found to have breached its subcontracting plan for utilization of CBEs in the performance of a contract shall be subject to the imposition of penalties, including monetary fines in accordance with D.C. Official Code § 2-218.63.

C.2.7.3 If the CO determines the Contractor's failure to be a material breach of the contract, the CO shall have cause to terminate the Contract for default pursuant to the terms set forth in the Standard Contract Provisions.

C.3 Residency Hiring Requirements for Contractors & Subcontractors.

C.3.1 At least fifty-one percent (51%) of the Contractor's team and every sub-consultant's employees hired after the Contractor enters into a contract with the Department, or after such sub-consultant enters into a contract with the Contractor, to provide the required goods or services, shall be residents of the District of Columbia. In addition, the Contractor shall use commercially reasonable best efforts to comply with the workforce percentage requirements established by the adopted amendments to the First Source Employment Agreement Act of 1984 (D.C. Code §§ 2-219.01 *et seq.*) and any implementing regulations, including, but not limited to, the following requirements for contracts in excess of Five Million Dollars:

- i. At least 20% of journey worker hours by trade shall be performed by District residents;

- ii. At least 60% of apprentice hours by trade shall be performed by District residents;
- iii. At least 51% of skilled laborer hours by trade shall be performed by District residents; and
- iv. At least 70% of common laborer hours by trade shall be performed by District residents.

C.3.2 Upon execution of the contract, the Contractor and all of its member firms, if any, and each of its subcontractors and sub-consultants shall submit to the Department a list of current employees that will be assigned to work under the contract, the date that they were hired and whether or not they live in the District of Columbia.

C.3.3 The Contractor shall comply with subchapter X of Chapter II of Title 2, and all successor acts thereto, including by not limited to the Workforce Intermediary Establishment and Reform of the First Source Amendment Act of 2011, and the rules and regulations promulgated thereunder. The Contractor and all member firms, subcontractors, tier subcontractors, sub-consultants, and suppliers with contracts in the amount of \$300,000 or more shall be required to comply with the following: (i) enter into a First Source Employment Agreement (**Attachment G**) with the D.C. Department of Employment Services (“DOES”) upon execution of the contract; (ii) submit an executed First Source Agreement to DOES prior to beginning work; (iii) make best efforts to hire at least 51% District residents for all new jobs created under the contract; (iv) list all employment vacancies with DOES; (v) submit monthly compliance reports to DOES by the 10th of each month; (vi) at least 51% apprentices and trainees employed must be residents of the District registered in a program approved by the D.C. Apprenticeship Council; and (vii) trade contractors and subcontractors with contracts in the amount of \$500,000 or more must register an apprenticeship program with the D.C. Apprenticeship Council.

C.4 Subcontracting Administration

The Contractor shall, through Subcontractors or its own forces, perform all of the Work necessary to construct the Project so that it is complete, safe, and properly built in strict accordance with the Contract Documents. Without limitation, the Contractor shall provide all of the labor, materials, tools, equipment, temporary services, and facilities necessary to complete the construction and installation of the Project. The Work shall be carried out in a good and workmanlike, first-class manner, and in timely fashion. All materials and equipment to be incorporated into the Project shall be new and previously unused, unless otherwise specified, and shall be free of manufacturing or other defects. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. If required by the Department, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

C.4.1 It is understood that the Contractor may, subject to the terms of this Contract, including but not limited to Sections C.2. and C.3 of this IFB, subcontract a portion of the work to a Subcontractor pursuant to written contract with the Contractor; provided, however, that the Contractor shall not be permitted to subcontract all or substantially all of the Work to a single Subcontractor.

C.4.2 The Department may at any time direct the Contractor to terminate any Subcontractor or supplier performing services or providing goods on the Project and may require the Contractor to replace such Subcontractor or supplier.

C.4.3 The Department may elect to review the form of any such subcontract or agreement with a material supplier to insure that such contract incorporates the contractual provisions required by this Agreement.

C.4.4 The Contractor shall solidify all services and materials for the Project over \$25,000 (other than Self-Performed Work) via written subcontracts or, for contracts requiring provision of materials or equipment only, and not labor, via written supply agreements. All subcontracts and supply agreements shall include the following provisions:

C.4.5 The Contractor agrees that all of its subcontracts and supply agreements for Work to be performed within the scope of this Agreement shall include the following provisions:

C.4.5.1 that, to the extent of the Work or supply within the Contract's scope, the Subcontractor or supplier is bound to the Contractor for the performance of all obligations which the Contractor owes the Department under the Contract;

C.4.5.2 that the Subcontractor or supplier is not in privity with the Department and shall not seek compensation directly from the Department on any third-party beneficiary, quantum meruit, or unjust enrichment claim, or otherwise, except as may be permitted by any applicable mechanic's lien law;

C.4.5.3 that the Department is a third-party beneficiary of the subcontract or supply agreement, entitled to enforce any rights thereunder for its benefit;

C.4.5.4 that the Subcontractor or supplier consents to assignment of its agreement to the Department, at the Department's sole option, if the Contractor is terminated for default;

- C.4.5.5** that the Subcontractor or supplier shall comply immediately with a written order from the Department to the Contractor to suspend or stop work;
- C.4.5.6** that the Subcontractor or supplier shall maintain records of all Work it is requested or authorized to do on a time and material or cost-plus basis, or with respect to claims that it has asserted on a time and materials or cost-plus basis, during the Project and for a period of time specified in the General Conditions and requiring the Subcontractor or supplier to make those records available for review or audit by the Department during that time;
- C.4.5.7** that the Subcontractor shall obtain and maintain, throughout the Project, workers' compensation insurance in accordance with the laws of the District of Columbia (This provision is not applicable to supply agreements.);
- C.4.5.8** that, if the Department terminates the Contract for convenience, the Contractor may similarly terminate the subcontract or supply agreement for convenience, upon seven (7) days' written notice to the Subcontractor or supplier, and that the Subcontractor or supplier shall, in such a case, be entitled only to the costs set forth in the Standard Contract Provisions;
- C.4.5.9** that the Department shall have the right to enter into a contract with the Subcontractor or supplier for the same price as its subcontract or supply agreement price less amounts already paid, if the Contractor files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it;
- C.4.5.10** that the Subcontractor or supplier shall not be entitled to payment for defective or non-conforming work, materials or equipment, and shall be obligated promptly to repair or replace non-conforming work, materials or equipment at its own cost;
- C.4.5.11** that Subcontractors and suppliers promptly pay Subcontractors and suppliers at lower tiers, imposing upon the Subcontractors and suppliers a duty to pay interest on late payments, and barring reimbursement for interest paid to lower tier Subcontractors or suppliers due to a Subcontractor's or supplier's failure to pay them in timely fashion;
- C.4.5.12** that all Subcontractors at all tiers comply with the provisions of Sections C.2 and C.3 (LSDBE Utilization and Residency Hiring Requirements, respectively); provided, however, that the Contractor may, in its reasonable discretion impose a different LSDBE subcontracting goal on some or all of its Subcontractors; provided, further, however, that

nothing in this provision shall be deemed to excuse the Contractor from using its best efforts to achieve the LSDBE subcontracting goal on an aggregate basis for the Project;

- C.4.5.13** that allows the Contractor to withhold payment from the Subcontractor if the Subcontractor does not meet the requirements of the Subcontract;
- C.4.5.14** that requires a lien and claim release as well as waiver provisions substantially identical to those in this Contract.
- C.4.5.15** Within seven (7) days of receiving any payment from the Department including amounts attributable to Work performed, or materials or equipment supplied, by a Subcontractor or supplier, the Contractor shall either pay the Subcontractor or supplier for its proportionate share of the amount paid to the Contractor for the Subcontractor's or supplier's Work or materials or equipment, or notify the Department and the Subcontractor or supplier, in writing, of the Contractor's intention to withhold all or part of the payment and state the reason for the withholding. All monies paid to the Contractor under the Contract shall be used first to pay amounts due to Subcontractors or suppliers supplying labor or materials for the Project and only money remaining after such payments are made may be retained by the Contractor.
- C.4.5.16** Monies paid to the Contractor for work performed or goods provided by a Subcontractor or supplier shall be deemed to have been fully paid to the Subcontractor or supplier. Any interest paid to Subcontractors or suppliers because the Contractor has failed to pay them in timely fashion shall not entitle the Contractor to a Change Order.
- C.4.5.17** The Contractor shall not substitute or replace any Subcontractor or supplier certified by DSBLD without the Department's prior written consent.
- C.4.5.18** The Department has the right to contact Subcontractors or suppliers at all tiers or material or equipment suppliers directly to confirm amounts due and owing to them or amounts paid to them for Work on the Project, and to ascertain from the Subcontractors or suppliers at all tiers their projections of the cost to complete their Work or to supply their material or equipment, or the existence of any claims or disputes. In doing so the Department shall not issue any directions to Subcontractors or suppliers at any tier.

SECTION D LUMP SUM PRICE

D.4.1 Lump Sum Price

The Contractor shall be paid a lump sum price to Fully Complete the Project.

D.4.2 Certain Work Included in the Lump Sum Price

The Contractor acknowledges and understands that the Lump Sum Price is based on the Scope of Work (**Section B**), including the 2017 Presidential Inauguration Viewing Stand Drawings and Specifications (**Attachment A**), which are incorporated into this Contract. It is understood and agreed that the Lump Sum Price represents the Contractor's offer to Fully Complete the Project. The Parties acknowledge and agree that it is their intent to have the Contractor provide all labor, materials, and equipment to fully complete the project as contemplated in the Contract Documents, for the Lump Sum Price and consistent with the Project Schedule. In furtherance of such intent, the Contractor hereby assumes the risks associated with and shall be responsible for (i) any changes in market conditions that affect the cost of labor or materials; (ii) coordination issues between the drawings; (iii) elements of work not shown on the Contract Documents, but which are reasonably inferable from the Contract Documents; (iv) cost associated with acceleration of the work and expediting of materials necessary to meet the Project Schedule which are the result of anything other than an Excusable Delay; and (v) the risk of subcontractor default or non-performance. It is understood and agreed by the parties that items (i) through (v) listed in the preceding sentence are not intended to be an exclusive list of the risks assumed by the Contractor and that such items represent a partial list of the risks assumed by the Contractor.

D.4.3 Review of Contract Documents

The Department has selected the Contractor because of its special expertise in constructing similar projects. Before agreeing to the Lump Sum Price, the Contractor reviewed the Bid Set for accuracy, constructability, and completeness and was required to bring such deficiencies to the attention of the Department and its Architect/Engineer to address any such deficiencies. The Contractor acknowledges that any additional deficiencies identified after agreement upon the Lump Sum Price shall not be the basis for a change in the Lump Sum Price or delaying the Project Schedule to the extent that any such deficiencies in the Drawings and Specifications could have been identified by such review by a competent Contractor.

D.4.3.1 During the course of the Work, should any errors, omissions, ambiguities or discrepancies be found on the Contract Documents, or should there be found any discrepancies between the Contract Documents to which Contractor has failed to call attention before agreeing to the Lump Sum Price, the Contractor shall bring any such errors, omissions, ambiguities or discrepancies to the attention of Department, and the Department will interpret the intent of the

Contract Documents. Contractor hereby agrees to abide by and to carry out the Work in accordance with the decision of the Department. Wherever the intent of the Contract Documents is not indicated clearly or there is a conflict between the Contract Documents, the Contractor will be held to have included in the Lump Sum Price the more expensive material or method of construction and the quantity of material.

D.4.3.2 If any item or material shown on the Drawings is omitted from the Specifications, or vice versa (except when the Drawings and Specifications clearly exclude such omitted item), and such item or material is required to complete the detail shown or specified, and if additional details or instructions are required to complete the Work, then the Contractor is deemed to have made an allowance in the Lump Sum Price for the completion of the Work, consistent with adjoining or similar details and the best accepted practices of the trade for projects of this type and quality, whichever is more expensive, unless such additional information was not reasonably inferable from the Contract Documents. Without limiting the Contractor's other duties, in the case of a difference among the Contract Documents as to the Contractor's obligations, or an inconsistency in the Contract Documents, the Department will decide which requirement governs; however, the Contractor shall assume that the more expensive material or method of construction and the quantity of material shall be required without a change to the Lump Sum Price.

D.4.3.3 Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly examined all Contract Documents, including all details, plans, elevations, sections, schedules and diagrams, has visited the site, has become familiar with local conditions under which the Work is to be performed, has correlated personal observations with the requirements of the Contract Documents, and has satisfied himself before executing the Contract as to all matters that can affect the Work and its cost, including: (1) the nature of the land and subsoil; (2) the form and nature of the site and surrounding areas; (3) details and levels of existing pipe lines, conduits, sewers, drains, cables or other existing services; (4) the quantities, nature and availability of the materials, tools, equipment and labor necessary for the completion of the Work; (5) the means of access to the site and any accommodation he may require; (6) uncertainties of weather and physical conditions at the site; and in general to have himself obtained all necessary information as to risk contingencies, climatic, hydrological and natural conditions and other circumstances which may influence or affect his performance of the Work. The Contractor waives any and all claims against the Department arising from or relating to such contingencies and conditions that are reasonably inferable from the Contract Documents,

in light of the required preconstruction review and inspection and the Contractor's expertise in the field of construction.

D.4.4 Basis of Lump Sum Price

The Lump Sum Price is based on the following documents that have been incorporated into the Contract:

D.4.4.1 Attachment A

2017 Presidential Inauguration Viewing Stands Drawings and Specifications

D.4.4.2 Attachment B:

Offer Letter and Bid Form

D.4.4.3 Attachment E:

Subcontracting Plan and Subcontracting Agreements

D.4.4.4 Attachment F:

Living Wage Act Notice and Fact Sheet

D.4.4.5 Attachment H:

Davis Bacon Wage Rates

**SECTION E
EVALUATION AND AWARD CRITERIA**

E.1 CONTRACT AWARD.

- E.1.1** This procurement is being conducted in accordance with the provisions of §4720 of the Department's Procurement Regulations (27 DCMR, Chapter 47).
- E.1.2** The Department reserves the right to accept or reject bids resulting from this solicitation. The Chief Contracting Officer may reject all bids or waive any minor informality or irregularity in bids received whenever it is determined that such action is in the best interest of the District.
- E.1.3** The Department intends, but is not obligated to, make an award to the qualified Contractor whose bid is responsible and who is responsive to the IFB and is most advantageous to the Department considering price and the price-related evaluation factors identified in the IFB and as submitted in the Offer Letter and Bid Form (**Attachment B**).

SECTION F
BID ORGANIZATION AND SUBMISSION

This section outlines specific information necessary for the proper organization and manner in which Contractor's bid submissions shall be proffered. References are made to other sections in this IFB for further explanation.

F.1 Bid Identification

Bids shall be proffered with an original and three (3) hard copies. The Contractor's submission shall be placed in a sealed envelope conspicuously marked: **"Solicitation Number: DCAM-16-CS-0146 – 2017 Presidential Inauguration Viewing Stands"**

F.2 Delivery or Mailing of Bids:

Submissions shall be delivered or mailed to:

Department of General Services
Attn: James H. Marshall
Lead Contract Specialist
2000 14th Street, NW, 8th Floor
Washington, D.C. 20009
Phone: (202) 727-7119

F.3 Date and Time for Receiving Bids

Submissions shall be received no later than **2:00 p.m.** local time on **September 16, 2016**. The Contractor assumes the sole responsibility for timely delivery of its submission, regardless of the method of delivery.

F.4 Bid Opening

A public Bid Opening will be held at **3:00 p.m.** on **September 16, 2016** at 1250 U Street, NW, 4th Floor Capitol Hill Conference Room.

F.5 Attachments and Other Bid Documents

The Contractor shall complete and include the following attachments with their Bid:

- (a) Award/Signature Page (**Attachment K**)
- (b) Acknowledgement of Amendments (Award/Signature Page Section 13)
- (c) The IFB pages 2 - 61
- (d) Form of Offer Letter and Bid Form - Each Contractor shall submit a Form of Offer Letter and Bid Form (**Attachment B**);
- (e) Bidder/Offeror Certification Form – Each Contractor shall submit a Bidder/Offeror Certification Form (**Attachment C**);
- (f) Tax Affidavit - Each Contractor shall submit a tax affidavit provided as **Attachment D**. In order to be eligible for this procurement, Contractors must be in full compliance with their tax obligations to the District of Columbia government;

- (g) Subcontracting Plan Form - Each Contractor shall submit a Subcontracting Plan Form provided as **Attachment E**;
- (h) First Source Employment - Each Contractor shall submit the First Source Employment Agreement provided as **Attachment G**;
- (i) Bid Bond or Bid Guarantee Certification - Each Contractor shall submit a Bid Bond or Bid Guarantee Certification substantially in the form of **Attachment I** or **Attachment J**, respectively;
- (j) LSDBE Certification Letter, if applicable; and
- (k) Evidence that Contractor meets the Special Qualifications described in Section B.8.

SECTION G
BIDDING PROCEDURES & PROTESTS

G.1 Contact Person. The contact person for this IFB is:

Farhad Rezaei,
Contract Specialist
Department of General Services
Contracts and Procurement Division
2000 14th Street, NW, 8th Floor
Washington, DC 20009
Phone: (202) 671-2255
Email: farhad.rezaei@dc.gov

G.2 Protests

Protests shall be governed by D.C. Official Code § 2-360.08 and Section 4734 of the Department's Procurement Regulations (27 DCMR).

G.3 Retention of Submissions

All submissions will be retained by the Department and therefore will not be returned to the Contractors. With the exception of proprietary financial information, the submissions will become the property of the Department, and the Department has the right to distribute or use such information as it determines.

G.4 Examination of Bids

Contractors are expected to examine the requirements of all instructions (including all amendments, addenda, attachments and exhibits) in this IFB. Failure to do so shall be at the sole risk of the Contractor, and may result in disqualification.

G.5 Late Bids and Modifications:

- (a) Any bid or best and final offer received at the address designated in this IFB after the exact time specified for receipt shall not be considered.
- (b) Any modification of a bid, including a modification resulting from the CO's requests for best and final offers, is subject to the same conditions as in G.5.(a) stated above.
- (c) The only acceptable evidence to establish the time of receipt at the Department's office is the time-date stamp of such installation on the Bid wrapper or other documentary evidence of receipt maintained by the installation.
- (d) Notwithstanding any other provisions of this Invitation for Bids to the contrary, a late modification of an otherwise successful bid which makes its terms more favorable to the Department may be considered at any time it is received and may be accepted.

- (e) Bids shall be irrevocable and remain in full force and effect for a period not less than 120 days after receipt of bids.

G.6 No Compensation for Preparation of Bids

The Department will not bear or assume any financial obligations or liabilities regarding the preparation of any Bids submitted in response to this IFB, or prepared in connection therewith, including, but not limited to, any Bids, statements, reports, data, information, materials or other documents or items.

G.7 Rejection of Bids

The Department reserves the right, in its sole discretion:

- (a) To cancel this solicitation or reject all bids;
- (b) To reject Bids that fail to prove the Contractor's responsibility;
- (c) To reject Bids that contain conditions and/or contingencies that in the Department's sole judgment, make the Bid indefinite, incomplete, otherwise non-responsive, or otherwise unacceptable for award;
- (d) To waive minor irregularities in any bid provided such waiver does not result in an unfair advantage to any Contractor;
- (e) To take any other action within the applicable Procurement Regulations or law;
- (f) To reject the Bid of any Contractor that has submitted a false or misleading statement, affidavit or certification in connection with such Bid or this Request for Bids.
- (g) To reject as non-responsive any Bid that fails to include a subcontracting plan that is required by law.
- (h) To reject submissions that indicate a lack of understanding of any aspect of the Project(s).
- (i) To reject submissions that are too costly, financially or otherwise, to the Department relative to other submissions and the Project budget.
- (j) To reject submissions where the bidder has altered any pricing element or line item by Thirty Percent (30%) from the initial offer or median price for that pricing element or line item in response to a Request for a Best and Final Offer ("BAFO").
- (k) To reject submissions that are deemed non-responsive.

G.8 Limitation of Authority

Only a contracting officer with prior written authority from the CCO shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clauses or conditions of the contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this IFB is not effective or binding unless made in writing and signed by the CCO or its authorized representative.

G.9 Non-Responsive Bids

- (a) **Pricing.** In general, the Department will consider a bid non-responsive if any pricing element of the bidder's price is Thirty Percent (30%) higher than the median price submitted by other bidders. If there are no more than two (2) bidders, the independent government estimate shall be used to establish a median price. The Department reserves

the right to deem a bid non-responsive if any pricing element of the bidder's price is Thirty Percent (30%) higher than the median price.

(b) **Certification.** The Department may consider a bid non-responsive if the bidder fails to properly complete or provides inaccurate information on the Bidder/Offeror Certification Form.

(c) **Exceptions.** The Department may consider a bid non-responsive if the bidder identifies any changes or exceptions to the Standard Contract Provisions, the Contract or attachments hereto.

(d) **Core Competency.** The Department may consider a bid non-responsive if the bidder, whether by inclusion or omission, fails, in the Department's sole judgment, to demonstrate an understanding and competence in every aspect of the Project.

SECTION H INSURANCE AND BOND REQUIREMENTS

H.1 Required Insurance. The Contractor shall maintain the following types of insurance throughout the life of the contract.

H.1.1 Commercial general public liability insurance (“Liability Insurance”) against liability for bodily injury and death and property damage, such Liability Insurance to be in an amount not less than One Million Dollars (\$1,000,000) for liability for bodily injury, death and property damage arising from any one occurrence and One Million Dollars (\$1,000,000) from the aggregate of all occurrences within each policy year. The policy should include completed operations coverage. The Contractor shall be required to maintain this coverage in force for a period of at least two years after substantial completion.

H.1.2 Workers’ compensation and Employers Liability coverage providing statutory benefits for all persons employed by the contractor, or its contractors and subcontractors at or in connection with the Work.

H.1.3 Automobile Liability, including Hired and Non-Owned Auto Liability in the amount of at least One Million Dollars (\$1,000,000) for each occurrence for bodily injury and property damage.

H.1.4 Excess umbrella liability coverage (on at least a follow form basis) and when combined with the general liability policy has an aggregate limit of at least Two Million Dollars (\$2,000,000).

H.1.5 Additional Insureds

Each insurance policy shall be issued in the name of the contractor and shall name as additional insured parties the Department and the District of Columbia, and shall not be cancelable or reduced without thirty (30) days prior written notice to the Department.

H.1.6 All such insurance shall contain a waiver of subrogation against the Department and the District of Columbia, and their respective agents.

H.1.7 Strength of Insurer

All insurance shall be placed with insurers that are reasonably acceptable to the Department and with an A.M. Best’s rating of not less than A- (Excellent) and a surplus size of not less than XV. All such insurers shall be licensed/approved to do business in the District of Columbia.

H.2 Bid Bond.

H.2.1 Contractors shall submit with their bid a Bid Bond in the amount of **5%** of the Contractor’s lump sum price. The Contractor’s Bid Bond shall be submitted in

substantially the form provided as **Attachment I**. All bonding companies shall be licensed to conduct business in the District of Columbia and be included on the United States Department of Treasury's website Listing of Approved Sureties.

H.2.2 Alternatively, Contractors may submit a cashier's check of credit in lieu of a Bid Bond. If the Contractor chooses to submit a cashier's check in lieu of a bid bond, the Contractor shall complete the form included as **Attachment J** and return, notarized, with the Contractor's bid.

H.2.3 Payment and Performance Bond

The Contractor shall be required to provide payment and performance bonds, each having a penal value equal to 100% of the Contract amount prior to performing any work on the contract. All bonding companies must be licensed to conduct business in the District of Columbia and be included on the Department of Treasury's Listing of Approved Sureties website.

H.2.4 In the event a Contractor who is awarded this Contract fails to post a payment and performance bond for the full value of the Contract, the Contractor shall thereby forfeit the full amount of the cashier's check or the Bid Bond, and the Department will collect such funds as liquidated damages.

**SECTION I
DEPARTMENT'S RESPONSIBILITIES**

I.1 Information and Services. The Department will provide full information in a timely manner regarding the requirements of the Project.

I.2 Department's Designated Representatives.

I.2.1 Chief Contracting Officer (CCO). In accordance with 27 DCMR, Chapter 47, Section 4704, this Contract may be entered into and signed on behalf of the District Government only by CCO or, under circumstances, the CCO's Delegate. The address and telephone number of the CCO is:

George G. Lewis
Interim Associate Director – Contracts and Procurement
Department of General Services
2000 14th Street, N.W. – 8th Floor
Washington, D.C. 20009
Telephone: (202) 727-2800
E-mail: george.lewis@dc.gov

I.2.1.1 Authorized Changes by the Contracting Officer (CO) and the CCO:

I.2.1.1.1 The CCO, the CCO's Delegate and the CO are the only persons authorized to approve changes to any of the requirements of the Contract.

I.2.1.1.2 The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this Contract, unless issued in writing and signed in accordance with Section I.2.1.1.1.

I.2.1.1.3 In the event the Contractor effects any change at any instruction or request not in compliance with this Section, the change will be considered to have been made without authority and no adjustment will be made in the Contract price to cover any cost increase incurred as a result thereof.

I.2.2 Contracting Officer Technical Representative (COTR):

I.2.2.1 The COTR is responsible for general administration of the Contract and advising the CO and CCO as to the Contractor's compliance or noncompliance with the Contract. The COTR has the responsibility for the day-to-day monitoring and supervision of the Contract, of ensuring the Work conforms to the requirements of the Contract and such other

responsibilities and authorities as may be specified in writing by the CCO and/or in the Contract. These include:

- I.2.2.1.1** Keeping the CO and CCO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO and CCO of any potential problem areas under the Contract;
- I.2.2.1.2** Coordinating site entry for Contractor personnel, if applicable;
- I.2.2.1.3** Reviewing invoices for completed work and recommending approval by the CCO if the Contractor's prices and costs are consistent with the Contract and progress is satisfactory and commensurate with the rate of expenditure;
- I.2.2.1.4** Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions and the Contract; and
- I.2.2.1.5** Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.
- I.2.2.1.6** The address and telephone number of the COTR is:

Daniel Bohnlein
Project Manager
Department of General Services - Capital
Construction
1250 U Street, N.W. 4th Floor
Washington, DC 20009
Office: (202) 698-4148
Mobile: (202) 680-9657
E-mail: daniel.bohnlein@dc.gov

I.2.2.2 The COTR Shall NOT Have the Authority to:

- I.2.2.2.1** Award, agrees to, or sign any Contract document, change order, change directive, delivery order or task order. Subject to Section I.2.1.1.1, only the CCO shall make contractual agreements, commitments or modifications;
- I.2.2.2.2** Grant deviations from or waive any of the terms and conditions of the Contract;

- I.2.2.2.3** Increase the dollar limit of the Contract or authorize work beyond the scope and dollar limit of the Contract,
- I.2.2.2.4** Authorize the expenditure of funds by the Contractor;
- I.2.2.2.5** Change the period of performance; or
- I.2.2.2.6** Authorize the use of District property, except as specified under the Contract.
- I.2.2.2.7** The Contractor shall be held fully responsible for any changes not authorized in advance, in writing, by the CCO or as otherwise provided in Section I.2.1.1.1, and may be denied compensation or other relief for any additional work performed that is not so authorized. In addition, Contractor may also be required at no additional cost to the District, to take all corrective action necessitated by reason of any unauthorized changes.

I.3 Payments.

I.3.1 Invoicing

The Contractor shall submit invoices to the Department on a monthly basis. Each such invoice shall itemize all goods and services provided during the previous month and must be submitted electronically to the COTR and upload the document into Prolog by the 25th of each month. The Department's reference address to use on invoices is as follows:

Department of General Services
Office of the Chief Financial Officer
2000 14th Street N.W. | 5th Floor
Washington, D.C. 20001

For assistance with the registration process, technical difficulties and/or additional information on Prolog, please contact the Portal Help Desk at (202) 671-0571.

I.3.2 Retention

The Department shall withhold from each progress payment an amount equal to ten percent (10%) of each progress payment until such time as fifty percent (50%) of the Work has been completed at which point the Department may cease retaining against such item. Once Substantial Completion has occurred, the Department will reduce the retention being withheld to an amount that is equal to Two Hundred percent (200%) of the Project Manager's good faith estimate of the remaining Work.

I.3.3 Documents Required with Application for Payment

Each Application for Payment shall be accompanied by the Contractor's job cost ledgers in a form satisfactory to the Department, the Subcontractors' and Suppliers' Applications for Payment on AIA Documents G702 and G703 or other form acceptable to the Department, and such other supporting documentation as the Department may reasonably request. Each Application for Payment shall include detailed documentation of costs as a condition to approving progress payments, but the Contractor shall nevertheless maintain complete documentation of the costs. The Contracting Officer may require the submission of any documentation necessary to support the Contractor's Application for Payment and the Application for Payment shall not be deemed complete until such documentation is produced and submitted to the Department.

I.3.3.1 Contractor's Certification

Each Application for Payment shall be accompanied by the Contractor's signed certification that all amounts paid to the Contractor on the previous Application for Payment that were attributable to Subcontractor Work or to materials or equipment being supplied by any supplier has been paid over to the appropriate Subcontractors and suppliers; that all amounts currently sought for Subcontractor Work or supply of materials or equipment are currently due and owing to the Subcontractors and material or equipment suppliers; and that all Work, materials or equipment for which payment is sought is, to the best of the Contractor's knowledge, free from defect and meets all of the Contract requirements. The Contractor shall not include in an Application Payment amounts for Work for which the Contractor does not intend to pay.

I.3.3.2 Lien Waivers

Each Application for Payment shall be accompanied by written waivers of the right to file a mechanic's lien and all other claims for the Contractor and all Subcontractors and material suppliers at all tiers who have supplied labor or material or both for which payment is requested, subject only to receipt of payment. If the Department so requests, the Contractor shall also submit unconditional waivers of liens for itself and all Subcontractors and material suppliers at all tiers with respect to Work or materials or equipment for which payment has been previously made, and additional forms of waiver acknowledging receipt of final payment under the Contract, and providing final release of such liens.

I.3.3.3 Warranty of Title

By submitting an Application for Payment, the Contractor warrants to the Department that title to all Work for which payment is sought will pass to the Department, without liens, claims, or other encumbrances, upon the receipt of payment by the Contractor. The Department may

require execution of appropriate documents to confirm passage of clear title. Passage of title shall not operate to pass the risk of loss with respect to the Work in question. Risk of loss remains with the Contractor until Substantial Completion, unless otherwise agreed by the Department, in writing.

I.3.3.4 Submission

On the twenty-fifth (25th) day of each month the Contractor shall submit to the Department (with a copy to the Project Manager) an Application for Payment, which Application for Payment shall cover the entire month during which the Application for Payment is submitted. All amounts formally submitted via Application for Payment and not disputed by the Department shall be due and payable on the last day of the month following submission or, if that is not a business day, on the following business day.

I.3.3.5 Right to Withhold Payments

The Department will notify the Contractor within fifteen (15) days after receiving any Application for Payment of any defect in the Application for Payment or the Contractor's performance which may result in the Department's declining to pay all or a part of the requested amount. The Department may withhold payment from the Contractor, in whole or part, as appropriate, if:

I.3.3.5.1 the Work is deficient, defective or otherwise not conforming to the Contract, and such deficiencies, defects or nonconformities have not been remedied; or

I.3.3.5.2 the Department has determined that the Contractor's progress has fallen behind the Project Schedule, and the Contractor fails, within ten (10) calendar days of the Department's written demand, to provide the Department with a realistic and acceptable plan to recover the delays; or

I.3.3.5.3 the Contractor's monthly schedule update reflects that the Contractor has fallen behind the Project Schedule, and the Contractor fails to include, in the same monthly report, a realistic and acceptable plan to recover the delays; or

I.3.3.5.4 the Contractor has failed to provide the monthly report in full compliance with this Section I.3.3.5 of this Agreement; or

I.3.3.5.5 the Contractor has failed to pay Subcontractors or suppliers promptly or has made false or inaccurate certifications that payments to Subcontractors or suppliers are due or have been made; or

- I.3.3.5.6** any mechanic's lien has been filed against the Department, the site or any portion thereof or interest therein, or any improvements on the site, even though the Department has paid all undisputed amounts due to the Contractor, and the Contractor, upon notice, has failed to remove the lien, by bonding it off or otherwise, within ten (10) calendar days; or
- I.3.3.5.7** the Department has reasonable evidence that the Work will not be completed by the Substantial Completion Dates, as required, that the unpaid balance of the Lump Sum Price would not be adequate to cover actual or liquidated damages arising from the anticipated delay; or
- I.3.3.5.8** the Department has reasonable evidence that the Work cannot be completed for the unpaid balance of the Lump Sum Price; or
- I.3.3.5.9** the Contractor is otherwise in substantial breach of this Contract (including, without limitation, failures to comply with LSDBE or CBE Utilization requirements in Section C).
- I.3.3.5.10** the Application for Payment is incomplete, unsubstantiated and/or does not contain sufficient documentation for evaluation by the Contracting Officer.

I.3.3.6 Payment Not Acceptance

Payment of any progress payment or final payment shall not constitute acceptance of Work that is defective or otherwise fails to conform to the Contract, or a waiver of any rights or remedies the Department may have with respect to defective or nonconforming Work.

I.3.3.7 Department Not Obligated to Others

The Department shall have no obligation to pay or be responsible in any way for payments to a consultant or subcontractor performing portions of the Work.

I.3.3.8 Final Payment

Final payment shall be made by the Department to the Contractor when (i) Final Completion has been achieved; (ii) certification by the Contractor that except for requested final payment, all subcontractors and suppliers have been paid in full and that appropriate partial lien releases have been obtained from such subcontractors and suppliers documenting such payments; and (iii) the Contractor submits a complete and final Application for Payment, acceptable to the

Department. The Department may, if it so elects, require that copies of all such lien releases be provided as a condition to making final payment.

I.3.3.9 No Diversion of Funds

Contractor agrees that the funds it receives for the performance of this Agreement shall be held in trust by Contractor for the benefit of all its Subcontractors, Suppliers, laborers and materialmen, and Contractor shall not itself have any interest in such funds until all these obligations have been satisfied in full. Contractor further agrees that any funds received shall be used exclusively for the prosecution of the Work, and none will be diverted to satisfy other obligations of Contractor. The Department has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers' amounts paid by the Department to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Department shall have the right to contact Subcontractors to ascertain whether they have been properly paid.

I.3.3.10 Interest on Payments

Payments are due and payable in accordance with Section I.3 of this Agreement and not more than thirty (30) days after the Department receives documents set forth in Section I.3.3.8 and verifies the information contained therein. Amounts unpaid after the date of which payments due shall bear interest in accordance with the Quick Payment Act.

SECTION J CONTRACT CHANGES

J.1 Changes Authorized

The Department may, without invalidating the contract, and without notice to or approval of any surety, order changes in the Work, including additions, deletions or modifications. Any such change must be conveyed by the Department to the Contractor via written Change Directive, Modification or Change Order. *The CO is the only person authorized to approve changes in any of the requirements of this Contract.* The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this Contract, unless issued in writing and signed by the Contracting Officer. Notwithstanding the foregoing, nothing herein shall be construed to limit the Department's ability to unilaterally modify the Contract.

J.2 Changes to the Lump Sum Price

Subject to the condition precedent that the Contractor has complied with the notice and documentation provisions set forth in the Standard Contract Provisions, and subject to the limitations stated in this Agreement, the Contractor may be entitled to an equitable adjustment to the Lump Sum Price in the following cases:

J.2.1 If the Department issues a Change Directive or Change Order that directs the Contractor to proceed with work which is beyond the scope of Work included within the Lump Sum; or

J.2.2 The Contractor encounters Differing Soil Conditions or Hazardous Materials not identified in the Preconstruction Phase.

J.2.3 For Changes to the Lump Sum Price, the following conditions shall apply:

J.2.3.1 For increases in the Work which the Contractor is permitted to perform by Contractor's own forces, the Lump Sum Price shall be increased by the sum of: (i) the Direct Cost of the Work; and (ii) a fee (covering home office overhead, field supervision, general conditions and profit) of fifteen percent (15%) of the sum due under (i);

J.2.3.2 For increases in the Work performed by Subcontractors, the Lump Sum Price shall be increased by the sum of: (i) the Direct Cost of the Work incurred by the Subcontractor for the changed Work; (ii) a fee (covering home office overhead and profit) equal to fifteen percent (15%) of the sum due under (i) above for the Subcontractor performing such Work; and (iii) a fee (covering the Contractor's home office overhead, field supervision, general conditions and profit) of five percent (5%) of the sum of items (i) and (ii). Intervening tier Subcontractors shall be entitled to a mark-up of five percent (5%) (covering home office overhead, field supervision, general conditions and profit); provided, however, that in all situations and regardless of the number of tier Subcontractors

involved, the maximum mark-up on the Direct Cost of the Work shall be twenty five percent (25%) and provided, further, that the Contractor shall not be entitled to the markup referred to in item (iii) on changes unless such changes exceed, either individually or in the aggregate, five percent (5%) of the Lump Sum Price.

- J.2.3.3** When both additions and credits are involved in any one change in the Work, the Contractor's Change Order and markup shall be figured on the basis of the net increase, if any.
- J.2.3.4** Fee will not be paid by Department for overtime or weekend work unless overtime is requested in writing and approved in writing by Department.
- J.2.3.5** The amount of credit to be allowed by Contractor to Department for a deletion or change which results in a net decrease in the Lump Sum Price shall be the Cost avoided as confirmed by Department plus fifteen percent (15%) for profit on the deleted work.
- J.2.3.6** Direct Cost of the Work shall mean labor, material and other costs reasonably and necessarily incurred in the proper performance of the Work as approved by the Department, and shall include, but is not limited to:
- (a) **Labor.** Payment will be made for direct labor cost plus indirect labor cost such as insurance, taxes, fringe benefits and welfare provided such costs are considered reasonable. Indirect costs shall be itemized and verified by receipted invoices. If verification is not possible, up to eighteen percent (18%) of direct labor costs may be allowed.
 - (b) **Rented Equipment.** Payment for required equipment rented from an outside company that is neither an affiliate of, nor a subsidiary of, the Contractor will be based on receipted invoices which shall not exceed rates given in the current edition of the Rental Rate Blue Book for Construction Equipment published by Data Quest. If actual rental rates exceed manual rates, written justification shall be furnished to the Contracting Officer for consideration. No additional allowance will be made for overhead and profit. The Contractor shall submit written certification to the Contracting Officer that any required rented equipment is neither owned by nor rented from the Contractor or an affiliate of or subsidiary of the Contractor.
 - (c) **Contractor's Equipment.** Payment for required equipment owned by the Contractor or an affiliate of the Contractor will be based solely on an hourly rate derived by dividing the current appropriate monthly rate by 176 hours. No payment will be made under any circumstances for repair costs, freight and transportation charges, fuel, lubricants, insurance, any other costs and

expenses, or overhead and profit. Payment for such equipment made idle by delays attributable to the Government will be based on one-half the derived hourly rate under this subsection.

Such costs, however, do not include home office overhead, field supervision, general conditions or profit of either the Subcontractor or the Contractor. No personnel above the level of a working foreman shall be considered a Direct Cost of the Work.

J.2.4 If the cost to Department of changed Work is determined by the lump sum method, Contractor warrants that the charge to Department shall not exceed the sum of: (a) any Subcontractor's charge to Contractor for such work; and (b) Contractor's best estimate of the actual cost of Contractor's work plus the permitted markup. If the cost to Department of changed Work is determined on a time and materials basis, Contractor warrants that the cost of any addition represents the true and actual cost, including Contractor's permitted markup, of such addition to Contractor, Subcontractor or Sub-subcontractor or other entity involved in such addition. If the changed Work will result in a reduction in the cost to Department, Contractor warrants that the amount of any deduction shall represent the amount of deduction to Contractor by the appropriate Subcontractor or the amount of Contractor's best estimate where the deduction involves Work, which Contractor will perform.

J.3 Executed Change Directive/Order Required

Changes to the Contract may be made only by a written Change Directive, Modification or Change Order executed by the Department.

J.4 Prompt Notice

In the event the Contractor encounters a situation which the Contractor believes to be a change to this Contract, the Contractor shall provide the Department with prompt written notice of such event and the possible impact such event could have on cost and schedule. All such notices shall be given promptly, considering the then applicable situations, but in no event more than ten (10) calendar days after encountering the situation. The Contractor acknowledges that the failure to provide such notice in a timely manner could limit or eliminate the Department's ability to mitigate such events, and thus, the Contractor shall not be entitled to an adjustment in the event it fails to provide prompt notice. The Contractor shall include provisions similar to this provision in all of its subcontracts.

J.5 Deductive Change Orders

The Department is likewise entitled to issue deduct Change Orders (reducing the Lump Sum Price) when changes are effected, by Change Directive or otherwise, which will decrease the cost of completing the Work or the time within which it can be completed.

J.6 Executed Change Orders Final

The Contractor agrees that any Change Order executed by the Department and the Contractor constitutes its full and final adjustment for all costs, delays, disruptions,

inefficiencies, cumulative impact, accelerations, schedule impacts, or other consequences arising from the change in question, whether a Change Directive, or a Change Event, or from any claimed cumulative effect of changes made to the date of the Change Order, and that no further adjustments in compensation or time shall be sought or made with respect to the Change Directive or the Change Event giving rise to the Change Order.

J.7 Failure to Agree

If the Contractor claims entitlement to a change in the Contract, and the Department does not agree that any action or event has occurred to justify any change in time or compensation, or if the parties fail to agree upon the appropriate amount of the adjustment in time or compensation, the Department will unilaterally make such changes, if any, to the Agreement, as it determines are appropriate pursuant to the terms of this Agreement. The Contractor shall proceed with the Work and the Department's directives, without interruption or delay, and may make a claim pursuant to the terms set forth in the Standard Contract Provisions. Failure to proceed due to a dispute over a change request shall constitute a material breach of the Contract and entitle the Department to all available remedies for such breach, including, without limitation, termination for default.

**SECTION K
MISCELLANEOUS PROVISIONS**

K.1 Liquidated Damages

Liquidated Damages will be assessed in the amount of \$4,344.00 per day. The Contractor and the Department agree that the liquidated damages do not constitute and shall not be deemed a penalty, but represent a reasonable approximation of the damages to the Department associated with a delay in the Project.

K.2 Extent of Contract

The Contract, which includes the terms set forth in this IFB, the Attachments hereto, and other documents incorporated herein by reference, represents the entire and integrated agreement between the Department and Contractor and supersedes all prior negotiations representations or agreements, either written or oral. No modifications to the Contract shall be effective against the Department unless made by written instrument signed by both the Department and Contractor.

K.3 Governing Law

The Contract shall be governed by and construed in accordance with the laws of the District of Columbia, without regard to its conflict of laws principles.

K.4 [Intentionally Omitted].

K.5 Retention of Records and Inspections and Audits.

K.5.1 The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance under the Contract in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Contract.

K.5.2 The Contractor shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the Department and the required cost submissions in effect on the date of execution of the Department.

K.5.3 The Department, the District of Columbia government, the District of Columbia Financial Responsibility and Management Assistance Office, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall have access to the books, records, documents and other evidence held, owned or maintained by the Contractor for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Contractor. The Contractor shall provide proper facilities for such access and inspection.

- K.5.4** The Contractor agrees to include the wording of this Section in all its subcontracts in excess of five thousand dollars (\$5,000) that directly relate to Project performance.
- K.5.5** Audits conducted pursuant to this Section will be in accordance with generally acceptable auditing principles and established procedures and guidelines of the applicable reviewing or audit agency.
- K.5.6** The Contractor agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Department. Where the audit concerns the Contractor, the auditing agency will afford the Contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.
- K.5.7** The Contractor shall preserve all records described herein from the effective date of the Contract completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.

K.6 Inspection for Supplies and Services.

- K.6.1** To the extent applicable or appropriate, the Department may, in its sole discretion, enter the place of business of the Contractor or the place of business of any Subcontractor in order to inspect or test supplies or services for acceptance by the Department. If inspections and tests are performed at the place of business of the Contractor or any Subcontractor, the inspections and tests shall be performed in a manner so as to not unduly delay the Work. Inspections and tests by the Department shall not relieve the Contractor or any Subcontractor of responsibility for defects or other failures to meet Contract requirements, and shall not constitute or imply acceptance.
- K.6.2** Notwithstanding the Department's acceptance of or payment for any product or service delivered by Contractor, the Contractor shall remain liable for deficient work, defective work, latent defects, fraud, gross mistakes amounting to fraud and the Department's rights under any warranty or guarantee and work otherwise not in compliance with the Contract.
- K.6.3** The Department shall have the right to enter the place of business of the Contractor or the place of business of any Subcontractor in order to investigate any contractor or Bidder with respect to a debarment or suspension of the Contractor or any such Subcontractor.

K.7 Laws and Regulations Incorporated by Reference

All federal and District of Columbia laws and regulations, and all Department procedures now or hereafter in effect, whether or not expressly provided for or referred to in the Contract, are incorporated by reference herein and shall be binding upon the Contractor and the Department. It shall be the responsibility of the Contractor to perform the Contract in conformance with the Department's procurement regulations and all statutes, laws, codes, ordinances, regulations, rules, requirements, and orders of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the Contractor to determine the procurement regulations, statutes, laws, codes, ordinances, regulations, rules, requirements, and orders that apply and their effect on the Contractor's obligations thereunder. However, if the application of a future law or regulation requires the Contractor to undertake additional work that is materially different in scope than that presently contemplated or required, the Contractor shall be entitled to an equitable adjustment for such additional work.

K.8 Tax Exemption Provision

Any tax exemptions applicable to the District of Columbia, including the gross receipts sales tax exemption for the sale of tangible personal property to the District, codified in D.C. Code § 47-2005, shall apply to the performance of the Contract.

K.9 Anti-Competitive Practices and Anti-Kickback Provisions

K.9.1 The Contractor recognizes the need for markets to operate competitively and shall observe and shall comply with all applicable law, rules, and regulations prohibiting anti-competitive practices. The Contractor shall not engage, directly or indirectly, in collusion or other anti-competitive practices that reduces or eliminates competition or restrains trade. The Department shall report to the appropriate authority any activity that evidences a violation of the antitrust laws, and take such other further action to which it is entitled or obligated under the law.

K.9.2 The Contractor shall observe and comply with all applicable law, rules, and regulations prohibiting kickbacks and, without limiting the foregoing, Contractor shall not (i) provide or attempt to provide or offer to provide any kickback; (ii) solicit, accept, or attempt to accept any kickback; or (iii) include, directly or indirectly, the amount of any kickback in the contract price charged by Contractor or a Subcontractor of the Contractor to the Department. The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in this subparagraph in its own operations and direct business relationships. The Department may take any recourse available to it under the law for violations of this anti-kickback provision.

K.9.3 The Contractor represents and warrants that it did not, directly or indirectly, engage in any collusive or other anti-competitive behavior in connection with the bid, negotiation or award of the Contract. In the event that it is discovered the Contractor has engaged in such conduct, the Department may terminate this Contract without liability.

K.10 Responsibility for Agents and Contractors

At all times and during performance under this Contract, the Contractor shall be responsible to the Department for any and all acts and omissions of the Contractor's agents, employees, Subcontractors, Sub-Subcontractors, material suppliers, and laborers, and the agents and employees of the Subcontractors, Sub-Subcontractors, material suppliers, and laborers performing or supplying Work in connection with the Project.

K.11 Ethical Standards for Department's Employees and Former Employees

The Department expects the Contractor to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Contractor, nor any person associated with the Contractor, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Department not in conformity with applicable law, rules or regulations. The Contractor shall not engage the services of any person or persons in the employment of the Department or the District for any Work required, contemplated or performed under the Contract. The Contractor may not assign to any former Department or District employee or agent who has joined the Contractor's firm any matter on which the former employee, while in the employ of the Department, had material or substantial involvement in the matter. The Contractor may request a waiver to permit the assignment of such matters to former Department personnel on a case-by-case basis. The Contractor shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Subcontractor or vendor.

K.12 Gratuities and Officers Not to Benefit Provisions

K.12.1 If it is found, after notice and hearing, by the Department that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any official, employee or agent of the Department or the District with a view toward securing the Contract or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Contract, the Department may, by written notice to the Contractor, terminate the right of the Contractor to proceed under the Contract and may pursue such other rights and remedies provided by law and under the Contract.

K.12.2 In the event the Contract is terminated as provided in K.12.1, the Department shall be entitled:

K.12.2.1 To pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor; and

K.12.2.2 As a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the

Department) which shall be not less than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

K.12.3 No member of, nor delegate to Congress, Mayor or City Council Member, nor officer nor employee of the District, nor officer nor employee of the Department shall be admitted to any share or part of the Contract or to any benefit that may arise therefrom, and all agreements entered into by the authorized representative of the Department in which he or any officer or employee of the Department shall be personally interested as well as all agreements made by the Department in which the Mayor or City Council Member or officer or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Department or by any officer thereof; but this provision shall not be construed or extend to the agreement if the share of or benefit to the member of, or delegate to Congress, Mayor or City Council Member, or officer or employee of the District is de minimus.

K.13 Covenant Against Contingent Fees Provisions

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a Commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Department shall have the right to terminate the Contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of the Department, percentage, brokerage of contingent fee.

K.14 Non-Discrimination in Employment Provisions

K.14.1 The Contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. The affirmative action shall include, but not be limited to, the following:

K.14.1.1 Employment, upgrading, or transfer;

K.14.1.2 Recruitment or recruitment advertising;

K.14.1.3 Demotion, layoff, or termination;

K.14.1.4 Rates of pay, or other forms of compensation; and

K.14.1.5 Selection for training and apprenticeship.

K.14.2 Unless otherwise permitted by law and directed by the Department, the Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Department setting forth the provisions of this Section concerning non-discrimination and affirmative action.

K.14.3 The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in this Section.

K.14.4 The Contractor agrees to send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice to be provided by the Department, advising each labor union or workers' representative of the Contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

K.14.5 The Contractor agrees to permit access by the Department to all books, records and accounts pertaining to its employment practices for purposes of investigation to ascertain compliance with this Section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

K.14.6 The Contractor shall include in every subcontract the equal opportunity clauses of this Section so that such provisions shall be binding upon each Subcontractor or vendor.

K.14.7 The Contractor shall take such action with respect to any Subcontractor as the Contracting Officer may direct as a means of enforcing these provisions, including sanctions for non-compliance.

K.15 Buy American Act Provision

The Contractor shall comply with the provisions of the Buy American Act (41 U.S.C. §§ 10a – 10d), including, but not limited to, the purchase of steel.

K.15.1 In accordance with the Buy American Act (41 U.S.C. § 10a-10d), and Executive Order 10582, December 17, 1954 (3 CFR, 1954-58 Comp., p. 230), as amended by Executive Order 11051, September 27, 1962 (3 CFR, 1059—63 Comp., p. 635), the Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, material men and suppliers in the performance of the Contract, except for non-domestic material listed in the Contract.

K.15.2 Domestic Construction Material. “Construction material” means any article, material or supply brought to the construction site for incorporation in the building or work. An unmanufactured construction material is a “domestic construction material” if it has been mined or produced in the United States. A manufactured construction material is a “domestic construction material” if it has been

manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. "Component" means any article, material, or supply directly incorporated in a construction material.

K.15.3 Domestic Component. A component shall be considered to have been "mined, produced, or manufactured in the United States" regardless of its source, in fact, if the article, material or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

K.15.4 Foreign Material. When steel materials are used in a project a minimal use of foreign steel is permitted. The cost of such materials cannot exceed one-tenth of one percent of the total project cost, or \$2,500,000, whichever is greater.

K.17 Termination or Suspension

All terminations or suspensions arising out of or under this Contract shall be in accordance with the terms of the Standard Contract Provisions, as amended.

K.18 False Claims Act

Contractor shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to the government, including the prescriptions set forth in District of Columbia Code §§ 22-2514 and 2-381.01 *et seq.* In the event that it is discovered the Contractor has made a false, fraudulent or unsupported statement or claim to the Department, the Department may terminate this Contract without liability.

K.19 Interpretation of Contract

All of the documents comprising the Contract should be read as complementary, so that what is called for by one is called for by all. Ambiguities should be construed in favor of a broader scope of work for the Contractor, as the intent of the Contract is, with specific identified exceptions, to require the Contractor to assume entire responsibility for the construction and installations of the Project(s). If there is any inconsistency among the documents comprising the Contract, the order of precedence among them is as follows, with the first listed document having the highest priority: this IFB, its Attachments, then the Construction Documents released by the Department. Any Change Order issued and executed by the Department shall supersede those portions of earlier dated Contract Documents to which it pertains.

K.20 Independent Contractor

In carrying out all its obligations under the Contract, the Contractor shall be acting as an independent Contractor, and not as an employee or agent of the Department, or joint venture or partner with the Department. The Contractor shall have exclusive authority to manage, direct, and control the Work, and shall be responsible for all methods, techniques, sequences, and procedures, as well as for Project safety.

K.21 Confidential Information

In the course of the Contractor's performance of the Work, the Department may make available to the Contractor information that the Department designates as trade secrets or other confidential engineering, technical and business information. As long as, and to the extent that, such information remains confidential and available to others only with the consent of the Department, or is not generally available to the public from other sources, the Contractor shall maintain such information in strict confidence and shall not disclose any such information to others (including its employees or Subcontractors), except to the extent necessary to enable the Contractor to carry out the Project. The Contractor shall similarly obligate any and all persons to whom such information is necessarily disclosed to maintain the information in strict confidence. The Contractor agrees that, in the event of any breach of this confidentiality obligation, the Department shall be entitled to equitable relief, including injunctive relief or specific performance, in addition to all other rights or remedies otherwise available.

K.22 No Third-Party Beneficiary Rights

Nothing in this Contract shall be construed as creating third-party beneficiary rights in any person or entity, except as otherwise expressly provided in this Contract.

K.23 Media Releases

Neither the Contractor, its employees, agents or Subcontractors or material suppliers shall make any press release or similar media release related to the Project unless such press release have been discussed with the Department prior to its issuance.

K.24 Construction

This Contract shall be construed fairly as to all parties and not in favor of or against any party, regardless of which party prepared the Contract.

K.25 Notices

All notices or communications required or permitted under the Contract shall be in writing and shall be hand delivered or sent by telecopier or by recognized overnight carrier to the intended recipient at the address stated below, or to such other address as the recipient may have designated in writing. Any such notice or communication shall be deemed delivered as follows: if hand delivered, on the day so delivered, if sent by telecopier, on confirmation of successful transmission, and if sent by recognized overnight carrier, the next business day.

If to the Department:

If to the Contractor:

George G. Lewis
Interim Associate Director/Contracting Officer
Department of General Services
2000 14th St, NW – 8th Floor
Washington, DC 20009

This Paragraph shall be read as imposing minimum requirements for distribution of required contractual notices, and not as displacing distribution requirements with respect to periodic reports and other documents.

K.26 Limitations

The Contractor agrees that any statute of limitations applicable to any claim or suit by the Department arising from this Contract or its breach shall be controlled by applicable District of Columbia law.

K.27 Binding Effect; Assignment

The Contract shall inure to the benefit of, and be binding upon and enforceable by, the parties and their respective successors and permitted assigns. The Contractor acknowledges that, in entering into the Contract, the Department is relying on the particular qualifications of the Contractor, and the Contractor therefore shall not delegate or assign any of its duties or obligations under the Contract, except in accordance with the Contract's provisions relating to subcontracting, or pursuant to the Department's prior written consent. The Contractor shall not assign its rights under the Contract, including the right to all or a portion of its compensation, without the Department's prior written consent. Any delegation or assignment made contrary to the provisions of this Paragraph shall be null and void.

K.28 Survival

All agreements warranties, and representations of the Contractor contained in the Contract or in any certificate or document furnished pursuant to the Contract shall survive termination or expiration of the Contract.

K.29 No Waiver

If the Department waives any power, right, or remedy arising from the Contract or any applicable law, the waiver shall not be deemed to be a waiver of the power, right, or remedy on the later recurrence of any similar events. No act, delay, or course of conduct by the Department shall be deemed to constitute the Department's waiver, which may be affected only by an express written waiver signed by the Department.

K.30 Remedies Cumulative

Unless specifically provided to the contrary in the Contract, all remedies set forth in the Contract are cumulative and not exclusive of any other remedy the Department may have, including, without limitation, at law or in equity. The Department's rights and remedies will be exercised at its sole discretion, and shall not be regarded as conferring any obligation on the Department's to exercise those rights or remedies for the benefit of the Contractor or any other person or entity.

K.31 Headings/Captions

The headings or captions used in this Agreement or its table of contents are for convenience only and shall not be deemed to constitute a part of the Contract, nor shall they be used in interpreting the Contract.

K.32 Entire Agreement; Modification

The Contract supersedes all contemporaneous or prior negotiations, representations, course of dealing, or agreements, either written or oral. No modifications to the Contract shall be effective against the Department unless made in writing signed by both the Department and the Contractor, unless otherwise expressly provided to the contrary in the Contract. Notwithstanding the foregoing, nothing herein shall be construed to limit the Department's ability to unilaterally modify the Contract.

K.33 Severability

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and in lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be valid, legal and enforceable; each part of this Agreement is intended to be severable.

K.34 Anti-Deficiency Act

The Department's obligations and responsibilities under the terms of the Contract and the Contract Documents are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1350, 1351, (ii) the D.C. Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Code §§ 47-355.01 - 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act. Neither the Contract nor any of the Contract Documents shall constitute an indebtedness of the Department, nor shall it constitute an obligation for which the Department is obligated to levy or pledge any form of taxation, or for which the Department has levied or pledged any form of taxation. IN ACCORDANCE WITH § 446 OF THE HOME RULE ACT, D.C. CODE § 1-204.46, NO DISTRICT OF COLUMBIA OFFICIAL IS AUTHORIZED TO OBLIGATE OR EXPEND ANY AMOUNT UNDER THE CONTRACT OR CONTRACT DOCUMENTS UNLESS SUCH AMOUNT HAS BEEN APPROVED, IS LAWFULLY AVAILABLE AND APPROPRIATED BY ACT OF CONGRESS.

K.35 Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Department and Department's consultants, agents, and employees from and against claims, damages, losses and expenses, including, but not limited to, attorneys' fees arising out of or resulting from its performance of the Work.

K.37 Claims and Dispute Resolution.

All claims arising out of this Contract shall be governed by the terms of the Standard Contract Provisions, as amended.

K.38 Claims for Additional Time.

K.38.1 Time is of the essence for this Contract.

K.38.2 The Contractor shall perform the Work so that it achieves Full Completion no later than Ninety (90) calendar days from the Notice To Proceed (NTP) by the Department. Unless the failure to achieve Full Completion by the Full Completion Dates is a result of an Excusable Delay, as defined in Section K.39, the delay shall be deemed Non-Excusable and the Contractor shall not be entitled to an extension of time. Without limiting the generality of the foregoing, delays for the following reasons shall be regarded as Non-Excusable and shall not entitle the Contractor to an extension of time:

K.38.2.1 Delays due to job site labor disputes, work stoppages, or suspensions of work;

K.38.2.2 Delays due to adverse weather, unless the Contractor establishes that the adverse weather was of a nature and duration in excess of averages established by data from the U.S. Department of Commerce, National Oceanic and Atmospheric Administration for the Project locale for the ten (10) years preceding the effective date of the Contract;

K.38.3.3 Delays due to the failure of the Contractor or Subcontractors or material suppliers at any tier to perform in timely or proper fashion, without regard to concepts of negligence or fault; or

K.38.3.4 Delays due to Site conditions whether known or unknown as of the effective date of the Contract, foreseeable or unforeseeable at that time, naturally occurring or man-made; provided, however, that delays due to Differing Site Conditions, as defined in the Standard Contract Provisions, or Hazardous Materials Remediation shall be deemed an Excusable Delay.

K.39 Excusable Delay

The Contractor shall be entitled to request an adjustment in the Substantial Completion Dates due to an Excusable Delay. The term "Excusable Delay" shall mean:

K.39.1 Delays due to adverse weather other than those that are classified as a Non-Excusable delay;

K.39.2 Delays due to acts of God, war, unavoidable casualties, civil unrest, and other similar causes of delay that are beyond the control of the Contractor; provided, however, that in no event shall a Non-Excusable delay or the action of the Contractor, or any of its employees, agents, Subcontractors or material suppliers be deemed an Excusable Delay; or

K.39.3 Delays caused by Differing Site Conditions, as defined in the Standard Contract Provisions, or Hazardous Materials Remediation.

K.39.4 In addition to the forgoing, a delay shall be deemed to be an Excusable Delay only to the extent that such delay (i) warrants an extension in the Substantial or Final Completion Dates; (ii) has not been caused by the Contractor or any of its employees, agents, Subcontractors or material suppliers; (iii) is on Project's critical path; (iv) is in addition to a time contingency of twenty-one (21) calendar days that is built into the critical path; and (v) is of a duration of not less than three (3) days.

K.39.5 If the Contractor wishes to make a request for an increase in the Contract time, written notice as provided herein shall be given. The Contractor's written notice and request shall include an estimate of the cost and of the probable effect of delay on the progress of the Work. In the case of continuing delay, only one request is necessary. The information set forth in the Contractor's request, including, but not limited to any additional costs, shall be for the Department's consideration in determining whether to grant the Contractor's request for an increase in the Contract time and shall not be construed to entitle the Contractor to additional compensation or reimbursement of additional costs.

K.39.6 In no event shall the Contractor be entitled to an increase in the Lump Sum Price a result of either an Excusable or Non-Excusable Delay.

K.40 Prior to the issuance of a Notice to Proceed, the Contractor shall provide information for the Department's review describing the Contractor's Management Approach/Staffing Plan & Key Personnel. The Contractor shall provide at a minimum the following:

- b) Bidders shall demonstrate to the Government that their corporate structure, their management approach/staffing plan, and especially their key personnel have the capability and capacity to ensure timely completion of a high quality product on challenging, fast track, high visibility projects such as the Inaugural Stands construction. Please provide your anticipated management approach/staffing plan. At a minimum, such plan should demonstrate that the Prime Bidder has the ability to provide adequate staffing levels to meet the required milestone dates, and should include at least the following:
 - i. A description of the overall corporate structure, including lines of specific responsibility, and the following key personnel:
 - 1. Project Executive;
 - 2. Project Manager (to be devoted full-time 100% to this project);
 - 3. General Superintendent (to be devoted full-time 100% to this project); and
 - 4. Three (3) Site Foremen/Superintendents (1 each per site to be devoted full-time 100% to this project).
 - ii. A description of the work that will be performed by the Bidder and work that will be performed by subcontractors. The Bidder should provide the available number of workers for each of the following trades to demonstrate adequate capacity to perform this contract:
 - 1. Carpentry (must have access to a minimum of 35 workers);

2. Painting (must have access to a minimum of 15 workers);
3. Electrical (must have access to a minimum of 15 workers); and
4. Scaffolding (must have access to a minimum of 18 workers).

SECTION L DEFINITIONS

L.1 Agreement

The term Agreement shall mean this IFB, including the Standard Contract Provisions, as amended and any document attached hereto and/or incorporated by reference.

L.2 Change Directive

A written direction signed and issued by the Department ordering the Contractor either to provide pricing and schedule impact information for a described change to the Work or to proceed with a described change and provide pricing and schedule impact information after beginning the changed Work.

L.3 Change Event

Any condition, event, act, omission or breach, other than the issuance of a Change Directive, which the Contractor believes entitles it to a change in the Lump Sum Price, or the Substantial or Final Completion Date.

L.4 Change Order

A written document, executed by the Department and the Contractor, setting forth the agreed terms upon which a change to the Contract has been made.

L.5 Construction Documents

The final Contract Documents, as prepared, sealed by the Architect/Engineer's design professional in accordance with the law, and issued by the Contractor for the purpose of obtaining bids from potential trade Subcontractors and material suppliers for use in constructing the Project.

L.6 Contract

The entire, integrated agreement between the Department and the Contractor with respect to the Project, consisting of this Agreement, the Attachments to the IFB, the Construction Documents released for the Contractor's use and any Change Directives or Change Orders that have been executed by the Department.

L.7 Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and wherever issued, showing the design, locations and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

L.8 Final Completion

The point at which Substantial Completion has been achieved, all punch list items noted at Substantial Completion have been completed and all documents the Contractor is required to deliver to the Department as a condition to receiving final payment.

L.9 Final Completion Date

The date established herein by which the Contractor shall achieve Final Completion. The Final Completion Date may be modified only by Change Order or Change Directive in accordance with the Agreement.

L.10 Fully Complete

To undertake all of the Work necessary to fully construct and complete the Project and execute all tasks necessary to obtain the final Certificate of Occupancy for the Project from the District of Columbia; submit final lien releases from the Contractor and Subcontractors and material suppliers; complete all punch list items to the Department's approval and sign-off; and cause all representations, warranties and guarantees to be honored and otherwise fulfill all of the requirements set forth in the Contract.

L.11 Hazardous Material

Any toxic substance or hazardous chemical defined or regulated pursuant to federal, state or local laws relating to pollution, treatment, storage or disposal of waste, or protection of human health or the environment. Such laws include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Water Act, the Clean Air Act and laws relating to emission, spills, leaks, discharges, releases or threatened releases of toxic material. The term Hazardous Materials shall also include petroleum and petroleum bi-products. **Hazardous Material Remediation** shall mean the work performed to remove, treat and/or dispose of Hazardous Material.

L.12 Notice to Proceed

A written notice to proceed, signed by the Department, directing the Contractor to proceed with the Project or any portion of the Project.

L.13 Project Schedule

The schedule for the project agreed to by the Department and the Contractor herein. Such schedule shall not be changed except by a Change Order or Change Directive issued by the Department. The schedule shall be in a form and contain such detail as may be agreed upon by the Parties.

L.14 Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

L.15 Subcontractor

Any person, natural or legal, to whom the Contractor delegates performance of any portion of the Work required by the Contract. The term "Subcontractor," used without a qualifier, shall mean a subcontractor in direct privity with the Contractor. "Subcontractors at all tiers" shall mean not only those Subcontractors in direct privity with the Contractor, but also those performing Work pursuant to sub-subcontracts, subsubsubcontracts, and so on.

“Subcontractors” shall include both those who are retained to perform labor only and those who are retained both to perform labor and to supply material or equipment. “Subcontractors” shall also include design professionals who are not the Contractor’s employees and to whom the Contractor delegates any part of its responsibilities under the Contract, except that references to “trade Subcontractors” shall exclude design professionals.

L.16 Substantial Completion

Substantial Completion shall mean that all of the following have occurred: (1) the construction and installation work have been completed with only minor punch list items remaining to be completed; (2) a permanent certificate of occupancy and all other required permits or approvals have been obtained; (3) all operating and maintenance manuals, training videotapes and warranties required by the Contract have been delivered to the Department; (4) any supplemental training session required by the Contract for operating or maintenance personnel have been completed; (5) all clean-up required by the Contract has been completed; (6) the Project is ready for the Department to use it for its intended purpose; and (7) all equipment, supplies, materials and items to be installed have been installed in accordance with the manufacturer’s specifications and industry standards and have undergone and passed the requisite testing and inspections. "Minor punch list items" are defined for this purpose as items that, in the aggregate, can be completed within thirty (30) days without interfering with the Department's normal use of the Project.

L.18 Substantial Completion Dates

The dates established herein by which the Contractor shall achieve Substantial Completion. The Substantial Completion Dates may be modified only by Change Order or Change Directive in accordance with the Agreement.