

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF GENERAL SERVICES



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**INVITATION FOR BIDS**

**Solicitation Number: DCAM-16-NC-0010**

**Fencing Services**

**This is an Open Market Solicitation.**

Date Issued: November 24, 2015

Bid Due Date: Tuesday, December 8, 2015 at 11:00 a.m.

Delivery of Bids: Department of General Services  
Contracts and Procurement Division  
Attention: Kimberly Gray  
Supervisory, Contract Specialist  
Frank D. Reeves Center  
2000 14<sup>th</sup> Street NW | 8<sup>th</sup> Floor  
Washington, DC 20009

Bid Opening: Tuesday, December 8, 2015 at 11:15 a.m.  
Frank D. Reeves Municipal Center  
2000 14<sup>th</sup> Street, NW - 2<sup>nd</sup> Floor Community Room  
Washington, DC 20009

Contact: Olivia Warren  
Program Analyst  
Contracts and Procurement Division  
2000 14<sup>th</sup> Street NW | 8<sup>th</sup> Floor  
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**SECTION A  
EXECUTIVE SUMMARY**

The District of Columbia Department of General Services (DGS or Department), Contracts and Procurement Division, is issuing this Invitation for Bids (IFB) to obtain one or more Contractor(s) to provide Fencing Services.

The goal of this procurement is to establish multiple Indefinite Delivery Indefinite Quantity (IDIQ) contracts for Fencing Services in accordance with 27 DCMR Chapter 47, Section 4720 that will provide the Department the vehicle to procure Fencing Services on an as needed basis.

Qualified Contractor(s) shall provide Fencing Services including, but not limited to, repairing or replacing damaged and/or broken fencing and gates, excavating, setting posts, and installing concrete, rails, bracing, gates, and chain link mesh, as described in the Statement of Work (*Section B*).

**A.1 CONTRACT TYPE:**

**A.1.1** The Contract(s) awarded pursuant to this IFB will be an Indefinite Delivery Indefinite Quantity (IDIQ) type of Contract with a time and material component for repair services. The Department will order and the Contractor shall deliver at least the minimum of \$250.00 in services and the Department may order a maximum of \$950,000.00 in services during the Contract period.

**A.2 FORM OF CONTRACT:**

**A.2.1** Contract(s) resulting from this IFB will typically include the following:

- (a) The Award/Signature Page (**Attachment I**)
- (b) Acknowledgement of Amendments (See Award/Signature Page Section 13)
- (c) The IFB pages **2 – 45**
- (d) The Contractor's Bid Form (**Attachment B**)
- (e) Applicable exhibits provided as attachments or incorporated by reference

**A.3 ORDERING METHODS:**

**A.3.1 Requests for Services:** As the need for services arise, the Department will, in most instances, request a Task Order proposal from two (2) or more contractors holding an IDIQ Contract. Each Task Order request shall provide, at a minimum, the following:

**A.3.1.1** The specific services required;

**A.3.1.2** A delivery date; and

**A.3.1.3** Such other information as the Department may reasonably

request.

**A.3.1.4** The Department will select the Contractor to be awarded each Task Order primarily based on price but the Department reserves the right to consider non-price factors when making such decisions.

**A.3.2 Requests for Emergency Services:** The Contractor shall honor verbal requests for goods or services made by the designated COTR on an emergency basis. Such orders shall not exceed \$2,500.00 per order and \$20,000.00 in the aggregate during the term of the contract.

**A.3.3 Use of P-Card for Services:** Small purchases (under \$2,500.00) may also be made by the Department's Procurement Card (P-Card). The Contractor agrees to accept the card for such request(s) as may be required by the Department. Contractors are prohibited from charging additional fees over and above their fixed fully loaded hourly rate to process payments made using the P-Cards.

#### **A.4 TERM OF THE CONTRACT:**

**A.4.1 Base Term:** The base term of the IDIQ Contract(s) will be for one (1) year from date of award through one (1) year thereafter.

**A.4.2 Option Year:** The Department shall have the right to unilaterally extend the term of this Agreement for, two (2) year terms of one (1) year each; provided that the Department shall give the Contractor preliminary written notice of its intent to exercise the option to extend the term of the Contract thirty (30) days prior to the expiration of the Contract. The preliminary notice does not commit the Department to an extension. The Contractor may waive the thirty (30) day notice requirement by providing a written waiver to the Contracting Department prior to the expiration of the Contract.

**A.4.3 Option Years Pricing:** In the event the Department exercises its option to extend the Agreement to cover an option year, the fixed hourly rates are applicable to such Option Year(s) are set forth in the Bid Form (**Attachment B**).

## **A.5 PRICING:**

Bidders shall complete the Bid Form (**Attachment B**) to provide fixed fully loaded hourly rates for fencing repair services. The quoted pricing must remain in effect through the full term of the Contract, including the base year plus any option years.

In general, it is contemplated that the Department will issue Task Orders to obtain the requested services. As such and absent specific instructions to the contrary, proposed Task Order pricing, which will include the quoted fixed fully loaded hourly rates, shall be sufficient to cover all of the Contractor's costs necessary to provide the required services including, but not limited to, labor, supervision, materials, equipment, supplies, trade, subcontractor cost, home office overhead, transportation, delivery fees, shipping, bonds insurance, travel and profit.

## **A.6 PROCUREMENT SCHEDULE:**

The "Procurement Schedule" for this procurement is as outlined below:

- |                                      |                                 |
|--------------------------------------|---------------------------------|
| • Issuance of IFB                    | November 24, 2015               |
| • Last Day for Questions             | December 1, 2015                |
| • Due Date & Time for Bid submission | December 8, 2015 11:00 a.m. EST |
| • Bid Opening                        | December 8, 2015 11:15 a.m. EST |

### **IMPORTANT NOTICE:**

The Department will notify bidders of any changes, additions, deletions to specifications and/or responses to questions by addenda posted on the Solicitations page on the Department's website at <http://dgs.dc.gov/page/dgs-solicitations>. It is the solely the potential Bidder's responsibility to visit the website frequently to stay abreast of and download copies of any such addenda(s).

**A.7 ATTACHMENTS:** The Following documents are attached to the IFB:

Attachment A	Bid Form
Attachment B	Disclosure Statement
Attachment C	Tax Affidavit
Attachment D	Subcontracting Plan Form
Attachment E	2015 Living Wage Act Notice and Fact Sheet
Attachment F	First Source Employment Agreement Form
Attachment G	Service Contract Act Wage Determination
Attachment H	Award/Signature Page

**SECTION B  
SCOPE OF WORK**

**B.1 Scope of Work**

The Department seeks Bids from one or more qualified Contractors to provide all material, labor and equipment necessary to provide fencing services, including fence installation, repair or replacement services. These services shall be awarded on a time and materials basis. Services shall be provided on an as needed basis.

**B.1.1 Services Required**

Fence repair services are required on an as needed basis. Services include, but are not limited to, repairing or replacing damaged and/or broken fencing and gates, excavating, setting posts, and installing concrete, rails, bracing, gates, and chain link mesh. Unless otherwise stated, 9 gauge fabric shall be installed to secure all fences. All poles shall be installed at a minimum depth of 12". Fence posts shall be set according to the gate openings specified previously or with changes accompanying the service call work assignment.

**B.1.1.1 Installation and Repair Services**

**B.1.1.1.1 General**

- B.1.1.1.1.1** Install posts at a maximum spacing of 10 feet on centers.
- B.1.1.1.1.2** Install corner or slope posts where changes in line or grade exceed a 30 degree deflection.
- B.1.1.1.1.3** When required, Contractor shall install a three-strand barbed wire trellis across the top of the fence.
- B.1.1.1.1.4** New fence poles requiring installation and/or existing fence poles requiring repair shall be installed equal distance from each other.
- B.1.1.1.1.5** Some terrain will be hilly and include several terrain change sections that shall require terminal posts.

**B.1.1.1.2 Excavating**

- B.1.1.1.2.1** Drill holes for post footings in firm, undisturbed or compacted soil, strictly adhering to the dimensions and spacing shown.
- B.1.1.1.1.2** Post hole dimensions
  - B.1.1.1.1.1.1** Provide 36 inch deep by 10 inch diameter foundations for line posts for 5 foot chain link mesh height and less.

**B.1.1.1.1.2** Provide 36 inch deep by 12 inch diameter foundations for line posts for chain link mesh heights exceeding 5 feet.

**B.1.1.1.1.3** Provide 60 inch deep by 18 inch diameter foundations for all other posts.

**B.1.1.1.1.3** Spread soil from excavations uniformly adjacent to the fence line, or on adjacent areas of the site if so directed.

**B.1.1.1.1.4** When solid rock is encountered near the surface, drill into rock at least 12 inch for line posts and at least 18 inch for end, pull, gate, and corner posts. Drill holes at least 1 inch greater diameter than the largest dimension of the post to be placed.

**B.1.1.1.1.5** If solid rock is below soil overburden, drill to full depth required, except penetration into rock need not exceed minimum depths specified above.

### **B.1.1.3 Setting posts**

**B.1.1.3.1** Remove loose and foreign materials from sides and bottoms of holes, and moisten soil prior to placing concrete.

**B.1.1.3.2** Center and align posts in holes.

**B.1.1.3.3** Place concrete around posts in a continuous pour, and vibrate or tamp for consolidation.

**B.1.1.3.4** Check each post for vertical and top alignment, and hold in position during placement and finishing operations.

**B.1.1.3.5** Trowel tops of footings, and slope or dome to direct water away from posts. Concrete shall be allowed to harden a minimum of 48 hours prior to exerting any pressure on the post.

**B.1.1.3.6** Extend footings for gate posts to the underside of bottom hinge.

**B.1.1.3.7** Set keeps, stops, sleeves, and other accessories into concrete as required.

**B.1.1.3.8** Grout-in those posts which are set into sleeved holes, concrete constructions, or rock excavations, using non-shrink Portland cement grout or other grouting material require prior approved by the Department.

#### **B.1.1.4 Installing Concrete**

- B.1.1.4.1** Allow concrete to attain at least 75% of its minimum 28-day strength before rails, tension wires, and/or chain link mesh is installed.
- B.1.1.4.2** Do not install, stretch, or tension chain link mesh and wire, and do not hang gates, until concrete has attained its full design strength.
- B.1.1.4.3** Contractor shall fill in, tamping several times during this process, all holes resulting from their work. The area shall be restored to the condition it was prior to the onset of Contractor's work.

#### **B.1.1.5 Installing Rails and Bracing**

- B.1.1.5.1** Install fence with a top rail and bottom tension wire.
- B.1.1.5.2** Install top rails continuously through post caps or extension arms, bending to radius for curved runs.
- B.1.1.5.3** Provide expansion couplings as recommended by the fencing manufacturer.
- B.1.1.5.4** Provide bracing to the midpoint of the nearest line post or posts at all end, corner, slope, pull, and gate posts.
- B.1.1.5.5** Install tension wires parallel to the line of chain link mesh by weaving through the chain link mesh, and tying to each post with not less than #6 gauge galvanized wire, or by securing the wire to the chain link mesh.

#### **B.1.1.6 Installing chain link mesh**

- B.1.1.6.1** Leave approximately 2 inches between finish grade and bottom selvage.
- B.1.1.6.2** Excavate high points in the ground to clear the bottom of the fence.
- B.1.1.6.3** Place and compact fill to within 1 inch of the bottom of the chain link mesh in depressions.
- B.1.1.6.4** Pull chain link mesh taut and tie to posts, rails, and tension wires.
- B.1.1.6.5** Install chain link mesh on outward side facing side of fence, and anchor to framework so that the chain link mesh remains in tension after pulling force is removed.



**B.1.1.6.6** Install stretcher bars by threading through or clamping to chain link mesh on 4 inch centers, and secure to posts with metal bands spaced 15 inches on centers.

**B.1.1.7 Installing gates**

**B.1.1.7.1** Install gates plumb, level, and secure for full opening without interference.

**B.1.1.7.2** Install ground-set items in concrete for anchorage in accordance with the fence manufacturer's recommendations.

**B.1.1.7.3** Lubricate and adjust the hardware for smooth operation.

**B.1.1.8 Installing, miscellaneous components**

**B.1.1.8.1** Use U-shaped tie wires, conforming to diameter of pipe to which attached, clasping pipe and chain link mesh firmly with ends twisted at least two full turns.

**B.1.1.8.2** Bend ends of wire to minimize hazards to persons and clothing.

**B.1.1.8.3** Fasteners

**B.1.1.8.3.1** Install nuts for tension band and hardware bolts on side of fence opposite chain link mesh side.

**B.1.1.8.3.2** Peen the ends of bolts to prevent removal of nuts.

**B.1.1.8.3.3** Repair coatings damaged in the shop or field erection, using a hot-applied repair compound applied in accordance with its manufacturer's recommendations.

**B.2 Work Site Safety**

**B.2.1** Contractor shall be responsible for the safety of its employees and the general public while completing services.

**B.2.2** Contractor employees shall have a minimum of two (2) 5 lb. fire extinguishers at the site at all times and readily available for use if needed.

**B.2.3** All equipment and services shall comply with all current District of Columbia laws, Federal laws, ordinances, and regulations. The materials and installation services shall be performed according to current OSHA standards.

**B.2.4** Except to the extent that more explicit or more stringent requirements are written directly into the solicitation documents, all applicable codes, regulations, and standards have the same force and effect and are made a part of the contract

documents by reference as if copied directly into the solicitation documents, or as if published copies are bound herewith.

### **B.3 Damage to Property or Personal Injury**

- B.3.1** Contractor shall immediately report all occurrences of damage and or personal injury done by Contractor's employees to the Department, citizen and/or private property, and Contractor's employee.
- B.3.2** Damage to property or loss of vegetation shall be replaced or repaired by the Contractor at no cost to the Department, and within a reasonable period of time that is satisfactory to the Department. Department may elect to deduct the cost of repairs to damaged property from Contractor's project price.
- B.3.3** The Department reserves the right to have their own safety inspectors inspect any property damage and or personal injury that occurred on Department property or Department maintained property.
- B.3.4** The Contractor shall be solely responsible for any and all spills or leaks caused by the Contractor and its agents while performing work under the terms of any resulting contract. The Contractor shall notify the Contracting Officer Technical Representative (COTR) within one (1) hour. At no cost to the Department, the Contractor shall contain, remediate, and restore the site of the spill to pre-spill conditions in accordance with applicable local, state and Federal regulations, and, if on Department property, in accordance with Department requirements. The Contractor shall be responsible for any and all costs associated with cleaning up a spill, including but not limited to complete remediation (as determined by Department) of contaminated surfaces, protective clothing, equipment and supplies. The Contractor shall be responsible for any and all costs associated with the remediation of any hidden contamination discovered to have been the result of a spill. A written report shall be submitted by the Contractor to the Department identifying the substance, associated profile number, quantity released, reportable quantity for the substance, agencies notified and representatives contacted, and remediation performed.

### **B.4 Contractor Requirements**

- B.4.1** Contractor shall have sufficient equipment, materials, and trained personnel experienced in fencing installation and repairs, and transportation available to satisfactorily complete installation as specified.
- B.4.2** Contractor shall have operated on a full time basis a fencing installation and repair company for a minimum of two (2) years continuously, and shall have a permanent business address and telephone.
- B.4.3** Contractor shall designate at least one (1) person within their firm as a single point of contact (SPOC) with office and cell phone numbers for accessibility.
- B.4.4** At the end of each work day, the Contractor shall be responsible for cleaning the site and all grounds that it has occupied of all rubbish, debris, and old fencing. No debris

shall be deposited in containers used by the site. All parts of the work site shall be left in a neat, orderly, and presentable condition.

- B.4.5** The Contractor shall be responsible for safeguarding its materials, tools and equipment. The Department will not assume responsibility for any vandalism or theft from said items left by the Contractor at the work site.
- B.4.6** All brush/vegetation cut shall be removed at the end of the work performed.
- B.4.7** The Contractor shall coordinate with the COTR for work scheduling; including but not limited to: availability of work areas, security planning and coordination with all agencies and utility providers, including Miss Utility.
- B.4.8** The Contractor shall designate a responsible bi-lingual supervisor, who shall be present at the work site at all times while work personnel are present at the job site.
- B.4.9** Contractor(s) shall report and sign in and out with the COTR upon arriving and departing from a project site.
  - B.4.9.1** This work in question is typically located on or around facilities frequented by citizens, therefore, no work can be performed during the normal business hours that will create noise and dust that will have impact on clients and employees.
  - B.4.9.2** The Contractor shall not accept work from a subcontractor without first obtaining approval from the Department and agreeing to payment terms for the subcontractor's services.
  - B.4.9.3** The Contractor is responsible for providing adequate lighting as required by the work being performed.
  - B.4.9.4** Some facilities require a security clearance and/or background check. The Contractor shall be informed, in advance, of work requested at a secure facility that requires a security clearance and/or background check. The Contractor shall be responsible for security clearances and/or background for each worker assigned to any site that requires one.
- B.4.10** The Contractor shall be solely responsible for locating, marking and avoiding buried underground pipelines and other underground utilities.
- B.4.11** The Contractor shall document the number of contract employees on site each day, hours worked, the materials and equipment used on the project. This information must be submitted in writing to the COTR for approval and verification of the contractor's accuracy and reasonableness for each invoice submitted for payment.

**B.4.12** The Contractor(s) shall keep the COTR informed of the status of all work in progress on a daily basis including, but not limited to, estimated completion date, and accrued and projected job costs.

**B.4.13** The Contractor shall provide a report in Microsoft Excel format detailing all fencing services made in the preceding year on an annual basis no later than June 1st of each year. The report shall include: purchase date, description, quantity purchased, list price, discount, price paid, payment method, account, and total spend for the period.

## **B.5 Personnel**

**B.3.5.1** All personnel shall be adequately experienced in fence repair, removal and installation, and trained, certified and/or skilled to operate equipment needed to perform these services, and shall be direct employees of the Contractor.

**B.3.5.2** All personnel shall be clearly identified, uniformed, and Contractor shall furnish each employee with proper identification giving both the names of the Contractor and the employee. Such identification shall be marked on an outer garment, or worn on the outer garment at all times.

**B.3.5.3** The Department may provide security/contractor badges for Contractor employees to wear on Department property if determined to be necessary.

**B.3.5.4** The Department may at any time request Contractor to perform criminal background checks on its employees for safety/security reasons.

**B.3.5.5** The Department shall have the right to require that the Contractor dismiss from the premises any Contractor employee whose conduct is improper, inappropriate or offensive. Non-contractor personnel and minors shall not be permitted on the job premises.

## **B.6 Schedule and Acceptance of Work**

**B.6.1** The Contractor shall meet with the Department at each site within two (2) days of notification of a Project. An acceptable "Work Plan" shall be provided by the Contractor to the Department within two (2) working days of receipt of an executed task order.

**B.6.2** Once the Department has agreed on the Work Plan, the Contractor should immediately commence work as agreed upon with the COTR or as indicated in the executed task order.

**B.6.4** Upon completion, the Contractor shall contact the Department for inspection. Acceptability of work will be determined by the Department. Any deficiencies or unsatisfactory work shall be noted. No invoice shall be issued by Contractor until the Department approves of the completed job.

**B.6.5** The Contractor shall satisfactorily complete corrections with five (5) working days of notification by the Department. The Department is the sole judge of completion of

work. The Department reserves the right to extend this time limit on a case by case basis. The Contractor shall justify to the Department why more than five (5) days is needed to complete any required corrections.

**B.6.6** The Contractor shall restrict work hours to 8:00 a.m. to 5:00 p.m. (Monday-Friday) Department may extend the work hours on a case by case basis.

**B.7 Warranty**

**B.7.1** Contractor guarantees one (1) year full warranty on all materials and workmanship to commence on the date of project acceptance by the Department. The Contractor shall include a copy of their warranty with their bid submittal.

**B.7.2** Any defects in materials, devices, and workmanship which become apparent within the guarantee period shall be repaired or replaced by the Contractor at his own expense, and at no additional cost to the Department.

**B.7.3** The Contractor warrants it understands the scope of all applicable regulations to properly perform the work described in this Scope of Work are in full compliance with all laws, governmental regulations and orders, and in full compliance with all terms and conditions specified in permits currently held by the Department for this work, as applicable to accomplishing the services described herein.

**B.8 Ordering Methods and Response Times**

**B.8.1 Ordering Methods for Services:** As referenced in Section A.3.1, work performed under this contract is task order driven for services. Within five (5) business days after completion of work, the Contractor shall submit a Work Order to the COTR via email and include a copy of each Work Order in monthly invoices to include, at a minimum, the following:

**B.8.1.1** Interested Contractor(s) shall provide a detailed cost estimate on or before the RFQ due date with a detailed breakdown of labor hours,

**B.8.1.3** A list of subcontractors used for labor if Contractor is not self-performing 100% of the work, and

**B.8.1.4** The number of hours necessary to complete the task and name(s) of employees on site, including subcontractors

**B.8.1.5** The Department will review responses and select a Contractor to complete the work. The Department shall issue a task order to the selected contractor.

**B.8.1.6** The Contractor shall deliver services only after receipt of an executed task order. Any services rendered without a written task order shall be at the Contractor's expense.

**B.8.2 Response Times:**

**B.8.2.1 Routine Requests:** The Contractor shall respond to requests for services within 48 hours of receipt of an executed task order.

**B.8.2.2 Emergency Requests:** The Contractor shall return emergency calls within two (2) hours and shall maintain a four (4) hour response time to Department requests for emergency services requests, 6:00 a.m. to 8:00 p.m. Monday through Friday. Once a request is designated as an Emergency, the fence contractor shall complete repairs within three (3) days.

**SECTION C  
ECONOMIC INCLUSION**

**C.1 PREFERENCE FOR SMALL, LOCAL AND DISADVANTAGED BUSINESS ENTERPRISES:**

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

**C.1.1 Application of Preferences:**

Under the provisions of the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, D.C. Law 16-33 (codified at D.C. Code § 2-218.01 et seq.), preferences shall be given to Bidders that are certified by the Department of Small and Local Business Development as being a small business enterprise, having resident business ownership, having a longtime resident business, being a local business enterprise, being a disadvantaged business enterprise, or being a local business enterprise with its principal office located in an enterprise zone. (A copy of the certification acknowledgment letter must be submitted with the Bidder’s Bid.) A percentage reduction in price shall be granted to prime contractors as follows:

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

**C.1.2 Maximum Preference Points Awarded:**

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

**C.1.3 Preferences for Certified Joint Ventures:**

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

**C.1.4 Verification of Bidder's Certification as a Certified Business Enterprise:**

- (a) 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 additional documentation regarding its certification as a certified business enterprise.
  
- (b) Any vendor seeking certification in order to receive preferences under this solicitation should contact the:

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

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

**C.2 LSDBE UTILIZATION:**

**C.2.1 Mandatory Subcontracting Requirements**

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



subcontracting effort shall be with CBEs. A certified joint venture prime Contractor that performs less than 50% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

- (f) Each CBE utilized to meet these subcontracting requirements shall perform at least 35% of its contracting effort with its own organization and resources.
- (g) A prime Contractor that is a CBE and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the on-site work with its own organization and resources if the Contract is \$1 million or less.
- (h) A list of Certified Business Enterprises can be found on the District of Columbia, Department of Small and Local Business Development website at <http://dslbd.dc.gov/DC/DSLBD>, click on “Doing Business in the District”, click on “Find CBE Certified Contractors.”

### **C.2.2 Subcontracting Plan**

**C.2.2.1** If the prime Contractor is required by law to subcontract under this Contract, it must subcontract at least 50% of the dollar volume of this Contract in accordance with the provisions of section C.2.1 of this clause. The plan shall be submitted as part of the bid and may only be amended with the prior written approval of the CO and Director of DSLBD. Any reduction in the dollar volume of the subcontracted portion resulting from an amendment of the plan shall inure to the benefit of the District. Each subcontracting plan shall include the following:

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

### **C.2.3 Copies of Subcontracts**

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

### **C.2.4 Subcontracting Plan Compliance Reporting.**

**C.2.4.1** If the Contractor has a subcontracting plan required by law for this Contract, the Contractor shall submit a quarterly report to the CO, CA, District of Columbia Auditor and the Director of DSLBD. The quarterly report shall include the following information for each subcontract identified in the subcontracting plan:

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

**C.2.4.2** If the fully executed subcontract is not provided with the quarterly report, the prime Contractor will not receive credit toward its subcontracting requirements for that subcontract.

### **C.2.5 Annual Meetings**

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

### **C.2.6 Notices**

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

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

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

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

**C.2.7.3** If the CO determines the Contractor's failure to be a material breach of the Contract, the CO shall have cause to terminate the Contract under the default provisions in clause 8 of the SCP, Default.

**C.3 RESIDENCY HIRING REQUIREMENTS FOR CONTRACTORS & SUBCONTRACTORS:**

- C.3.1** At least fifty-one percent (51%) of the Bidder's team and every sub-consultant's employees hired after the Bidder enters into a Contract with the Department, or after such sub-consultant enters into a Contract with the Bidder, to provide the required goods or services, shall be residents of the District of Columbia.
- C.3.2** Upon execution of the Contract, the Bidder and all of its member firms, if any, and each of its subcontractors and sub-consultants shall submit to the Department a list of current employees that will be assigned to work under the Contract, the date that they were hired and whether or not they live in the District of Columbia.
- C.3.3** The Bidder shall comply with subchapter X of Chapter II of Title 2, and all successor acts thereto, including by not limited to the Workforce Intermediary Establishment and Reform of the First Source Amendment Act of 2011, and the rules and regulations promulgated thereunder. The Bidder and all member firms, subcontractors, tier subcontractors, sub-consultants, and suppliers with contracts in the amount of \$300,000 or more shall be required to comply with the following: (i) enter into a First Source Employment Agreement Attachment G with the D.C. Department of Employment Services ("DOES") upon execution of the Contract; (ii) submit an executed First Source Agreement to DOES prior to beginning work; (iii) make best efforts to hire at least 51% District residents for all new jobs created under the Contract; (iv) list all employment vacancies with DOES; (v) submit monthly compliance reports to DOES by the 10th of each month; (vi) at least 51% apprentices and trainees employed must be residents of the District registered in a program approved by the D.C. Apprenticeship Council; and (vii) trade contractors and subcontractors with contracts in the amount of \$500,000 or more must register an apprenticeship program with the D.C. Apprenticeship Council.

**SECTION D  
COMPLIANCE REQUIREMENTS**

**D.1 CONFORMANCE WITH LAWS:**

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

**D.2 LICENSING, ACCREDITATION AND REGISTRATION:**

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

**D.3 STANDARD CONTRACT PROVISIONS:**

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

**D.4 LIVING WAGE ACT:**

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

**D.5 SERVICE CONTRACT ACT:**

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

**SECTION E**  
**EVALUATION AND AWARD CRITERIA**

**E.1 CONTRACT AWARD:**

- E.1.1** This procurement is being conducted in accordance with the provisions of §4720 of the Department's Procurement Regulations (27 DCMR, Chapter 47).
- E.1.2** The District reserves the right to accept/reject bids resulting from this solicitation both partially and or totally based on what is most advantageous to the Government. The Chief Contracting Officer may reject all bids or waive any minor informality or irregularity in bids received whenever it is determined that such action is in the best interest of the District.
- E.1.3** The District will make an award(s) to the responsive and responsible bidder(s) with the lowest total price. The total price will be determined based on the sum of the total hourly rates for fencing services.

**SECTION F**  
**BID ORGANIZATION AND SUBMISSION**

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

**F.1 BID IDENTIFICATION:**

Bids shall be proffered in an original and three (3) hard copies placed in a sealed envelope conspicuously marked: DCAM-16-NC-0010 Fencing Services.

**F.2 DELIVERY OR MAILING OF BIDS:**

Submissions shall be delivered or mailed to:  
Department of General Services  
Attn: Kimberly Gray  
Supervisory, Contract Specialist – Contracting Officer  
2000 14<sup>th</sup> Street, NW | 8<sup>th</sup> Floor  
Washington, D.C. 20009  
Phone: (202) 727-2800

**F.3 DATE AND TIME FOR RECEIVING BIDS:**

Submissions shall be received no later than **11:00 a.m. local time on December 8, 2015**. The Bidder assumes the sole responsibility for timely delivery of its submission, regardless of the method of delivery.

**F.4 BID OPENING:**

A public Bid Opening will be held at **11:15 a.m. on December 8, 2015** at the Frank D. Reeves Municipal Center 2nd Floor Community Room.

**F.5 ATTACHMENTS**

The Bidder shall complete and include, with the Bidders Bid Package the following attachments in the order listed below:

- (a) Bid Form (**Attachment B**);
- (b) Award/Signature Page (**Attachment H**)
- (c) Acknowledgement of Amendments (Award/Signature Page Section 13)
- (d) The IFB pages **2 – 45**
- (e) Disclosure Statement – Each Bidder shall submit a Disclosure Statement (**Attachment C**);

- (f) Tax Affidavit - Each Bidder shall submit a completed tax affidavit (**Attachment D**). In order to be eligible for this procurement, Bidders must be in full compliance with their tax obligations to the District of Columbia government;
- (g) Subcontracting Plan Form - Each Bidder shall submit a Subcontracting Plan, (*if applicable*), substantially in the form of (**Attachment F**);
- (h) First Source Employment Agreement – Each Bidder shall submit the First Source Employment Agreement in the form of (**Attachment G**);
- (i) LSDBE Certification Letter; and
- (j) Contractor References.

**SECTION G**  
**BIDDING PROCEDURES & PROTESTS**

**G.1 CONTACT PERSON:**

The contact person for this IFB is:

Olivia Warren  
Department of General Services  
Contracts and Procurement Division  
2000 14<sup>th</sup> Street NW | 8<sup>th</sup> Floor  
Washington, DC 20009  
Phone: (202) 698-7780  
Email: olivia.warren@dc.gov

**G.2 EXPLANATIONS TO PROSPECTIVE BIDDERS:**

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

Requests shall be directed to Olivia Warren at the email address listed in Section G.1 no later than ***December 1, 2015***. The person making the request shall be responsible for prompt delivery.

**G.3 PROTESTS:**

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



not be considered. To expedite handling of protests, the envelope shall be labeled "Protest".

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

**G.4 RETENTION OF SUBMISSIONS:**

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

**G.5 EXAMINATION OF BIDS:**

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

**G.6 LATE BIDS AND MODIFICATIONS:**

- (a) Any bid received by the Department after the exact time specified for receipt shall not be considered.
- (b) The only acceptable evidence to establish the time of receipt at the Department's office is the time-date stamp of such installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.
- (c) Notwithstanding any other provisions of this Invitation for Bids to the contrary, a late modification of an otherwise successful bid which makes its terms more favorable to the DGS may be considered at any time it is received and may be accepted.
- (d) Bids shall be irrevocable and remain in full force and effect for a period not less than 120 days after receipt of bids.

**G.7 NO COMPENSATION FOR PREPARATION OF BIDS:**

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

**G.8 REJECTION OF BIDS:**

The Department reserves the right, in its sole discretion:

- (a) To cancel this solicitation or reject all bids;
- (b) To reject bids that fail to prove the Bidder's responsibility;
- (c) To reject bids that contain conditions and/or contingencies that in the Department's sole judgment, make the bid indefinite, incomplete, otherwise non-responsive, or otherwise unacceptable for award;
- (d) To waive minor irregularities in any bid provided such waiver does not result in an unfair advantage to any Bidder;
- (e) To take any other action within the applicable Procurement Regulations or law;
- (f) To reject the bid of any Bidder that has submitted a false or misleading statement, affidavit or certification in connection with such bid or this Request for Bids.
- (g) To reject as non-responsive any bid that fails to include a subcontracting plan that is required by law.

**G.9 LIMITATION OF AUTHORITY:**

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

## **SECTION H INSURANCE REQUIREMENTS**

### **H.1 REQUIRED INSURANCE:**

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

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

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

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

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

### **H.2 ADDITIONAL INSURED:**

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

### **H.3 WAIVER OF SUBROGATION:**

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

### **H.4 STRENGTH OF INSURER:**

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

**SECTION I  
DEPARTMENT'S RESPONSIBILITIES**

**I.1 INFORMATION & SERVICES:**

**I.1.1** The Department will provide full information in a timely manner regarding the requirements of the Project.

**I.2 THE DEPARTMENTS' DESIGNATED REPRESENTATIVES:**

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

Christopher Weaver  
Acting Director/Contracting Officer  
2000 14<sup>th</sup> Street, NW | 8<sup>th</sup> Floor  
Washington, D.C. 20009  
Phone: (202) 727-2800  
E-mail: [chris.weaver@dc.gov](mailto:chris.weaver@dc.gov)

**I.2.2 Authorized Changes by the Contracting Officer (CO) and the CCO:**

**I.2.2.1** The CCO and the CO are the only persons authorized to approve changes to any of the requirements of the Contract. The CO is authorized to approve changes valued up to \$100,000.00.

**I.2.2.2** The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this Contract, unless issued in writing and signed by the CCO.

**I.2.2.3** In the event the Contractor effects any change at the instruction or request of any person other than the CCO, the change will be considered to have been made without authority and no adjustment will be made in the Contract price to cover any cost increase incurred as a result thereof.

**I.2.3 COTR:**

**I.2.3.1** The COTR is responsible for general administration of the Contract and advising the CCO as to the Contractor's compliance or noncompliance with the Contract. The COTR has the responsibility for the day-to-day monitoring and supervision of the Contract, of ensuring the Work conforms to the requirements of the Contract and such other

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

- I.2.3.1.1** Keeping the CCO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CCO of any potential problem areas under the Contract;
- I.2.3.1.2** Coordinating site entry for Contractor personnel, if applicable;
- I.2.3.1.3** Reviewing invoices for completed work and recommending approval by the CCO if the Contractor's prices and costs are consistent with the Contract and progress is satisfactory and commensurate with the rate of expenditure;
- I.2.3.1.4** Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions and the Contract; and
- I.2.3.1.5** Maintaining a file that includes all Contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.
- I.2.2.1.6** The address and telephone number of the COTR is:

Kirt Bakos  
COTR – Operations Manager  
Department of General Services  
Facilities Management Division  
2000 14<sup>th</sup> Street N.W. | 5<sup>th</sup> Floor  
Washington, DC 20009  
Telephone: (202) 545-3021  
Cell: (202) 286-0407  
E-mail: kirt.bakos@dc.gov

**I.2.3.2 The COTR Shall NOT Have the Authority to:**

- I.2.2.3.1** Award, agree to, or sign any Contract document, change order, change directive, delivery order or Task Order. Only the CCO shall make contractual agreements, commitments or modifications;
- I.2.2.3.2** Grant deviations from or waive any of the terms and conditions of the Contract;
- I.2.2.3.3** Increase the dollar limit of the Contract or authorize work beyond the scope and dollar limit of the Contract,
- I.2.2.3.4** Authorize the expenditure of funds by the Contractor;
- I.2.2.3.5** Change the period of performance; or
- I.2.2.3.6** Authorize the use of District property, except as specified under the Contract.
- I.2.2.3.7** The Contractor shall be held fully responsible for any changes not authorized in advance, in writing, by the CCO, and may be denied compensation or other relief for any additional work performed that is not authorized by the CCO in writing. In addition, Contractor may also be required at no additional cost to the District, to take all corrective action necessitated by reason of any unauthorized changes.

**I.3 PAYMENTS:**

**I.3.1 Invoicing.**

The Contractor shall submit invoices to the Department on a monthly basis. Each such invoice shall itemize all goods and services provided during the previous month and must be submitted electronically through the EASI Pay Portal on the Department Website at <https://dgs.onbaseonline.com>. The Department will no longer accept hardcopy invoice submittals.

The Department reference address to use on invoices is as follows:

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

First time users will be prompted to register to access the Portal. For assistance with the registration process, technical assistance and/or additional information on the EASI Pay Portal, please contact the Portal Help Desk at (301) 563-3025.

**I.3.2 Right to Withhold Payments.**

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

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

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

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

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

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

**SECTION J  
MISCELLANEOUS PROVISIONS**

**J.1 RESERVED**

**J.2 EXTENT OF CONTRACT:**

The Contract, which includes this Agreement and the exhibits attached hereto, and other documents incorporated herein by reference, represents the entire and integrated Agreement between the Department and Contractor and supersedes all prior negotiations representations or agreements, either written or oral. The Contract may be amended only by written instrument signed by both the Department and Contractor. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

**J.3 GOVERNING LAW:**

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

**J.4 ASSIGNMENT:**

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

**J.5 RETENTION OF RECORDS AND INSPECTIONS AND AUDITS:**

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

**J.5.2** The Contractor shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the



Department and the required cost submissions in effect on the date of execution of the Department.

- J.5.3** The Department, the District of Columbia government, the District of Columbia Financial Responsibility and Management Assistance Office, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall have access to the books, records, documents and other evidence held, owned or maintained by the Contractor for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Contractor. The Contractor shall provide proper facilities for such access and inspection.
- J.5.4** The Contractor agrees to include the wording of this Section in all its subcontracts in excess of five thousand dollars (\$5,000) that directly relate to Project performance.
- J.5.5** Audits conducted pursuant to this Section will be in accordance with generally acceptable auditing principles and established procedures and guidelines of the applicable reviewing or audit agency.
- J.5.6** The Contractor agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Department. Where the audit concerns the Contractor, the auditing agency will afford the Contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.
- J.5.7** The Contractor shall preserve all records described herein from the effective date of the Contract completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.

**J.6 INSPECTION FOR SUPPLIES AND SERVICES:**

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

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

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

**J.7 LAWS AND REGULATIONS INCORPORATED BY REFERENCE:**

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

**J.8 TAX EXEMPTION PROVISION:**

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

**J.9 ANTI-COMPETITIVE PRACTICES AND ANTI-KICKBACK PROVISIONS:**

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

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

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

**J.10 RESPONSIBILITY FOR AGENTS AND CONTRACTORS:**

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

**J.11 ETHICAL STANDARDS FOR DEPARTMENT'S EMPLOYEES AND FORMER EMPLOYEES:**

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

## **J.12 GRATUITIES AND OFFICERS NOT TO BENEFIT PROVISIONS:**

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

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

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

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

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

## **J.13 COVENANT AGAINST CONTINGENT FEES PROVISIONS:**

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

Contract price or consideration, or otherwise recover, the full amount of the Department, percentage, brokerage of contingent fee.

**J.14 NON-DISCRIMINATION IN EMPLOYMENT PROVISIONS:**

- J.14.1** The Contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. The affirmative action shall include, but not be limited to, the following:
- J.14.1.1** Employment, upgrading, or transfer;
  - J.14.1.2** Recruitment or recruitment advertising;
  - J.14.1.3** Demotion, layoff, or termination;
  - J.14.1.4** Rates of pay, or other forms of compensation; and
  - J.14.1.5** Selection for training and apprenticeship.
- J.14.2** Unless otherwise permitted by law and directed by the Department, the Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Department setting forth the provisions of this Section concerning non-discrimination and affirmative action.
- J.14.3** The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in this Section.
- J.14.4** The Contractor agrees to send to each labor union or representative of workers with which it has a collective bargaining Agreement, or other Contract or understanding, a notice to be provided by the Department, advising each labor union or workers' representative of the Contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- J.14.5** The Contractor agrees to permit access by the Department to all books, records and accounts pertaining to its employment practices for purposes of investigation to ascertain compliance with this Section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

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

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

**J.15 BUY AMERICAN ACT PROVISION:**

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

**J.16 RESERVED**

**J.17 TERMINATION OR SUSPENSION:**

**J.17.1 Cancellation before Notice to Proceed:**

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

**J.17.2 Termination for Default:**

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

**J.17.2.1** The Contractor fails to prosecute the Work diligently, in accordance with the Project Schedule or to make such progress in the Work as the Department reasonably believes is necessary to complete the Project within the time required by the Contract; or

**J.17.2.2** The Contractor fails to perform the Work in a good and workmanlike manner or to correct defects in the Work promptly upon notice by the Department; or

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

**J.17.2.4** becomes insolvent, makes an assignment for the benefit of creditors, files a voluntary petition under any chapter of the Bankruptcy Code or has an involuntary petition filed against it under any chapter of the

Bankruptcy Code, or has a receiver appointed, or files for dissolution or otherwise is dissolved; or

- J.17.2.5** The Contractor fails to pay its debts in a timely manner or becomes insolvent, or the Department reasonably determines that the Contractor does not have the financial ability to carry out its obligations under the Contract and the Contractor fails to give the Department prompt and reasonable assurances of its ability to perform.
- J.17.2.6** The Department must provide the Contractor with written notice of its intent to terminate the Contract under this provision seven (7) days before actually putting the termination into effect. If the Contractor has begun its curative action and has made progress satisfactory to the Department within the seven days, the Department may so notify the Contractor and the termination will not take effect. Otherwise, the termination shall take effect after seven days without further notice or opportunity to cure.
- J.17.2.7** If the Department terminates the Contract for default, the Department will have the right to take over the Work, to accept assignment of some or all Subcontracts or agreements with material suppliers, to take possession of the Project, to take and use all tools, equipment and supplies then being used in connection with the Work, and to finish the Project by whatever method it deems expedient, including accepting assignment of all outstanding Subcontracts and Supply Agreements.

**J.17.3 Termination for Convenience:**

- J.17.3.1** The Department may, upon seven (7) days written notice to the Contractor, terminate the Contract in whole or specified part, for its convenience, whether the Contractor is in breach of Contract or not. The notice of termination shall state the effective date of termination, the extent of the termination, and any specific instructions.
- J.17.3.2** After receiving notice of termination for convenience, the Contractor shall (1) stop work on the terminated portion of the Project as of the effective date of the termination and stop placing subcontracts or supply agreements thereunder; (2) consult with the Department regarding the disposition of existing orders and subcontracts, and use its best efforts to terminate them on terms favorable to the Department; (3) consult with the Department to decide what actions should be taken to protect work in place and equipment that has been delivered and not yet installed, and to render the site safe, and proceed to take such actions as may be agreed upon or, absent Agreement, as may be reasonable; (4) take necessary or directed action to protect and preserve property in the Contractor's possession in which the

Department has or may acquire an interest and, as directed by the termination notice or other order from the Department, deliver the property to the Department; and (5) promptly deliver to the Department all computer files it has prepared relating to the Project. The Contractor shall also promptly notify the Department, in writing, of any legal proceeding arising from any subcontract or supply Agreement related to the terminated portion of the Project, and, in consultation with the Department, settle outstanding liabilities arising out of the terminated portion of the Project on the best terms reasonably possible.

**J.17.3.3** The Contractor shall be entitled to receive only the following with respect to the terminated portion of the Project: (1) Cost of Work performed up to the date of termination; (2) reasonable costs of terminating outstanding subcontracts and supply agreements and other similar wind-up costs in a reasonable amount; (3) a fair and reasonable portion of the overhead and profit attributable to the Work performed on the terminated portion of the Project, up to the time of termination. The Contractor shall not be entitled to recover overhead or profits on unperformed portions of the Work. Further, if it appears to the Department that the cost of completing Work would have exceeded the Price, the Department shall have the right to adjust the settlement figure downward in an appropriate amount. In no case shall the Contractor be entitled to receive an amount in settlement for termination for convenience that would exceed the percentage value of the Work actually performed in accordance with the Contract, multiplied by the Price, and reduced by any damages, liquidated or otherwise, the Contractor may owe the Department.

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

**J.17.3.5** The Contractor shall, promptly after termination, submit a proposal for settlement of the amounts due to it as a result of the termination for convenience. The proposal shall be consistent with the requirements of Subparagraphs J.17.6.2 and shall be accompanied by such documentation of costs as the Department may reasonably require. Such documentation may include cost and price data in accordance with the Department's Regulations.

**J.17.4 Effect of Wrongful Termination:**

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



### **J.17.5 Continued Responsibility after Termination:**

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

### **J.17.6 Suspension:**

#### **J.17.6.1 Suspension at the Convenience of the Department:**

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

#### **J.17.6.2 Payment upon Suspension for Convenience.**

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

**J.17.6.2.1** Additional Costs of the Work, if any, which are incurred by the Contractor, its Subcontractors and Vendors as a result of continuing to maintain dedicated personnel, materials and equipment at the Site at the Department's request during any suspension, delay or interruption period, including for the purpose of safeguarding all material, equipment, supplies and the Work in progress caused solely by such suspension, delay or interruption ordered by the Department for convenience, but the Price shall be increased only if and to the extent such delay, suspension or interruption exceeds a period of thirty (30) consecutive days following commencement of the Work; and

**J.17.6.2.2** Other reasonable and unavoidable Costs of the Work, if any, which are directly related to any subsequent re-mobilization of the suspended, delayed or interrupted the Work caused solely by such suspension, delay or interruption ordered by the Department for convenience, but the Price shall be increased only if and to the extent such delay, suspension or interruption exceeds a period of thirty (30) consecutive days following commencement of the Work.

**J.17.6.2.3** Provided, however, that no adjustment shall be made to the extent that performance was otherwise subject to suspension, delay or interruption by another cause for which the Contractor is responsible. Furthermore, the Contractor shall not be entitled to an increase in overhead or profit for a suspension ordered by the Department.

**J.18 FALSE CLAIMS ACT:**

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

**J.19 INTERPRETATION OF CONTRACT:**

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

**J.20 INDEPENDENT CONTRACTOR:**

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

**J.21 CONFIDENTIAL INFORMATION:**

In the course of the Contractor's performance of the Work, the Department may make available to the Contractor information that the Department designates as trade secrets or

other confidential engineering, technical and business information. As long as, and to the extent that, such information remains confidential and available to others only with the consent of the Department, or is not generally available to the public from other sources, the Contractor shall maintain such information in strict confidence and shall not disclose any such information to others (including its employees or Subcontractors), except to the extent necessary to enable the Contractor to carry out the Project.

The Contractor shall similarly obligate any and all persons to whom such information is necessarily disclosed to maintain the information in strict confidence. The Contractor agrees that, in the event of any breach of this confidentiality obligation, the Department shall be entitled to equitable relief, including injunctive relief or specific performance, in addition to all other rights or remedies otherwise available.

**J.22 NO THIRD-PARTY BENEFICIARY RIGHTS:**

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

**J.23 MEDIA RELEASES:**

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

**J.24 GOODS AND SERVICES:**

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

**J.25 NOTICES:**

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

If to the Department:

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

If to the Contractor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**J.26 LIMITATIONS:**

The Contractor agrees that any statute of limitations applicable to any claim or suit by the Department arising from this Contract or its breach shall not begin to run, or shall be deemed to be tolled, until Final Completion or, with respect to latent defects or nonconformities, such later time as the Department knew or should have known of the defect or nonconformity.

**J.27 BINDING EFFECT; ASSIGNMENT:**

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

**J.28 SURVIVAL:**

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

**J.29 NO WAIVER:**

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

**J.30 REMEDIES CUMULATIVE:**

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

any obligation on the Department to exercise those rights or remedies for the benefit of the Contractor or any other person or entity.

**J.31 HEADINGS/CAPTIONS:**

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

**J.32 ENTIRE AGREEMENT; MODIFICATION:**

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

**J.33 SEVERABILITY:**

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

**J.34 ANTI-DEFICIENCY ACT:**

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

**J.35 INDEMNIFICATION:**

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Department and Department's consultants, agents, and employees from and against

claims, damages, losses and expenses, including, but not limited to, attorneys' fees arising out of or resulting from performance of work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

## **J.36 CHANGES.**

### **J.36.1 Changes Authorized.**

The Department may, without invalidating the Contract, and without notice to or approval of any surety, order changes in the Work, including additions, deletions or modifications. Any such change must be conveyed by the Department to the Contractor via written Change Directive or Change Order.

**J.36.1.1** The Contracting Officer is the only person authorized to approve changes in any of the requirements of this Contract. The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this Contract, unless issued in writing and signed by the Contracting Officer.

**J.36.1.2** In the event the Contractor effects any change at the instruction or request of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the Contract price to cover any cost increase incurred as a result thereof.

### **J.36.2 Executed Change Directive/Order Required.**

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

### **J.36.3 Prompt Notice.**

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

**J.36.4 Executed Change Orders Final.**

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

**J.36.5 Failure to Agree.**

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

**J.37 DISPUTES.**

**J.37.1 Informal Resolution.**

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

**J.37.2 Formal Dispute Resolution Procedure.**

**J.37.2.1 Notice of Claim.**

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

**J.37.2.2 Contents of Notice of Claim.**

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

**J.37.2.3 Appeal Procedures.**

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