GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES

INVITATION FOR BIDS

Solicitation Number: DCAM-16-CS-0082

BANNEKER COMMUNITY CENTER CONCESSIONS AND ADA UPGRADES

This IFB is designated only for certified small business enterprise (SBE) Contractors 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 Contractors that are certified by the District of Columbia Department of Small and Local Business Development (DSLBD) as a SBE are eligible.

Date Issued:	January 29, 2016
Bid Opening Date:	February 12, 2016 at 11:15 a.m.
Delivery of Bids:	Department of General Services Contracts and Procurement Division Attention: James Marshall Frank D. Reeves Center 2000 14th Street NW, 8th Floor Washington, DC 20009
Pre-Bid Conference and Site Visit:	February 3, 2016 at 10:00 a.m. Banneker Community Center 2500 Georgia Ave, NW Washington, DC 20001 (See Section G.2)
Contact:	Jason James Contract Specialist Contracts and Procurement Division 2000 14th Street, NW, 8th Floor Washington, DC 20009 Phone: 202-729-2164 Email: jason.james2@dc.gov

EXECUTIVE SUMMARY

The District of Columbia Department of General Services ("Department" or "DGS"), Contracts and Procurement Division, on behalf of the Office of Disability Rights ("ODR") and The District of Columbia Department of Parks and Recreation ("DPR"), is issuing this Invitation for Bids ("IFB") to engage a Contractor to provide all necessary construction services, supervision, permits, labor, tools, supplies, equipment and materials necessary to perform Americans with Disabilities Act ("ADA") modifications and renovate/convert the existing lifeguard house to a concessions building ("Work" or "Project") at the Banneker Community Center. The Contractor shall provide the required services in accordance with the Scope of Work.

A.1 Contract Type

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

A.2 Form of Contract

The Contract resulting from this IFB will include the following:

(a) The Award/Signature Page (**Attachment J)**
(b) Acknowledgement of Amendments (See Award/Signature Page Section 13)
(c) The IFB pages 2 – 60
(d) The Contractor's Offer Letter and Bid Form (**Attachment A**)
(e) Applicable exhibits provided as attachments or incorporated by reference

A.3 Contractor's Compensation

Contractors shall provide an Offer Letter and Bid Form **(Attachment A)** to include their lump sum fixed price to complete the work. The Total Lump Sum Price shall be the Contractor's sole method of compensation and as such shall be sufficient funding to cover all of the costs necessary to fully complete the Project, including, but not limited to, labor, materials, trade, subcontractor costs, insurance and bonding, home office overhead, travel and profit. The Total Lump Sum Price shall also include sufficient funding for the Americans with Disabilities Act ("ADA") modifications and renovation/conversion of the existing lifeguard house to a concessions building at the Banneker Community Center that is not specifically identified in the Scope of Work but which is reasonably inferable therefrom.

A.4 Procurement Schedule

The schedule for this procurement is as follows:

• Issue IFB	January 29, 2016
• Pre-Bid Conference and Site Visits	February 3, 2016 at 10:00 a.m.
• Last Day for Questions	February 5, 2016
• Bids Due	February 12, 2016 at 11:00 a.m.
• Bid Opening	February 12, 2016 at 11:15 a.m.

A.5 Attachments: The following documents are attached to the IFB:

Attachment A	Form of Offer Letter and Bid Form
Attachment B	Disclosure Statement
Attachment C	Tax Affidavit
Attachment D	Subcontracting Plan Form
Attachment E	2016 Living Wage Act Notice and Fact Sheet
Attachment F	First Source Employment Agreement Form
Attachment G	Davis Bacon Wage Determination
Attachment H	Bid Bond Form
Attachment I	Bid Guaranty Certification
Attachment J	Award/Signature Page
PROJECT DRAWINGS	
Exhibit A	Site Plan / Location of Existing Lifeguard House
Exhibit B	Concession Stand Contract Drawings Required for Permit
Exhibit C	ADA Executive Level Assessment for Banneker Community Center by Studio 27/Leo A Daly Architects Joint Venture
Exhibit D	Construction documents for ADA compliance upgrades for Banneker Community Center by Studio 27/Leo A Daly Architects Joint Venture
Exhibit E	Phase 1 Environmental Assessment for Banneker Community Center by ECS
Exhibit F	Hazardous Materials Survey for Banneker Community Center by ECS
Exhibit G	Hazardous Materials Abatement Project Specifications for Banneker Community Center by ECS

SECTION B
SCOPE OF WORK

B.1 SCOPE OF WORK

The Department of General Services ("Department" or "DGS"), in conjunction with the Office of Disability Rights ("ODR") and The District of Columbia Department of Parks and Recreation ("DPR") seeks the services of a contractor ("Contractor") to perform Americans with Disabilities Act ("ADA") modifications pursuant to a site specific Executive ADA Summary Assessment and construction documentation provided by Studio 27/Leo Daly joint venture. Upgrades may include ADA men's and women's restrooms, front of building ADA ramp access, rear of building ADA access, and ADA handrails for outdoor egress. The Contractor shall also renovate the existing lifeguard house at Banneker Pool into a concessions building for DPR. Banneker Pool is located at 2500 Georgia Ave, NW.

Site Location

The Banneker Community Center and Pool is located at 2500 Georgia Avenue NW, Washington, DC 20001 in Ward 1. The Property contains a one-story wood-framed recreation building, two outdoor swimming pools, one baseball field, eight tennis courts, a playground, and two basketball courts all contained upon a site of approximately 13.17 acre (388,120 square feet). The recreational building and principal other recreational features were constructed circa 1936. The first floor level of the recreational building consists of offices, a community room, classrooms, and a multipurpose room. The lower level consists of locker rooms, offices, weight room, and mechanical rooms. The recreational building is of construction type 5B and contains a measured gross floor area of 12,660 square feet.

The Property is bounded by Georgia Avenue, NW, to the East; Barry Place, NW, to the South; 9th Street, NW, to the West; and Euclid Street, NW, on the North. The Property is served by a bus stop along Georgia Avenue, NW. The nearest Metrorail station is the Shaw-Howard Station, which is approximately 0.56 miles to the South of the Property.

B.2 REQUIREMENTS

Contractor shall provide all labor, materials, equipment and supplies to accomplish the following scope of work. The existing building is historic and precautions must be taken to ensure it is not damaged other than what is called for on the drawings. Project must be substantially complete by April 27, 2016.

B.2.1 Renovate existing lifeguard house (clouded in attached **Exhibit A**) into a concessions building for the pool / surrounding outdoor areas.

a. The contract drawings are included in attached **Exhibit B**
b. Additional power is required from the electrical room in the Banneker Community Center for the Concession Renovation (shown as alternate #1 on the drawings).

c. New kitchen equipment as shown on the drawings, along with mechanical, electrical, plumbing, etc.
d. Commissioning as required to ensure the concessions building is operating as designed.

B.2.2 Renovate the existing Banneker Community center for ADA compliance per construction drawings, specifications, referenced surveys and assessments (attached as **Exhibit C, Exhibit D, Exhibit E, Exhibit F and Exhibit G**)

a. The contract drawings are included in attached **Exhibit D**

B.2.3 Procure all permits required for the project, which includes approval through the Department of Health. DGS will be providing the building permit for the ADA portion.

B.3 MEETINGS

The Contractor, Project Manager and the DPR representative shall meet as necessary to review Contractor's work. Upon the commencement of construction, the Contractor shall meet with DPR and DGS Project Manager on-site once per week for project update walk-throughs. The Contractor shall provide the Project Manager meeting minutes of each meeting held.

B.4 COORDINATION

Coordination of the work is the responsibility of the Contractor. The Contractor shall coordinate with all agencies at least two business days prior to taking any action requiring coordination or approval.

B.5 SITE CLEANLINESS

During the contract and/or as directed by the Project Manager, as the installation is completed, Contractor shall ensure that the site is clear of all extraneous materials, rubbish or debris.

B.6 SITE SECURITY

Contractor shall secure the project work area by a minimum 6'-0" chain link fence. Contractor shall ensure site is locked during non-work hours and absences from the site during working hours.

B.7 PROTECTION OF EXISTING ELEMENTS

Contractor shall protect all existing features, public utilities and other existing structures during construction. Contractor shall protect existing trees and shrubs from damage during construction. Protection shall extend to the root systems of existing vegetation. Contractor shall not store materials or equipment, or drive machinery, within drip line of existing trees and shrubs. No vehicles are allowed on the site at any time.

B.8 DAMAGE BY CONTRACTOR

Contractor is responsible for the replacement, repair or patch of any exiting surfaces or materials damaged during construction by own or subcontractors crews.

B.9 PERMITS

Contractor shall be responsible to provide all permits as required to complete the scope of work.

B.10 SUBMITTALS

Contractor shall submit to the Project Manager for review and approval all shop drawings, material data and samples provided by Contractor, vendors and/or manufacturers. The Contractor shall submit a submittal log to the Project Manager within five (5) business days of finalizing the material / equipment / etc. selections, or the design. The Project Manager shall review and approve or reject submittals within five (5) business days of receipt from the Contractor.

B.11 CONSTRUCTION SCHEDULE

Contractor shall submit to the Project Manager for review and approval a construction schedule within five (5) business days of Notice to Proceed.

B.12 CONSTRUCTION

Contractor shall provide all labor, equipment and materials as required to install the park site improvements, including but not limited to:

1) Layout and staking;
2) Erosion and sediment control;
3) Site clearing (e.g., demolition, clearing and grubbing as necessary, topsoil stripping and stockpiling as necessary);
4) Earthwork (e.g., cut, fill, trenching, rough grading, finish grading);
5) Utility installation, including electric, water, and storm-water management required by the District Department of the Environment;
6) Paving and/or surfacing; and
7) Furnishings and installation (e.g., benches, fences and gates, litter receptacles).

B.13 WALK-THROUGH INSPECTION

At the achievement of Substantial Completion, the Project Manager shall perform a walk-through inspection in the presence of the Contractor. The Contractor shall prepare a written report stating any deficiencies found during the walk through, identify the responsible parties, and ensure that all the deficiencies are corrected by the Contractor prior to demobilization. The Contractor shall not demobilize from the site until receiving written notice, in writing, from the Project Manager the deficiencies have been corrected to the Project Manager's satisfaction.

B.14 AS-BUILT DRAWINGS, OPERATION & MAINTENANCE & WARRANTY INFORMATION

The Contractor shall prepare one (1) full size, two (2) half size and four (4) electronic copies of "As-Built" plans of the site, including all the modifications performed during construction, and submit to the Project Manager within thirty (30) days after reaching Substantial Completion. The Contractor shall also submit O&M's and Warranty information on all installed products, materials and workmanship within thirty (30) days after reaching Substantial Completion. The Contractor shall submit four (4) hard copies and four (4) electronic copies of each: Operation & Maintenance Manuals and Warranty Information to the Project Manager.

B.15 PERIOD OF PERFORMANCE

The Contractor shall have until April 27, 2016 to reach Substantial Completion. The Contractor shall perform the Work so that it achieves Full Completion no later than May 6, 2016

B.16 EXHIBITS

The following documents are hereby attached/incorporated into this IFB:

- Exhibit A – Site Plan / Location of Existing Lifeguard House
- Exhibit B – Concession Stand Contract Drawings Required for Permit
- Exhibit C – ADA Executive Level Assessment for Banneker Community Center by Studio 27/Leo A Daly Architects Joint Venture
- Exhibit D – Construction documents for ADA compliance upgrades for Banneker Community Center by Studio 27/Leo A Daly Architects Joint Venture
- Exhibit E – Phase 1 Environmental Assessment for Banneker Community Center by ECS
- Exhibit F – Hazardous Materials Survey for Banneker Community Center by ECS
- Exhibit G – Hazardous Materials Abatement Project Specifications for Banneker Community Center by ECS

B.17 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.

B.17.1 LIVING WAGE ACT

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

B.17.2 DAVIS-BACON ACT

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

B.17.3 APPRENTICESHIP ACT

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

B.18 LICENSING, ACCREDITATION AND REGISTRATION:

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

B.19 STANDARD CONTRACT PROVISIONS:

The Standard Contract Provisions for use with Specifications for District of Columbia Government Construction Projects (Revised March 2011) are hereby incorporated into this IFB.

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);Ten (10) percent for a longtime resident business (LRB);
(c) Two (2) percent for a local business enterprise (LBE);
(d) Two (2) percent for a local business enterprise with its principal office located in an enterprise zone (DZE);
(e) Two (2) percent for a disadvantaged business enterprise (DBE);
(f) Two (2) percent for veteran-owned business (VOB);
(g) Two (2) percent for local manufacturing business enterprise (LMBE)

C.1.2 Maximum Preference Points Awarded

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

C.1.3 Preferences for Certified Joint Ventures

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

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

Any 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.

(a) Any vendor seeking certification in order to receive preferences under this solicitation should contact the:

Department of Small and Local Business Development
ATTN: CBE Certification Program
441 Fourth Street, NW, Suite 850N
Washington DC 20001

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

C.2 LSDBE Utilization

The mandatory subcontracting requirements are as follows:

(a) Unless the Director of the Department of Small and Local Business Development (DSLBD) has approved a waiver in writing, for all contracts in excess of $250,000, at least 50% 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 50% of the dollar volume to any qualified certified business enterprises (CBEs); provided, however, that all reasonable efforts shall be made to ensure that SBEs are significant participants in the overall subcontracting work.

(c) A prime contractor that is certified by DSLBD as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of sections C.2.1 (a) and C.2.1 (b) of this clause.

(d) Except as provided in C.2.1 (e) and C.2.1 (f), a prime contractor that is a CBE and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A CBE prime contractor that performs less than 35% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

(e) A prime contractor that is a certified joint venture and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A certified joint venture prime contractor that performs less than 50% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

(f) Each CBE utilized to meet these subcontracting requirements shall perform at least 35% of its contracting effort with its own organization and resources.

(g) A prime contractor that is a CBE and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the on-site work with its own organization and resources if the contract is $1 million or less.

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

C.2.2 Subcontracting Plan

If the prime contractor is required by law to subcontract under this contract, it must subcontract at least 50% 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 Contracting Officer (CO) and Director of DSLBD. Any reduction in the dollar volume of the subcontracted portion resulting from an amendment of the plan shall inure to the benefit of the District. Each subcontracting plan shall include the following:

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

C.2.3 Copies of Subcontracts

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

C.2.4 Subcontracting Plan Compliance Reporting

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

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

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

C.2.5 Annual Meetings

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

C.2.6 Notices

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

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

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

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

C.2.7.3 If the CO determines the Contractor's failure to be a material breach of the contract, the CO shall have cause to terminate the contract 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. In addition, the Contractor shall use commercially reasonable best efforts to comply with the workforce percentage requirements established by the adopted amendments to the First Source Employment Agreement Act of 1984 (D.C. Code §§ 2-219.01 *et seq.*) and any implementing regulations, including, but not limited to, the following requirements for contracts in excess of Five Million Dollars:

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

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

iv. At least 70% of common laborer hours by trade shall be performed by District residents.

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

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

C.4 Subcontracting Administration

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

C.4.1 It is understood that the Contractor may, subject to the term of this Agreement, subcontract a portion of the work to a Subcontractor pursuant to written contract with the Contractor; provided, however, that the Contractor shall not be permitted to subcontract all or substantially all of the Work to a single Subcontractor.

C.4.2 The Department may at any time direct the Contractor to terminate any Subcontractor or supplier performing services on the job.

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

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

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

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

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

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

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

C.4.5.5 that the Subcontractor or supplier shall comply immediately with a written order from the Department to the Contractor to suspend or stop work;

C.4.5.6 that the Subcontractor or supplier shall maintain records of all Work it is requested or authorized to do on a time and material or cost-plus basis, or with respect to claims that it has asserted on a time and materials or cost-plus basis, during the Project and for a period of time specified in the General Conditions and requiring the Subcontractor or supplier to make those records available for review or audit by the Department during that time;

C.4.5.7 that the Subcontractor shall obtain and maintain, throughout the Project, workers' compensation insurance in accordance with the laws of the District of Columbia (This provision is not applicable to supply agreements.);

C.4.5.8 that, if the Department terminates the Contract for convenience, the Contractor may similarly terminate the subcontract or supply agreement for convenience, upon seven (7) days' written notice to the Subcontractor or supplier, and that the Subcontractor or supplier shall, in such a case, be entitled only to the costs set forth in the Termination for Convenience provisions of this Agreement;

C.4.5.9 that the Department shall have the right to enter into a contract with the Subcontractor or supplier for the same price as its subcontract or supply agreement price less amounts already paid, if the Contractor files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it;

C.4.5.10 that the Subcontractor or supplier shall not be entitled to payment for defective or non-conforming work, materials or equipment, and shall be obligated promptly to repair or replace non-conforming work, materials or equipment at its own cost;

C.4.5.11 that Subcontractors and suppliers promptly pay Subcontractors and suppliers at lower tiers, imposing upon the Subcontractors and suppliers a duty to pay interest on late payments, and barring reimbursement for interest paid to lower tier Subcontractors or suppliers due to a Subcontractor's or supplier's failure to pay them in timely fashion;

C.4.5.12 that all Subcontractors at all tiers comply with the provisions of **Section C** (Economic Inclusion Goals); provided, however, that the Contractor may, in its reasonable discretion impose a different LSDBE subcontracting goal on some or all of its Subcontractors; provided, further, however, that nothing in this provision shall be deemed to excuse the Contractor from using its best efforts to achieve the LSDBE subcontracting goal on an aggregate basis for the Project;

C.4.5.13 that allows the Contractor to withhold payment from the Subcontractor if the Subcontractor does not meet the requirements of the Subcontract;

C.4.5.14 that requires a lien and claim release as well as waiver provisions substantially identical to those in this Agreement.

C.4.5.15 Within seven (7) days of receiving any payment from the Department including amounts attributable to Work performed, or materials or equipment supplied, by a Subcontractor or supplier, the Contractor shall either pay the Subcontractor or supplier for its proportionate share of the amount paid to the Contractor for the Subcontractor's or supplier's Work or materials or equipment, or notify the Department and the Subcontractor or supplier, in writing, of the Contractor's intention to withhold all or part of the payment and state the reason for the withholding. All monies paid to the Contractor under the Contract shall be used first to pay amounts due to Subcontractors or suppliers supplying labor or materials for the Project and only money remaining after such payments are made may be retained by the Contractor.

C.4.5.16 Monies paid by joint check shall be deemed to have been paid fully to the Subcontractor or supplier named as a joint payee, unless the Department agrees otherwise in writing. Any interest paid to Subcontractors or suppliers because the Contractor has failed to pay them in timely fashion shall not entitle the Contractor to a Change Order.

C.4.5.17 The Contractor shall not substitute or replace any Subcontractor or supplier certified by DSBLD without the Department's prior written consent.

C.4.5.18 The Department has the right to contact Subcontractors or suppliers at all tiers or material or equipment suppliers directly to confirm amounts due and owing to them or amounts paid to them for Work on the Project, and to ascertain from the Subcontractors or suppliers at all tiers their projections of the cost to complete their Work or to supply their material or equipment, or the existence of any claims or disputes. In doing so the Department shall not issue any directions to Subcontractors or suppliers at any tier.

SECTION D
TOTAL LUMP SUM PRICE

D.4.1 Total Lump Sum Price

The Contractor shall be paid the Total Lump Sum Price to Fully Complete the Project.

D.4.2 Certain Work Included in the Total Lump Sum Price

The Contractor acknowledges and understands that the Total Lump Sum Price is based on the Scope of Work which is incorporated into this contract. It is understood and agreed that the Total Lump Sum Price represents the Contractor's offer to Fully Complete the Project. The Parties acknowledge and agree that it is their intent to have the Contractor provide all labor, tools, equipment and materials necessary for the ADA modifications and renovation/conversion of the existing lifeguard house to a concessions building at the Banneker Community Center as contemplated in the Contract Documents, for the Total Lump Sum Price and consistent with the Project Schedule. In furtherance of such intent, the Contractor hereby assumes the risks associated with and shall be responsible for (i) any changes in market conditions that affect the cost of labor or materials; (ii) coordination issues between the drawings; (iii) elements of work not shown on the Contract Documents, but which are reasonably inferable from the Contract Documents; (iv) cost associated with acceleration of the work and expediting of materials necessary to meet the Project Schedule which are the result of anything other than an Excusable Delay; and (v) the risk of subcontractor default or non-performance. It is understood and agreed by the parties that items (i) through (v) listed in the preceding sentence are not intended to be an exclusive list of the risks assumed by the Contractor and that such items represent a partial list of the risks assumed by the Contractor.

D.4.3 Review of Contract Documents

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

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

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

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

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

Department arising from or relating to such contingencies and conditions that are reasonably inferable from the Contract Documents, in light of the required preconstruction review and inspection and the Contractor's expertise in the field of construction.

D.4.4 Basis of Total Lump Sum Price

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

D.4.4.1 Attachment A:
Offer Letter and Bid Form

D4.4.2 Attachment D:
CBE Subcontracting Plan and Subcontracting Agreements

D.4.4.3 Attachment E:
Living Wage Act Notice and Fact Sheet

D.4.4.4 Attachment G:
Davis Bacon Wage Rates

SECTION E
EVALUATION AND AWARD CRITERIA

E.1 CONTRACT AWARD.

E.1.1 This procurement is being conducted in accordance with the provisions of §4720 of the Department's Procurement Regulations (27 DCMR, Chapter 47).

E.1.2 The 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 intends, but is not obligated to, make an award to the qualified Contractor whose bid is responsible and responsive to the IFB and is most advantageous to the Department considering only price and the price-related evaluation factors identified in the IFB.

E.1.4 The District will make an award(s) to the responsive and responsible Contractor(s) with the lowest total Total Lump Sum Price as referenced in the Offer Letter and Bid Form **(Attachment A)**.

SECTION F
BID ORGANIZATION AND SUBMISSION

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

F.1 Bid Identification

Bids shall be proffered with an original and three (3) hard copies. The Contractor's submission shall be placed in a sealed envelope conspicuously marked: **"Solicitation Number: DCAM-16-CS-0082 – Banneker Community Center Concessions and ADA Upgrades"**

F.2 Delivery or Mailing of Bids:

Submissions shall be delivered or mailed to:

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

F.3 Date and Time for Receiving Bids

Submissions shall be received no later than 11:00 a.m. local time on February 12, 2016. The Contractor assumes the sole responsibility for timely delivery of its submission, regardless of the method of delivery.

F.4 Bid Opening

A public Bid Opening will be held at 11:15 a.m. on February 12, 2016 at the Frank D. Reeves Municipal Building, 2nd Floor Community Room.

F.5 Attachments and Other Bid Documents

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

(a) Award/Signature Page (**Attachment J**)
(b) Acknowledgement of Amendments (Award/Signature Page Section 13)
(c) The IFB pages 2 - 60
(d) Form of Offer Letter and Bid Form - Each Contractor shall submit a Form of Offer Letter and Bid Form **(Attachment A**);
(e) Disclosure Statement – Each Contractor shall submit a Disclosure Statement **(Attachment B);**
(f) Tax Affidavit - Each Contractor shall submit a tax affidavit provided as **Attachment C**. In order to be eligible for this procurement, Contractors must be in full compliance with their tax obligations to the District of Columbia government;

(g) Subcontracting Plan Form - Each Contractor shall submit a Subcontracting Plan Form provided as **Attachment D**;
(h) First Source Employment - Each Contractor shall submit the First Source Employment Agreement provided as **Attachment F**.
(i) Bid Bond or Bid Guarantee Certification - Each Contractor shall submit a Bid Bond or Bid Guarantee Certification substantially in the form of **Attachment H** or **Attachment I respectively**; and
(j) LSDBE Certification Letter

SECTION G
BIDDING PROCEDURES & PROTESTS

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

Jason James, Contract Specialist
Department of General Services
Contracts and Procurement Division
2000 14th Street, NW, 8th Floor
Washington, DC 20009
Phone: (202) 729-2164
Email: jason.james2@dc.gov

G.2 Pre-Bid Conference and Site Visit

A pre-bid conference and site visit will be held February 3, 2016 at 10:00 am at the Banneker Community Center located at 2500 Georgia Ave., NW, Washington, DC 20001. Interested Contractors are strongly encouraged to attend.

G.3 Explanations to Prospective Contractors

Each Contractor shall carefully examine this IFB and all amendments, addenda, and other revisions, and thoroughly familiarize itself with all requirements prior to proffering a bid. Should a Contractor 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 Contractor concerning the solicitation will be furnished promptly to all other Contractors 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 Contractors. Oral explanations or instructions given before the award of the contract will not be binding.

Requests for explanation or interpretation shall be directed to Jason James at the email address listed in Section G.1 no later than February 5, 2016 at 2:00 p.m. The person making the request shall be responsible for prompt delivery.

G.4 Protests

Protests shall be governed by Section 4734 of the Department's Procurement Regulations (27 DCMR). Protests alleging defects in this solicitation must be filed prior to the time set for receipt of bids. If an alleged defect does not exist in this initial IFB, but was incorporated into the IFB by an amendment or addendum, a protest based on that defect must be filed before the next closing time established for proffering bids. In all other cases, a protester shall file the protest within seven (7) days after the protester knows or should have known of the defect, whichever is earlier, of the facts and circumstances upon which the protest is based. All protests must be made in writing to the Department's Chief Contracting Officer (CCO) and must be filed in duplicate. Protests shall be served on the Department by obtaining written and dated acknowledgment of receipt from the

Department's CCO. Protests received by the Department after the indicated period shall not be considered. To expedite handling of protests, the envelope shall be labeled "Protest".

This section is intended to summarize the bid protest procedures and is for the convenience of Contractors only. To the extent any provision of this section is inconsistent with the Procurement Regulations; the more stringent provisions shall prevail.

G.5 Retention of Submissions

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

G.6 Examination of Bids

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

G.7 Late Bids and Modifications:

(a) Any bid or best and final offer received at the Department designated in this IFB after the exact time specified for receipt shall not be considered.

(b) Any modification of a bid, including a modification resulting from the CO's requests for best and final offers, is subject to the same conditions as in G.7.(a) stated above.

(c) The only acceptable evidence to establish the time of receipt at the Department's office is the time-date stamp of such installation on the Bid wrapper or other documentary evidence of receipt maintained by the installation.

(d) Notwithstanding any other provisions of this Invitation for Bids to the contrary, a late modification of an otherwise successful bid which makes its terms more favorable to the Department may be considered at any time it is received and may be accepted.

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

G.8 No Compensation for Preparation of Bids

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

G.9 Rejection of Bids

The Department reserves the right, in its sole discretion:

(a) To cancel this solicitation or reject all bids;
(b) To reject Bids that fail to prove the Contractor's responsibility;
(c) To reject Bids that contain conditions and/or contingencies that in the Department's sole judgment, make the Bid indefinite, incomplete, otherwise non-responsive, or otherwise unacceptable for award;

(d) To waive minor irregularities in any bid provided such waiver does not result in an unfair advantage to any Contractor;
(e) To take any other action within the applicable Procurement Regulations or law;
(f) To reject the Bid of any Contractor that has submitted a false or misleading statement, affidavit or certification in connection with such Bid or this Request for Bids.
(g) To reject as non-responsive any Bid that fails to include a subcontracting plan that is required by law.

G.10 Limitation of Authority

Only a person with prior written authority from the CO 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 CO or its authorized representative.

SECTION H
INSURANCE AND BOND REQUIREMENTS

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

H.1.1 Commercial general public liability insurance ("Liability Insurance") against liability for bodily injury and death and property damage, such Liability Insurance to be in an amount not less than One Million Dollars ($1,000,000) for liability for bodily injury, death and property damage arising from any one occurrence and One Million Dollars ($1,000,000) from the aggregate of all occurrences within each policy year. The policy should include completed operations coverage. The Contractor 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.1.5 Additional Insureds
Each insurance policy shall be issued in the name of the contractor and shall name as additional insured parties the Department and the District of Columbia, and shall not be cancelable or reduced without thirty (30) days prior written notice to the Department.

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

H.1.7 Strength of Insurer
All insurance shall be placed with insurers that are reasonably acceptable to the Department and with an A.M. Best's rating of not less than A- (Excellent) and a surplus size of not less than XV. All such insurers shall be licensed/approved to do business in the District of Columbia.

H.2 Bid Bond.

H.2.1 Contractors shall submit with their bid a Bid Bond in the amount of **5%** of the Contractor's Total Lump Sum Price. The Contractor's Bid Bond shall be submitted in substantially the form provided as **Attachment H**. All bonding

companies shall be licensed to conduct business in the District of Columbia and be included on the United States Department of Treasury's website Listing of Approved Sureties.

H.2.2 Alternatively, Contractors may submit a cashier's check or irrevocable letter of credit in lieu of a Bid Bond. If the Contractor chooses to submit a cashier's check or letter of credit in lieu of a bid bond, the Contractor shall complete the form included as **Attachment I** and return, notarized, with the Contractor's bid. Letters of credit must be: (i) unconditional and standby; (ii) irrevocable; (iii) issued by an FDIC insured institution that is reasonably acceptable to the Department; and (iv) able to be drawn on in the Washington, DC metropolitan area. The letter of credit shall provide that it may be drawn upon if the holder of the letter of credit submits a signed statement by Department's CCO stating that the Contractor has failed to enter into a contract consistent with the terms of this procurement and the Contractor's Bid submitted thereunder.

H.2.2.1 In the event a Contractor who is awarded a contract fails to post a payment and performance bond for the full value of the contract, the Contractor shall thereby forfeit the full amount of the cashier's check or letter of credit, and the Department will collect such funds as liquidated damages.

H.2.3 Payment and Performance Bond

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

SECTION I
DEPARTMENT'S RESPONSIBILITIES

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

I.2 Department's Designated Representatives.

I.2.1 Chief Contracting Officer (CCO). In accordance with 27 DCMR, Chapter 47, Section 4704 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:

Christopher Weaver
Director & Chief Contracting Officer
Department of General Services
2000 14th Street, N.W. – 8th Floor
Washington, D.C. 20009
Telephone: (202) 727-2800
E-mail: christopher.weaver@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 CO and CCO as to the Contractor's compliance or noncompliance with the Contract. The COTR has the responsibility for the day-to-day monitoring and supervision of the Contract, of ensuring the Work conforms to the requirements of the Contract and such other

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

I.2.2.1.1 Keeping the CO and CCO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO and CCO of any potential problem areas under the Contract;

I.2.2.1.2 Coordinating site entry for Contractor personnel, if applicable;

I.2.2.1.3 Reviewing invoices for completed work and recommending approval by the CCO if the Contractor's prices and costs are consistent with the Contract and progress is satisfactory and commensurate with the rate of expenditure;

I.2.2.1.4 Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions and the Contract; and

I.2.2.1.5 Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.

I.2.2.1.6 The address and telephone number of the COTR is:

Mark Bacus
Project Manager
Department of General Services
Capital Construction
1250 U Street, N.W.
Washington, DC 20009
Cell: (803) 474-3583
E-mail: Mark.Bacus2@dc.gov

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

I.2.2.2.1 Award, agrees to, or sign any Contract document, change order, change directive, delivery order or task order. 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 submit invoices to the Department on a monthly basis. Each such invoice shall itemize all goods and services provided during the previous month and must be submitted electronically to the COTR and upload the document into Prolog by the 25th of each month. The Department's reference address to use on invoices is as follows:

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

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

I.3.2 Retention

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

I.3.3 Documents Required with Application for Payment

Each Application for Payment shall be accompanied by the Contractor's job cost ledgers in a form satisfactory to the Department, the Subcontractors' and Suppliers' Applications for Payment on AIA Documents G702 and G703 or other form acceptable to the Department, and such other supporting documentation as the Department may reasonably request. Each Application for Payment shall include detailed documentation of costs as a condition to approving progress payments, but the Contractor shall nevertheless maintain complete documentation of the costs.

I.3.3.1 Contractor's Certification

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

I.3.3.2 Lien Waivers

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

I.3.3.3 Warranty of Title

By submitting an Application for Payment, the Contractor warrants to the Department that title to all Work for which payment is sought will pass to the Department, without liens, claims, or other encumbrances, upon the receipt of payment by the Contractor. The Department may require execution of appropriate documents to confirm passage of clear title. Passage of title shall not operate to pass the risk of loss

with respect to the Work in question. Risk of loss remains with the Contractor until Substantial Completion, unless otherwise agreed by the Department, in writing.

I.3.3.4 Submission

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

I.3.3.5 Right to Withhold Payments

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

I.3.3.5.1 the Work is defective and such defects have not been remedied; or

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

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

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

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

I.3.3.5.6 any mechanic's lien has been filed against the Department, the site or any portion thereof or interest therein, or any improvements on the site, even though the Department has paid all undisputed amounts due to the Contractor, and the Contractor, upon notice, has failed to remove the lien, by bonding it off or otherwise, within ten (10) calendar days; or

I.3.3.5.7 the Department has reasonable evidence that the Work will not be completed by the Substantial Completion Dates, as required, that the unpaid balance of the Total Lump Sum Price would not be adequate to cover actual or liquidated damages arising from the anticipated delay; or

I.3.3.5.8 the Department has reasonable evidence that the Work cannot be completed for the unpaid balance of the Total Lump Sum Price; or

I.3.3.5.9 the Contractor is otherwise in substantial breach of this Contract (including, without limitation, failures to comply with CBE Utilization requirements in Section C).

I.3.3.6 Payment Not Acceptance

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

I.3.3.7 Department Not Obligated to Others

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

I.3.3.8 Final Payment

Final payment shall be made by the Department to the Contractor when (i) Final Completion has been achieved; and (ii) certification by the Contractor that except for requested final payment, all subcontractors and suppliers have been paid in full and that appropriate partial lien releases have been obtained from such subcontractors and suppliers documenting such payments. The Department may, if it so elects, require that copies of all such lien releases be provided as a condition to making final payment.

I.3.3.9 No Diversion of Funds

Contractor agrees that the funds it receives for the performance of this Agreement shall be held in trust by Contractor for the benefit of all its

Subcontractors, Suppliers, laborers and materialmen, and Contractor shall not itself have any interest in such funds until all these obligations have been satisfied in full. Contractor further agrees that any funds received shall be used exclusively for the prosecution of the Work, and none will be diverted to satisfy other obligations of Contractor. The Department has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers' amounts paid by the Department to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Department shall have the right to contact Subcontractors to ascertain whether they have been properly paid. The Department shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law. The Department reserves the right to issue joint-payee checks, payable to Contractor and its Subcontractors and materialmen of every tier.

I.3.3.10 Interest on Payments

Payments are due and payable in accordance with Section I.3 of this Agreement. Amounts unpaid after the date of which payments due shall bear interest in accordance with the Quick Payment Act.

SECTION J
CONTRACT CHANGES

J.1 Changes Authorized

The Department may, without invalidating the contract, and without notice to or approval of any surety, order changes in the Work, including additions, deletions or modifications. Any such change must be conveyed by the Department to the Contractor via written Change Directive or Change Order. *The CO is the only person authorized to approve changes in any of the requirements of this contract.* The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the Contracting Officer.

J.1.1 Department-Initiated Changes.

J.1.1.2 If the Department wishes to make a change in the Work or to accelerate the Work, it will execute and issue to the Contractor a written Change Directive, either directing the Contractor to proceed at once with the changed Work or directing it to not to proceed, but to inform the Department, in writing, of the amount, if any, by which the Contractor believes that Substantial or Final Completion Date and/or the Total Lump Sum Price should be adjusted to take the Change Order or Change Directive into account.

J.1.1.3 Within ten (10) days of receiving a Change Directive, the Contractor shall provide the Department with a written statement of all changes in the Contract, including, without limitation, any changes to the Substantial or Final Completion Date or the Total Lump Sum Price to which it believes it is entitled as a result of the Change Directive. If additional time is sought, a schedule analysis supporting the requested extension should be included. The schedule analysis should include a written narrative explanation. If a change in the Total Lump Sum Price is sought (or if the Department has requested a deduct change), the statement should include a breakdown, by line item, of the estimated cost changes attributable to the proposed change. The Department may request, and the Contractor shall provide, further cost breakdowns, clarifications, documentation or back-up if the Department reasonably believes such additional information is needed to understand and evaluate the request. The additional information required may include cost and pricing data in accordance with the Department's regulations. Any requested adjustment to the Total Lump Sum Price shall be limited to increased Cost of the Work due to the Change Directive. The Contractor is not entitled to any markup on any kind of change orders. All deductive Change Orders shall include a corresponding reduction in the overhead and profit shown on the Schedule of Values.

J.1.1.4 If the Department has not yet directed the Contractor to proceed with the Change described by a Change Directive, the Department may rescind it. If the Department wishes to proceed, or has already directed the Contractor to proceed, the Contractor shall immediately proceed with the changed Work and, the Department and the Contractor shall use their good faith best efforts to reach an agreement upon the modifications to the Substantial or Final Completion Date, and/or the Total Lump Sum Price that are justified by the Change Directive. If they reach agreement, the agreement shall be set forth in a Change Order and the Contractor shall also execute it, at which point it will become binding on both parties.

J.1.1.5 If the Parties fail to reach an agreement within sixty (60) days after the Department receives the Contractor's detailed statement pursuant to Section 8.3.2, and such other documentation as the Department may request, the Contractor may assert a claim in accordance with this Agreement. In such a case, and subject to adjustment via the claims and disputes process under this Agreement, the Department shall unilaterally grant the Contractor such adjustments, if any, to the Substantial or Final Completion Date, and the Total Lump Sum Price as the Department has judged to be appropriate.

J.1.2 Contractor-Initiated Changes.

J.1.2.1 Notice of Change Event

The Contractor must give the Department written notice of any Change Event within ten (10) calendar days of the date on which the Contractor knew, or reasonably should have known, of the Change Event. To the extent available, the notice must state the nature of the Change Event and describe, generally, all changes in the Contract to which the Contractor believes it is entitled. Such notice is an express condition precedent to any claim or request for adjustment to the Substantial or Final Completion Date, or the Total Lump Sum Price arising from the Change Event and, if the notice is not given within the required time, the Contractor will have waived the right to request any adjustment to the Substantial or Final Completion Date or the Total Lump Sum Price arising from the Change Event.

J.1.2.2 Detailed Change Request

Within twenty (20) days after giving notice of a change event, the Contractor shall submit a written change request describing, in reasonable detail, all adjustments it seeks to the Substantial or Final Completion Date or the Total Lump Sum Price as a result of the Change Event. The change request shall include the same information as described in Section 8.3 with respect to any Contract changes the Contractor seeks due to the Change Event, and the amount of any

requested adjustment to the Total Lump Sum Price Sum shall be limited in accordance with that Section.

J.1.2.3 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.2 Changes to the Total Lump Sum Price

Subject to the condition precedent that the Contractor have complied with the notice and documentation provisions of this Article, and subject to the limitations stated in this Agreement, the Contractor will be entitled to request an adjustment to the Total Lump Sum Price in the following cases:

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

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

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

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

J.2.3.2 For increases in the Work performed by Subcontractors, the Total Lump Sum Price shall be increased by the sum of: (i) the Direct Cost of the Work incurred by the Subcontractor for the changed Work; (ii) a fee (covering home office overhead and profit) equal to fifteen percent (15%) of the sum due under (i) above for the Subcontractor performing such Work; and (iii) a fee (covering the Contractor's home office overhead, field supervision, general conditions and profit) of five percent (5%) of the sum of items (i) and (ii). Intervening tier Subcontractors shall be entitled to a mark-up of five percent (5%) (covering home office overhead, field supervision, general conditions and profit); provided, however, that in all situations and regardless of the number of tier Subcontractors involved, the maximum mark-up on the Direct Cost of the Work shall be twenty five percent (25%) and provided, further, that the Contractor shall not be entitled to the markup referred to in item (iii) on changes unless such changes

exceed, either individually or in the aggregate, five percent (5%) of the Total Lump Sum Price.

J.2.3.3 When both additions and credits are involved in any one change in the Work, the Contractor's Change Order and markup shall be figured on the basis of the net increase, if any.

J.2.3.4 Fee will not be paid by Department for overtime or weekend work unless overtime is requested in writing and approved in writing by Department.

J.2.3.5 The amount of credit to be allowed by Contractor to Department for a deletion or change which results in a net decrease in the Total Lump Sum Price shall be the Cost avoided as confirmed by Department plus Five percent (5%) for profit on the deleted work.

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

J.3 Executed Change Directive/Order Required

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

J.4 Prompt Notice

In the event the Contractor encounters a situation which the Contractor believes to be a change to this 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.5 Deductive Change Orders

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

J.6 Executed Change Orders Final

The Contractor agrees that any Change Order executed by the Department and the Contractor constitutes its full and final adjustment for all costs, delays, disruptions, inefficiencies, cumulative impact, accelerations, schedule impacts, or other consequences arising from the change in question, whether a Change Directive, or a Change Event, or from any claimed cumulative effect of changes made to the date of the Change Order, and that no further adjustments in compensation or time shall be sought or made with respect to the Change Directive or the Change Event giving rise to the Change Order.

J.7 Failure to Agree

If the Contractor claims entitlement to a change in the 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.

SECTION K
MISCELLANEOUS PROVISIONS

K.1 Liquidated Damages

Liquidated Damages will be assessed in the amount of **Two Thousand Dollars** ($2,000.00 per day). The Contractor and the Department agree that the liquidated damages do not constitute and shall not be deemed a penalty, but represent a reasonable approximation of the damages to the Department associated with a delay in the Project.

K.2 Extent of Contract

The Contract, which includes 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.

K.3 Governing Law

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

K.4 Assignment

The Department and Contractor respectively bind themselves, their partners, members, joint venturers, constituent entities, successors, assigns and legal representative to the other party hereto and to partners, members, joint venturers, constituent entities, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contact. 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.

K.5 Retention of Records and Inspections and Audits.

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

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

K.5.3 The Department, the District of Columbia government, the District of Columbia Financial Responsibility and Management Assistance Office, the Comptroller

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

K.5.4 The Contractor agrees to include the wording of this Section in all its subcontracts in excess of five thousand dollars ($5,000) that directly relate to Project performance.

K.5.5 Audits conducted pursuant to this Section will be in accordance with generally acceptable auditing principles and established procedures and guidelines of the applicable reviewing or audit agency.

K.5.6 The Contractor agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Department. Where the audit concerns the Contractor, the auditing agency will afford the Contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

K.5.7 The Contractor shall preserve all records described herein from the effective date of the Contract completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.

K.6 Inspection for Supplies and Services.

K.6.1 To the extent applicable or appropriate, the Department may, in its sole discretion, enter the place of business of the Contractor or the place of business of any Subcontractor in order to inspect or test supplies or services for acceptance by the Department. If inspections and tests are performed at the place of business of the Contractor or any Subcontractor, the inspections and tests shall be performed in a manner so as to not unduly delay the Work. Inspections and tests by the Department shall not relieve the Contractor or any Subcontractor of responsibility for defects or other failures to meet Contract requirements, and shall not constitute or imply acceptance.

K.6.2 Notwithstanding the Department's acceptance of or payment for any product or service delivered by Contractor, the Contractor shall remain liable for latent defects, fraud, gross mistakes amounting to fraud and the Department's rights under any warranty or guarantee.

K.6.3 The Department shall have the right to enter the place of business of the Contractor or the place of business of any Subcontractor in order to investigate any contractor or offeror with respect to a debarment or suspension of the Contractor or any such Subcontractor.

K.7 Laws and Regulations Incorporated by Reference

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

K.8 Tax Exemption Provision

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

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

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

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

business relationships. The Department may take any recourse available to it under the law for violations of this anti-kickback provision.

K.9.3 The Contractor represents and warrants that it did not, directly or indirectly, engage in any collusive or other anti-competitive behavior in connection with the bid, negotiation or award of the Contract.

K.10 Responsibility for Agents and Contractors

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

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

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

K.12 Gratuities and Officers Not to Benefit Provisions

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

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

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

K.12.2.2 As a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Department) which shall be not less than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

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

K.13 Covenant Against Contingent Fees Provisions

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

K.14 Non-Discrimination in Employment Provisions

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

K.14.1.1 Employment, upgrading, or transfer;

K.14.1.2 Recruitment or recruitment advertising;

K.14.1.3 Demotion, layoff, or termination;

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

K.14.1.5 Selection for training and apprenticeship.

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

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

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

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

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

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

K.15 Buy American Act Provision

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

K.16 Reserved

K.17 Termination or Suspension

K.17.1 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.

K.17.2 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:

K.17.2.1 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

K.17.2.2 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

K.17.2.3 the Department reasonably determines that the Contractor has abandoned the Work, or has failed to pay laborers, mechanics, materialmen, Subcontractors or suppliers when payment is due; or

K.17.2.4 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

K.17.2.5 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.

K.17.2.6 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.

K.17.2.7 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.

K.17.3 Termination for Convenience.

K.17.3.1 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.

K.17.3.2 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.

K.17.3.3 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 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 Price, and reduced by any damages, liquidated or otherwise, the Contractor may owe the Department.

K.17.3.4 Payment of such amounts shall be the Contractor's sole remedy for termination for convenience.

K.17.3.5 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 K.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.

K.17.4 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 K.17.3 and shall be governed by that Paragraph.

K.17.5 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.

K.17.6 Suspension

K.17.6.1 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.

K.17.6.2 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 Price shall be increased by such amounts (subject to the payment and related requirements of the Contract Documents) as follows:

K.17.6.2.1 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

K.17.6.2.2 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 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.

K.17.6.2.3 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.

K.18 False Claims Act

Contractor shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to the government, including the prescriptions set forth in District of Columbia Code § 22-2514.

K.19 Interpretation of Contract

All of the documents comprising the Contract should be read as complementary, so that what is called for by one is called for by all. Ambiguities should be construed in favor of a broader scope of work for the Contractor, as the intent of the Contract is, with specific identified exceptions, to require the Contractor to assume entire responsibility for a 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. Any Change Order issued and executed by the Department shall supersede those portions of earlier dated contract documents to which it pertains.

K.20 Independent Contractor

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

K.21 Confidential Information

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

K.22 No Third-Party Beneficiary Rights

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

K.23 Media Releases

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

K.24 Goods and Services

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

K.25 Notices

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

If to the Department: If to the Contractor:

Christopher Weaver
Director/Chief Contracting Officer
Department of General Services
2000 14th St, NW – 8th Floor
Washington, DC 20009

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

K.26 Limitations

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

K.27 Binding Effect; Assignment

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

\K.28 Survival

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

K.29 No Waiver

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

K.30 Remedies Cumulative

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

K.31 Headings/Captions

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

K.32 Entire Agreement; Modification

The Contract supersedes all contemporaneous or prior negotiations, representations, course of dealing, or agreements, either written or oral. No modifications to the Contract shall be effective unless made in writing signed by both the Department and the Contractor, unless otherwise expressly provided to the contrary in the Contract.

K.33 Severability

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

K.34 Anti-Deficiency Act

The Department's obligations and responsibilities under the terms of the Contract and the Contract Documents are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1350, 1351, (ii) the D.C. Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Code §§ 47-355.01 - 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the

District of Columbia Home Rule Act. Neither the Contract nor any of the Contract Documents shall constitute an indebtedness of the Department, nor shall it constitute an obligation for which the Department is obligated to levy or pledge any form of taxation, or for which the Department has levied or pledged any form of taxation. IN ACCORDANCE WITH § 446 OF THE HOME RULE ACT, D.C. CODE § 1-204.46, NO DISTRICT OF COLUMBIA OFFICIAL IS AUTHORIZED TO OBLIGATE OR EXPEND ANY AMOUNT UNDER THE CONTRACT OR CONTRACT DOCUMENTS UNLESS SUCH AMOUNT HAS BEEN APPROVED, IS LAWFULLY AVAILABLE AND APPROPRIATED BY ACT OF CONGRESS.

K.35 Indemnification

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

K.37 Disputes.

K.37.1 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 K.37.2 of this Agreement, if resolution is not reached in such manner, the PROJECT MANAGER shall make a claim in accordance with this Section.

K.37.2 Formal Dispute Resolution Procedure.

K.37.2.1 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).

K.37.2.2 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.

K.37.2.3 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.

K.38 Claims for Additional Time.

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

K.38.2 The Contractor shall perform the Work so that it achieves Full Completion no later than May 6, 2016. Unless the failure to achieve Full Completion by the Full Completion Dates is a result of an Excusable Delay, as defined in Section 39, the delay shall be deemed Non-Excusable and the Contractor shall not be entitled to an extension of time. Without limiting the generality of the foregoing, delays for the following reasons shall be regarded as Non-Excusable and shall not entitle the Contractor to an extension of time:

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

K.38.2.2 Delays due to adverse weather, unless the Contractor establishes that the adverse weather was of a nature and duration in excess of averages established by data from the U.S. Department of Commerce, National Oceanic and Atmospheric Administration for the Project locale for the ten (10) years preceding the effective date of the Contract. For purposes of this clause, weather shall only be deemed "Excusable" if the weather in question was more severe than that encountered at the Project site over the last ten (10) years for the month in question. Such

determinations shall be made based on the number of rain/snow days or the cumulative precipitation total for the month in question. Notwithstanding the foregoing, named storms shall conclusively be deemed "Excusable";

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

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

K.39 Excusable Delay

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

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

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

K.39.3 Delays caused by Differing Soils Conditions or Hazardous Materials Remediation.

K.40 In addition to the forgoing, a delay shall be deemed to be an Excusable Delay only to the extent that such delay (i) warrants an extension in the Substantial or Final Completion Dates; (ii) has not been caused by the Contractor or any of its employees, agents, Subcontractors or material suppliers; (iii) is on Project's critical path; and (iv) is in addition to a time contingency of twenty-one (21) calendar days that is built into the critical path.

K.41 If the Contractor wishes to make a request for an increase in the Contract time, written notice as provided herein shall be given. The Contractor's request shall include an estimate of the cost and of the probable effect of delay on the progress of the Work. In the case of continuing delay, only one claim is necessary.

K.42 In no event shall the Contractor be entitled to an increase in the Total Lump Sum Price a result of either an Excusable or Non-Excusable Delay.

K.43 Claims and Dispute Resolution

K.43.1 Notice of Claim

If the Contractor has complied with all provisions in Article 8 regarding changes, and the Department has denied the changes requested in a written Change Proposal, or has failed to respond to a written Change Proposal within thirty (30) days, and the Contractor wishes to pursue a claim over the disputed item, it shall inform the Department's Chief Contracting Officer, in writing, of its claim. The notice must be delivered to the Department within fifteen (15) days of the Department's decision, or within thirty (30) days of the written request for a Change Order, if the Department has failed to respond to the request. If the Contractor wishes to assert a claim, as such term is defined in the General Conditions, over a dispute not arising from matters related to a Change Event, Change Order or Change Directive, the written notice of claim must be delivered to the Department's Chief Contracting Officer within fifteen (15) days of the date the Contractor knew or should reasonably have known of the events giving rise to the claim. All claims must be submitted pursuant to the procedures set forth in section 4733 of the Department's procurement rules and section 908 of the District's *Procurement Practices Reform Act of 2010* (PPRA).

K.43.2 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, 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 under this Contract.

K.43.3 Appeal Procedures

All claims arising under or in connection with the Contract or its breach, or relating to the Project, 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 PPRA. However, if a third party brings any claim or suit 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 or suit is being litigated.

K.44.1 Retention of Records and Inspections and Audits

K.44.1.2 The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance under the Contract in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Contract.

K.44.1.3 The Contractor shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the Department and the required cost submissions in effect on the date of execution of the Department.

K.44.1.4 The Department, the District of Columbia government, the District of Columbia Financial Responsibility and Management Assistance Office, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall have access to the books, records, documents and other evidence held, owned or maintained by the Contractor for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Contractor. The Contractor shall provide proper facilities for such access and inspection.

K.44.1.5 The Contractor agrees to include the wording of this Section in all its subcontracts in excess of five thousand dollars ($5,000) that directly relate to Project performance.

K.44.1.6 Audits conducted pursuant to this Section will be in accordance with generally acceptable auditing principles and established procedures and guidelines of the applicable reviewing or audit agency.

K.44.1.7 The Contractor agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Department. Where the audit concerns the Contractor, the auditing agency will afford the Contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

K.44.1.8 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.

SECTION L
DEFINITIONS

L.1 Agreement

The term Agreement shall mean this Agreement consisting of 45 pages. It does not include exhibits attached hereto or any document incorporated by reference.

L.2 Change Directive

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

L.3 Change Event

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

L.4 Change Order

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

L.5 Construction Documents

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

L.6 Contract

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

L.7 Drawings

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

L.8 Final Completion

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

L.9 Final Completion Date

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

L.10 Fully Complete

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

L.11 Hazardous Material

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

L.12 Notice to Proceed

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

L.13 Project Schedule

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

L.14 Specifications

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

L.15 Subcontractor

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

supply material or equipment. "Subcontractors" shall also include design professionals who are not the Contractor's employees and to whom the Contractor delegates any part of its responsibilities under the Contract, except that references to "trade Subcontractors" shall exclude design professionals.

L.16 Substantial Completion

Substantial Completion shall mean that all of the following have occurred: (1) the construction and installation work have been completed with only minor punch list items remaining to be completed; (2) a permanent certificate of occupancy and all other required permits or approvals have been obtained; (3) all operating and maintenance manuals, training videotapes and warranties required by the Contract have been delivered to the Department; (4) any supplemental training session required by the Contract for operating or maintenance personnel have been completed; (5) all clean-up required by the Contract has been completed; and (6) the Project is ready for the Department to use it for its intended purpose. "Minor punch list items" are defined for this purpose as items that, in the aggregate, can be completed within ninety (90) days without interfering with the Department's normal use of the Project.

L.18 Substantial Completion Dates

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