

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF GENERAL SERVICES



**SECTION A**  
**INVITATION FOR BIDS (“IFB”)**  
**Solicitation Number: DCAM-20-CS-IFB-0002**

**Construction of the Office of State Superintendent of Education Division of Student  
Transportation (OSSE DOT)**

**Date Issued:** December 23, 2019

**Pre-Bid Conference &  
Site Visit:** January 2, 2020 at 11:00 A.M.  
1601 W Street NE  
Washington, DC 20018

**Last Day for Questions:** January 10, 2020 by 4:00 P.M.

**Bid Due Date:** January 24, 2020 at 2:00 P.M.

**Delivery of Bids:** Department of General Services  
Contracts and Procurement Division  
Attention: George Lewis c/o Ahmad Stanekzai  
2000 14th Street, NW, 8th Floor  
Washington, D.C. 20009

**Bid Opening Date:** January 24, 2020 at 3:30 P.M.  
1250 U Street N.W. 4th Floor  
Capitol Hill Conference Room  
Washington, DC 20009

**Contact:** Ahmad Stanekzai  
Contract Specialist  
Department of General Services  
1250 U Street NW, 4th floor  
Washington, DC 20009  
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## SECTION B CONTRACT TYPE, SUPPLIES OR SERVICES AND PRICE/COST

### B.1 INTRODUCTION

The District of Columbia Department of General Services (the “District”, “DGS” or “Department”) is issuing this Invitation for Bids (“IFB”) to engage a contractor (“Contractor”) to complete the construction of the Office of State Superintendent of Education’s Division of Student Transportation (“OSSE DOT”) W Street NE Bus Terminal and the relocation of OSSE DOT 5th Street NE Terminal, in accordance to the Drawings and Specifications, attached hereto as Attachment J.1 (the “Project”). The OSSE DOT W Street NE Bus Terminal will be located at 1601 W Street NE, in the Ward 5 Neighborhood of Brentwood. The 4.27 acre site, once four individual lots, was acquired to meet OSSE DOT’s needs for a maintenance facility, office space, and parking. OSSE will relocate and consolidate its Adams Place and New York Avenue terminals to the W Street location, which will become the main bus repair and maintenance facility for OSSE’s fleet.

The Department intends to make one (1) contract award to the Bidder who submits the lowest evaluated bid that is responsive and responsible. To this end, the Department will evaluate bids as submitted in the Offer Letter and Bid Form, consistent with the price-related evaluation factors identified in this IFB.

In addition to the attachments required by Section L.18, the bids should include the following:

- A lump sum price to provide the required construction services for the Project. The lump sum price should be to complete the scope of work in accordance with the Drawings and Specifications (**Attachment J.1**). The lump sum price should be based on the Davis-Bacon Wage Determination attached hereto as **Attachment J.7** and as maybe updated by the U.S Department of Labor prior to a Bidder’s submission of its bid.
- Interested Contractors that submit bids in response to this IFB (“Bidder(s)”) should include a schedule of values breaking down the proposed lump sum price in the form of **Attachment J.2**.

**IMPORTANT NOTICE:** DGS will notify Bidders of any changes, additions and or deletions to the specifications and or responses to questions by addenda to this IFB as they will be posted on the DGS’ website. It is the Bidder’s responsibility to frequently visit DGS’ website at: <http://dgs.dc.gov/page/dgs-solicitations> to obtain addenda once they have received a copy or downloaded a copy of the IFB.

## **B.2 TYPE OF CONTRACT**

**B.2.1** This will be Lump Sum Price type contract. Bidders will be required to provide a Lump Sum Price which shall include sufficient funds to cover all the expenses necessary to complete the Project, including, but not limited to, profit, home and field office overhead, supervision, labor, materials, equipment, bonds, insurance and other services that may be required to obtain the necessary permits, and construct the work. The Lump Sum Price shall also include sufficient funding to fund items that are not specifically identified on the Drawings and Specifications but which are reasonably inferable therefrom. The District contemplates award of a Lump Sum Price contract to multiple contractors, therefore contracts resulting from this IFB to the lowest evaluated Bidder who is responsive and responsible.

## **B.3 PRICE SCHEDULE/BID FORM – Lump Sum Price**

### **B.3.1 Lump Sum Price**

The awarded Contractor shall be paid a Lump Sum Price, as detailed in **Attachment J.2**, to complete the Project.

### **B.3.2 Work Included in the Lump Sum Price**

The Bidder acknowledges and understands that the Lump Sum Price is based on the Scope of Work (**Section C**), including the **Drawings and Specifications (Attachment J.1)**, which are incorporated into the Contract awarded pursuant to this IFB. It is understood and agreed that the Lump Sum Price represents the Bidder's offer to complete the Project. The Parties acknowledge and agree that it is their intent to have the awarded Contractor provide all labor, materials, and equipment to complete the project as contemplated in the Contract Documents, for the Lump Sum Price and consistent with the Project Schedule. In furtherance of such intent, the awarded Contractor 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 awarded Contractor and that such items represent a partial list of the risks assumed by the awarded Contractor.

### **B.3.3 Basis of Lump Sum Price**

The Lump Sum Price is based on the following documents that are incorporated into the IFB and resulting Contract:

#### **B.3.3.1 Attachment J.1**

Drawings and Specifications

- B.3.3.2 Attachment J.2**  
Offer Letter and Bid Form
- B.3.3.3 Attachment J.5**  
Subcontracting Plan and Subcontracting Agreements
- B.3.3.4 Attachment J.6**  
Living Wage Act Notice and Fact Sheet
- B.3.3.5 Attachment J.7**  
Davis Bacon Wage Rates Determination

#### **B.4 ACKNOWLEDGEMENT OF REVIEW OF CONTRACT DOCUMENTS**

Before submitting its bid in response to this IFB, the Bidder acknowledges that it reviewed the Drawings and Specifications for accuracy, constructability, and completeness and was required to bring such deficiencies to the attention of the Department so that the Department's Architect/Engineer can address any such deficiencies. The awarded Contractor acknowledges that any deficiencies it identifies after submitting its bid shall not be the basis for a change in the Lump Sum Price or delaying the Project Schedule to the extent that any such deficiencies in the Drawings and Specifications could have been identified by prior review of a competent prospective Contractor.

**B.4.1** During the term of the awarded Contract, 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 the awarded Contractor has failed to call attention before submitting its bid, the awarded 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. The awarded Contractor 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 awarded Contractor will be held to have included in the Lump Sum Price the more expensive material or method of construction and the quantity of material.

**B.4.2** 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 awarded Contractor is deemed to have made an allowance in the Lump Sum Price for the completion of the Work, consistent with

adjoining or similar details and the best accepted practices of the trade for projects of this type and quality, whichever is more expensive, unless such additional information was not reasonably inferable from the Contract Documents. Without limiting the awarded 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 awarded Contractor shall assume that the more expensive material or method of construction and the quantity of material shall be required without a change to the Lump Sum Price.

**B.4.3** Execution of the Contract by the awarded 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 itself 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 awarded 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.

**B.5.** A Bidder responding to this IFB must submit with its bid a copy of the certification acknowledgment letter, and a notarized statement detailing any subcontracting plan required by law. A Bidder responding to this IFB shall be deemed nonresponsive and shall be rejected if the Bidder fails to submit a subcontracting plan required by law. For contracts in excess of \$250,000.00, a Bidder shall ensure that its bid complies with the subcontracting requirement(s) in accordance with **Section J.5 of this IFB.**

## SECTION C SPECIFICATIONS/SCOPE OF WORK STATEMENT

### C.1 Background

The OSSE DOT W Street NE Bus Terminal will be located at 1601 W Street NE, in the Ward 5 Neighborhood of Brentwood. The 4.27 acre site, once four individual lots, was acquired to meet OSSE DOT's needs for a maintenance facility, office space, and parking. OSSE will relocate and consolidate its Adams Place and New York Avenue terminals to the W Street location, which will become the main bus repair and maintenance facility for OSSE's fleet.

In general, the awarded Contractor shall provide all necessary construction services, supervision, permits, labor, supplies, equipment, materials and all other work necessary for the completion of the Project in accordance to the attached Drawings and Specifications documents (**Attachment J.1**).

To enable major structural rehabilitation, expansion, and improvements at OSSE's 5th Street terminal location, its existing operations will be relocated to a portion of the 1601 W Street site. This relocation will include an administrative office, as well as operations and maintenance space for the bus fleet.

The awarded Contractor shall develop the means and methods most practical for successful completion of both W Street construction and 5th Street relocation. The design documents will include phasing plans for the 5th Street NE Terminal. The Contractor shall coordinate with the Department closely on the phasing of the work.

The Department intends to award a Letter Contract to start the process in the amount of \$950,000.00. Once this Contract is definitized, the Letter Contract shall automatically terminate and merge into the definitized Contract. The Bidder's bid must include a Schedule of Values for the anticipated, initial \$950,000.00 Letter Contract (Ex. General Conditions, Pre-Construction, Mobilization, Demolition, etc.).

### C.2 Scope of Work

The awarded Contractor will be required to complete the construction of the OSSE DOT W Street NE Bus Terminal and Relocated Operations of OSSE DOT 5th Street NE Terminal, in accordance to the Drawings and Specifications, attached hereto as **Attachment J.1**. To the extent there is an inconsistency between the Drawings and the Specifications, the Contractor shall be required to provide the more expensive requirement. Prior to submitting its bid, each Offeror shall carefully review the Drawings and Specifications and shall bring any inconsistency or error in the drawings and specifications to the attention of the Department in writing. To the extent that a competent Contractor could have identified any such inconsistency or error, such inconsistency or error shall not serve as the basis for a change order and the Contractor shall assume the risk of such inconsistency or error.

The Department has selected Alphatec P.C. to perform the selective demolition and new construction design necessary for the new Bus Terminal facility for the Office of the State Superintendent of Education (OSSE), to be located at 1601 W Street N.E., Washington D.C. The new facility and site shall have a unique architectural appearance and shall be configured to maximize building systems and infrastructure functionality, energy savings, and maintainability. The new Bus Terminal shall achieve USGBC LEED Silver Certification.

The Department shall greatly expand OSSE operations on this currently vacant and abandoned 2.5-acre site, providing the urban infrastructure required to fulfill the transportation and logistics demands of an increasing Washington D.C. student population. OSSE is the State Education Agency for the District of Columbia charged with raising the quality of education for all DC residents. OSSE serves as the District's liaison to the U.S. Department of Education and works closely with the District's traditional and public charter schools.

### **C.2.1 New OSSE Bus Terminal**

The new Bus Terminal is designed in conformance with the programming requirements developed during a series of meetings and interviews with the OSSE, DGS, as well as references codes and standards. The four-story (~30,000 GSF) facility is inclusive of the following operational categories; Bus Maintenance, Service Parts and Storage, Driver Intake/Waiting and Dispatch, Training, Recreational Areas, and Administrative and Office. The 3-acre site is inclusive of the following operational categories; Bus Parking, Passenger Vehicle Parking, Perimeter Fencing/Screening and Controlled Access, Guard Booths, Bus Wash Station, Bus Fueling Station.

### **C.2.2 Phasing**

The Project shall consist of two Phases, Phase I and Phase II. Phase I shall be closely coordinated with the timing of the OSSE 5<sup>th</sup> Street N.E. renovation and consist of demolition and temporary construction at 1601 W Street N.E., to minimize disturbance of on-going OSSE operations to the extent feasible. Phase II shall consist of selective demolition and permanent new construction, completing the new Bus Terminal facility and site at 1601 W Street N.E. DGS intends to perform Phase I and Phase II as summarized;

**C.2.2.1 Phase I:** 5th St. Terminal Swing Space consisting of but not limited to the following elements:

- a. Construction screening on the W Street perimeter of the site (North side).
- b. Construction fencing to secure the perimeter of the existing facility.
- c. Raze of four existing storage structures (not including selective demolition of existing facility to be secured) including any hazardous material abatement.
- d. Site clearing.
- e. Preparation and Coordination required for the purchase of Mobile Site Office.

- f. Purchase of Mobile Site Office.
- g. Site and utility work required for installation of the Mobile Site Office and temporary Guard Booths.
- h. Installation of the Mobile Office and two temporary Guard Booths.
- i. Preparation and installation of dedicated construction entrance and dedicated OSSE entrance. OSSE shall access the site, park busses on the site, and operate in the Mobile Office during Phase I construction.
- j. Purchase and Installation of Furniture.

**C.2.2.1 Phase II:** New Bus Depot including but not limited to the following:

- a. Selective demolition of the existing facility including any hazardous material abatement.
- b. New construction of the existing facility.
- c. Demolition of site to accommodate the new retaining wall.
- d. Construction of the retaining wall and associated structures.
- e. Demolition of the Mobile Office.
- f. Installation of the permanent Guard Booths.
- g. Resurfacing the site to accommodate the new parking layout.
- h. New utility trenching to accommodate new site program.
- i. Parking striping and site lighting for the new parking layout.
- j. New bus fueling station.
- k. New bus washing station.
- l. Purchase and Installation of Furniture.

**C.3 Preconstruction Activities**

Prior to mobilizing to the Project site and commencing work, the Contractor shall be required to complete those activities set forth in this Section C.2. Unless a delay in completing the preconstruction activities is the result of a delay beyond the timeframes set forth herein by the Department, the Program Manager, the Code Official or the Architect or an event of force majeure, delays in completing the preconstruction activities shall not be considered excusable and shall not justify an extension of the substantial completion date.

**C.3.1 Detailed Schedule.** Within seven (7) days of the issuance of a Notice to Proceed, the Contractor shall submit to the Department for its approval a schedule of Project. Such schedule shall include a schedule for submittals that is reasonably acceptable to the Program Manager. The Program Manager shall have five (5) business days to review such submittal.

**C.3.2 Preconstruction Submittals.** On or before the dates specified in the approved detailed schedule, the Contractor shall submit any necessary preconstruction phase information to the Program Manager for his review and approval. Unless a different timeframe is established in the approved baseline schedule, the Program Manager shall have five (5) business days to review such documents. In the event the Program Manager finds such documents to be unacceptable, the Contractor shall be required to revise and

resubmit such documents. The Contractor shall not commence construction activities unless and until the deliverables listed in Section B.7 have been approved by the Program Manager. Any delays that result from any preconstruction submittal resubmissions shall be considered Non-Excusable.

**C.3.3 Safety Plan.** Prior to the start of construction activities, the Contractor shall prepare a safety plan for the construction phase conforming to OSHA 29 CFR 1926 (such plan, the “Safety Plan”). The Safety Plan shall be submitted to the Department, and the Contractor shall incorporate such comments as the Department may reasonably request.

**C.3.3.1 Safety Barriers/Fences.** As part of its responsibility for Project safety, the Contractor shall install such fences and barriers as may be necessary. The Contractor shall develop a plan that describes the proposed separation and the specific nature of the fences and barriers that will be used. This plan will be submitted to the Department for their review and approval prior to the commencement of construction, and the Program Manager shall have five (5) business days to review such plan. Once such plan has been approved, the Contractor shall comply with it at all times during construction. The Contractor shall be required to revise the plan as may be reasonably requested by the Department. The cost of revising and complying with the revised plan shall not entitle the Contractor to an increase in the Lump Sum Price.

**C.3.3.2 Site Security.** The Contractor shall be responsible for site security and shall be required to provide such watchman as are necessary to protect the site from unwanted intrusion.

**C.3.3.3 Exculpation.** The right of the Department to comment on the Safety Plan and the nature and location of the required fences and barriers shall in no way absolve the Contractor from the obligation to maintain a safe site.

**C.3.4 Site Logistics Plan.** Prior to the start of construction activities, the Contractor shall prepare a Site Logistics Plan. The Site Logistics Plan shall address: (i) the manner in which the Contractor intends to organize the site; (ii) the location and description of site fences and other safety barricades intended to prevent the public from entering the site; (iii) the location of construction entrances and wheel washing stations; and (iv) parking restrictions and procedures that will apply to the employees of Contractor and its Subcontractors. The Contractor’s storage/laydown area will be limited to the limits of disturbances shown on the Drawings and Specifications.

**C.3.5 Potential Subcontractors and Suppliers.** The Contractor shall include with its bid a list of the significant subcontractors that the Contractor intends to engage to perform the work. Within seven (7) days after the issuance of a Notice to Proceed, the Contractor shall furnish to the Department and its Program Manager a list of the subcontractors and suppliers that will work on this Project as well as a general description of each such subcontractor’s scope of work. Within five (5) business days after such list is submitted, the Program Manager shall advise the Contractor if it has any objection to any of the listed subcontractors or suppliers. In the event the Program Manager has a reasonable objection

to any such subcontractor or supplier, the Parties shall discuss such objection and agree on an appropriate course of action. To the extent the Department rejects a subcontractor that was disclosed in the bid, the Contractor shall be entitled to an appropriate equitable adjustment as a result of such disapproval.

**C.3.6 Preconstruction Phase Deliverables.** The following deliverables are required during the Preconstruction Phase.

- .1 Detailed Schedule (C.3.1).
- .2 Safety Plan (C.3.3).
- .3 Site Logistics Plan (C.3.4).
- .4 List of Subcontractors and Suppliers (C.3.5).

#### **C.4 Construction Phase.**

The Construction Phase shall commence when the Department issues a written Notice to Proceed for Construction. The Contractor shall construct the work described on the Drawings and Specifications including any work that is that is not specifically shown thereon but is reasonably inferable therefrom or necessary for a fully functioning 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. On or before the dates specified in the approved detailed schedule, the Contractor shall submit any necessary construction phase information (i.e. shop drawings, submittals, sketches, etc.) to the Architect and/or the Program Manager for his review and approval. Unless a different timeframe is established in the approved baseline schedule, the Architect/Engineer and/or the Program Manager shall have Twenty One (21) business days to review such documents. In the event the Program Manager finds such documents to be unacceptable, the Contractor shall be required to revise and resubmit such documents. Any delays that result from any construction phase submittal resubmissions shall be considered Non-Excusable.

**C.4.1 Supervision & Coordination.** The Contractor will be required to properly supervise and coordinate its work. At a minimum, it is envisioned that the Contractor will be required to undertake the following tasks:

- a) Participate and assist in Project/Planning meetings;
- b) Maintain full-time on-site construction supervision and provide daily inspections, quality control, monitoring, coordination of various trades, record drawings, and daily work log;
- c) Coordinate work with any on-site personnel so as to ensure that their activities are not adversely affected;
- d) Conduct periodic progress meetings following a Contractor generated agenda with the Program Manager;

- e) Provide general safety signage and posting for the project and see that each subcontractor prepares and submits adequate safety program and monitoring throughout the project;
- f) Obtain all job permits and approvals from the Department of Consumer and Regulatory Affairs that are required to perform and complete the Work, unless otherwise noted herein;
- g) Prepare payment requests verify accuracy and forward to Department for approval and payment;
- h) Assemble close-out documents required;
- i) Provide assistance to the Department through all applicable warranty periods.
- j) Coordinate its work with all third parties so as not to delay the critical path of the
- k) Project; and
- l) Prepare and submit to the Department construction meeting minutes, progress meeting minutes, daily logs, inspection reports, preliminary and baseline schedules, (Primavera format) and schedule updates demonstrating the critical path of the Project (Primavera format).

**C.4.2 CBE Subcontractors.** The Contractor shall not substitute or replace any Subcontractor or supplier certified by the District of Columbia Department of Small and Local Business Development without the Department's prior written consent.

**C.4.3 Site Observations.** The Contractor will be required to visit the site, become familiar with local conditions under which the work is to be performed and correlate personal observations with requirements of the Drawings and Specifications. The Contractor shall carefully study and compare the Drawings and Specifications with each other and with information furnished by the Department. Before commencing activities, the Contractor shall (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Drawings and Specifications; and (3) promptly report errors, inconsistencies or omissions discovered to the Department. Once work is started, the Contractor assumes the responsibility and costs for the work and the cost of correcting work previously installed.

**C.4.4 Warranty of the Construction Work.** The Contractor warrants to the Department that materials and equipment furnished under the Contract will be of good quality and new unless otherwise expressly permitted in writing, and that for the one (1) year period following the Substantial Completion Date the construction work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the Construction Documents and/or any approved design documents. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. The Contractor and a representative of the Department shall walk the Project together eleven (11) months after the Substantial Completion Date to identify any necessary warranty work. In the event the Contractor fails

to schedule such a walk, the Warranty period shall be extended until such time as the Contractor schedules such a walk.

**C.4.5 Extent of Responsibility and Site Conditions.** The Contractor shall be entitled to an equitable adjustment in accordance with the Standard Contract Provisions for differing site conditions only to the extent that: (i) such conditions could not have been discovered by a competent visual inspection of the site, are of unusual nature, and differ materially from those ordinarily encountered and generally recognized as inhering to work of the character provided for in the Contract; or (ii) with regard to subsurface conditions on or adjacent to the Project site, such subsurface conditions differ materially from those indicated in the geotechnical reports (such circumstances, “Differing Site Conditions”). Prior to commencing construction, the Contractor shall be required to conduct a thorough review of the Project site and the surrounding area and shall document its findings. In the event the Contractor fails to undertake and document such a thorough review, the Contractor shall be deemed to have known of those conditions which a thorough review would have detected. Any Change Request related to Differing Site Conditions shall be made pursuant to the Standard Contract Provisions.

#### **C.4.6 Unsafe Materials and Hazardous Materials**

**C.4.6.1** The Contractor shall abate and legally dispose of any Hazardous Materials in the demolished facility, in accordance with EPA and all jurisdictional agencies’ rules and regulations. The Contractor shall be responsible for all interior and exterior demolition, as required.

**C.4.6.2** The Contractor shall not bring, spill or release onto the site asbestos, PCBs, or any other Hazardous Material that is not customarily used in a facility of the type and similar to the Project, and shall bring to the Department’s attention any specification of such Hazardous Materials in the design documents. If the Contractor believes that anything in the Contract would require that it use or bring onto the site asbestos, PCBs, or any Hazardous Material that is not customarily used in a facility of the type and similar to the Project, it shall immediately inform the Department and seek direction before proceeding.

**C.4.6.3** The Contractor’s scope of work includes the abatement and removal of hazardous materials found within the existing building. In performing such work, the Contractor shall comply with all laws, including, without limitation, the requirements of the EPA and all jurisdictional agencies as well as all laws relating to safety, health welfare, and protection of the environment, in removing, treating, encapsulating, passivating, and/or disposing of hazardous materials, including, but not limited to, removal, treatment, encapsulation, passivation, and/or disposal of the hazardous materials. If any notices to governmental authorities are required, the Contractor shall also give those notices at the appropriate times. The Contractor shall ensure abatement subcontractors and disposal sites are appropriately licensed and qualified. In addition, the Contractor shall ensure that any subcontractors involved in the abatement of hazardous materials maintain a contractor’s pollution legal liability insurance policy of at least Two Million Dollars (\$2,000,000) for the duration of the Project and a period of three (3) years after Substantial Completion of

the Project, and that any disposal site to which hazardous materials are taken carries environmental impairment liability insurance for the duration of the Project and a period of three (3) years after Substantial Completion of the Project. The Contractor's obligations under this paragraph shall include signing (as the agent for the Department) any manifests required for the disposal of hazardous materials.

**C.4.6.4** If Hazardous Materials beyond those identified in the hazmat report are discovered on the site, the Contractor shall immediately inform the Program Manager and the Department of such discovery. In such an event, the Contractor shall be entitled to an equitable adjustment in accordance with the Standard Contract Provisions for any Hazardous Materials abatement and disposal work. The Contractor shall keep detailed records documenting Work done so that the Department may independently verify compliance with all laws, the number of units actually removed, treated, and/or disposed of, and the appropriate unit price(s) applicable to the Work.

**C.4.7 Progress Meetings.** The Contractor shall schedule and conduct at a minimum bi-weekly progress meetings at which the Department, the Program Manager, the Contractor and appropriate Subcontractors can discuss the status of the Work. The Contractor shall prepare and promptly distribute meeting minutes.

**C.4.8 Written Reports.** The Contractor shall provide written reports to the Program Manager on the progress of the entire Work in accordance at least every other week, including, but not limited to, a baseline schedule and schedule updates with narrative demonstrating the critical path of the Project in Primavera format. The Contractor shall also maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, major equipment on the site, Work accomplished, problems encountered and other similar relevant data as the Department may reasonably require. The log shall be available to the Department, the Architect/Engineer and the Program Manager and on a monthly basis a copy of the log shall be submitted to the Department.

**C.4.9 Work by Separate Contractors.** The Department reserves the right to perform construction or operations related to the Project with the Department's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site.

**C.4.10 Site Safety, Clean-Up & Protection of Existing Elements.** The Contractor will be required to: (i) provide a safe and efficient site, with controlled access, including the installation and provision of such safety barricades, enclosures and overhead protection as may reasonably be required by the Department and as may be necessary to ensure a safe workplace or as may be required by OSHA or other applicable law, and to remove such at the end of the Work and leave the site in broom clean condition; and (ii) be responsible for the security of its tools, equipment and materials that are stored at the site. The Contractor shall be responsible for the removal and legal disposal of all construction debris. The Contractor shall protect all existing features, public utilities and other existing structures during construction.

**C.4.11 Close-out.** The Contractor shall be required to prepare and submit at close-out a complete set of product files, including but not limited to: (i) QC/QA reports, daily reports, and test reports; (ii) a complete set of product manuals (O&M), training videos, and warranties; (iii) as-built record drawings; (iv) environmental, health, and safety documents; and (v) all applicable inspection certificates/permits. The Contractor shall also provide the Department with any shop drawings prepared by the Contractor or its subcontractors along with any other documentation that may reasonably be requested by the Department or its Program Manager.

**C.4.12 Cutting and Patching.** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching. The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Department or separate Contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor is responsible for the replacement, repair or patch of any existing surfaces or materials damaged during construction by own or subcontractor crews.

**C.4.13 Salvaging and Storing.**

The Contractor shall be responsible for salvaging and storing all items as identified by the Department, and to the benefit of the Department, in accordance with all applicable District laws and regulations, after notifying the Department and receiving the Department's permission to proceed.

**C.4.14 Correction of Work**

**C.4.14.1** The Department shall be at liberty to object and to require the Contractor to remove forthwith from the Project site and the Work and to promptly replace the Superintendent, any foreman, technical assistant, laborer, agent, representative, or other person used by the Contractor in or about the execution or maintenance of the Work, who in the sole opinion of the Department is misconducting himself or herself, or is incompetent or negligent in the proper performance of his or her duties, or whose performance in the Work is otherwise considered by the Department to be undesirable or unsatisfactory, and such person shall not be again employed upon the Project without the written permission of the Department.

**C.4.14.2** The Contractor shall promptly correct Work rejected by Department for failing to conform to the requirements of the Construction Documents or any approved design document or applicable law or regulations whether observed before or after the Project's completion and whether or not fabricated, installed or completed, and shall correct any Work found to be not in accordance with the requirements within a period of one (1) year from the date of completion or by terms of an applicable special warranty required by the Contract.

**C.4.14.3** If during the guarantee or warranty period, any material, equipment or system requires corrective Work because of defects in materials or workmanship, the

Contractor shall commence corrective Work within forty-eight (48) hours after receiving the notice and work diligently until corrective Work is completed; provided, however, if such notice is received on the day before a weekend or a holiday, the Contractor will commence corrective Work on the next business day. If the Contractor does not, in accordance with the terms and provisions of the Contract Documents, commence all corrective Work within forty-eight (48) hours or if the Contractor commences such Work but does not pursue it in an expeditious manner, Department may either notify the bonding company (if any) to have such Work and/or obligations performed at no additional cost to Department or may perform such Work and/or obligations and charge the costs thereof to Contractor.

#### **C.4.15 Manufacturers' Warranties**

**C.4.15.1** The Contractor warrants that all manufacturers' or other warranties on all labor, materials and equipment furnished by the Contractor or a Subcontractor or supplier shall run directly to or will be specifically assigned to Department on demand or upon Project completion without demand. In the event any issue or defect which would be covered by any warranty arises but is not addressed by the grantor of the warranty, the Contractor shall be required to act as the guarantor of the obligations under the warranty and to perform under the terms of the warranty.

**C.4.15.2** The Contractor warrants that the installation of all materials and equipment shall be in strict accordance with the manufacturers' requirements or specifications.

**C.4.16 Schedule Updates.** The Contractor shall submit bi-weekly schedule updates which shall reflect actual conditions of Project progress as of the date of the update. The update shall reflect the actual progress of construction, identify developing delays, regardless of their cause, and reflect the Contractor's best projection of the actual date by which Substantial Completion and Final Completion of the Project will be achieved. Via a narrative statement (not merely a critical path method schedule), the Contractor shall identify the causes of any potential delay and state what, in the Contractor's judgment, must be done to avoid or reduce that delay. The Contractor shall point out, in its narrative, changes that have occurred since the last update, including those related to major changes in the scope of work, activities modified since the last update, revised projections of durations, progress and completion, revisions to the schedule logic or assumptions, and other relevant changes. Any significant variance from the previous schedule or update shall also be identified in a narrative, together with the reasons for the variance and its impact on Project completion. All schedule updates shall be in Primavera 6 format. The Department may make reasonable requests during the Project for changes to the format or for further explanation of information provided. Submission of updates showing that Substantial Completion or Final Completion of the Project will be achieved later than the applicable scheduled completion date shall not constitute requests for extension of time and shall not operate to change the scheduled completion date. The Department's receipt of, and lack of objection to, any schedule update showing Substantial Completion or Final Completion later than the dates agreed upon in the Project Schedule shall not be regarded as the Department's agreement that the Contractor may have an

extension of time, or as a waiver of any of the Department's rights, but merely as the Contractor's representation that, as a matter of fact, Substantial Completion or Final Completion of the Project may not be completed by the agreed upon date in the Project Schedule. Changes to the scheduled completion dates may be made only in the circumstances and only by the methods set forth in the Contract.

**C.4.17 Acceleration.** Subject to the terms of this Section, the Department shall have the right to direct the Contractor to accelerate the Work if, in the reasonable judgment of Department, the Contractor fails to: (i) supply a sufficiency of workers or to deliver the materials or equipment with such promptness as to prevent the delay in the progress of the Work; or (ii) the progress of the Work materially falls behind the projections contained in the then currently approved Project Schedule. In the event that the Department or its Program Manager determine that either of the events specified in the preceding sentence have occurred, the Department shall provide the Contractor with written notice of such event and the Contractor shall be required to provide the Department with a corrective action plan that is reasonably designed to address the concerns raised in such notice within three (3) days after receipt of such notice. If the Department and the Contractor are unable to agree on the terms of such corrective action plan within five (5) days after the issuance of the notice (i.e. with forty eight (48) hours after the receipt of the proposed corrective action plan), the Department shall have the right to direct such acceleration as the Department, in its reasonable judgment, deems necessary. Provided the notice provisions of this Section are complied with and the delay in the critical path is not the result of Excusable Delays, the cost of any acceleration directed under this Section shall not justify an adjustment to the Lump Sum Price or the Substantial Completion Date. The Contractor hereby acknowledges that this provision is a material inducement upon which the Department has relied in entering into the Contract; and represents and warrants that it has included sufficient funding in its Lump Sum Price in order to comply with the requirements of this Section.

## **C.5 Substantial Completion Date.**

Phase I of the Project shall be substantially complete no later than **July 2, 2020** and Phase II of the Project shall be substantially complete no later than **February 9, 2022**. For purposes of this requirement, the term "Substantially Complete" shall mean that all of the following have occurred: (1) the work has been completed with only minor punch list items remaining to be completed; (2) any and all required permits or approvals related to the work 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 thirty (30) days without interfering with the Department's normal use of the Project.

## **C.6 Final Completion Date.**

The Phase I of the Project shall be complete no later than **August 2, 2020** and Phase II of the Project shall be complete no later than **March 9, 2022**. Final Completion shall mean 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 have been received. Work is defined as the construction and services required by the Contract, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

## **C.7 Administrative Matters**

**C.7.1 Use of Prolog.** The Contractor shall utilize the Department's Prolog system to submit any and all documentation required to be provided by the Contractor for the Project, including, but not limited to, (i) requests for information; (ii) submittals; (iii) meeting minutes; (iv) proposed Changes; (v) certified payrolls (and at DGS' option to upload via DOES LCP Tracker software which the District will make available to the Contractor); (vi) Drawings and Specifications; (vii) punch list; (viii) invoices/applications for payment (full package including all forms required by DGS); and (ix) other documents as may be designated by the Department.

**C.7.2 Liquidated Damages.** If the Contractor fails to achieve Substantial Completion by the Substantial Completion Date, the Parties acknowledge and agree that the actual damage to the Department for the delay will be impossible to determine, and in lieu thereof, the Contractor will be assessed and shall owe to the Department, as fixed and agreed liquidated delay damages in the amount of Five Hundred Dollars (\$1,250.00) per calendar day of delay for failure to meet the Substantial Completion Date. 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.

**C.7.3 Progress Payments.** The Contractor shall be paid its compensation in a series of progress payments and a final payment. Progress payments shall be based on a Schedule of Values that is agreed upon by the Parties as well as the Program Manager's good faith estimate of the level of completion for each component of the Schedule of Values. Contractor shall prepare the Schedule of Values which breaks down the Lump Sum Price for the various parts of the Work. The Schedule of Values shall be maintained in such a manner to provide a breakdown of the Lump Sum Price in enough detail to facilitate continued evaluation of applications for payment and progress reports. Large subcontracts shall be broken into several line items where, in the reasonable opinion of the Program Manager, such detail is necessary to properly track the progress of the Work. The proposed schedule of values shall also include separate line items for each part of the Work if so required by the Program Manager. The Contractor and the Program Manager shall meet as necessary to maintain the schedule of values for the Project in a manner acceptable

to the Program Manager. No progress payments shall be made unless the then current Schedule of Values is acceptable to the Program Manager.

## **C.8 Key Personnel**

The Offeror's personnel should have the necessary experience and licenses to perform the required work. Toward that end, Offerors should include within the bid a description of the staff available to perform this work and their qualifications.

Key personnel shall include, at a minimum, the following individuals: (i) the Project Executive; (ii) the Field Superintendent; and (iii) the Project Manager who will be responsible for the Project. The Contractor will not be permitted to reassign any of the key personnel unless the Department approves the proposed reassignment and the proposed replacement. A list of the key personnel shall be attached to the contract that results from this IFB.

## **C.9 Risks Assumed by the Contractor**

By submitting a bid, the Offeror shall be deemed to have thoroughly examined the terms of this IFB, the Drawings and Specifications and shall constitute its acknowledgement that it has been provided with an opportunity to visit the Project site and that such Offeror has had the opportunity to become familiar with local conditions under which the work is to be performed. Further, in submitting any such bid, the Offeror shall be deemed to represent that it has satisfied itself that it can undertake the work for the stated cost. Among other things, by submitting a bid, the Offeror assumes the following risks: (1) the nature of the land and subsoil unless such conditions constitute a Differing Site Condition; (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 that may be required; (6) uncertainties of weather and physical conditions at the site; and in general to have itself 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.

## **C.10 Construction Phase Deliverables.**

- .1 Progress Meeting Minutes (C.4.7).
- .2 Progress Reports (C.4.8).
- .3 Close Out Documents (C.4.11).
- .4 Copy of Manufacturer Warranties (C.4.15).
- .5 Bi-Weekly Schedule Updates (C.4.16).

## **C.11 DEFINITIONS**

**C.11.1 Change Directive.** A written directive 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.

**C.11.2 Change Event.** Any condition, event, act, omission or breach, other than the issuance of a Change Directive, which the Contractor believes entitles it to a change in the Lump Sum Price, or the Substantial or Final Completion date(s).

**C.11.3 Change Order/Contract Modification.** 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.

**C.11.4 Contract.** The entire, integrated agreement between the Department and the Contractor with respect to the Project, consisting of this IFB, the Attachments to the IFB, the Construction Documents released for the Contractor's use and any Change Directives or Change Orders that have been executed by the Department.

**C.11.5 Contract Documents.** The final documents comprising the Contract, as prepared in accordance with the law, including, but not limited to those documents requiring review and approval by the District Council.

**C.11.6 Drawings.** 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.

**C.11.7 Final Completion.** The point at which Substantial Completion has been achieved, all punch list items noted at Substantial Completion have been completed with the Department's approval and sign-off and all documents the Contractor is required to deliver to the Department as a condition to receiving final payment have been delivered. These may include, as applicable, but are not limited to, a final Certificate of Occupancy for the Project from the District of Columbia; and final lien releases from the Contractor and Subcontractors and material suppliers. Contractor shall cause all representations, warranties and guarantees to be honored, and otherwise fulfill all of the requirements set forth in the Contract.

**C.11.8 Reserved.**

**C.11.9 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.

**C.11.10 Hazardous Material Remediation.** Hazardous material remediation shall mean the work performed to remove, treat and/or dispose of Hazardous Material.

**C.11.11 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.

**C.11.12 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.

**C.11.13 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.

**C.11.14 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, sub-sub-subcontracts, 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.

**C.11.15 Substantial Completion Date.** The date established herein by which the Contractor shall achieve Substantial Completion. In order for the Contractor to achieve Substantial Completion, the District must be able to receive a Certificate of Occupancy (C of O) the Substantial Completion Date may be modified only by Change Order or Change Directive in accordance with the Contract by Contracting Officers Only.

## **C.12 ACCELERATION**

Subject to the terms of this Section, the Department shall have the right to direct the Contractor to accelerate the work if, in the reasonable judgment of Department, the Contractor fails to: (i) supply a sufficiency of workers or to deliver the materials or equipment with such promptness as to prevent the delay in the progress of the work; or (ii) the progress of the work materially falls behind the projections contained in the then currently approved Project Schedule. In the event that the Department or its Project Manager determine that either of the events specified in the preceding sentence have occurred, the Department shall provide the Contractor with written notice of such event and the Contractor shall be required to provide the Department with a corrective action plan that is reasonably designed to address the concerns raised in such notice within three (3) days after receipt of such notice. If the Department and the Contractor are unable to agree on the terms of such corrective action plan within five (5) days after the issuance of the notice (i.e. with forty eight (48) hours after the receipt of the proposed corrective action plan), the Department shall have the right to direct such acceleration as the

Department, in its reasonable judgment, deems necessary. Provided the notice provisions of this Section are complied with, the cost of any acceleration directed under this Section shall not justify an adjustment to the Lump Sum Price or the Substantial Completion Date. The Contractor hereby acknowledges that this provision is a material inducement upon which the Department has relied in entering into the Contract; and represents and warrants that it has included sufficient funding in its Lump Sum Price in order to comply with the requirements of this Section.

### **C.13 WALK-THROUGH INSPECTION**

At the achievement of Substantial Completion, the DGS Program 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 DGS Project Manager the deficiencies have been corrected to the DGS Project Manager's satisfaction.

### **C.14 LICENSING, ACCREDITATION AND REGISTRATION**

The Contractor and all its subcontractors and subconsultants (regardless of tier) 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.

### **C.15 CONFORMANCE WITH LAWS**

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

**SECTION D  
PACKAGING AND MARKING**

**D.1 Not Applicable**

**SECTION E**  
**INSPECTION AND ACCEPTANCE**

**E.1** The inspection and acceptance requirements for the Contract shall be governed by clause number 11 of the Government of the District of Columbia Department of General Services Standard Contract Provisions (General Provisions) for Construction Contracts. (**Attachment J.14**)

**SECTION F**  
**PERIOD OF PERFORMANCE**

**F.1 TERM OF CONTRACT**

The term of the Contract shall be from the date of the CO's execution (as specified on page 1 of the Contract [or date of Notice to Proceed] through July 2, 2020 for Phase I and February 9, 2022 for Phase II ("**Substantial completion Dates**"); and Final Completion is required by no later than August 2, 2020 for Phase I and March 9, 2022 ("**Final Completion Date(s)**") for Phase II.

An administrative term of **March 30, 2020 ("Administrative Term Date")** is established for the sole purpose of permitting the Department's Office of the Chief Financial Officer to process payments in the event any payments become due. Notwithstanding the foregoing, nothing herein shall be construed to: extend the Substantial Completion Date; extend the Final Completion date; or, limit the Department's ability to assess liquidated damages thereon.

**SECTION G  
CONTRACT ADMINISTRATION**

**G.1 INVOICE PAYMENT**

**G.1.1** The District will make payments to the Contractor, upon the submission of proper invoices, at the prices stipulated in this Contract, for supplies delivered and accepted or services performed and accepted, less any discounts, allowances or adjustments provided for in this Contract.

**G.1.2** The District will pay the Contractor on or before the 30<sup>th</sup> day after receiving a proper invoice from the Contractor.

**G.2 INVOICE SUBMITTAL**

**G.2.1** The Contractor shall create and submit payments requests in an electronic format through the DC Vendor Portal, <http://vendorportal.dc.gov>. The Contractor shall submit proper invoices on a monthly basis. To constitute a proper invoice, the Contractor shall enter all required information into the Portal after selecting the applicable purchase order number which is listed on the Contractor's profile.

**G.2.2** The Contractor shall submit proper invoices on a monthly basis or as otherwise specified in Section G.4. Invoices shall be prepared in duplicate and submitted to the agency Chief Financial Officer ("CFO") with concurrent copies to the Project Manager specified in Section G.9 below. The address of the CFO is:

Department of General Services  
Office of the Controller/Agency CFO  
2000 14<sup>th</sup> Street NW, 5<sup>th</sup> Floor  
Washington, DC 20009

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

**G.2.2** To constitute a proper invoice, the Contractor shall submit the following information on the invoice:

**G.2.2.1** Contractor's name, federal tax ID and invoice date (the Contractor shall date invoices as of the date of mailing or transmittal);

**G.2.2.2** Contract number, invoice number, and appropriate Purchase Order;

**G.2.2.3** Description, price, quantity and the date(s) that the supplies or services were delivered or performed;

- G.2.2.4** Other supporting documentation or information, as required by the Contracting Officer;
- G.2.2.5** Name, title, telephone number and complete mailing address of the responsible official to whom payment is to be sent;
- G.2.2.6** Name, title, phone number of person preparing the invoice;
- G.2.2.7** Name, title, phone number and mailing address of person (if different from the person identified in G.2.2.6 above) to be notified in the event of a defective invoice; and
- G.2.2.8** Authorized signature.

### **G.3 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT**

- G.3.1** For contracts subject to the 51% District Residents New Hires Requirements and First Source Employment Agreement requirements, final request for payment must be accompanied by the report or a waiver of compliance discussed in section H.5.5.
- G.3.2** The District shall not make final payment to the Contractor until the agency Chief Financial Officer “CFO” has received the Contracting Officer’s final determination or approval of waiver of the Contractor’s compliance with 51% District Residents New Hires Requirements and First Source Employment Agreement requirements.

### **G.4 PAYMENT**

#### **G.4.1 Partial Payment**

Unless otherwise specified in this Contract, payment will be made on partial deliveries of goods and services accepted by the District if:

- a) The amount due on the deliveries warrants it; or
- b) The Contractor requests it and the amount due on the deliveries is in accordance with the following:
  - 1. "Payment will be made on completion and acceptance of each percentage or stage of work as described in the Contract in accordance with the prices stated in the Form of Offer Letter and Bid Form, **Attachment J.2**; and
  - 2. Presentation of a properly executed invoice.

## **G.5 ASSIGNMENT OF CONTRACT PAYMENTS**

- G.5.1** In accordance with 27 DCMR 3250, the Contractor may assign to a bank, trust company, or other financing institution funds due or to become due as a result of the performance of this Contract.
- G.5.2** Any assignment shall cover all unpaid amounts payable under this Contract, and shall not be made to more than one party.
- G.5.3** Notwithstanding an assignment of contract payments, the Contractor, not the assignee, is required to prepare invoices. Where such an assignment has been made, the original copy of the invoice must refer to the assignment and must show that payment of the invoice is to be made directly to the assignee as follows:

“Pursuant to the instrument of assignment dated \_\_\_\_\_, make payment of this invoice to (name and address of assignee).”

## **G.6 THE QUICK PAYMENT ACT**

### **G.6.1 Interest Penalties to Contractors**

- G.6.1.1** The District will pay interest penalties on amounts due to the Contractor under the Quick Payment Act, D.C. Official Code § 2-221.01 *et seq.*, as amended, for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of at least 1.5% per month. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before the required payment date. The required payment date shall be:

**G.6.1.1.1** The date on which payment is due under the terms of the contract;

**G.6.1.1.2** Not later than 7 calendar days, excluding legal holidays, after the date of delivery of meat or meat food products;

**G.6.1.1.3** Not later than 10 calendar days, excluding legal holidays, after the date of delivery of a perishable agricultural commodity; or

**G.6.1.1.4** 30 calendar days, excluding legal holidays, after receipt of a proper invoice for the amount of the payment due.

**G.6.1.2** No interest penalty shall be due to the Contractor if payment for the completed delivery of goods or services is made on or after:

**G.6.1.2.1** 3rd day after the required payment date for meat or a meat food product;

**G.6.1.2.2** 5<sup>th</sup> day after the required payment date for an agricultural commodity; or

**G.6.1.2.3** 15<sup>th</sup> day after any other required payment date.

**G.6.1.3** Any amount of an interest penalty which remains unpaid at the end of any 30-day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

## **G.6.2 Payments to Subcontractors**

**G.6.2.1** The Contractor must take one of the following actions within seven (7) days of receipt of any amount paid to the Contractor by the District for work performed by any subcontractor under the contract:

**G.6.2.1.1** Pay the subcontractor(s) for the proportionate share of the total payment received from the District that is attributable to the subcontractor(s) for work performed under the contract; or

**G.6.2.1.2** Notify the CO and the subcontractor(s), in writing, of the Contractor's intention to withhold all or part of the subcontractor's payment and state the reason for the nonpayment.

**G.6.2.2** The Contractor must pay any subcontractor or supplier interest penalties on amounts due to the subcontractor or supplier beginning on the day after the payment is due and ending on the date on which the payment is made. Interest shall be calculated at the rate of at least 1.5% per month. No interest penalty shall be paid on the following if payment for the completed delivery of the item of property or service is made on or before the:

**G.6.2.2.1** 3<sup>rd</sup> day after the required payment date for meat or a meat product;

**G.6.2.2.2** 5<sup>th</sup> day after the required payment date for an agricultural commodity; or

**G.6.2.2.3** 15<sup>th</sup> day after any other required payment date.

**G.6.2.3** Any amount of an interest penalty which remains unpaid by the Contractor at the end of any 30-day period shall be added to the principal amount of the debt to the subcontractor and thereafter interest penalties shall accrue on the added amount.

**G.6.2.4** A dispute between the Contractor and subcontractor relating to the amounts or entitlement of a subcontractor to a payment or a late payment interest penalty under the Quick Payment Act does not constitute a dispute to which the District is a party. The District may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

### **G.6.3 Subcontractor Quick Payment Clause Flow-Down Requirements**

The Contractor shall include in each subcontract under this Contract a provision requiring the subcontractor to include in its contract with any lower-tier subcontractor or supplier the payment and interest clauses required under paragraphs (1) and (2) of D.C. Official Code § 2-221.02(d).

### **G.7 CONTRACTING OFFICER (“CO”)**

Contracts will be entered into and signed on behalf of the District only by contracting officers. The contact information for the Contracting Officers are:

**George G. Lewis, CPPO**

Chief of Contracts & Procurement | Chief Contracting Officer  
Department of General Services  
2000 14th Street, NW | 8th Floor | Washington, DC 20009  
Tel: 202.478.5727 | Email: [George.Lewis@dc.gov](mailto:George.Lewis@dc.gov)

**Franklin Austin, CPPB, CPM**

Contracting Officer  
Department of General Services  
2000 14<sup>th</sup> Street, NW 8<sup>th</sup> Floor  
Washington, DC 20009  
[Franklin.Austin5@dc.gov](mailto:Franklin.Austin5@dc.gov)  
Phone: 202-727-7128

### **G.8 AUTHORIZED CHANGES BY THE CONTRACTING OFFICER**

**G.8.1** The CO is the only person authorized to approve changes in any of the requirements of this Contract.

**G.8.2** 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 CO.

**G.8.3** In the event the Contractor effects any change at the instruction or request of any person other than the CO, 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.

## **G.9 DEPARTMENT PROGRAM MANAGER**

### **G.9.1 PROGRAM MANAGER**

The DGS Program Manager (“DGS PM”) will assist the CO as needed to ensure the effective implementation of the Project. The Program Manager is:

Oñyel Bhola  
Project Manager  
Department of General Services  
1250 U Street, NW 4<sup>th</sup> Floor  
Washington, DC 20009  
[onyel.bhola@dc.gov](mailto:onyel.bhola@dc.gov)

**SECTION H  
SPECIAL CONTRACT REQUIREMENTS**

**H.1 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES**

**H.1.1** For all new employment resulting from this Contract or subcontracts hereto, as defined in Mayor's Order 83-265 and implementing instructions, the Contractor shall use its best efforts to comply with the following basic goal and objectives for utilization of bona fide residents of the District of Columbia in each project's labor force:

**H.1.1.1** At least fifty-one (51) percent of apprentices and trainees employed shall be residents of the District of Columbia registered in programs approved by the District of Columbia Apprenticeship Council.

**H.1.2** The Contractor shall negotiate an Employment Agreement with the Department of Employment Services (DOES) for jobs created as a result of this contract. The DOES shall be the Contractor's first source of referral for qualified apprentices and trainees in the implementation of employment goals contained in this clause.

**H.2 DEPARTMENT OF LABOR WAGE DETERMINATIONS**

The Contractor shall be bound by the Wage Determination provided and issued by the U.S. Department of Labor in accordance with the Service Contract Act, 41 U.S.C. § 351 *et seq.*, and incorporated herein as Section J.7. The Contractor shall be bound by the wage rates for the term of the contract. If an option is exercised, the Contractor shall be bound by the applicable wage rates at the time of the exercise of the option. If the option is exercised and the CO obtains a revised wage determination, the revised wage determination is applicable for the option periods and the Contractor may be entitled to an equitable adjustment.

**H.3 PREGNANT WORKERS FAIRNESS**

**H.3.1** The Contractor shall comply with the Protecting Pregnant Workers Fairness Act of 2016, D.C. Official Code § 32-1231.01 *et seq.* (PPWF Act).

**H.3.2** The Contractor shall not:

(a) Refuse to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding for an employee, unless the Contractor can demonstrate that the accommodation would impose an undue hardship;

(b) Take an adverse action against an employee who requests or uses a reasonable accommodation in regard to the employee's conditions or privileges of employment, including failing to reinstate the employee when

the need for reasonable accommodations ceases to the employee's original job or to an equivalent position with equivalent:

- (1) Pay;
- (2) Accumulated seniority and retirement;
- (3) Benefits; and
- (4) Other applicable service credits;

(c) Deny employment opportunities to an employee, or a job applicant, if the denial is based on the need of the employer to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding;

(d) Require an employee affected by pregnancy, childbirth, related medical conditions, or breastfeeding to accept an accommodation that the employee chooses not to accept if the employee does not have a known limitation related to pregnancy, childbirth, related medical conditions, or breastfeeding or the accommodation is not necessary for the employee to perform her duties;

(e) Require an employee to take leave if a reasonable accommodation can be provided; or

(f) Take adverse action against an employee who has been absent from work as a result of a pregnancy-related condition, including a pre-birth complication.

**H.3.3** The Contractor shall post and maintain in a conspicuous place a notice of rights in both English and Spanish and provide written notice of an employee's right to a needed reasonable accommodation related to pregnancy, childbirth, related medical conditions, or breastfeeding pursuant to the PPWF Act to:

(a) New employees at the commencement of employment;

(b) Existing employees; and

(c) An employee who notifies the employer of her pregnancy, or other condition covered by the PPWF Act, within 10 days of the notification.

**H.3.4** The Contractor shall provide an accurate written translation of the notice of rights to any non-English or non-Spanish speaking employee.

**H.3.5** Violations of the PPWF Act shall be subject to civil penalties as described in the Act.

## **H.4 UNEMPLOYED ANTI-DISCRIMINATION**

**H.4.1** The Contractor shall comply with the Unemployed Anti-Discrimination Act of 2012, D.C. Official Code § 32-1361 *et seq.*

**H.4.2** The Contractor shall not:

- (a) Fail or refuse to consider for employment, or fail or refuse to hire, an individual as an employee because of the individual's status as unemployed; or
- (b) Publish, in print, on the Internet, or in any other medium, an advertisement or announcement for any vacancy in a job for employment that includes:
  - (1) Any provision stating or indicating that an individual's status as unemployed disqualifies the individual for the job; or
  - (2) Any provision stating or indicating that an employment agency will not consider or hire an individual for employment based on that individual's status as unemployed.

**H.4.3** Violations of the Unemployed Anti-Discrimination Act shall be subject to civil penalties as described in the Act.

## **H.5 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT**

**H.5.1** For contracts for services in the amount of \$300,000 or more, the Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code § 2-219.01 *et seq.* (First Source Act).

**H.5.2** The Contractor shall enter into and maintain during the term of the contract, a First Source Employment Agreement (Employment Agreement) (Attachment J.8) with the District of Columbia Department of Employment Service's (DOES), in which the Contractor shall agree that:

- (a) The first source for finding employees to fill all jobs created in order to perform the contract shall be the First Source Register; and
- (b) The first source for finding employees to fill any vacancy occurring in all jobs covered by the Employment Agreement shall be the First Source Register.

**H.5.3** If applicable, 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 First Source Amendment Act of 2011*, and the rules and

regulations promulgated thereunder, including, but not limited to the following requirements:

- a) At least twenty percent (20%) of journey worker hours by trade shall be performed by District residents;
- b) At least sixty percent (60%) of apprentice hours by trade shall be performed by District residents;
- c) At least fifty one percent (51%) of the skilled laborer hours by trade shall be performed by District residents; and
- d) At least seventy percent (70%) of common laborer hours shall be performed by District residents.

**H.5.4** The Contractor agrees that at least 51% of the new employees hired to perform the contract shall be District residents.

**H.5.5** The Contractor's hiring and reporting requirements under the First Source Act and any rules promulgated thereunder shall continue for the term of the contract.

**H.5.6** The CO may impose penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract, for a willful breach of the Employment Agreement, failure to submit the required hiring compliance reports, or deliberate submission of falsified data.

**H.5.7** If the Contractor does not receive a good faith waiver, the CO may also impose an additional penalty equal to 1/8 of 1% of the total amount of the direct and indirect labor costs of the contract for each percentage by which the Contractor fails to meet its hiring requirements.

**H.5.8** Any contractor which violates, more than once within a 10-year timeframe, the hiring or reporting requirements of the First Source Act shall be referred for debarment for not more than five (5) years.

**H.5.9** The contractor may appeal any decision of the CO pursuant to this clause to the D.C. Contract Appeals Board as provided in the Disputes clauses of the SCP of construction contracts.

**H.5.10** The provisions of the First Source Act do not apply to nonprofit organizations which employ 50 employees or less.

## **H.6 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 J.6**).

## **H.7 BUY AMERICAN ACT PROVISION.**

**H.7.1** In accordance with the Buy American Act (41 U.S.C. § 10a-10d), and Executive Order 10582, December 17, 1954 (3 CFR, 1954-58 Comp., p. 230), as amended by Executive Order 11051, September 27, 1962 (3 CFR, 1059—63 Comp., p. 635), the Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, material men and suppliers in the performance of the agreement, except for non-domestic material listed in the Contract.

- a. “Components” as used in this Section, means those articles, materials and supplies incorporated directly into the end products.
- b. “Domestic end product”, as used in this section, means, (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States, exceeds 50 percent of the cost of all its components.
- c. Components of foreign origin of the same class or kind as the products shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
- d. “End Products”, as used in this Section, means those articles, materials, and supplies to be acquired for public use under this Contract.
- e. The Contractor shall deliver only domestic end products, except those:
  - i. For use outside the United States;
  - ii. That the District determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;
  - iii. For which the District determines that domestic preference would be inconsistent with the public interest; or
  - iv. For which the District determines the cost to be unreasonable.

**H.7.1.2 Domestic Construction Material.** “Construction material” means any article, material or supply brought to the construction site for incorporation in the building or work. An unmanufactured construction material is a “domestic construction material” if it has been mined or produced in the United States. A manufactured construction material is a “domestic construction material” if it has been manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. “Component” means any article, material, or supply directly incorporated in a construction material.

**H.7.1.3 Domestic Component.** A component shall be considered to have been “mined, produced, or manufactured in the United States” regardless of its source, in fact, if the article, material or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the government to be not mined, produced or manufactured in the united states in sufficient and reasonably available commercial quantities and of a satisfactory quality.

**H.7.1.4 Foreign Material.** When steel materials are used in a project a minimal use of foreign steel is permitted. The cost of such materials cannot exceed on-tenth of one percent of the total project cost, or \$2,500,000, whichever is greater

## **H.8 ANTI-DEFICIENCY ACTS**

The Department’s obligations and responsibilities under the terms of the Contract 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. The Contract shall not 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 AGREEMENT OR CONTRACT DOCUMENTS UNLESS SUCH AMOUNT HAS BEEN APPROVED, IS LAWFULLY AVAILABLE AND APPROPRIATED BY ACT OF CONGRESS.**

## **H.9 SUBCONTRACTING REQUIREMENTS**

### **H.9.1 Mandatory Subcontracting Requirements**

**H.9.1.1** For all contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted to qualified small business enterprises (SBEs).

**H.9.1.2** If there are insufficient SBEs to completely fulfill the requirement of paragraph H.9.1.1, then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any qualified certified business enterprises (CBEs); provided, however, that all reasonable efforts shall be made to ensure that SBEs are significant participants in the overall subcontracting work.

**H.9.1.3** 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 H.9.1.1 and H.9.1.2.

**H.9.1.4** Except as provided in H.9.1.5 and H.9.1.7, 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.

**H.9.1.5** If the prime contractor 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, the CBE member of the certified joint venture 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. If the CBE member of the certified joint venture prime contractor performs less than 50% of the contracting effort, the certified joint venture shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

**H.9.1.6** Each CBE utilized to meet these subcontracting requirements shall perform at least 35% of its contracting effort with its own organization and resources.

**H.9.1.7** 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.9.2 Subcontracting Plan**

If the prime contractor is required to subcontract under this Contract, it shall submit a subcontracting plan as part of the bid and it may only be amended after award with the prior written approval of the CO and Director of DSLBD. Any reduction in the dollar volume of the subcontracted portion resulting from an amendment of the plan after award shall inure to the benefit of the District.

Each subcontracting plan shall include the following:

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

## **H.9.3 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, PM, District of Columbia Auditor and the Director of DSLBD.

## **H.9.4 Subcontracting Plan Compliance Reporting**

**H.9.4.1** The Contractor shall submit a quarterly report to the CO, PM, 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.

**H.9.4.2** If the fully executed subcontract is not provided with the quarterly report, the prime contractor will not receive credit toward its subcontracting requirements for that subcontract.

## **H.9.5 Annual Meetings**

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

## **H.10 FAIR CRIMINAL RECORD SCREENING**

**H.10.1** The Contractor shall comply with the provisions of the Fair Criminal Record Screening Amendment Act of 2014, effective December 17, 2014 (D.C. Law 20-152) (“Act” as used in this section). This section applies to any employment, including employment on a temporary or contractual basis, where the physical location of the employment is in whole or substantial part within the District of Columbia.

**H.10.2** Prior to making a conditional offer of employment, the Contractor shall not require an applicant for employment, or a person who has requested consideration for employment by the Contractor, to reveal or disclose an arrest or criminal accusation that is not then pending or did not result in a criminal conviction.

**H.10.3** After making a conditional offer of employment, the Contractor may require an applicant to disclose or reveal a criminal conviction.

**H.10.4** The Contractor may only withdraw a conditional offer of employment, or take adverse action against an applicant, for a legitimate business reason as described in the Act.

**H.10.5** This section and the provisions of the Act shall not apply:

- (a) Where a federal or District law or regulation requires the consideration of an applicant's criminal history for the purposes of employment;
- (b) To a position designated by the employer as part of a federal or District government program or obligation that is designed to encourage the employment of those with criminal histories;
- (c) To any facility or employer that provides programs, services, or direct care to, children, youth, or vulnerable adults; or
- (d) To employers that employ less than 11 employees.

**H.10.6** A person claiming to be aggrieved by a violation of the Act may file an administrative complaint with the District of Columbia Office of Human Rights, and the Commission on Human Rights may impose monetary penalties against the Contractor.

## **H.11 FREEDOM OF INFORMATION ACT**

The District of Columbia Freedom of Information Act, at *D.C. Official Code § 2-532 (a-3)*, requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If the Contractor receives a request for such information, the Contractor shall immediately send the request to the Program Manager designated in subsection **G.9** who will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by the Contractor pursuant to the contract, the Program Manager will forward a copy to the Contractor. In either event, the Contractor is required by law to provide all responsive records to the Program Manager within the timeframe designated by the Program Manager. The FOIA Officer for the agency with programmatic responsibility will determine the releasability of the records. The District will reimburse the Contractor for the costs of searching and copying the records in accordance with *D.C. Official Code §2-532* and Chapter 4 of Title 1 of the *D.C. Municipal Regulations*.

## **H.12 SECTION 504 OF THE REHABILITATION ACT OF 1973, as amended.**

During the performance of the contract, the Contractor and any of its subcontractors shall comply with Section 504 of the Rehabilitation Act of 1973, as amended. This Act prohibits discrimination against disabled people in federally funded program and activities. **See 29 U.S.C. §794 et seq.**

### **H.13 AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)**

During the performance of this contract, the Contractor and any of its subcontractors shall comply with the ADA. The ADA makes it unlawful to discriminate in employment against a qualified individual with a disability. See *42 U.S.C. §12101 et seq.*

### **H.14 WAY TO WORK AMENDMENT ACT OF 2006**

**H.14.1** Except as described in **Section H.14.8** below, the Contractor shall comply with Title I of the Way to Work Amendment Act of 2006, effective June 8, 2006 (D.C. Law 16-118, D.C. Official Code §2-220.01 *et seq.*) (“Living Wage Act of 2006”), for contracts for services in the amount of \$100,000 or more in a 12-month period.

**H.14.2** The Contractor shall pay its employees and subcontractors who perform services under the contract no less than the current living wage.

**H.14.3** The Contractor shall include in any subcontract for \$15,000 or more a provision requiring the subcontractor to pay its employees who perform services under the contract no less than the current living wage rate.

**H.14.4** The DOES may adjust the living wage annually and Contractor will find the current living wage rate on its website at [www.does.dc.gov](http://www.does.dc.gov).

**H.14.5** The Contractor shall provide a copy of the Fact Sheet attached as **J.6** to each employee and subcontractor who performs services under the contract. The Contractor shall also post the Notice attached as **J.6** in a conspicuous place in its place of business. The Contractor shall include in any subcontract for \$15,000 or more a provision requiring the subcontractor to post the Notice in a conspicuous place in its place of business.

**H.14.6** The Contractor shall maintain its payroll records under the contract in the regular course of business for a period of at least three (3) years from the payroll date, and shall include this requirement in its subcontracts for \$15,000 or more under the contract.

**H.14.7** The payment of wages required under the Living Wage Act of 2006 shall be consistent with and subject to the provisions of *D.C. Official Code §32-1301 et seq.*

**H.14.8** The requirements of the Living Wage Act of 2006 do *not* apply to:

- (1) Contracts or other agreements that are subject to higher wage level determinations required by federal law;

- (2) Existing and future collective bargaining agreements, provided, that the future collective bargaining agreement results in the employee being paid no less than the established living wage;
- (3) Contracts for electricity, telephone, water, sewer or other services provided by a regulated utility;
- (4) Contracts for services needed immediately to prevent or respond to a disaster or imminent threat to public health or safety declared by the Mayor;
- (5) Contracts or other agreements that provide trainees with additional services including, but not limited to, case management and job readiness services; provided that the trainees do not replace employees subject to the Living Wage Act of 2006;
- (6) An employee under 22 years of age employed during a school vacation period, or enrolled as a full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than 25 hours per week; provided that he or she does not replace employees subject to the Living Wage Act of 2006;
- (7) Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia; provided, that the tenant or retail establishment did not receive direct government assistance from the District;
- (8) Employees of nonprofit organizations that employ not more than 50 individuals and qualify for taxation exemption pursuant to section 501(c)(3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3));
- (9) Medicaid provider agreements for direct care services to Medicaid recipients, provided, that the direct care service is not provided through a home care agency, a community residence facility, or a group home for mentally retarded persons as those terms are defined in section 2 of the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective February 24, 1984 (*D.C. Law 5-48; D.C. Official Code § 44-501*); and
- (10) Contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.

**H.14.9** The Mayor may exempt a contractor from the requirements of the Living Wage Act of 2006, subject to the approval of Council, in accordance with the provisions of Section 109 of the Living Wage Act of 2006.

## **H.15 DIVERSION, REASSIGNMENT AND REPLACEMENT OF KEY PERSONNEL**

The key personnel specified in the contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified key personnel for any reason, the Contractor shall notify the CO at least thirty (30) calendar days in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact upon the contract. The Contractor shall obtain written approval of the CO for any proposed substitution of key personnel.

## **H.16 AUDITS AND RECORDS**

**H.16.1** As used in this clause, “records” includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

**H.16.2 Examination of Costs.** If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price re-determinable contract, or any combination of these, the Contractor shall maintain and the CO, or an authorized representative of the CO, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor’s plants, or parts of them, engaged in performing the contract.

**H.16.3 Cost or pricing data.** If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the CO, or an authorized representative of the CO, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor’s records, including computations and projections, related to:

- a. The proposal for the contract, subcontract, or modification;
- b. The discussions conducted on the proposal(s), including those related to negotiating;
- c. Pricing of the contract, subcontract, or modification; or
- d. Performance of the contract, subcontract or modification.

### **H.16.4 Comptroller General**

**H.16.4.1** The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any

of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

**H.16.4.2** This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

**H.16.5 Reports.** If the Contractor is required to furnish cost, funding, or performance reports, the CO or an authorized representative of the CO shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating:

- a. The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and
- b. the data reported.

**H.16.6 Availability.** The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in section H.11, for examination, audit, or reproduction, until three (3) years after final payment under this contract or for any shorter period specified in the solicitation, or for any longer period required by statute or by other clauses of this contract. In addition:

- a. If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until three (3) years after any resulting final termination settlement; and
- b. The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

**H.16.7** The Contractor shall insert a clause containing all the terms of this clause, including this section H.16.7 in all subcontracts under this contract that exceed the small purchase threshold of \$100,000.00 and:

- a. That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price re-determinable type or any combination of these;
- b. For which cost or pricing data are required; or
- c. That requires the subcontractor to furnish reports as discussed in H.16.5 of this clause.

## **H.17 ADVISORY AND ASSISTANCE SERVICES**

This contract is a “non-personal services contract”. The Contractor and the Contractor’s employees: (1) shall perform the services specified herein as independent contractors, not as employees of the government; (2) shall be responsible for their own management and administration of the work required and bear sole responsibility for complying with any and all technical, schedule, financial requirements or constraints attendant to the performance of this contract; (3) shall be free from supervision or control by any government employee with respect to the manner or method of performance of the service specified; but (4) shall, pursuant to the government’s right and obligation to inspect, accept or reject work, comply with such general direction of the CO, or the duly authorized representative of the CO as is necessary to ensure accomplishment of the contract objectives.

## **H.18 DISTRICT RESPONSIBILITIES**

### **H.18.1 District Furnished Property**

District property shall remain the property of the District in all respects. The Program Manager may require Contractor personnel to sign for receipt and custody of District furnished property, at the discretion of the Program Manager. The Contractor shall take all reasonable precautions to safeguard and protect District property. District property shall be used only in direct Operations for providing contract services, and shall not be used in any manner for any personal advantage, business gain, or other personal endeavor by the Contractor or the Contractor’s employees.

## **H.19 CONTRACTOR RESPONSIBILITIES**

**H.19.1** The Contractor shall be responsible for providing services in accordance with the requirements of this contract.

**H.19.2** The Contractor shall be responsible for obtaining all licenses and permits necessary for the performance of this contract.

**H.19.3** The Contractor shall furnish all equipment needed for the performance of the work under this contract. All equipment must be properly guarded and meet all applicable United States Occupational Safety and Health Administration OSHA standards.

**H.19.4** The Contractor shall assume full responsibility and liability for compliance with all applicable regulations pertaining to the health and safety of personnel during the execution of work, and shall hold the District harmless for any action on his part or that of his employees or subcontractors, which results in illness, injury or death.

**H.19.5** Meet all federal, state vehicles compliance standards, local laws, inspections, and regulations, including, but not limited to, the permitting requirements under Chapter 25 of Title 18, DCMR by the DC Department of Transportation (DDOT), the DC Department of Consumer and Regulatory Affairs (DCRA) and the DC Department of Public Works (DPW). The Contractor shall ensure that each vehicle is licensed and registered in accordance with District regulations.

## **H.20 STAFF ATTIRE AND IDENTIFICATION**

**H.20.1** The Contractor's staff shall wear identification badges at all times. The identification badges shall provide company logo, employee's name, and employee photograph.

## **H.21 SAFETY REQUIREMENTS**

**H.21.1** The Contractor shall be responsible for complying with all applicable District and Federal rules, regulations and practices relating to safety on the job site; for all injury to persons or damage to property that occurs as a result of the Contractor's negligence and shall take proper safety and health precautions to protect the work, the workers, the tenants and District property; and for all materials delivered and work performed until completion and acceptance of the entire work in writing by the Program Manager.

**H.21.2** The Contractor shall provide and ensure that all its personnel at the work sites properly wear all applicable safety devices and apparel required by the United States Occupational Safety and Health Administration (OSHA) including, but not limited to:

**H.21.2.1** Back support devices

**H.21.2.2** Eye protection

**H.21.2.3** Hearing protection

**H.21.2.4** Hand protection

**H.21.2.5** Head protection

**H.21.2.6** Foot protection

**H.21.3** The District has the right to inspect all areas for safety violations at its discretion, direct the Contractor to make immediate improvement of necessary conditions and/or procedures, and/or stop the work if other hazards are deemed to exist.

**H.21.4** Notwithstanding any provision to the contrary, the District shall not be obligated to make an equitable adjustment for any work stoppage that results from safety hazards created by the Contractor. In the event that the Contracting Officer directs the work to stop because of existing safety hazards after the Contractor has been notified and provided ample time to correct, the Contractor shall bear all costs for eliminating the hazard(s) and shall not be granted compensation for the work stoppage.

**H.21.5** The Contractor shall immediately notify the Program Manager if the job site is visited by an OSHA official for compliance with the Occupational Safety and Health Act or any other safety regulatory requirements.

## **H.22 FIRE PREVENTION**

**H.22.1** The Contractor shall be responsible for establishing and maintaining an effective fire prevention program for its employees and the District property being serviced on the job site.

**H.22.2** The Contractor shall be knowledgeable and train all its employees on the job site to fulfill the requirements of this Statement of Work on the procedures, means of egress and methods of reporting fires on the job sites.

## **H.23 SMOKE FREE ENVIRONMENT**

The District's facilities are smoke free. The Contractor is responsible for adhering to all applicable rules and regulations regarding maintenance of a smoke free environment on the job sites.

## **H.24 ACCIDENT REPORTS**

The Contractor shall immediately notify the Program Manager of any accidents on the job site arising from the performance of this SOW that involve bodily injury to Contractor's employees or District workers or both, building occupants, visitors, or other persons.

## **H.25 PROPERTY DAMAGE NOTIFICATION**

Any damage caused by the Contractor or its employees to District property shall be promptly repaired or replaced by the Contractor at the Contractor's expense.

## **H.26 SUSPENSION OF WORK**

**H.26.1** In the event services are not provided or required by the District because the buildings is closed due to unanticipated circumstances, deductions to the Contractor price normally payable to Contractor will be computed as follows.

**H.26.2** The deduction rate in dollars per day will be equal to the per month contract price for the building, divided by twenty-one (21) days per month. (This will be adjusted as appropriate if some portion of the Contractor's requirements apply to weekends or holidays).

**H.26.3** The deduction rate in dollars per day multiplied by the number of days services were not provided or required will equal the total dollar deduction to be made.

**H.26.4** Deductions will not be made to the extent that the Contractor can demonstrate that payment to employees is required by an incorporated wage determination or union agreement.

**H.26.5** In the event services are provided for portion of days, appropriate adjustments will be made by the Program Manager to assure the Contractor is compensated for services provided.

**H.27**                    **CONTRACTOR RESPONSIBILITY UPON CONTRACT COMPLETION OR TERMINATION**

**H.27.1** The Contractor shall turn over all plans codes, manuals, records, files, reports, databases spare inventory and materials developed or purchased in the course of the Contract to the Program Manager within thirty (30) calendar days after contract completion or termination. The Contractor shall develop transition plans, which shall describe staffing and organizational structure during the phase-in and phase-out transition periods, and how the Contractor will interact with the existing work force during the thirty (30) days of transition at the beginning and end of this contract.

**H.28**                    **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

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

**H.29**                    **FALSE CLAIMS ACT**

The Contractor shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to DC government, including the prescriptions set forth in D.C. Official Code §§ 22-2405 and 2-381.02 et seq. In the event that it is discovered that the Contractor has made a false, fraudulent or unsupported statement or claim to the Department, the Department may terminate this Agreement without liability

## **SECTION I CONTRACT CLAUSES**

### **I.1 APPLICABILITY OF STANDARD CONTRACT PROVISIONS**

The Department of General Services Standard Contract Provisions General Provisions, Supplies and Services and Construction dated 2016 (“SCP”) (**Attachment J.14**). The (SCP) are incorporated as part of the Contract.

### **I.2 CONTRACTS THAT CROSS FISCAL YEARS**

Continuation of this Contract beyond the current fiscal year is contingent upon future fiscal appropriations.

### **I.3 CONFIDENTIALITY OF INFORMATION**

The Contractor shall keep all information relating to any employee or customer of the District in absolute confidence and shall not use the information in connection with any other matters; nor shall it disclose any such information to any other person, firm or corporation, in accordance with the District and federal laws governing the confidentiality of records.

### **I.4 TIME**

Time, if stated in a number of days, will include Saturdays, Sundays, and holidays, unless otherwise stated herein.

### **I.5 RIGHTS IN DATA**

#### **A. Definitions**

1. “Products” - A deliverable under any contract that may include commodities, services and/or technology furnished by or through the Contractor, including existing and custom Products, such as, but not limited to: a) recorded information, regardless of form or the media on which it may be recorded; b) document research; c) experimental, developmental, or engineering work; d) licensed software; e) components of the hardware environment; f) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings); g) third party software; h) modifications, customizations, custom programs, program listings, programming tools, data, modules, components; and i) any intellectual property embodied therein, whether in tangible or intangible form, including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, and object code.

2. “Existing Products” - Tangible Products and intangible licensed Products that exist prior to the commencement of work under the contract. Existing Products must be identified on

the Product prior to commencement of work or else will be presumed to be Custom Products.

3. “Custom Products” - Products, preliminary, final or otherwise, which are created or developed by Contractor, its subcontractors, partners, employees, resellers or agents for the District under the contract.

4. “District” – The District of Columbia and its agencies.

## **B. Title to Project Deliverables**

The Contractor acknowledges that it is commissioned by the District to perform services detailed in the Contract. The District shall have ownership and rights for the duration set forth in the contract to use, copy, modify, distribute, or adapt Products as follows:

1. Existing Products: Title to all Existing Licensed Product(s), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or third party proprietary owner, who retains all rights, title and interest (including patent, trademark or copyrights). Effective upon payment, the District shall be granted an irrevocable, non-exclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, adapt (unless Contractor advises the District as part of Contractor’s bid that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the District’s satisfaction), and distribute Existing Product to District users up to the license capacity stated in the contract with all license rights necessary to fully effect the general business purpose of the project or work plan or contract. Licenses shall be granted in the name of the District. The District agrees to reproduce the copyright notice and any other legend of ownership on any copies authorized under this paragraph.

2. Custom Products: Effective upon Product creation, the Contractor shall convey, assign, and transfer to the District the sole and exclusive rights, title and interest in Custom Products, whether preliminary, final or otherwise, including all patents, trademark, and copyrights. The Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through the Contractor.

## **C. Transfers or Assignments of Existing or Custom Products by the District**

The District may transfer or assign Existing or Custom Products and the licenses thereunder to another District agency. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a project or work plan in the course of the Contractor’s business.

#### **D. Subcontractor Rights**

Whenever any data, including computer software, are to be obtained from a subcontractor under the contract, the Contractor shall use this clause, **Rights in Data**, in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the District's or the Contractor's rights in that subcontractor data or computer software which is required for the District.

#### **E. Source Code Escrow**

1. For all computer software furnished to the District with the rights specified in section B.2, the Contractor shall furnish to the District, a copy of the source code with such rights of the scope as specified in section B.2 of this clause. For all computer software furnished to the District with the restricted rights specified in section B.1 of this clause, the District, if the Contractor either directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided the District under the contract or any paid-up maintenance agreement, or if the Contractor should be declared insolvent by a court of competent jurisdiction, shall have the right to obtain, for its own and sole use only, a single copy of the current version of the source code supplied under the contract, and a single copy of the documentation associated therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.

2. If the Contractor or Product manufacturer/developer of software furnished to the District with the rights specified in section B.1 of this clause offers the source code or source code escrow to any other commercial customers, the Contractor shall either: (1) provide the District with the source code for the Product; (2) place the source code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the District, and who shall be directed to release the deposited source code in accordance with a standard escrow arrangement acceptable to the District; or (3) will certify to the District that the Product manufacturer/ developer has named the District as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the District, and who shall be directed to release the deposited source code in accordance with the terms of escrow.

3. The Contractor shall update the source code, as well as any corrections or enhancements to the source code, for each new release of the Product in the same manner as provided above, and certify such updating of escrow to the District in writing.

#### **F. Indemnification and Limitation of Liability**

The Contractor shall indemnify and save and hold harmless the District, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under

this Contract, or (ii) based upon any data furnished under this Contract, or based upon libelous or other unlawful matter contained in such data.

- G.** All DGS data, information, documents, and similar material provided to the contractor for the purpose of performing the scope will remain the sole property of DGS and will be destroyed or returned by the contractor upon completion of services.
- H.** All Contractors' specified deliverables to DGS will become DGS sole property and will not be encumbered in their future use by any licensing or copyright by Contractor.

Contractor may maintain a copy of deliverables for internal reference purposes.

- I.** The Contractor's intellectual property related to delivery of services will remain The Contractor's property unless otherwise specified in this Contract or task order.

## **I.6 OTHER CONTRACTORS**

The Contractor shall not commit or permit any act that will interfere with the performance of work by another District contractor or by any District employee.

## **I.7 DEPARTMENT APPROVAL OF SUBCONTRACTS**

The Contractor hereunder shall not subcontract any of the Contractor's work or services to any Subcontractor without the prior written consent of the CO. Any work or service so subcontracted shall be performed pursuant to a subcontract agreement, which the District will have the right to review and approve prior to its execution by the Contractor. Any such subcontract shall specify that the Contractor and its Subcontractor shall be subject to every provision of this Contract. Notwithstanding any such subcontract approved by the District, the Contractor shall remain liable to the District for all Contractor's work and services required hereunder.

## **I.8 INSURANCE**

- A. GENERAL REQUIREMENTS.** The Contractor at its sole expense shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the CO giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best

Company rating of A- / VII or higher. The Contractor shall require all of its subcontractors to carry the same insurance required herein.

All required policies shall contain a waiver of subrogation provision in favor of the Government of the District of Columbia.

The Government of the District of Columbia shall be included in all policies required hereunder to be maintained by the Contractor and its subcontractors (except for workers' compensation and professional liability insurance) as an additional insureds for claims against The Government of the District of Columbia relating to this contract, with the understanding that any affirmative obligation imposed upon the insured Contractor or its subcontractors (including without limitation the liability to pay premiums) shall be the sole obligation of the Contractor or its subcontractors, and not the additional insured. The additional insured status under the Contractor's and its subcontractors' Commercial General Liability insurance policies shall be effected using the ISO Additional Insured Endorsement form CG 20 10 11 85 (or CG 20 10 07 04 **and** CG 20 37 07 04) or such other endorsement or combination of endorsements providing coverage at least as broad and approved by the CO in writing. All of the Contractor's and its subcontractors' liability policies (except for workers' compensation and professional liability insurance) shall be endorsed using ISO form CG 20 01 04 13 or its equivalent so as to indicate that such policies provide primary coverage (without any right of contribution by any other insurance, reinsurance or self-insurance, including any deductible or retention, maintained by an Additional Insured) for all claims against the additional insured arising out of the performance of this Statement of Work by the Contractor or its subcontractors, or anyone for whom the Contractor or its subcontractors may be liable. These policies shall include a separation of insureds clause applicable to the additional insured.

If the Contractor and/or its subcontractors maintain broader coverage and/or higher limits than the minimums shown below, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Grantee and subcontractors.

1. **Commercial General Liability Insurance ("CGL")** - The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries a CGL policy, written on an occurrence (not claims-made) basis, on Insurance Services Office, Inc. ("ISO") form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by the CO in writing), covering liability for all ongoing and completed operations of the Contractor, including ongoing and completed operations under all subcontracts, and covering claims for bodily injury, including without limitation sickness, disease or death of any persons, injury to or destruction of property, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising out of an Insured Contract (including the tort liability of another assumed in a contract) and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than \$1,000,000 each occurrence, a \$2,000,000 general aggregate (including a per location

or per project aggregate limit endorsement, if applicable) limit, a \$1,000,000 personal and advertising injury limit, and a \$2,000,000 products-completed operations aggregate limit.

The vendor should be named as an additional insured on the applicable manufacturer's/distributor's Commercial General Liability policy using Insurance Services Office, Inc. ("ISO") form CG 20 15 04 13 (or another occurrence-based form with coverage at least as broad).

2. **Automobile Liability Insurance** - The Contractor shall provide evidence satisfactory to the CO of commercial (business) automobile liability insurance written on ISO form CA 00 01 10 13 (or another form with coverage at least as broad and approved by the CO in writing) including coverage for all owned, hired, borrowed and non-owned vehicles and equipment used by the Contractor, with minimum per accident limits equal to the greater of (i) the limits set forth in the Contractor's commercial automobile liability policy or (ii) \$1,000,000 per occurrence combined single limit for bodily injury and property damage.
3. **Workers' Compensation Insurance** - The Contractor shall provide evidence satisfactory to the CO of Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

**Employer's Liability Insurance** - The Contractor shall provide evidence satisfactory to the CO of employer's liability insurance as follows: \$500,000 per accident for injury; \$500,000 per employee for disease; and \$500,000 for policy disease limit.

All insurance required by this paragraph 3 shall include a waiver of subrogation endorsement for the benefit of Government of the District of Columbia.

4. **Crime Insurance (3rd Party Indemnity)** - The Contractor shall provide a Crime policy including 3<sup>rd</sup> party fidelity to cover the dishonest acts of Contractor's, its employees and/or volunteers which result in a loss to the District. The Government of the District of Columbia shall be included as loss payee. The policy shall provide a limit of \$10,000 per occurrence.
5. **Cyber Liability Insurance** - The Contractor shall provide evidence satisfactory to the Contracting Officer of Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress,

invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. This insurance requirement will be considered met if the general liability insurance includes an affirmative cyber endorsement for the required amounts and coverages.

6. **Environmental Liability/Contractors Pollution Liability Insurance** - The Contractor shall provide evidence satisfactory to the CO of environmental liability insurance covering losses caused by pollution or other hazardous conditions arising from ongoing or completed operations of the Contractor. Such insurance shall apply to bodily injury, property damage (including loss of use of damaged property or of property that has been physically injured), clean-up costs, transit and non-owned disposal sites. Coverage shall extend to defense costs and expenses incurred in the investigation, civil fines, penalties and damages or settlements. There shall be neither an exclusion nor a sublimit for mold or fungus-related claims. The minimum limits required under this paragraph shall be equal to the greater of (i) the limits set forth in the Contractor's pollution liability policy or (ii) \$2,000,000 per occurrence and \$2,000,000 in the annual aggregate. If such coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverages under the policy precedes the Contractor's performance of any work under the Contract and that continuous completed operations coverage will be maintained for at least ten (10) years or an extended reporting period shall be purchased for no less than ten (10) years after completion.

The Contractor also must furnish to CO Owner certificates of insurance evidencing environmental liability insurance maintained by third party transportation and disposal site operators(s) used by the Contractor for losses arising from facility(ies) accepting, storing or disposing hazardous materials or other waste as a result of the Contractor's operations. Such coverages must be maintained with limits of at least the amounts set forth above.

7. **Employment Practices Liability** - The Contractor shall provide evidence satisfactory to the Contracting Officer with respect to the operations performed to cover the defense of claims arising from employment related wrongful acts including but not limited to: Discrimination, Sexual Harassment, Wrongful Termination, or Workplace Torts, whether between employees of contractor or against third parties. Employment Practices Liability coverage must specifically state Third Party Liability coverage is included. Contractor will indemnify and defend the District of Columbia should it be named co-defendant or be subject to or party of any claim. Coverage shall also extend to Temporary Help Firms and Independent Contractors hired by Contractor. The policy

shall provide limits of not less than \$1,000,000 for each wrongful act and \$2,000,000 annual aggregate for each wrongful act.

8. **Professional Liability Insurance (Errors & Omissions)** - The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of \$1,000,000 per claim or per occurrence for each wrongful act and \$2,000,000 annual aggregate. The Contractor warrants that any applicable retroactive date precedes the date the Contractor first performed any professional services for the Government of the District of Columbia and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least ten years after the completion of the professional services.
  
9. **Railroad Protective Liability Insurance (RPL)** - The Contractor shall provide evidence satisfactory to the Contracting Officer of a RPL policy with respect to activities Contractor, or any of its officers, agents, employees, members, successors and assigns, or subcontractors, perform within fifty (50) feet vertically or horizontally of railroad tracks, but only prior to the initiation of any such activity, Contractor shall provide Railroad Protective Liability Insurance (ISO CG 00 35 or equivalent), in the name of The Government of the District of Columbia. The policy shall have limits of liability of not less than Ten Million Dollars (\$10,000,000.00) per occurrence, combined single limits, for coverage A & B, for losses arising out of injury to or death of any person, and for physical loss or damage to or destruction of property, including the loss of use thereof. A Ten Million Dollar (\$10,000,000.00) annual aggregate may apply. (IF APPLICABLE)
  
10. **Commercial Umbrella or Excess Liability** - The Contractor shall provide evidence satisfactory to the CO of commercial umbrella or excess liability insurance with minimum limits equal to the greater of (i) the limits set forth in the Contractor's umbrella or excess liability policy or (ii) \$10,000,000 per occurrence and \$10,000,000 in the annual aggregate, following the form and in excess of all liability policies. **All** liability coverages must be scheduled under the umbrella and/or excess policy. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by the District and the "other insurance" provision must be amended in accordance with this requirement and principles of vertical exhaustion.

### **Construction Projects Controlled by the District**

For construction projects controlled by the District, the District will procure the following policies with the District listed as the first named insured. Since the District will control the placement of the policies, the District should not contractually bind itself to secure coverage broader than the minimum that satisfy the interests of the Contractor.

**Builders Risk** – The District shall purchase and maintain, in a company authorized to do business in the jurisdiction in which the project is located, builders risk insurance, written on an “all risk”, special causes of loss or equivalent form. Builders risk coverage will include boiler and machinery / equipment breakdown, earthquake and flood perils. Building ordinance and terrorism coverage will be included.

The deductible shall not exceed \$25,000 except for earthquake, flood, windstorm, water damage or other perils at the discretion of the District and as available in the insurance industry.

The project limit shall equal the replacement value of the structure, including coverage for property in transit and stored off premises.

At the discretion of the District, builders risk coverage will extend to soft costs and delayed completion.

Builders risk insurance shall include the interests of The Government of the District of Columbia, the Contractor, Subcontractors and Sub – subcontractors in the project.

### **B. PRIMARY AND NONCONTRIBUTORY INSURANCE**

The insurance required herein shall be primary to and will not seek contribution from any other insurance, reinsurance or self-insurance including any deductible or retention, maintained by the Government of the District of Columbia.

C. **DURATION.** The Contractor shall carry all required insurance until all contract work is accepted by the District of Columbia and shall carry listed coverages for ten years for construction projects following final acceptance of the work performed under this contract and two years for non-construction related contracts.

D. **LIABILITY.** These are the required minimum insurance requirements established by the District of Columbia. **HOWEVER, THE REQUIRED MINIMUM INSURANCE REQUIREMENTS PROVIDED ABOVE WILL NOT IN ANY WAY LIMIT THE CONTRACTOR’S LIABILITY UNDER THIS CONTRACT.**

E. **CONTRACTOR’S PROPERTY.** Contractor and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and

equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia.

- F. **MEASURE OF PAYMENT.** The District shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price.
- G. **NOTIFICATION.** The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event of coverage and / or limit changes or if the policy is canceled prior to the expiration date shown on the certificate. The Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium. The Contractor will also provide the CO with an updated Certificate of Insurance should its insurance coverages renew during the contract.
- H. **CERTIFICATES OF INSURANCE.** The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Certificates of insurance must reference the corresponding contract number. Evidence of insurance shall be submitted to:

**The Government of the District of Columbia**

**Franklin Austin, CPPB, CPM**  
**Contracting Officer**  
**Department of General Services**  
[Franklin.Austin5@dc.gov](mailto:Franklin.Austin5@dc.gov)

The CO may request and the Contractor shall promptly deliver updated certificates of insurance, endorsements indicating the required coverages, and/or certified copies of the insurance policies. If the insurance initially obtained by the Contractor expires prior to completion of the contract, renewal certificates of insurance and additional insured and other endorsements shall be furnished to the CO prior to the date of expiration of all such initial insurance. For all coverage required to be maintained after completion, an additional certificate of insurance evidencing such coverage shall be submitted to the CO on an annual basis as the coverage is renewed (or replaced).

- I. **DISCLOSURE OF INFORMATION.** The Contractor agrees that the District may disclose the name and contact information of its insurers to any third party which presents a claim against the District for any damages or claims resulting from or arising out of work performed by the Contractor, its agents, employees, servants or subcontractors in the performance of this contract.
- J. **CARRIER RATINGS.** All Contractor's and its subcontractors' insurance required in connection with this contract shall be written by insurance companies with an A.M. Best Insurance Guide rating of at least A- VII (or the equivalent by any other rating agency) and licensed in the in the District.

## **I.9 EQUAL EMPLOYMENT OPPORTUNITY**

In accordance with the District of Columbia Administrative Issuance System, Mayor's Order 85-85 dated June 10, 1985, the forms for completion of the Equal Employment Opportunity Information Report are incorporated herein as Section J.3. An award cannot be made to any bidder who has not satisfied the equal employment requirements.

## **I.10 ORDER OF PRECEDENCE**

The Contract awarded as a result of this IFB contains the following clause:

A conflict in language shall be resolved by giving precedence to the document in the highest order of priority that contains language addressing the issue in question. The following documents are incorporated into the Contract by reference and made a part of the Contract in the following order of precedence:

- (1) An applicable Court Order, if any
- (2) Contract Document
- (3) Standard Contract Provisions (SCP)
- (4) Contract attachments other than the Standard Contract Provisions
- (5) IFB, as amended
- (6) Contractor's Bid

## **I.11 CLAIMS & DISPUTE RESOLUTION**

All Claims and Disputes arising under or relating to this Contract shall be resolved as provided in the attached SCPs. In addition:

- (a) **Claims by the Contractor against the District:** Claim, as used in paragraph (a) of this clause, means a written assertion by the Contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant

All claims by a Contractor against the District arising under or relating to a contract shall be in writing and shall be submitted to the CO for a decision. The Contractor's claim shall contain at least the following:

- (i) A description of the claim and the amount in dispute;
- (ii) Data or other information in support of the claim;
- (iii) A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and
- (iv) The Contractor's request for relief or other action by the CO.

The CO may meet with the Contractor in a further attempt to resolve the claim by agreement.

The CO shall issue a decision on any claim within 120 calendar days after receipt of the claim. Whenever possible, the CO shall take into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.

The CO's written decision shall do the following:

- (v) Provide a description of the claim or dispute;
- (vi) Refer to the pertinent contract terms;
- (vii) State the factual areas of agreement and disagreement;
- (viii) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
- (ix) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
- (x) Indicate that the written document is the CO's final decision; and
- (xi) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

Failure by the CO to issue a decision on a contract claim within 120 days of receipt of the claim will be deemed to be a denial of the claim, and will authorize the commencement of an appeal to the Contract Appeals Board as provided by D.C. Official Code § 2-360.04.

(6) If a contractor is unable to support any part of its claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim. Liability under this paragraph (a) (6) shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.

(7) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the CO.

(b) **Claims by the District against the Contractor:** Claim as used in paragraph (b) of this clause, means a written demand or written assertion by the District seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to the contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

- (1) The CO shall decide all claims by the District against a contractor arising under or relating to a contract.
  - (2) The CO shall send written notice of the claim to the contractor. The CO's written decision shall do the following:
    - (xii) Provide a description of the claim or dispute;
    - (xiii) Refer to the pertinent contract terms;
    - (xiv) State the factual areas of agreement and disagreement;
    - (xv) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
    - (xvi) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
    - (xvii) Indicate that the written document is the CO's final decision; and
    - (xviii) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.
  - (3) The CO shall support the decision by reasons and shall inform the Contractor of its rights as provided herein.
  - (4) Before or after issuing the decision, the CO may meet with the Contractor to attempt to resolve the claim by agreement.
  - (5) The authority contained in this paragraph (b) shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle or determine.
  - (6) This paragraph shall not authorize the CO to settle, compromise, pay, or otherwise adjust any claim involving fraud.
- (c) Decisions of the CO shall be final and not subject to review unless the Contractor timely commences an administrative appeal for review of the decision, by filing a complaint with the Contract Appeals Board, as authorized by D.C. Official Code § 2-360.04.
  - (d) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the CO.

## **I.12 CHANGES**

- (a) The CO may, at any time, by written order, and without notice to the surety, if any, make changes in the contract within the general scope hereof. If such change causes an increase or decrease in the cost of performance of the contract, or in the time required for performance, an equitable adjustment shall be made. Any claim for adjustment for a change within the general scope must be asserted within ten (10) days from the date the change is ordered; provided, however, that the CO, if he or she determines that the facts justify such action, may receive, consider and adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in the SCP.
  
- (b) The District shall not require the Contractor, and the Contractor shall not require a subcontractor, to undertake any work that is beyond the original scope of the contract or subcontract, including work under a District-issued change order, when the additional work increases the contract price beyond the not-to-exceed price or negotiated maximum price of this contract, unless the CO:
  - (1) Agrees with Contractor, and if applicable, the subcontractor on a price for the additional work;
  - (2) Obtains a certification of funding to pay for the additional work;
  - (3) Makes a written, binding commitment with the Contractor to pay for the additional work within 30-days after the Contractor submits a proper invoice; and
  - (4) Provides the Contractor with written notice of the funding certification.
  
- (c) The Contractor shall include in its subcontracts a clause that requires the Contractor to:
  - (1) Within 5 business days of its receipt of notice the approved additional funding, provide the subcontractor with notice of the amount to be paid to the subcontractor for the additional work to be performed by the subcontractor;
  - (2) Pay the subcontractor any undisputed amount to which the subcontractor is entitled for the additional work within 10 days of receipt of payment from the District; and
  - (3) Notify the subcontractor and CO in writing of the reason the Contractor withholds any payment from a subcontractor for the additional work.
  
- (d) Neither the District, Contractor, nor any subcontractor may declare another party to be in default, or assess, claim, or pursue damages for delays, until the parties to agree on a price for the additional work.

## **I.13 NON-DISCRIMINATION CLAUSE**

- (b) The Contractor shall not discriminate in any manner against any employee or applicant for employment that would constitute a violation of the District of Columbia Human Rights Act, effective December 13, 1977, as amended (D.C. Law 2-38; D.C. Official Code § 2-1402.01.01 *et seq.*) (“Act”, as used in this Section). The Contractor shall include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials. In addition, the Contractor agrees, and any subcontractor shall agree, to post in conspicuous places, available to employees and applicants for employment, a notice setting forth the provisions of this non-discrimination clause as provided in section 251 of the Act.
- (c) Pursuant to Mayor’s Order 85-85, (6/10/85), Mayor’s Order 2002-175 (10/23/02), Mayor’s Order 2011-155 (9/9/11) and the rules of the Office of Human Rights, Chapter 11 of Title 4 of the D.C. Municipal Regulations, the following clauses apply to the contract:
- (1) The Contractor shall not discriminate against any employee or applicant for employment because of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, source of income or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act.
  - (2) The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, source of income or place of residence or business. The affirmative action shall include, but not be limited to the following:
    - (a) employment, upgrading or transfer;
    - (b) recruitment, or recruitment advertising;
    - (c) demotion, layoff or termination;
    - (d) rates of pay, or other forms of compensation; and
    - (e) Selection for training and apprenticeship.
  - (3) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency, setting forth the provisions in subsections I.13.1 and I.13.2 concerning non-discrimination and affirmative action.

- (4) 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 subsection I.12.4.
- (5) 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 contracting agency, advising the said labor union or workers' representative of that contractor's commitments under this nondiscrimination clause and the Act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (6) The Contractor agrees to permit access to its books, records, and accounts pertaining to its employment practices, by the Chief Procurement Officer or designee, or the Director of the Office of Human Rights or designee, for purposes of investigation to ascertain compliance with the Act, and to require under terms of any subcontractor agreement each subcontractor to permit access of such subcontractors' books, records, and accounts for such purposes.
- (7) The Contractor agrees to comply with the provisions of the Act and with all guidelines for equal employment opportunity applicable in the District of Columbia adopted by the Director of the Office of Human Rights, or any authorized official.
- (8) The Contractor shall include in every subcontract the equal opportunity clauses subsections I.13.3 through I.13.11 of this section, so that such provisions shall be binding upon each subcontractor or vendor.
- (9) The Contractor shall take such action with respect to any subcontract as the CO may direct as a means of enforcing these provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the District to enter into such litigation to protect the interest of the District.

## **I.14 BONDS**

### **I.14.1 Bid Bond**

Bidders are required to submit with their bid a bid bond in the amount of five percent (5%) of total bidding budget, in the form included as **Attachment J.9**. All bonding companies must be included on the Department of Treasury's Listing of Approved Sureties. Alternatively, Bidders may submit a cashier's check in lieu of a bid bond. However, in the event a Bidder who is awarded the Agreement fails to post a payment and performance

bond for the full value of the Agreement, the Bidder shall there by forfeit the full amount of the cashier's check, and the Department shall collect such funds as liquidated damages. If the Bidder chooses to submit a cashier's check in lieu of a bid bond, the Bidder must complete the form included as **Attachment J.9** and return, notarized, with the Bidder's Proposal.

#### **I.14.2 Trade Subcontractor Bonds**

The Contractor shall require that all trade subcontractors provide a payment and performance bond having a penal value equal to One Hundred Percent (100%) of the cost of the trade subcontract. All such bonds shall be written on a dual-oblige basis.

#### **I.14.3 Contractor's 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. The Contractor shall provide the required bonds within ten (10) days of the execution of 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.

### **I.15 CONTRACTS IN EXCESS OF ONE MILLION DOLLARS**

Any contract in excess of \$1,000,000 shall not be binding or give rise to any claim or demand against the District until approved by the Council of the District of Columbia and signed by the Contracting Officer.

### **I.16 GOVERNING LAW**

This contract and any disputes arising out of or related to this contract, shall be governed by, and construed in accordance with, the laws of the District of Columbia.

**SECTION J  
ATTACHMENTS**

The following list of attachments incorporated into the IFB by reference.

<b>Attachment Number</b>	<b>Document</b>
<b>J.1</b>	Scope of Work/Drawings & Specifications
<b>J.2</b>	Form of Offer Letter and Bid Form
<b>J.3</b>	Bidder/Offeror Certification Form
<b>J.4</b>	Tax Certification Affidavit
<b>J.5</b>	SBE Subcontracting Plan Form
<b>J.6</b>	2019 Living Wage Act Notice and Fact Sheet
<b>J.7</b>	Davis-Bacon Wage Determination
<b>J.8</b>	First Source Initial Employment Plan (if contract is \$300,000 or more)
<b>J.9</b>	Bid Bond Form
<b>J.10</b>	Bid Guaranty Certification
<b>J.11</b>	Certification to Furnish Performance & Payment Bond
<b>J.12</b>	Payment and Performance Bond
<b>J.13</b>	EEO Policy Statement
<b>J.14</b>	Standard Contract Provisions (Construction Contract)
<b>J.15</b>	Award Signature Page

**SECTION K**  
**REPRESENTATIONS, CERTIFICATIONS AND**  
**OTHER STATEMENTS OF BIDDERS**

**K.1** Bidders shall submit the Bidder/Offeror Certification Form (**Attachment J.3**) with its bids.

**SECTION L**  
**INSTRUCTIONS, CONDITIONS AND NOTICES TO BIDDERS**

**L.1 METHOD OF AWARD**

**L.1.1** The Department reserves the right to accept/reject any/all bids resulting from this IFB. The CO 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.

**L.1.2** The Department intends to make one award resulting from this IFB to the responsive and responsible Bidder with the lowest evaluated bid.

**L.2 BID SUBMISSION DATE AND TIME**

Bids must be submitted no later than **2:00 p.m., EST on January 24, 2020.**

**L.3 WITHDRAWAL OR MODIFICATION OF BIDS**

A Bidder may modify or withdraw its bid upon written or facsimile transmission if received at the location designated in the IFB for submission of bids, but not later than the exact time set for opening of bids.

**L.4 LATE SUBMISSIONS, LATE MODIFICATIONS, AND LATE WITHDRAWALS**

**L.4.1** Bids, modifications to bids, or requests for withdrawals that are received at the location designated in the IFB after the time and date specified above, are “late” and shall be considered only if they are received before the award is made and any of the following circumstances apply:

- a. The bid or modification was sent by registered or certified mail no later than five (5) calendar days before the date specified for receipt of bids;
- b. It was sent by mail and the Contracting Officer determines that the late receipt was due solely to mishandling by the District after receipt at the location specified in the IFB; or
- c. It was sent electronically by the Bidder prior to the time and date specified and there is objective evidence in electronic form confirming that the bid was received prior to the bid receipt time and date specified.

**L.4.2 Postmarks**

The only acceptable evidence to establish the date of a late bid, late modification or late withdrawal sent either by registered or certified mail shall be a U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the bid, modification or withdrawal shall be deemed to have been mailed late. When the postmark shows the date but not the hour, the time is presumed to be the last minute of the date shown. If no date is shown on the

postmark, the bid shall be considered late unless the Bidder can furnish evidence from the postal authorities of timely mailing.

#### **L.4.3 Late Submissions**

A late bid, late request for modification or late request for withdrawal shall not be considered, except as provided in this section L.

#### **L.4.4 Late Modifications**

A late modification of a successful bid which makes its terms more favorable to the District will be considered at any time it is received and may be accepted.

#### **L.4.5 Late Bids**

A late bid, late modification or late withdrawal of a bid that is not considered shall be held unopened, unless opened for identification, until after award and then retained with unsuccessful bids resulting from this IFB.

### **L.5 BID IDENTIFICATION AND DELIVERY**

Bids shall be proffered with a one (1) original, one (1) hard copy and one (1) electronic copy on a flash drive. The Contractor's submission shall be placed in a sealed envelope conspicuously marked:

**Solicitation Number: DCAM-20-CS-IFB-0002**  
**Construction of the Office of State Superintendent of Education Division of Student**  
**Transportation (OSSE DOT)**

**Bids must be delivered or mailed to:**

George G. Lewis  
Associate Director/Chief Contracting Officer  
2000 14<sup>th</sup> Street, NW 8<sup>th</sup> Floor  
Washington, DC 20009

### **L.6 ERRORS IN BIDS**

Bidders are expected to read and understand fully all information and requirements contained in the IFB; failure to do so will be at the Bidder's risk. In event of a discrepancy between the unit price and the total price, the unit price shall govern.

### **L.7 QUESTIONS ABOUT THE SOLICITATION**

If a prospective bidder has any questions relative to this solicitation, the prospective Bidder shall submit the questions in writing to the Contact. The prospective Bidder shall submit questions no later than **4:00 p.m., EST on January 10, 2020** to Ahmad Stanekzai at

[ahmad.stanekzai@dc.gov](mailto:ahmad.stanekzai@dc.gov). The District will not consider any questions received after **4:00 p.m., EST on January 10, 2020**. The District will furnish responses promptly to all other prospective Bidders. An amendment to the IFB will be issued, if that information is necessary in submitting bids, or if the lack of it would be prejudicial to any other prospective bidders. Oral explanations or instructions given before the award of the contract will not be binding.

## **L.8 BID PROTESTS**

Any actual or prospective Bidder or contractor, who is aggrieved in connection with the IFB or award of a contract, must file with the D.C. Contract Appeals Board (Board) a protest no later than ten (10) business days after the basis of protest is known or should have been known, whichever is earlier. A protest based on alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial bids shall be filed with the Board prior to bid opening or the time set for receipt of initial bids. The protest shall be filed in writing, with the Contract Appeals Board, 441 4<sup>th</sup> Street, N.W., Suite 350N, Washington, D.C. 20001. The aggrieved person shall also mail a copy of the protest to the CO of the IFB.

## **L.9 ACKNOWLEDGMENT OF AMENDMENTS**

The Bidder shall acknowledge receipt of any amendment to this IFB (a) by signing and returning the amendment; (b) by identifying the amendment number and date in the space provided for this purpose in Section A.13 of the IFB; or (c) by letter or telegram, including mailgrams. The District must receive the acknowledgment by the date and time specified for receipt of bids. Bidder's failure to acknowledge an amendment may result in rejection of the bid.

## **L.10 SIGNING OF BIDS**

**L.10.1** The Contractor shall sign the bid and print or type its name on the IFB, Offer and Award form of this IFB. Each bid must show a full business address and telephone number of the Bidder and be signed by the person or persons legally authorized to sign contracts. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the CO.

**L.10.2** All correspondence concerning the bid or resulting contract will be mailed to the address shown on the bid in the absence of written instructions from the bidder or contractor to the contrary. Any bid submitted by a partnership must be signed with the partnership name by a general partner with authority to bind the partnership. Any bid submitted by a corporation must be signed with the name of the corporation followed by the signature and title of the person having authority to sign for the corporation.

## **L.11 FAMILIARIZATION WITH CONDITIONS**

Bidders shall thoroughly familiarize themselves with the terms and conditions of this IFB, acquainting themselves with all available information regarding difficulties which may be encountered and the conditions under which the work is to be accomplished. Bidders will not be relieved from assuming all responsibility for properly estimating the difficulties and the cost of performing the services required herein due to their failure to investigate the conditions or to become acquainted with all information, schedules and liability concerning the services to be performed.

## **L.12 BIDS WITH OPTION YEARS**

Reserved.

## **L.13 LEGAL STATUS OF BIDDER**

Each bid must provide the following information:

**L.13.1** Name, address, telephone number and federal tax identification number of Bidder;

**L.13.2** A copy of each District of Columbia license, registration or certification that the Bidder is required by law to obtain. If the bidder is a corporation or partnership and does not provide a copy of its license, registration or certification to transact business in the District of Columbia, the bid shall certify its intent to obtain the necessary license, registration or certification prior to contract award or its exemption from such requirements; and

**L.13.3** If the Bidder is a partnership or joint venture, the names and addresses of the general partners or individual members of the joint venture, and copies of any joint venture or teaming agreements.

## **L.14 BID OPENING**

A public bid opening will be held at **3:30 p.m., EST on January 24, 2020** at 1250 U Street, NW, Washington, DC 20009, 4<sup>th</sup> Floor Capitol Hill Conference Room.

## **L.15 CERTIFICATES OF INSURANCE**

Prior to commencing work, the Contractor shall have its insurance broker or insurance company submit certificates of insurance giving evidence of the required coverages to the CO. **Each certificate of insurance must identify the contract or solicitation number.**

## **L.16 GENERAL STANDARDS OF RESPONSIBILITY**

**L.16.1** To be determined responsible, a prospective contractor must demonstrate that it:

- (a) Has adequate financial resources, or the ability to obtain such resources, required to perform the contract;
- (b) Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and government contract commitments;
- (c) Has a satisfactory performance record;
- (d) Has a satisfactory record of integrity and business ethics;
- (e) Has a satisfactory record of compliance with the applicable District licensing and tax laws and regulations;
- (f) Has a satisfactory record of compliance with the law, including labor and civil rights laws and rules, and the First Source Employment Agreement Act of 1984, D.C. Official Code § 2-219.01 *et seq.*, as amended;
- (g) Has, or has the ability to obtain, the necessary organization, experience, accounting, and operational control, and technical skills;
- (h) Has, or has the ability to obtain, the necessary production, construction, technical equipment, and facilities;
- (i) Has not exhibited a pattern of overcharging the District;
- (j) Does not have an outstanding debt with the District or the federal government in a delinquent status; and
- (k) Is otherwise qualified and is eligible to receive an award under applicable laws and regulations.

**L.16.2** If the prospective contractor fails to supply the information requested, the CO shall make the determination of responsibility or non-responsibility based upon available information. If the available information is insufficient to make a determination of responsibility, the CO shall determine the prospective contractor to be non-responsible.

## **L.17 SPECIAL STANDARDS OF RESPONSIBILITY**

**L.17.1** The Contractor shall provide at a minimum a list of (5) construction projects completed in the past (10) years similar in size and scope as that described in Section C, Scope of Work. Similar in size shall mean projects with a total value between \$10,000,000 and \$20,000,000. Similar in scope shall mean construction projects involving:

- (a) Demonstrated experience in construction or modernization of industrial type facilities of the following three types:

1. Vehicle operation and maintenance centers;
  2. Retaining Walls;
  3. District Department of Transportation (DDOT) pavement work
- (b) Demonstrated experience in working with major utility components and major City Water and Sewer Lines replacement and installation.
- (c) Demonstrated experience Storm Water Best Management Practice and Department of the Energy and Environment (DOEE) on Storm Water Runoff Structures.
- (d) Demonstrated experience of working on projects with phased construction and occupancy and performing work in occupied spaces.
- (e) Demonstrated experience with installation and construction of modular site offices.
- (f) Demonstrated experience successfully completing fast-track projects on-time and on-budget.
- (g) The Bidder/Prime Contractor must submit documentation that it has performed outreach to Disadvantaged Business Enterprises (DBE) for procurement of construction, equipment, services and supplies. Documentation of DBE outreach efforts can consist of a phone log, emails, and/or internet postings, sent to certified DBEs, along with an explanation of the responses from the DBE contractors.
- (h) If the Bidder/Prime Contractor intends to utilize specialty contractor(s) as subcontractors for any specialty work depicted in various sections of the Specifications, the Bidder/Prime Contractor shall provide evidence to demonstrate the capability of the proposed sub-contractor(s).
- (i) Demonstrated experience of working on projects that are in proximity of rail lines and interacting with the entities that govern them (WMATA, CSX, and Amtrak).
- (j) Demonstrated experience working on projects that utilizes sustainable design principles (certified LEED Gold or higher).
- (k) Demonstrated experience working on projects that involve campus type environments, large parking areas, and/or bus-staging facilities.
- (l) Demonstrated experience installing fuel stations.

## L.18 INSTRUCTIONS TO BIDDERS

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

- (a) The IFB pages 1 – 77, with page 1 signed
- (b) Acknowledgement of Amendments (**Attachment J.15, Section 13**);
- (c) Bidder/Offeror Certification Form (**Attachment J.3**);
- (d) Tax Affidavit - Each Contractor shall submit a tax affidavit provided as (**Attachment J.4**). In order to be eligible for this procurement, Contractors must be in full compliance with their tax obligations to the District of Columbia government;
- (e) SBE Subcontracting Plan (**Attachment J.5**);
- (f) First Source Employment Plan and Agreement (**Attachment J.8**);
- (g) Bid Bond for Evaluation Purposes Only (**Attachment J.9**);
- (h) Bid Guaranty Certification (**Attachment J.10**);
- (i) Certification to Furnish Performance and Payment Bond (**Attachment J.11**);
- (j) EEO Policy Statement (**Attachment J.13**); and
- (k) Award Signature Page (**Attachment J.15**)

## L.19 RESTRICTION ON DISCLOSURE AND USE OF DATA

**L.19.1** Bidders who include in their bid data that they do not want disclosed to the public or used by the District except for use in the procurement process shall mark the title page with the following legend:

**"This bid includes data that shall not be disclosed outside the District and shall not be duplicated, used or disclosed in whole or in part for any purpose except for use in the procurement process.**

**If, however, a contract is awarded to this bidder as a result of or in connection with the submission of this data, the District will have the right to duplicate, use, or disclose the data to the extent consistent with the District's needs in the procurement process. This restriction does not limit the District's rights to use, without restriction, information contained in this proposal if it is obtained from another source. The data subject to this restriction are contained in sheets (insert page numbers or other identification of sheets).**

**L.19.2** Mark each sheet of data it wishes to restrict with the following legend:

**"Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this Bid."**

**L.20 UNNECESSARILY ELABORATE BIDS**

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective response to this solicitation are not desired and may be construed as an indication of the bidder's lack of cost consciousness. Elaborate artwork, expensive paper and bindings, and expensive visual and other presentation aids are neither necessary nor desired.

**L.21 RETENTION OF SUBMISSIONS**

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

**L.22 NO COMPENSATION FOR PREPARATION OF BIDS**

The Department shall not bear or assume any financial obligations or liabilities regarding the preparation of any bids submitted in response to this IFB, or prepared in connection therewith, including, but without limitation, any bids, statements, reports, data, information, materials or other documents or items.

**L.23 ELECTRONIC COPY OF BIDS FOR FREEDOM OF INFORMATION ACT REQUESTS**

In addition to other bid submission requirements, the bidder must submit an electronic copy of its bid, redacted in accordance with any applicable exemptions from disclosure in D.C. Official Code §2-534, in order for the District to comply with §2-536(b) that requires the District to make available electronically copies of records that must be made public. The District's policy is to release documents relating to District bids following award of the contract, subject to applicable FOIA exemption under §2-534(a) (1).

## **SECTION M EVALUATION FACTORS**

### **M.1. Preferences for Certified Business Enterprises**

Under the provisions of the “Small and Certified Business Enterprise Development and Assistance Act of 2005”, D.C. Official Code § 2-218.01 *et seq.*, as amended (the “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.

#### **M.1.1. Application of Preferences**

For evaluation purposes, the allowable preferences under the Act shall be applicable to prime contractors in response to this IFB as follows:

**M.1.1.1** A small business enterprise certified by the DSLBD will receive a three percent (3%) reduction in the bid price.

**M.1.1.2** A resident-owned business certified by DSLBD will receive a five percent (5%) reduction in the bid price.

**M.1.1.3** A longtime resident business certified by DSLBD will receive a ten percent (10%) reduction in the bid price.

**M.1.1.4** A local business enterprise certified by DSLBD will receive a two percent (2%) reduction in the bid price.

**M.1.1.5** A local business enterprise with its principal offices located in an enterprise zone certified by DSLBD will receive a two percent (2%) reduction in the bid price.

**M.1.1.6** A disadvantaged business enterprise certified by DSLBD will receive a two percent (2%) reduction in the bid price.

**M.1.1.7** A veteran-owned business certified by DSLBD will receive a two percent (2%) reduction in the bid price.

**M.1.1.8** A local manufacturing business enterprise certified by DSLBD will receive a two percent (2%) reduction in the bid price.

#### **M.1.2 Maximum Preference Awarded**

Notwithstanding the availability of the preceding preferences, the maximum total preference to which a certified business enterprise is entitled to 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 certified business enterprises.

### **M.1.3 Preferences for Certified Joint Ventures**

A joint venture certified by DSLBD for this solicitation will receive preferences as a prime contractor as determined by DSLBD.

### **M.1.4 Verification of Bidder's Certification as a Certified Business Enterprise**

**M.1.4.1** Any Bidder seeking to receive preferences on this solicitation must be certified at the time of submission of its bid. The CO will verify the bidder's certification with DSLBD, and the bidder should not submit with its bid any documentation regarding its certification as a certified business enterprise.

**M.1.4.2** Any Bidder seeking certification in order to receive preferences under this IFB should contact the:

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

**M.1.4.3** All Bidders are encouraged to contact DSLBD at (202) 727-3900 if additional information is required on certification procedures and requirements.

## **M.2 EVALUATION OF OPTION YEARS**

Not Applicable