

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES



Contracts & Procurement Division

[], 2016

By Electronic Mail

[

_____]

Reference: RFP for Design-Build Services – [PROJECT LOCATION]
[(CONTRACT NO.)]

Subject: Notice to Proceed & Letter Contract

Dear [_____]:

We refer to the proposal submitted by [CONTRACTOR] (the “Design-Builder”) in response to the above referenced solicitation for the work at [PROJECT LOCATION] (the “Project”). This Letter Contract will serve as a notice to proceed for the work described herein (the “Work”) upon acknowledgement and execution by [CONTRACTOR]. This notice to proceed is subject to the following terms:

1. Letter Contract. This Letter Contract between the Design-Builder and the District of Columbia government, acting by and through its Department of General Services (“DGS” or the “Department”, and collectively with the Design-Builder, the “Parties”) along with the Standard Contract Provisions attached hereto as Exhibit A (the “Standard Provisions”) and the Form of Contract issued with the Request for Proposals (the “Form Contract”, and collectively with the Letter Contract and the Standard Provisions, the “Governing Documents”) shall govern our relationship until such time as a final contract is entered into for the work described in the above referenced solicitation (the “Definitized Contract”); provided, however, that to the extent there is ambiguity or inconsistency among the terms of the Governing Documents, then the prevailing terms shall be in the following order of precedence: the Standard Provisions, the Form Contract, then the Letter Contract. Once the Definitized Contract is signed, this Letter Contract shall automatically merge into the Definitized Contract.

2. Scope of Work. The Design-Builder is hereby authorized to proceed with preconstruction services for the Project as contemplated in the Request for Proposals and the Design-Builder Agreement. The Design-Builder shall provide such preconstruction services as are required to properly advance the Project. In addition to other preconstruction services required to advance the Project, the Design-Builder shall conduct cost estimates and constructability reviews as the design progresses to identify any potential issues that may cause cost or schedule issues that conflict with the Department's requirements for the Project.

The Design-Builder shall also solicit bids based on the approved design development documents as is further described in paragraph 5 of this Letter Contract. The Design-Builder shall engage in any value engineering and scoping exercises in an effort to allow the Project to be completed within the most recent budget reported by the Department for the Project. The Design-Builder is not authorized to proceed with the ordering of any long-lead items or early site activities unless and until the Department issues an amendment to this Letter Contract authorizing the Design-Builder to do so.

3. Deliverables. In connection with the services provided pursuant to this Letter Contract, the Design-Builder shall provide, at a minimum, the following deliverables to the Department's Program Manager and in the referenced instances to the Contracting Officer as well:

- a. A preliminary cost estimate based on the design development documents. The preliminary cost estimate shall be broken down in standard 16 division CSI format. The preliminary cost estimate shall be submitted no later than [_____].
- b. A preliminary schedule for the Project, including the preconstruction phase activities and the construction phase activities. This schedule shall be prepared in a CPM method and be developed in a sufficient level of detail so as to permit the affected parties (i.e. the Department, DPR and the Design-Builder) to properly plan the Project, and shall show: (w) key design milestones and bid packages; (x) release dates for long lead items; (y) release dates for key subcontractors; and (z) substantial and final completion dates. The preliminary schedule must also be submitted in Primavera 6 native format or the latest version of the software. The preliminary schedule shall be submitted no later than [_____] and updated by the Design-Builder, at a minimum, on a bi-weekly basis.
- c. The Design-Builder shall perform a design review of the design development package and shall prepare and submit a memorandum that addresses the Project's budget, schedule and key constructability concerns based on the design development documents. Such memorandum shall also identify any long-lead items that could adversely affect the project schedule. Such memorandum shall be submitted to the Department no later than [_____].
- d. The Design-Builder shall meet with the Program Manager on a periodic and ongoing basis, which shall be, at a minimum, on a weekly basis, and the Program Manager shall conduct "over-the-shoulder" design reviews prior to the completion of the permit

documents. With regard to each of the “over-the-shoulder” design reviews, the Design-Builder shall be required to submit to the Department and its Program Manager a written memorandum that summarizes the Design-Builder’s findings and recommendations with regard to the drawings for each discipline. Such memoranda shall be submitted to the Department no later than two (2) weeks after the permit documents are approximately 50% complete and progress print of such documents are issued by the Design-Builder.

- e. The Design-Builder shall provide to the Department for its review and approval a written submission on the proposed subcontractor bidding procedures for the Department’s review and approval. Such procedures shall include: (i) a list of proposed trade packages; (ii) a list of trade subcontractors that will be invited to bid on each such package; and (iii) a narrative description of the process. At least three (3) potential subcontractors shall be identified for each trade package. Such bid procedures shall be submitted no later than [_____]. This deliverable must be submitted by this date to the Contracting Officer as well.
- f. A bid tabulation of the trade bids solicited and copies of all trade bids. The bid tabulation shall include scope assessments and identify required leveling of the trade submitted. In addition, the bid tabulations shall include Certified Business Enterprise (“CBE”) or Local, Small, and Disadvantaged Business Enterprise (“LSDBE”) and Workforce utilization information. Such bid tabulations shall be submitted to the Department’s Program Manager no later than [_____].
- g. Based on the trade bids received, the Design-Builder shall prepare a written report of suggested value engineering strategies necessary to reconcile the costs of constructing the Project within the Project budget. Such report shall be submitted no later than one week after the submission of the bid tabulations. The Design-Builder shall meet with the Department’s representatives to discuss any value engineering and changes in scope necessary to ensure that the Department’s schedule and programmatic requirements are met and that the budget is not exceeded. The Design-Builder shall work with the Program Manager and the Department to implement and to price any approved value engineering strategies.
- h. A Lump Sum Price for the Project, including all supporting documentation, no later than [_____]. This deliverable must be submitted by the date provided to the Contracting Officer as well.
- i. Statement of constructability within ten (10) days of the conclusion of the Preconstruction or Design Phases, executed by both the Design-Builder and the Program Manager.

In the event that the Design-Builder fails to timely submit any such deliverable, the Design-Builder shall pay to the Department as liquidated damages Seven Thousand Five Hundred Dollars (\$7,500) for each such deliverable that is not timely submitted. This remedy is cumulative and does not limit any other right or remedy of the Department under the contract or applicable District law.

4. Lump Sum Price Proposal. Based on any value engineering, scope modifications and approved changes in the Project Budget, the Design-Builder shall prepare and submit to the Department a Lump Sum Price proposal. The Lump Sum Price proposal shall represent the Design-Builder's offer to Fully Complete the Project. The Lump Sum Price proposal shall include: (i) a line item construction budget; (ii) a detailed CPM schedule; (iii) a listing of the drawings upon which the Lump Sum Price is based; and (iv) a CBE/LSDBE utilization plan. The Lump Sum Price Proposal will include an agreed upon protocol for the manner in which construction administration services will be provided. In the event that the Department and the Design-Builder are unable to agree upon a Lump Sum Price or schedule for the Project, the Department shall have the right to terminate the contract and assume any trade subcontracts held by the Design-Builder. In such an event, the Design-Builder shall only be entitled to 50% of the preconstruction fee.

5. Not-to-Exceed Amount. The limit of this authorization is [_____] Dollars (\$[_____] (the "Not-To-Exceed Amount"). The Not-To-Exceed Amount includes the Design-Builder's Preconstruction Fee in the amount of [_____] Dollars (\$[_____]). The Parties acknowledge that the Preconstruction Fee is to be the Design-Builder's sole compensation for all preconstruction services performed under this Letter Contract and the Definitized Contract. It is understood that the Design-Builder shall not be due any additional compensation from the Department for such preconstruction services. In no event shall the Design-Builder be entitled to receive more than the Not-To-Exceed Amount under this Letter Contract unless authorized in advance and in writing by a duly authorized Contracting Officer.

6. Insurance. At all times while working under this Letter Contract, the Design-Builder shall maintain the following insurance: (i) comprehensive general liability policy having a policy limit of at least Five Million Dollars (\$5,000,000) and including completed operations coverage; (ii) workers compensation coverage at the statutory limit; (iii) automobile liability, including a hired and non-owned automobile liability policy, of at least One Million Dollars (\$1,000,000); and (iv) pollution liability insurance policy of at least Two Million Dollars (\$2,000,000). All such policies shall be endorsed to add the District of Columbia, including, but not limited to, its Department of General Services, and the respective agents, employees and officers of each as additional insureds. The Design-Builder shall provide certificates evidencing such insurance prior to commencing any work pursuant to this Letter Contract.

7. Construction Phase Compensation. The Design-Builder understands and agrees that the Department makes no representation or warranty that the Design-Builder shall be entitled to serve as the builder for the Project. If, however, the Department and the Design-Builder agree upon a Lump Sum Price and schedule for the Project, the Design-Builder agrees that it shall be paid a Design-Build Fee of [_____] Dollars (\$[_____]), based on the schedule and budget set forth in the RFP. The Design-Builder further agrees to enter into a design-build agreement that is substantially similar to the Form of Contract issued with the RFP, subject only to such adjustments as were requested by the Design-Builder in its bid and which are agreed to by the Department.

8. Duration. This Letter Contract shall become effective on the date it is accepted and countersigned by the Design-Builder and expire on the earlier to occur of the following: (i) the date the Definitized Contract becomes effective; or (ii) [_____]. DGS reserves the right to terminate this Letter Contract, in whole or specified part, for convenience in accordance with the Standard Provisions.

9. Billing. All invoices shall be submitted directly to the Department's Program Manager. Properly prepared invoices with the necessary backup shall be paid within thirty (30) days of receipt. Invoices not paid by that date shall bear interest in accordance with the Quick Payment Act.

10. Purchase Order Number. Our contracting group will issue a purchase order number within five (5) business days of issuance of this Letter Contract and forward a copy of that number for your records. That number should be included in all future invoices and accounting records. In the event that you do not obtain a purchase order number within five (5) business days, please contact me directly to obtain this number.

11. Ownership and Use of Documents. All documents and work product prepared by the Design-Builder and its subcontractors or subconsultants related to the Project shall become the property of the Department. Without limiting the generality of the foregoing, the Design-Builder agrees that the Department shall be entitled to all such information and that the Department may use such documents as it sees fit (including, but not limited to, reprocurring a builder for this project) in the event the Department and the Design-Builder are unable to agree upon a Lump Sum Price and schedule.

12. Trade Work/Site Control. Unless otherwise directed by the Department, the Design-Builder shall not perform any trade work or take control of the site. Any authorization to proceed with trade work will include appropriate provisions relating to bonds, insurance, and safety procedures. At a minimum, however, the Department's Standard Contract Provisions for Construction shall apply and in addition to the requirements set forth in any such subsequent authorization, prior to commencing any construction activity, the Design-Builder shall provide the Department's Contracting Officer with certificates evidencing insurance, a payment and performance bond having a penal value equal to the then value of the Letter Contract and the Contractor's agreement of indemnity. In the event the Design-Builder fails to provide the Department with such certificates of insurance, the agreement for indemnity or bond, the Department may withhold any subsequent payment until such documents are provided.

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

14. Entire Agreement; Modification. This Letter Contract, along with the Standard Provisions and the Form Contract supersede all contemporaneous or prior negotiations, representations, course of dealing, or agreements, either written or oral. No modifications to

this Letter Contract shall be effective against the Department and unless made in writing signed by the Department. Notwithstanding the provisions of this Section 14, nothing herein shall limit the Department's ability to unilaterally modify this Letter Contract.

Assuming the foregoing terms are acceptable, please countersign below to indicate your acceptance. Should you have any questions, please feel free to contact me directly at (202) 727-2800.

Sincerely,

ACCEPTED & AGREED TO

this _____ day of [_____] by
[CONTRACTOR]

[_____]
Contracting Officer

Copy:

By: _____
Name: _____
Title: _____

Exhibit A

Standard Contract Provisions