

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES



INVITATION FOR BIDS

Solicitation Number: DCAM-17-NC-0027

**Kitchen Hoods, Stoves/Ovens, and Miscellaneous Appliances
Preventive Maintenance, Repairs, and Replacement Services**

This solicitation is being set-aside for Bidders that are certified by the District of Columbia Department of Small and Local Business Development (DSLBD) as a Small Business Enterprise (SBE).

Date Issued: Thursday, December 1, 2016

Bid Due Date: Wednesday, December 21, 2016 at 11:00 a.m.

Delivery of Bids: Department of General Services
Contracts and Procurement Division
Attention: George G. Lewis, CPPO
Frank D. Reeves Municipal Center
2000 14th Street, NW - 8th Floor
Washington, DC 20009

Bid Opening: Wednesday, December 21, 2016 at 11:15 a.m.
DGS 2nd Floor Community Room
Frank D. Reeves Municipal Center
2000 14th Street, NW, Washington, DC 20009

Contact: Karen J. Araujo
Contract Specialist
Contracts and Procurement Division
2000 14th Street, NW - 8th Floor
Washington, DC 20009
Phone: (202) 545-3035
Email: karen.araujo@dc.gov

SECTION A EXECUTIVE SUMMARY

The District of Columbia Department of General Services (DGS), Contracts and Procurement Division, is issuing this Invitation for Bids (IFB) to engage one or more Contractors to perform certain preventive maintenance, repairs, and replacement services described herein with respect to Kitchen Hoods, Stoves/Ovens, and Miscellaneous Appliances (as each term is defined below, and together are the “Equipment”) located at Fire & Emergency Medical Services (FEMS) facilities, identified on Attachment A attached hereto (hereafter, “Facilities”). Please see Section B.1 below for definitions of capitalized terms.

The intent of this contract is to be proactive and detect possible failures with respect to certain Equipment before they develop into major defects. In addition, the intent of this contract is to ensure the timely repair and, if necessary, replacement of Equipment, as needed.

The awarded contractors (each a “Contractor”) will be required to provide Services (as defined below) to all Equipment currently owned by the Department, and any new Equipment purchased by the Department during the term of this contract.

The Department has categorized each of the Equipment into the following three groups (each an “Equipment Group”): (i) Group A: Kitchen Hoods; (ii) Group B: Stoves/Ovens; and (iii) Group C: Dryers and Miscellaneous Appliances.

DGS reserves the right, at any time (including after an award hereunder), to add or remove (i) categories of Equipment, or individual pieces of Equipment within a particular Equipment Group, to be serviced by a Contractor hereunder, or (ii) any facilities to, or from, the list of Facilities awarded to a Contractor(s) hereunder. Interested bidders are permitted to submit proposals to perform Services for all Equipment Groups. Bidders must bid on all line items (i.e., base year and the two option years, etc.) within each Equipment Group. The Department intends to award up to three (3) contracts (one for each Equipment Group), and awards will be made to the responsive and responsible bidder offering the lowest price, per Equipment Group, for these services specified herein. DGS will select only one Contractor for each Equipment Group, and can award multiple Equipment Groups to one Contractor.

The goal of this procurement is to establish multiple contracts for the Services (as defined below) in accordance with 27 DCMR Chapter 47, Section 4715. The contracts will provide the Department the vehicle to procure such Services.

This IFB is designated only for certified Small Business Enterprise (SBE) bidders 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. ONLY Bidders that are certified by the District of Columbia Department of Small and Local Business Development (DSLBD) as a SBE on the Bid Due Date are eligible. A copy of the certification acknowledgment letter must be submitted with the Bidder’s Bid.

A.1 CONTRACT TYPE:

A.1.1 The contract awarded pursuant to this IFB will be an Indefinite Delivery Indefinite Quantity (IDIQ) contract based on fixed unit prices per service and fixed labor rates for repairs as quoted on the Bid Form (**Attachment B**). The Department will order and the Contractor shall deliver a minimum of \$250.00 and a maximum of \$950,000.00 in services during the contract period.

A.2 FORM OF CONTRACT:

A.2.1 Contracts resulting from this IFB will typically include the following:

- (a) The SIGNED Award/Signature Page (**Attachment J**)
- (b) Acknowledgement of Amendments (See Award/Signature Page Section 13)
- (c) The IFB pages 2 – 47
- (d) The Bid Form (**Attachment B**)
- (e) Applicable exhibits provided as attachments or incorporated by reference

A.3 TERM OF THE CONTRACT:

A.3.1 Base Term: The base term of the IDIQ contracts will be for one (1) year from date of award.

A.3.2 Option Year: The Department shall have the unilateral right to extend the term of this Agreement for two (2) terms of one (1) year or fraction thereof; provided that the Department shall give the Contractor preliminary written notice of its intent to exercise the option to extend the term of the Contract thirty (30) days prior to the expiration of the contract. The preliminary notice does not commit the Department to an extension. The Contractor may waive the thirty (30) day notice requirement by providing a written waiver to the Department prior to the expiration of the Contract.

A.3.3 Option Years Pricing: In the event the Department exercises its option to extend the Agreement to cover an option year, the rates or unit prices applicable to such Option Year is set forth in the Bid Form (**Attachment B**).

A.4 PRICING:

Contractors shall provide a Bid Form (**Attachment B**) to include their unit prices to provide Preventive Maintenance Services, Repair Services, and Replacement Services. The fixed unit and hourly rate prices shall be the Contractor's sole method of compensation for all labor, and as such, shall be sufficient to cover all of the costs necessary to provide Services, including, but not limited to, subcontractor costs, home office overhead, travel and profit. The contractor shall be paid for parts and materials for repairs and replacement equipment on a cost reimbursement basis.

The Contractor's price shall be as low as or lower than those charged to the Contractor's most favored customer under similar terms and conditions.

A.5 PROCUREMENT SCHEDULE:

The “Procurement Schedule” for this procurement is as outlined below:

- Issuance of IFB Thursday, December 1, 2016
- Last Day for Questions Thursday, December 8, 2016
- Due Date & Time for Bid submission Wednesday, December 21, 2016 - 11:00 a.m.
- Bid Opening Wednesday, December 21, 2016 - 11:15 a.m.

IMPORTANT NOTICE: Contracts & Procurement will notify bidders of any changes, additions and or deletions to the specifications and or responses to questions by addenda posted on the Department of General Services, Contracts & Procurement website. It is the potential Bidder’s responsibility to frequently visit the Procurement’s website at <http://dgs.dc.gov/page/dgs-solicitations> to obtain addenda(s) once they have received a copy or downloaded a copy of the solicitation.

A.6 ATTACHMENTS: The following documents are attached to the IFB:

Attachment A	List of Facilities
Attachment B	Bid Form
Attachment C	Preventive Maintenance Schedule
Attachment D	Bidder / Offeror Certification Form
Attachment E	Tax Certification Affidavit
Attachment F	Subcontracting Plan Form
Attachment G	2016 Living Wage Act Notice and Fact Sheet
Attachment H	First Source Employment Agreement Form
Attachment I	Service Contract Act Wage Determinations
Attachment J	Award/Signature Page
Attachment K	Standard Contract Provisions – January 2016
Attachment L	EEO Policy Statement Agreement

SECTION B SCOPE OF WORK

B.1 DEFINITIONS:

For purposes of this solicitation, the following terms shall have the meanings set forth below:

“Cleaning” means the process of cleansing components properly, by use of qualified and proper materials based on manufacturer guidelines.

“Contracting Officer (CO)” shall be a business communications liaison between the Department and a Contractor. He or she ensures that their goals are mutually beneficial. The CO is an employee who is responsible for recommending, authorizing, or denying actions and expenditures for both standard delivery orders and task orders, and those that fall outside of the normal business practices of its supporting Contractors and Sub Contractors.

“COTR” means the Contracting Officer’s Technical Representative.

“Deficiency” means a lack of quality and or sub-standard mechanical, technical or support work. For the purpose of this solicitation, a deficiency is an item, or condition that is considered sub-standard, or below minimum expectations with regard to code, work product and safety.

“Delivery/Installation” means the delivery and installation of all newly purchased Equipment, including all appropriate utility related hookups.

“Dryers” means all dryers that are included within the Household Grade Appliances.

“Emergency” means a serious situation or occurrence that happens unexpectedly and demands immediate action and/or a condition of urgent need for action or assistance.

“Emergency Services” means services needed of District Contractors when situations that impact public safety and or health arise. For the purpose of this solicitation, the District requires all Contractors be available 24-hours a day, 7 days a week.

“Equipment” has the meaning given to it in the Executive Summary.

“Facilities” has the meaning given to it in the Executive Summary.

“Industry Standard” means an Industry-developed quality of standards, if any, that are established requirements for products, practices, or operations (including, without limitation, any standards, policies, recommendations and guidelines established by the National Fire Protection Association).

“Kitchen Hoods” means any kitchen hoods (whether commercial or household grade in nature) located at the Facilities that are existing now or subsequently acquired later during an award under this IFB.

“Miscellaneous Appliances” means any dishwashers, refrigerators, washers, dryers and stackable washer dryer combinations, microwaves, and disposals, whether any of such are commercial or household grade in nature, which are located at the Facilities and existing now or subsequently acquired later during an award under this IFB.

“Preventive Maintenance Services” has the meaning given to it in Section B.3.1.

“Removal/Disposal” means the de-installation of non-working/defective Equipment and transporting defective equipment to the Department’s designated recycling location, currently 2200 Adams Place, Washington, DC 20005.

“Repair Services” has the meaning given to it in Section B.3.2.

“Replacement Services” has the meaning given to it in Section B.3.3.

“Services” means Preventive Maintenance Services, Repair Services, and Replacement Services.

“Stoves/Ovens” means all stoves and ovens, or combinations thereof (whether commercial or household grade in nature), that are located at the Facilities and are existing now or subsequently acquired later during an award under this IFB.

B.2 PROJECT SUMMARY:

The Department is seeking qualified Contractor(s) that specialize in providing certain preventive maintenance, repair and replacement services, as described below, to certain (i) Kitchen Hoods, (ii) Stoves/Ovens, and (iii) Miscellaneous Appliances contemplated herein. In general, the selected Contractor(s) shall be required to provide all supervision, materials, tools, supplies, equipment, transportation and labor necessary to perform the required Services twenty-four (24) hours a day, seven (7) days a week. Please see Section B.1 above for definitions of capitalized terms.

The Contractor shall conduct all activities and perform all work consistent with: (i) the applicable specifications and requirements recommended by the original equipment manufacturers (O.E.M); (ii) Industry Standards; and in (iii) compliance with applicable federal and local laws, statutes, codes, ordinances, rules and regulations (whether existing now or subsequently passed, enacted, adopted or amended, at any time, during the term of an award made hereunder, collectively “Applicable Laws”).

All Services herein shall be performed by qualified and certified technicians, trained to service equipment on which they work. Any work that may be completed by a helper or apprentice will be allowed only under the direct supervision of a qualified technician.

B.3 SCOPE OF WORK:

The selected Contractors shall be required to provide Preventive Maintenance Services, Repair Services and Replacement Services with respect to all applicable Equipment within its awarded Equipment Group. Such Services shall be performed in the manner set forth below.

B.3.1 Preventive Maintenance (PM) Services: In general, the Contractor shall perform such inspections, cleanings and comprehensive preventive maintenance services to all Stoves/Ovens, Dryers and Kitchen Hoods (as applicable) within the Equipment Group awarded to such Contractor. Such inspections, cleanings and comprehensive preventive maintenance services shall be performed by a Contractor in the manner recommended by such equipment's manufacturers, or as otherwise expressly noted herein or in **Attachment C** (collectively, "Preventive Maintenance Services"). These Preventive Maintenance Services shall be performed twice a year as coordinated in writing with the COTR.

B.3.1.1 Stoves/Ovens and Dryers: The Contractor shall conduct annual inspections, and periodic cleaning and preventive maintenance services with respect to the Stoves/Ovens and Dryers. At a minimum, such services shall be performed to inspect, evaluate and test such appliances for condition and satisfactory operability as per manufacturer's performance operation standards. Notwithstanding the foregoing, the Contractor shall also be required to perform certain preventive maintenance services to the Stoves/Ovens and Dryers in the manner and frequency set forth on **Attachment C** (to the extent it requires greater frequency than required by the manufacturer).

B.3.1.2 Kitchen Hoods: With respect to the Kitchen Hoods at each Facility, the Contractor shall conduct an inspection, and periodic cleaning and preventive maintenance services of the Equipment in the following manner: on a semi-annual basis, inspect, evaluate and test all Kitchen Hoods for condition and satisfactory operability as per manufacturer's performance operation standards, including but not limited to all electrical components, motors, contactors, switches and disconnects. In addition, the Contractor shall perform inspect all associated fire suppression systems, including, but not limited to, (i) chemical fills, (ii) CO2 cartridges, (iii) discharge nozzles and associated caps, and (iv) control panels. Furthermore, the Contractor shall, upon completion of the inspection, provide annual inspection tags as required by the District's Department of Consumer and Regulatory Affairs ("DCRA") and the National Fire Protection Association (NFPA).

B.3.1.3 Reporting: Upon completing its Preventive Maintenance Services, the Contractor shall provide a checklist of services performed and a written report to the COTR within twenty-four (24) hours following the completion of services. The report shall detail all Kitchen Hoods, Stoves/Ovens and Dryers and related components inspected, tested and cleaned, list repairs recommended ("PM Repairs"), and state the condition of such Equipment.

B.3.2 Repair Services: The Contractor(s) shall perform all PM Repairs and On-Call Repair Services to all Equipment, within its awarded Equipment Group, as needed (“Repair Services”).

B.3.2.1 PM Repairs: As a result of the Preventive Maintenance Services, the Contractor may determine that certain repairs are required to restore Equipment to satisfactory operability, as per manufacturer’s performance operation standards. In such situation, the Contractor will be responsible for making an assessment of the repair and providing an itemized repair quote based on the pricing schedule in the awarded contract. Upon written approval by the COTR, the Contractor(s) may proceed with the work. The Contractor shall ensure all replacement parts shall be new and of the same quality and when possible, same brand name as that being replaced. The repair shall be coordinated with the COTR, and upon completion, the Contractor must have its work inspected approved by the COTR or the COTR’s designee. All repairs shall be completed within five (5) days of the initial PM Service date, unless otherwise instructed by the COTR.

B.3.2.2 On-Call Repairs: In the event of Equipment failure, the Contractor shall provide the necessary repairs to return the affected Equipment to normal operation. The Contractor will also provide any necessary replacement materials and parts within forty-eight (48) hours or less for non-critical needs. The Contractor shall (i) respond to all Equipment on-call emergencies by telephone within a one (1) hour period, (ii) arrive at the site of any emergency within two (2) hours from the initial request, and (iii) provide quotes, when required, within 24 hours from arriving on-site. On-Call services shall be provided to the District, 24 hours a day, 7 days a week to include weekends and holidays.

The Contractor will be responsible for making an assessment of the repair and provide an itemized repair quote based on the pricing schedules in the awarded contract. Upon completion of repairs (and prior to submitting its invoice for payment), the Contractor must have its work inspected approved by the COTR or the COTR’s designee.

B.3.2.3 Parts and Materials: The Contractor shall furnish any needed repair parts for use in the repair and maintenance of Equipment and related components. Unless otherwise authorized by the COTR, all repair parts shall be equal quality to, or exceed and conform to, the original equipment installed. However, if any such Equipment is under warranty, the Contractor shall utilize OEM replacement parts. If the Contractor is unable to obtain such parts, it shall obtain DGS’ approval before utilizing a non-OEM part. Notwithstanding the above, to the extent applicable, all parts or components purchased by Contractor shall meet EnergyStar specifications for energy efficiency. The Contractor is encouraged to visit www.energystar.gov for complete product specifications and updated lists of qualifying products. The purpose of this requirement of EnergyStar qualified equipment is to reduce both the Facilities’ overall electrical consumption and the greenhouse gas emissions related to power generation and usage.

B.3.2.4 Delivery and Removal of Containers (Parts): The Contractor shall deliver all new replacement parts (with a value of \$500 or more) for the COTR's (or her/his designee's) inspection in good condition to the job site in the manufacturer's original unopened containers that bear the name and brand of the Manufacturer, together with receipts, manufacturers manual, and warranty card for such purchases of replacement part for which the Contractor intends to bill the Department. The Contractor shall remove all packaging, supplies, and materials used to complete the installation. The Contractor shall remove and recycle all non-working defective parts at the direction of the COTR.

B.3.3 Replacement Services: In the event of Equipment failure within its Equipment Group (and such Equipment cannot be repaired in a cost-effective manner), the Contractor shall submit a written quote and price to the COTR for approval prior to replacement. The pricing for the repairs shall include the cost for the purchase of new Equipment and the total labor hours required to complete the repair. Upon approval by the COTR, the Contractor shall Deliver and Install, and test, all newly purchased Equipment ("Replacement Services"), and shall Remove all defective equipment, and Dispose in a manner designated by DGS. The installation schedule shall be coordinated with the COTR, and upon completion, the Contractor must have its work inspected approved by the COTR or the COTR's designee.

B.3.3.1 Quality of Replacement Equipment: Unless otherwise authorized by the COTR, all replacement Equipment shall be equal quality to, or exceed and conform to, the Equipment being replaced. For illustrative purposes only, the current manufacturer of Equipment, existing at the Facilities now, establishes a minimum standard for the expected quality, performance, suitability, performance and workmanship of any replacement Equipment. A Contractor may recommend appliances from other manufacturers, provided that the Contractor must first convince the COTR that its recommended Equipment is equal to or better in quality, performance, design, and suitability for intended use than the manufacturer of the then non-working Equipment. Notwithstanding the above, unless otherwise agreed by the COTR, the Contractor shall ensure that all Equipment purchased is manufactured by credentialed companies that have replacement parts for such Equipment readily obtainable from national parts distributors. All Equipment purchased shall meet EnergyStar specifications for energy efficiency. The Contractor is encouraged to visit www.energystar.gov for complete product specifications and updated lists of qualifying products. The purpose of this requirement of EnergyStar qualified Equipment is to reduce both the Facilities' overall electrical consumption and the greenhouse gas emissions related to power generation and usage.

B.3.3.2 Delivery and Removal of Containers: The Contractor shall deliver all new Equipment for the COTR's (or her/his designee's) inspection in good condition to the job site in the manufacturer's original unopened containers that bear the name and brand of the Manufacturer, together with receipts for such purchases of Equipment for which the Contractor intends to bill the Department. The

Contractor shall remove all packaging, supplies, and materials used to complete the installation. The Contractor shall remove and recycle all non-working equipment at the direction of the COTR.

B.4 WARRANTY:

In connection with the installation of new Equipment and parts, the Contractor shall provide DGS with all manufacturer warranties. The minimum warranty shall be for the longer of: (i) one (1) year for any new Equipment and parts, or (ii) such longer warranty period being offered by the manufacturer. In connection with the Contractor's repair of then existing Equipment, the Contractor shall guarantee all of its repair work for a period of ninety (90) days. During that ninety (90) day period, if the Contractor has been informed that its repair work has failed to correct the initial problem, the Contractor shall repair such faulty equipment, or related parts, at no additional cost to DGS. In this case, the Contractor's subsequent repairs shall be guaranteed for another ninety (90) day period.

B.5 QUOTES:

B.5.1 Form of Quote: Any quotes for repair, parts and Equipment shall be prepared by the Contractor (utilizing its Labor Rates). Preparation of quotes shall be at no charge to the District. The Contractor must submit a quote, and have it approved by the COTR, prior to commencing any work hereunder.

B.5.2 Right to Solicit Other Quotes: If at any time the Department receives from the Contractor a quote (or proposal) that it deems, in its sole discretion, unreasonable or otherwise unsatisfactory (whether due to pricing, quality, timing or any other reason), the Department reserves the right to refuse having the Contractor to service any/all Equipment and related components at any time. In addition, the Department also reserves the right to (i) solicit quotes (or proposals) from any other third parties, and (ii) engage such third parties to perform Services, on its behalf, without any penalty to Contractor.

B.5.3 Pricing/Mark-Ups: The price charged for the materials shall be based on actual cost, less all applicable discounts to the Department, and in no event shall the price exceed the Contractor's sale price to its most-favored customer for the same item in like quantity, or the current market price, whichever is lower. If it is determined that replacement parts are needed, the cost of these parts shall be added to the invoice at cost with no greater than a ten (10) percent mark-up on the cost of parts and materials. The invoice shall include unit pricing and an itemized list of all replacement parts used. When repairs are needed, the inspection shall be of no cost to DGS.

B.6 REQUIRED RESPONSE TIME AND PENALTIES:

Once the Department determines that repair work is needed and classifies the nature of the repair as minor, major or critical, the Department will contact the Contractor. The

Contractor shall provide the Department with a telephone number available 24 hours per day, 7 days per week, 365 days per year where the repair requests will be reported. The Contractor must adhere to the following requirements:

B.7 TECHNICAL REQUIREMENTS:

In addition to complying with the requirements outlined elsewhere in this IFB, the Contractor shall at a minimum:

- A. Carry all necessary insurances required by DGS under this award;
- B. Supply a sufficient number of vehicles/trucks, equipment, tools, labor and supplies needed to perform all of the Services required of it in an expedient manner including, without limitation maintaining (or having access to) an ample supply of replacement parts for normal preventive maintenance, repairs, and replacement of Equipment and related components;
- C. Completely familiarize itself with its proposal/quote documents, and the location of all of the Facilities within Equipment Group.

B.8 QUALIFICATIONS:

Each bidder shall submit evidence with its proposal satisfactory to DGS that such bidder can fulfill the requirements of the contract. Such evidence must include the following, but need not be limited to:

- A. Proof that bidder has had at least one (1) year of experience with providing preventive maintenance, repair and replacement services for Equipment within the Equipment Group that an offeror is submitting a bid on.
- B. Proof that a bidder is authorized and certified to repair nationally recognized name brand manufacturers of the types of Equipment within Equipment Group that an offeror is submitting a bid on, or such bidder has the ability, if required by DGS, to utilize a subcontractor with such authorizations and certifications to perform repairs.
- C. Proof that bidder has had at least one (1) year of experience operating as a wholesaler and retailer with respect to nationally recognized name brand manufacturers of the types of Equipment within Equipment Group that an offeror is submitting a bid on, or such bidder has the ability, if required by DGS, to utilize a subcontractor with such experience.
- D. Proof that a bidder is duly licensed with the D.C. Department of Consumer and Regulatory Affairs as an “Electrical Contractor.”
- E. DGS may make such investigations as it deems necessary to determine the qualifications of any bidder and its ability to perform the Services, and all bidders

shall promptly furnish to DGS all such evidence and information for this purpose as DGS may request. In addition, DGS reserves the right to reject any bid if the evidence submitted by, or the investigation of, the bidder fails to satisfy DGS that such bidder is properly qualified, competent and capable, in all respects, to perform the Services in accordance therewith. No award shall be made to any bidder whose submitted background information, when investigated and verified by DGS, raises significant questions as to its ability to successfully complete the Services.

B.9 KEY PERSONNEL:

The Contractor shall provide skilled electrical certified/licensed journeyman and apprentice to complete all projects including but not limited to, electrical services, renovations, additions, demolition, fire damage, portable classroom additions, and/or modifications at any District of Columbia Government facilities and or work site where applicable.

The D.C. Official Code § 47-2853.91: Scope of practice for Electricians

For the purposes of this Contract, the term "electrician" means any person who designs, installs, maintains, alters, converts, changes, repairs, removes, or inspects electrical wiring, equipment, conductors, or systems in buildings or structures or on public and private space for the transmission, distribution, or use of electrical energy for power, heat, light, radio, television, signaling, communications, or any other purpose, except elevators, platform lifts, stairway chair lifts, manlifts, conveyors, escalators, dumbwaiters, material lifts, automated people movers, and other related conveyances.

B.9.1 Submittals: The Contractor shall present the following submittals in relation to it proposed key personnel with its bid and for all new employees brought on during the term of the contract or at the request of the Contracting Officer and or COTR.

- List of all Key Personnel whom the Contractor designates to respond to on-site service and/or repair service.
- Resume's for each proposed designee
- A valid Electrician's License for each applicable designee, OR Proof of Apprenticeship
- A copy of the General Contractor's License
- A copy of the Basic Business License

B.10 WORK SITE AND SAFETY:

B.10.1 The Contractor shall provide all safeguards and suitable barricades to protect public and adjacent property.

B.10.2 The Contractor shall repair or remove unsafe items and clean unsanitary areas.

B.10.3 The Contractor shall remove abandoned items and any items serving no useful purpose, such as abandoned parts, wiring and electrical devices.

B.10.4 The Contractor shall remove unsuitable or extraneous materials such as abandoned equipment, and debris.

B.10.5 The Contractor shall clean surfaces and remove surface finishes as needed to install new work and finishes.

B.10.6 The Contractor shall design and provide all necessary temporary terminations and redirects of utility services (electrical power) to the facility to the satisfaction of the COTR.

B.10.7 The Contractor's employees shall be subject to background checks. If there is suspicion of drug use (erratic or suspicious behavior) by an employee, the Department reserves the right to request, at any time, that such individual be removed from project.

B.10.8 The Contractor shall not disturb portions of buildings outside of those areas in which the Services are required.

B.10.9 The Contractor shall keep driveways, loading areas, and entrances serving premises clear and available to District employees, the public, and emergency vehicles at all times. The Contractor shall not use these areas for parking or storage of materials, and schedule deliveries to minimize use of driveways and entrances.

B.10.10 The Contractor shall schedule deliveries and provide at least twelve hours advanced notification to minimize space and time requirements for storage of materials and equipment on-site.

B.10.11 The Department may appoint other entities or representatives to manage, on its behalf, the day-to-day activities for the execution of the Project.

B.11 **CLEAN-UP:**

All work areas shall be left in broom swept condition after completing work. The Contractor shall ensure that no refuse, rubbish, empty cans, scrap materials, rags, and other discarded materials and debris shall be left at the work area or buried or burned on the job site. Such items shall be removed from the site by the Contractor and properly disposed of in a licensed landfill (or such other location permissible by Applicable Laws). Upon completion of the work but before final acceptance, the Contractor shall remove all surplus material, false work or temporary structures including foundations. The Contractor shall be responsible for all costs associated with the immediate removal of all packing materials and cartons, and legal disposal of such material.

B.11.1 The Contractor shall take every precaution to maintain adequate protection of all their work from damage, and shall protect both the public and the Department's property from any harm or damage arising in any way from the performance of Services by the Contractor.

B.11.2 Work sites shall be appropriately designated by any necessary signage/barriers including signs, caution tape, etc. as required to protect areas.

B.11.3 The Contractor shall ensure that all work areas shall be maintained in a neat, orderly and workmanlike appearance at all times.

B.11.4 The Contractor shall dispose of daily all hazardous waste in accordance with all Applicable Laws. At no time shall the use of dumpsters or trash receptacles be allowed at any location. There shall be no dumping of materials in or around District of Columbia buildings or facilities.

B.12 **REGULATORY COMPLIANCE:**

The Contractor and its employees shall obtain and maintain, at all times, all applicable permits, licenses, authorizations and/or certificates needed to perform the Services as required by Applicable Laws. A copy of these documents must be provided to the COTR upon request.

B.13 **INDUSTRY SPECIFIC STANDARDS:**

B.13.1 The Contractor shall provide all Services in a manner consistent with Industry Standards, if any, and in accordance with Applicable Laws.

B.13.2 The Contractor shall take all the necessary precautions to prevent fire hazards and spontaneous combustions.

B.14 **SAFETY STANDARDS:**

The Contractor shall ensure all personnel safety, including Sub Contractors and equipment, comply with the requirements and standards of the Occupational Safety and Health Act, as amended from time to time (OSHA). Appropriate personal protective equipment shall be provided to and used by all employees while performing work. The Contractor shall take every precaution at all times for the protection of persons and their property that may come on the work site or be affected by the Contractor's operation and give immediate notice to the COTR, or the Department's designee, of any condition deemed hazardous to any persons.

B.15 **REPORTING – WORK TICKET:**

Within five (5) business days after completion of work, the Contractor shall provide the COTR with a full report ("Report") of any Equipment serviced. The Contractor shall

submit all Reports, with updates, to the Department through its “SalesForce” online work management system with respect to the performance of its services (as soon as this management system becomes fully operational and accessible for Contractors). These reports will also include summaries, notes, pictures, and any other information requested by the Department, as well as record the following information:

B.15.1 The manufacturer’s make, model, and serial number on the Work Ticket.

B.15.2 The date and time of initial contact,

B.15.3 The date and time of the arrival and departure of mechanic,

B.15.4 The full name of technician and credentials,

B.15.5 A full explanation of the problem, and

B.15.6 The steps taken to resolve and/or repair the problem.

B.16 **SERVICE HOURS:**

The Contractor shall perform all Services during the hours of 6:00 a.m. – 8:00 p.m. local time (adjustments will be made for Daylight Savings Time), Monday through Friday, excluding District holidays, unless otherwise approved by the Department. If the Contractor needs to work on a weekend or District holiday in order to maintain the required schedule, the Contractor shall obtain the Department’s approval. There may be situations that require the Contractor to work other than the hours specific herein. In those cases, the Contractor shall advise the Department to reschedule the work to minimize disruption.

**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), 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 Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, D.C. Law 16-33 (codified at D.C. Code § 2-218.01 et seq.), 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 prime Contractors 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);
- (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 percent (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:

- (a) Any Contractor 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.
- (b) 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

- (c) All vendors are encouraged to contact DSLBD at (202) 727-3900 if additional information is required on certification procedures and requirements.

C.2 DSLBD UTILIZATION:

C.2.1 Mandatory Subcontracting Requirements

- (a) Unless the Director of the Department of Small and Local Business Development (DSLBD) has approved a waiver in writing, 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 2.1 (e) and 2.1 (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 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, 50% 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

C.2.2.1 If the prime Contractor is required by law to subcontract under this contract, it must subcontract at least 35% of the dollar volume of this contract in accordance with the provisions of section C.2.1 of this clause. The plan shall be submitted as part of the bid and may only be amended with the prior written approval of the 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 Sub Contractor;
- (b) A current certification number of the small or certified business enterprise;
- (c) The scope of work to be performed by each Sub Contractor; and
- (d) The price that the prime Contractor will pay each Sub Contractor.

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, COTR, District of Columbia Auditor and the Director of DSLBD.

C.2.4 Subcontracting Plan Compliance Reporting

C.2.4.1 If the Contractor has a subcontracting plan required by law for this contract, the Contractor shall submit a quarterly report to the CO, COTR, 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 Sub Contractor 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.2.4.2 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, COTR, 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 under the default provisions in clause 8 of the SCP, Default.

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.

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 H**) 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.

**SECTION D
COMPLIANCE REQUIREMENTS**

D.1 CONFORMANCE WITH LAWS:

It shall be the responsibility of the Contractor to perform the Agreement 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.

D.2 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.

D.3 STANDARD CONTRACT PROVISIONS:

The Standard Contract Provisions for Use with Supplies and Services Contracts (2007) are applicable to this contract and are incorporated by this reference.

D.4 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 G**).

D.5 SERVICE CONTRACT ACT:

The Service Contract Act is applicable to the resulting Contract. As such, the Contractor and its subcontractors shall comply with the wage and reporting requirements imposed by this Act. Applicable wage determination rates are attached hereto as (**Attachment I**).

**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 District reserves the right to accept/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 District will make an award(s) to the **responsive and responsible** Bidders with the lowest total price for each group of work, as follows:

- 1) Group A – Kitchen Hoods
- 2) Group B – Stoves/Ovens
- 3) Group C – Dryers and Miscellaneous Appliances

The total price will be determined based on the sum of the total the base and two (2) option years after application of the appropriate percentage reduction for Certified Business Enterprise (CBE).

SECTION F
BID ORGANIZATION AND SUBMISSION

This section outlines specific information necessary for the proper organization and manner in which Bidder'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 in an original and two (2) hard copies placed in a sealed envelope conspicuously marked: **DCAM-17-NC-0027 – Kitchen Hoods, Stoves/Ovens, and Miscellaneous Appliances.**

F.2 DELIVERY OR MAILING OF BIDS:

Submissions shall be hand delivered or mailed to:

Department of General Services
Contracts & Procurement Division
Attn: George G. Lewis, CPPO Interim Associate Director/Contracting Officer
2000 14th Street, NW | 8th Floor
Washington, D.C. 20009
Phone: (202) 727-2800

F.3 DATE AND TIME FOR RECEIVING BIDS:

Submissions shall be received no later than 11:00 a.m. local time on December 21, 2016. The Bidder 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 11:15 a.m. on December 21, 2016 on the 2nd Floor Community Room at the Frank D. Reeves Municipal Center.

F.5 ATTACHMENTS

The Bidder shall complete and include ALL the following attachments with their bid in the order listed below:

- (a) SIGNED Award/Signature Page (**Attachment J**)
- (b) Acknowledgement of Amendments (Award/Signature Page Section 13)
- (c) The IFB pages 2 – 47
- (d) Bid Form - Each Bidder shall submit the completed and **SIGNED** MS Excel Bid Form (**Attachment B**);

- (e) Bidder/Offeror Certification – Each Bidder shall submit the Bidder/Offeror Certification (**Attachment D**).
- (f) Tax Affidavit - Each Bidder shall submit a completed tax affidavit to include an e-mail address and fax number (**Attachment E**). In order to be eligible for this procurement, Bidders must be in full compliance with their tax obligations to the District of Columbia government;
- (g) Subcontracting Plan Form - Each Bidder shall submit a Subcontracting Plan (**even if Bidder is self-performing**) in the form of (**Attachment F**);
- (h) First Source Employment - Each Bidder shall submit the First Source Employment Agreement in the form of (**Attachment H**);
- (i) Equal Employment Opportunity (EEO) Policy Statement Agreement – Each Bidder shall submit a signed EEO Policy Statement Agreement on company letterhead and complete and sign the Employer Information Report in the form of (**Attachment L**);
- (j) Key Personnel Submittals – With its Bid, the Bidder shall present all key personnel documentation requirements in accordance with Section B.9.1
- (k) DSLBD Certification Letter.

SECTION G
BIDDING PROCEDURES & PROTESTS

G.1 CONTACT PERSON:

The contact person for this IFB is:

Karen Araujo
Department of General Services
Contracts and Procurement Division
2000 14th Street, NW - 8th Floor
Washington, DC 20009
Phone: (202) 545-3035
Email: karen.araujo@dc.gov

G.2 EXPLANATIONS TO PROSPECTIVE BIDDERS:

Each Bidder shall carefully examine this IFB and any and all amendments, addenda, or other revisions, and thoroughly familiarize itself with all requirements prior to proffering a bid. Should a Bidder find discrepancies or ambiguities in, or omissions from, the IFB and amendments, addenda or revisions, or otherwise desire an explanation or interpretation of the IFB, any amendments, addenda, or revisions, it must submit a request for interpretation or correction in writing. Any information given to a Bidder concerning the solicitation will be furnished promptly to all other Bidders as an amendment or addendum to this IFB if in the sole discretion of the Department that information is necessary in proffering bids or if the lack of it would be prejudicial to any other prospective Bidders. Oral explanations or instructions given before the award of the contract will not be binding.

Requests shall be directed to Karen Araujo at the email address listed in Section G.1 ***no later than December 8, 2016***. The person making the request shall be responsible for prompt delivery.

G.3 PROTESTS:

Any Proposer, who is aggrieved in connection with the solicitation or award of a contract, must file with the D.C. Contract Appeals Board (Board) a protest no later than ten (10) business days after the basis of protest is known or should have been known, whichever is earlier. A protest based on alleged improprieties in a solicitation which are apparent at the time set for receipt of initial proposals shall be filed with the Board prior to the time set for receipt of initial proposals. In procurements in which proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, must be protested no later than the next closing time for receipt of proposals following the incorporation. The protest shall be filed in writing, with the Contract Appeals Board, 441 4th Street, N.W., Suite 350 N,

Washington, D.C. 20001. The aggrieved person shall also mail a copy of the protest to the Contracting Officer listed in this document.

G.4 RETENTION OF SUBMISSIONS:

All submissions will be retained by the Department and therefore will not be returned to the Bidders. 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.5 EXAMINATION OF BIDS:

Bidders 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 Bidder, and may result in disqualification.

G.6 LATE BIDS AND MODIFICATIONS:

- (a) Any bid received by the Department after the exact time specified for receipt shall not be considered.
- (b) 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.
- (c) 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.
- (d) Bids shall be irrevocable and remain in full force and effect for a period not less than 120 days after receipt of bids.

G.7 NO COMPENSATION FOR PREPARATION OF BIDS:

The Department shall 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 without limitation, any bids, statements, reports, data, information, materials or other documents or items.

G.8 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 Bidder'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 Bidder;
- (e) To take any other action within the applicable Procurement Regulations or law;
- (f) To reject the bid of any Bidder 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.

G.9 LIMITATION OF AUTHORITY:

Only a person 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.

SECTION H INSURANCE REQUIREMENTS

H.1 REQUIRED INSURANCE:

The Contractor shall maintain the following types of insurance throughout the life of the contract.

H.1.1 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 will 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.2 ADDITIONAL INSURED:

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.3 WAIVER OF SUBROGATION:

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

H.4 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.

**SECTION I
DEPARTMENT'S RESPONSIBILITIES**

I.1 INFORMATION & SERVICES:

I.1.1 The Department will provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the Department's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

I.2 DEPARTMENT'S DESIGNATED REPRESENTATIVES:

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

George G. Lewis, CPPO
Interim Associate Director, Contracts & 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 and the CO are the only persons authorized to approve changes to any of the requirements of the Contract. The CO is authorized to approve changes valued up to \$100,000.00.

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 by the CCO.

I.2.1.1.3 In the event the Contractor effects any change at the instruction or request of any person other than the CCO, 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 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 CCO fully informed of any technical or contractual difficulties encountered during the performance period and advising the 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 COTRs are:

Paul Hoftzyer

FEMS Facility Manager - MPD HQ
300 Indiana Avenue, NW, Room 4001
Washington, DC 20001
Desk 202-727-2084
Paul.Hoftzyer@dc.gov

Ruth Jenkins

Management Analyst, Public Safety Facilities
300 Indiana Avenue, NW, Room 4001
Washington, DC 20001
Desk: 202-727-4368
Ruth.Jenkins@dc.gov

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

- I.2.2.2.1** Award, agree to, or sign any Contract document, change order, change directive, delivery order or task order. 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, and may be denied compensation or other relief for any additional work performed that is not authorized by the CCO in writing. 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 invoice the Department on a monthly basis. Each such invoice shall itemize all goods and services provided and submitted to dgsfm.invcs@dc.gov.

I.3.2 Right to Withhold Payments

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

- I.3.2.1** The work is defective and such defects have not been remedied; or

I.3.2.2 The Department has determined that the Contractor's progress has fallen behind the Project Schedule, and the Contractor fails, within ten calendar days of the Department's written demand, to provide the Department with a realistic and acceptable plan to recover the delays; or

I.3.2.3 The Contractor has failed to pay subcontractors promptly or has made false or inaccurate certifications that payments to Subcontractors or Suppliers are due or have been made; or

I.3.2.4 The Contractor is otherwise in substantial breach of the Contract (including, without limitation, failures to comply with the Economic Inclusion Requirements in Section C of this Contract).

I.3.3 The Department's liability under this contract is contingent upon the future availability of appropriated monies with which to make payment under the contract. The legal liability on the part of the Department for the payment of any money shall not arise unless and until such appropriations have been provided.

**SECTION J
MISCELLANEOUS PROVISIONS**

J.1 EXTENT OF CONTRACT:

The Contract, which includes this Agreement and the exhibits attached 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. The Contract may be amended only by written instrument signed by both the Department and Contractor. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

J.2 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.

J.3 ASSIGNMENT:

The Department and Contractor respectively bind themselves, their partners, members, joint ventures, constituent entities, successors, assigns and legal representative to the other party hereto and to partners, members, joint ventures, constituent entities, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

J.4 RETENTION OF RECORDS AND INSPECTIONS AND AUDITS:

J.4.1 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.

J.4.2 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.

- J.4.3** 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.
- J.4.4** 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.
- J.4.5** 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.
- J.4.6** 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.
- J.4.7** 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.

J.5 INSPECTION FOR SUPPLIES AND SERVICES:

- J.5.1** 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.

J.5.2 Notwithstanding the Department's acceptance of or payment for any product or service delivered by Contractor, the Contractor shall remain liable for latent defects, fraud, gross mistakes amounting to fraud and the Department's rights under any warranty or guarantee.

J.5.3 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 offeror with respect to a debarment or suspension of the Contractor or any such Subcontractor.

J.6 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.

J.7 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.

J.8 ANTI-COMPETITIVE PRACTICES AND ANTI-KICKBACK PROVISIONS:

J.8.1 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.

J.8.2 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 Sub Contractor 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.

J.8.3 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.

J.9 RESPONSIBILITY FOR AGENTS AND CONTRACTORS:

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

J.10 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 Sub-Contractor or vendor.

J.11 GRATUITIES AND OFFICERS NOT TO BENEFIT PROVISIONS:

J.11.1 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.

J.11.2 In the event the Contract is terminated as provided in J.12.1, the Department shall be entitled:

J.11.2.1 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

J.11.2.2 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.

J.11.3 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 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.

J.12 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 Kitchen 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.

J.13 NON-DISCRIMINATION IN EMPLOYMENT PROVISIONS:

J.13.1 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:

J.13.1.1 Employment, upgrading, or transfer;

J.13.1.2 Recruitment or recruitment advertising;

J.13.1.3 Demotion, layoff, or termination;

J.13.1.4 Rates of pay, or other forms of compensation; and

J.13.1.5 Selection for training and apprenticeship.

J.13.2 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.

J.13.3 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.

J.13.4 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.

J.13.5 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.

J.13.6 The Contractor shall include in every subcontract the equal opportunity clauses of this Section so that such provisions shall be binding upon each Sub Contractor or vendor.

J.13.7 The Contractor shall take such action with respect to any Sub Contractor as the Contracting Officer may direct as a means of enforcing these provisions, including sanctions for non-compliance.

J.14 BUY AMERICAN ACT PROVISION:

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

J.15 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT PROVISION:

The Contractor agrees that the construction work performed under this Contract shall be subject to the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333).

J.16 TERMINATION OR SUSPENSION:

J.16.1 Cancellation before Notice to Proceed:

The Department may cancel the Contract at any time before issuance of a Notice to Proceed, in the Department's sole discretion. Such a cancellation shall not be a breach of the Contract, and the Contractor shall not be entitled to any compensation or damages if cancellation occurs.

J.16.2 Termination for Default:

The Department may terminate the Contract for default if the Contractor fails materially to perform any of its duties or obligations under the Contract. In particular, but without limitation, the Department may terminate the Contract if:

J.16.2.1 the Contractor fails to prosecute the Work diligently, in accordance with the Project Schedule or to make such progress in the Work as the Department reasonably believes is necessary to complete the Project within the time required by the Contract; or

- J.16.2.2** the Contractor fails to perform the Work in a good and workmanlike manner or to correct defects in the Work promptly upon notice by the Department; or
- J.16.2.3** the Department reasonably determines that the Contractor has abandoned the Work, or has failed to pay laborers, mechanics, material men, Subcontractors or suppliers when payment is due; or
- J.16.2.4** becomes insolvent, makes an assignment for the benefit of creditors, files a voluntary petition under any chapter of the Bankruptcy Code or has an involuntary petition filed against it under any chapter of the Bankruptcy Code, or has a receiver appointed, or files for dissolution or otherwise is dissolved; or
- J.16.2.5** the Contractor fails to pay its debts in a timely manner or becomes insolvent, or the Department reasonably determines that the Contractor does not have the financial ability to carry out its obligations under the Contract and the Contractor fails to give the Department prompt and reasonable assurances of its ability to perform.
- J.16.2.6** the Department must provide the Contractor with written notice of its intent to terminate the Contract under this provision seven (7) days before actually putting the termination into effect. If the Contractor has begun its curative action and has made progress satisfactory to the Department within the seven days, the Department may so notify the Contractor and the termination will not take effect. Otherwise, the termination shall take effect after seven days without further notice or opportunity to cure.
- J.16.2.7** If the Department terminates the Contract for default, the Department will have the right to take over the Work, to accept assignment of some or all Subcontracts or agreements with material suppliers, to take possession of the Project, to take and use all tools, equipment and supplies then being used in connection with the Work, and to finish the Project by whatever method it deems expedient, including accepting assignment of all outstanding Subcontracts and Supply Agreements.

J.16.3 Termination for Convenience:

- J.16.3.1** The Department may, upon seven (7) days written notice to the Contractor, terminate the Contract in whole or specified part, for its

convenience, whether the Contractor is in breach of Contract or not. The notice of termination shall state the effective date of termination, the extent of the termination, and any specific instructions.

J.16.3.2 After receiving notice of termination for convenience, the Contractor shall (1) stop work on the terminated portion of the Project as of the effective date of the termination and stop placing subcontracts or supply agreements thereunder; (2) consult with the Department regarding the disposition of existing orders and subcontracts, and use its best efforts to terminate them on terms favorable to the Department; (3) consult with the Department to decide what actions should be taken to protect work in place and equipment that has been delivered and not yet installed, and to render the site safe, and proceed to take such actions as may be agreed upon or, absent agreement, as may be reasonable; (4) take necessary or directed action to protect and preserve property in the Contractor's possession in which the Department has or may acquire an interest and, as directed by the termination notice or other order from the Department, deliver the property to the Department; and (5) promptly deliver to the Department all computer files it has prepared relating to the Project. The Contractor shall also promptly notify the Department, in writing, of any legal proceeding arising from any subcontract or supply agreements related to the terminated portion of the Project, and, in consultation with the Department, settle outstanding liabilities arising out of the terminated portion of the Project on the best terms reasonably possible.

J.16.3.3 The Contractor shall be entitled to receive only the following with respect to the terminated portion of the Project: (1) Cost of Work performed up to the date of termination; (2) reasonable costs of terminating outstanding subcontracts and supply agreements and other similar wind-up costs in a reasonable amount; (3) a fair and reasonable portion of the overhead and profit attributable to the Work performed on the terminated portion of the Project, up to the time of termination. The Contractor shall not be entitled to recover overhead or profits on unperformed portions of the Work. Further, if it appears to the Department that the cost of completing Work would have exceeded the Lump Sum Price, the Department shall have the right to adjust the settlement figure downward in an appropriate amount. In no case shall the Contractor be entitled to receive an amount in settlement for termination for convenience that would exceed the

percentage value of the Work actually performed in accordance with the Contract, multiplied by the Lump Sum Price, and reduced by any damages, liquidated or otherwise, the Contractor may owe the Department.

J.16.3.4 Payment of such amounts shall be the Contractor's sole remedy for termination for convenience.

J.16.3.5 The Contractor shall, promptly after termination, submit a proposal for settlement of the amounts due to it as a result of the termination for convenience. The proposal shall be consistent with the requirements of Subparagraphs J.17.6.2 and shall be accompanied by such documentation of costs as the Department may reasonably require. Such documentation may include cost and price data in accordance with the Department's Regulations.

J.16.4 Effect of Wrongful Termination:

Any termination for cause which is later determined to have been improperly affected shall be deemed to have been a termination for convenience pursuant to Paragraph J.17.3 and shall be governed by that Paragraph.

J.16.5 Continued Responsibility after Termination:

If the Contractor is terminated, either for default or otherwise, the Contractor shall remain responsible for defects or non-conformities in all Work performed to the date of the termination.

J.16.6 Suspension:

J.16.6.1 Suspension at the Convenience of the Department:

The Department may at any time, with or without cause, suspend, delay, reduce or interrupt performance of all or any portion of the Work for such period or periods as the Department elects by giving the Contractor written notice specifying which portion of the Work is to be suspended and the effective date of such suspension. Such suspension, delay or interruption shall continue until the Department terminates such suspension, delay or interruption by written notice to the Contractor. No such suspension, delay, interruption or reduction by the Department shall constitute a breach or default by the Department under the Contract Documents. The Contractor shall continue to diligently perform any remaining Work that is not suspended, delayed, reduced or interrupted and shall take all actions

necessary to maintain and safeguard all materials, equipment, supplies and Work in progress affected by the suspension, delay, reduction or interruption.

J.16.6.2 Payment upon Suspension for Convenience

In the event of suspension, delay, reduction or interruption for convenience by the Department, the Department shall pay the Contractor and the Lump Sum Price shall be increased by such amounts (subject to the payment and related requirements of the Contract Documents) as follows:

J.16.6.2.1 Additional Costs of the Work, if any, which are incurred by the Contractor, its Subcontractors and Vendors as a result of continuing to maintain dedicated personnel, materials and equipment at the Site at the Department's request during any suspension, delay or interruption period, including for the purpose of safeguarding all material, equipment, supplies and the Work in progress caused solely by such suspension, delay or interruption ordered by the Department for convenience, but the price shall be increased only if and to the extent such delay, suspension or interruption exceeds a period of thirty (30) consecutive days following commencement of the Work; and

J.16.6.2.2 Other reasonable and unavoidable Costs of the Work, if any, which are directly related to any subsequent re-mobilization of the suspended, delayed or interrupted the Work caused solely by such suspension, delay or interruption ordered by the Department for convenience, but the Lump Sum Price shall be increased only if and to the extent such delay, suspension or interruption exceeds a period of thirty (30) consecutive days following commencement of the Work.

J.16.6.2.3 Provided, however, that no adjustment shall be made to the extent that performance was otherwise subject to suspension, delay or interruption by another cause for which the Contractor is responsible. Furthermore, the Contractor shall not be entitled to an increase in

overhead or profit for a suspension ordered by the Department.

J.17 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.

J.18 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 construction of the Project. 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 Agreement and its Exhibits, the General Conditions, and 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.

J.19 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 construction means, methods, techniques, sequences, and procedures, as well as for Project safety.

J.20 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 Sub Contractors), 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.

J.21 NO THIRD-PARTY BENEFICIARY RIGHTS:

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

J.22 MEDIA RELEASES:

Neither the Contractor, its employees, agents or Sub Contractors 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.

J.23 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:

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

If to the Contractor:

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

J.24 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 not begin to run, or shall be deemed to be tolled, until Final Completion or, with respect to latent defects or nonconformities, such later time as the Department knew or should have known of the defect or nonconformity.

J.25 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.

J.26 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.

J.27 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.

J.28 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.

J.29 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.

J.30 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 unless made in writing signed by both the Department and the Contractor, unless otherwise expressly provided to the contrary in the Contract.

J.31 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.

J.32 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.

J.33 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 performance of work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Sub Contractor, anyone directly or

indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

J.34 CHANGES:

J.34.1 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 or Change Order.

J.34.1.1 The Contracting Officer 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.

J.34.1.2 In the event the Contractor effects any change at the instruction or request of any person other than the Contracting Officer, 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.

J.34.2 Executed Change Directive/Order Required. Changes to the Agreement may be made only by a written Change Directive or Change Order executed by the Department.

J.34.3 Prompt Notice. In the event the Contractor encounters a situation which the Contractor believes to be a change to this Agreement, 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.34.4 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.34.5 Failure to Agree. If the Contractor claims entitlement to a change in the Agreement, 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 of this Agreement. Failure to proceed due to a dispute over a change request shall constitute a material breach of the Agreement and entitle the Department to all available remedies for such breach, including, without limitation, termination for default.

J.35 DISPUTES:

J.35.1 Informal Resolution

It is the mutual desire of the parties to resolve any disputes arising under, or otherwise related to, this Agreement in an informal manner and by consensus. Toward this end, should any such dispute arise, the parties shall use their best efforts to resolve the dispute without the need for formal litigation or process of any kind. In the event that any such dispute cannot be resolved by the parties' representatives, the parties shall arrange for representatives of their senior management to meet and, if possible, discuss the issue. If this process cannot resolve the problem, then either party may initiate arbitration in accordance with Section J.37.2 of this Agreement, if resolution is not reached in such manner, the Program Manager shall make a claim in accordance with this Section.

J.35.2 Formal Dispute Resolution Procedure

J.35.2.1 Notice of Claim. If the Contractor wishes to assert a claim over a contract dispute, the Contractor shall provide written notice of the claim to the Department pursuant to procedures set forth in Section 4732 of the Department's procurement rules and Section 1004 of the District's Procurement Practices Reform Act of 2010 (PPRA).

J.35.2.2 Contents of Notice of Claim. The notice of claim shall state the nature of the claim, the events or circumstances giving rise to the claim, the

type of relief requested, and the amount of time or additional compensation, or other damages sought. If the amount of time, compensation, or other damages sought is not reasonably ascertainable at the time such notice is provided, the Contractor shall so state, explain why, and provide whatever estimates it can reasonably provide. The notice shall state clearly that the Contractor intends to assert a claim against the Department.

J.35.2.3 Appeal Procedures. All claims arising under or in connection with the Agreement or its breach, or relating to the delivery of services, whether framed in contract, tort or otherwise, and which are not resolved via the claims process may be resolved by filing an appeal with the District of Columbia Board of Contract Appeals in accordance with Title X of the Procurement Practices Reform Act of 2010 (PPRA). However, if a third party brings any claim against the Department, including, without limitation, claims of infringement of patents, copyrights or other intellectual property rights, the Department may bring an action for defense or indemnification against the Contractor in the court in which such claim is being litigated.