

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF GENERAL SERVICES**



**D.C. DEPARTMENT OF GENERAL SERVICES**

**REQUEST FOR PROPOSALS**

**DCAM-17-NC-0058**

**“FACILITY CONDITION ASSESSMENTS”**

“This solicitation is being set-aside for Offerors that are certified by the District of Columbia Department of Small and Local Business Development (DSLBD) as a Small Business Enterprise (SBE, Professional Services, Construction, and Specialty Trades).”

**Issue Date:** April 14, 2017

**Proposal Due Date:** May 4, 2017

**Pre-Proposal Conference** April 20, 2017 at 2:00 p.m.  
2000 14<sup>th</sup> Street, NW,  
6th Floor, DPW Conference Room  
Washington, DC 20009

**Proposal Delivery Location:** Department of General Services  
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## SECTION B SUPPLIES OR SERVICES AND COST

### B.1 INTRODUCTION

The District of Columbia Department of General Services (“DGS” or “Department”), is issuing this Request for Proposals (RFP) to engage one Contractor to provide documented data to define and determine the short and long term level of capital reinvestment needed to maintain the subject facilities as safe, reliable, functional, and more energy efficient government assets. The Comprehensive Facility Condition Assessment and Space Utilization Study (“the evaluation”) shall provide objective, analytical findings and recommendations that optimally meets the identified needs. It will produce both a physical plan of action, as well as an estimated, recommended budget, to satisfy those needs. The District will use the information from the evaluation to determine future capital funding needs, space needs and to identify future physical repair, replacement and upgrade projects.

The Department reserves the right at any time (including after an award hereunder), to either add or remove facilities and/or to increase or decrease the responsibility by contract modification for services within the general scope of this solicitation.

The selected Contractor shall perform the required services throughout the 2017 fiscal year for all of the facilities listed on **Attachment J .12**. The contract shall also provide for one additional option year.

### B.2 TYPE OF CONTRACT

**B.2.1** The contract awarded pursuant to this Request for Proposal (“RFP”) will be an Indefinite Quantity Indefinite Delivery (“ID/IQ”) contract. The Contractor’s sole method of compensation shall be based on a fixed rate price, per square foot for facilities condition assessment and a fixed rate price, per CADD drawing for each of the facilities listed on **Attachment J.12 List of Facilities**. The rate will be the Contractor’s sole compensation for the services required under the contract and should include sufficient funding for all of the Contractor’s costs associated with the work.

**B.3                    DESIGNATION OF SOLICITATION FOR THE SMALL BUSINESS  
ENTERPRISE (SBE) SET-ASIDE MARKET ONLY**

This RFP is designated only for certified small business enterprise (SBE) offerors 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.

An SBE must be certified as small in the procurement category of (Professional Services, Construction, and Specialty Trades) in order to be eligible to submit a proposal in response to this solicitation.

**B.4                    TYPE OF CONTRACT**

**B.4.1    INDEFINITE DELIVERY- INDEFINITE QUANTITY (IDIQ) CONTRACT**

This is an IDIQ contract for the supplies or services specified, and effective for the period stated.

B.4.1.1            Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering Clause, (See Ordering Clause G.9). The Contractor shall furnish to the District, when and if ordered, the supplies or services specified in the Schedule up to and including the maximum quantity of 5,000,000sf. The District will order at least the minimum quantity of 2,000,000sf

B.4.1.2            There is no limit on the number of orders that may be issued. The District may issue orders requiring delivery to multiple destinations or performance at multiple locations.

B.4.1.3            Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and District's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided that the contractor shall not be required to make any deliveries under this contract after *[insert date]*.

## B.5 PRICE SCHEDULE – IDIQ

### B.5.1 BASE YEAR

Contract Line Item No. (Clin)	Item Description	Minimum QTY	Price Per Unit	Minimum Total Price	Maximum QTY	Price Per Unit	Maximum Total Price
000A1	Facility Condition Assessment (Per Square Foot)	2,000,000.00		-	5,000,000.00		\$ -
000A2	Computer Aided Design Drawings (Average 75, 000 square feet per building)	5.00		-	10.00		\$ -
GRAND TOTAL FOR BASE YEAR				\$ -			\$ -

### B.5.2 OPTION YEAR ONE

Contract Line Item No. (Clin)	Item Description	Minimum QTY	Price Per Unit	Minimum Total Price	Maximum QTY	Price Per Unit	Maximum Total Price
000B1	Facility Condition Assessment (Per Square Foot)	2,000,000.00		-	5,000,000.00		\$ -
000B2	Computer Aided Design Drawings (Average 75, 000 square feet per building)	5.00		-	10.00		\$ -
GRAND TOTAL FOR BASE YEAR				\$ -			\$ -

## **SECTION C**

### **SPECIFICATIONS/WORK STATEMENT**

#### **C.1 SCOPE OF WORK**

The Contractor shall perform Comprehensive Facility Condition Assessments (“FCAs”) with associated data to be uploaded and function as the source for the District Department of General Services’ (“DGS”) development of a comprehensive repair, alteration, and improvement program for District facilities. The Assessment and analytical data will enable the District to plan, manage and analyze data utilizing a single platform. This will enhance the District’s ability to develop short, intermediate, and long term capital improvement strategies based on stakeholder needs and will provide for a cost effective operation of the facility based upon the prioritization code for each identified element or component in the study.

**C.1.1** The Contractor shall provide a complete and thorough visual, non-destructive Assessment of the entirety of each facility (exterior and interior), grounds, components, and building systems. The Contractor shall utilize the ASTM standards (“ASTM E2018-08”) for preparing property condition Assessments. The Contractor shall be required to perform the Assessments during the hours of 7:00 am and 5:00 pm Monday through Friday.

**C.1.2** The Contractor shall determine the remaining life (“RUL”) of each building components. The Contractor shall provide a preventative maintenance schedule and cost estimates to extend the useful life of assets. The Contractor shall provide a plan to strategically and efficiently reduce the current backlog of deferred capital and routine maintenance projects. The Contractor shall determine the Facility Condition Index (“FCI”) of each facility.

**C.1.3** The Contractor shall use the findings from the facility Assessments to determine the timing and extent of required capital and maintenance expenditures required over the next six years. The Contractor shall use engineering judgment to determine the most cost effective repair and replacement options to correct all defects observed and defective conditions or lifecycle replacement repair and replacement projects anticipated over the six year study period. The Contractor shall provide detailed cost estimates for the repair and replacement projects required.

**C.1.4** The Contractor shall use iPlan™ Sustainable Facility Governance Solution or a similar, equivalent tool to collect facility assessment and analytical data so that District can plan, manage and analyze data on a single platform. DGS currently uses iPlan™. If the proposer intends to utilize a different facility assessment and analytical data tool, all data must be uploaded into iPlan™ and Quality Assurance/Quality Control procedures implemented to confirm data is uploaded into iPlan™ correctly.

**C.1.5** The Contractor shall produce floor plans for each floor of each facility to show dimension, space usage and furniture layout in sufficient detail to allow the District to determine building and footprint size, use characteristics and space utilization.

#### **C.1.6 Assessments**

**C.1.6.1** The Contractor shall research the nature of the project, such as building systems, grounds, utilities, support systems, other building components, building requirements, etc. Review all documentation both at the site and at the District office. The District will make available to the Contractor all documentation it is able to provide in electronic format or hard copy. These may include drawings, assessment reports, and other data. Offeror's should presume that no documentation is available. Contractors shall verify its accuracy before relying on the data. Data must be collected from direct measurements and observations of buildings, and must be based on Contractor's own efforts. All materials provided are for information only and the Contractor shall verify all field conditions. The Contractor is responsible for the accuracy of all statements made in submissions.

**C.1.6.2** The Contractor shall conduct a field survey of identified facilities or structures for the purpose of updating and validating existing architectural floor plans. The Contractor shall be required to identify facility status data (age, historical status, construction type, square footage, materials, user/tenants, and functional areas such as offices, mechanical/electrical rooms, etc.); architectural floor plans; and site plan/general development map data (surface man-made site features, and real estate boundary maps). These tasks shall involve coordinating with the District representatives to obtain existing electronic or hardcopy architectural and site development drawings, existing facilities condition assessment reports and other related facilities inventory data.

**C.1.6.3** The Contractor shall conduct a physical assessment to include a limited non-intrusive visual assessment of the buildings and their components. It is expected that generally all aspects of the buildings will be made accessible, including the roof, interior areas, mechanical, electrical rooms and common areas. Confined spaces or hazardous areas are not expected to be assessed. Flat roofs with safe access are considered accessible however sloped inaccessible roofing or roofing that is considered unsafe without the use of personal protective equipment will not be accessed.

**C.1.6.4** During the Assessment for each building, the Contractor shall utilize the iPlan™ or similar tools to collect and upload facility-related data for the specific iPlan™ data elements to be collected. The Contractor is responsible for ensuring that the data sets are accurate and consistent.

**C.1.6.5** The Contractor shall identify and categorize each major component for predictive maintenance, testing and/or inspection, preventative maintenance, emergency maintenance and/or routine maintenance needs. The Contractor shall prioritize necessary repair, renovation and or replacement actions with the estimated costs by the projected year in a format consistent with the requirements of the District.

## **C.1.7 Component Elements**

### **C.1.7.1 Substructure**

The elements shall include but are not limited to; the foundations, slabs on grade, basement excavation and walls. The Contractor shall visually evaluate the accessible below grade components for signs of distress (cracking, displacement, insect infiltration, etc.) and document findings with photos.

### **C.1.7.2 Core and Shell**

The elements shall include the superstructure (floors, bearing walls, columns, beams, roofs and related structures); exterior closure (exterior walls, windows and doors); and roofing. The Contractor shall visually evaluate the accessible shell components and ancillary elements for signs of distress and document findings with photo logs. This will include cracking, displacement, and connection adequacy, continuity of flashing and seals, and evidence of other types of distress. The Contractor shall check for flashing and connections for proper drainage on walls and check for condition and proper placement of expansion joints. For roofing, Contractor shall access the roof to visually observe the condition of the roof system and any accessories and details. The Contractor shall observe flashing and penetration details for condition and conformance with accepted practice.

### **C.1.7.3 Interiors**

The elements shall include interior partitions, doors, and specialties such as toilet accessories, lockers, storage shelving, etc. Stairways and finishes; and interior finishes such as paint and other wall finishes, flooring, and interior ceiling finishes and systems. The Contractor shall visually evaluate the condition of interior finishes, and document findings with photos.

### **C.1.7.4 Building Equipment and Systems**

The elements shall include the Conveyor systems (elevators, and other vertical transportation and conveying systems), plumbing systems (fixtures, domestic water distribution, sanitary waste, rain water drainage and special plumbing systems such as gasoline dispensing, compressed air, etc.); HVAC Systems; heat generation, rejection, distribution and transfer systems; HVAC controls and instrumentation; and other HVAC support elements; Fire Detection and Suppression Systems (alarm systems, monitoring systems, sprinkler systems, standpipe and hose systems, pumps, fire protection specialties, and special fire suppression systems); Electrical Systems (service and distribution, feeder type (aluminum or copper), lighting and branch wiring, communications and security systems, emergency generators, UPS systems, and electrical controls and instrumentation). Include service points, meters and capacities for all utilities. The Contractor shall visually evaluate the conditions of service, and document findings. For conveying systems, the Contractor shall review the maintenance records and available reports on equipment and evaluate the performance and anticipated service life of the systems. The Contractor shall also evaluate equipment for code compliance. For plumbing, HVAC and



electrical systems, the Contractor shall observe the age, condition, and adequacy of capacity and status of maintenance of these systems and document their findings.

#### **C.1.7.5 Equipment and Furnishing**

The elements shall include fixed components of the structure, and non- movable furnishings, office or support equipment. Representative examples include security vaults, commercial laundry equipment, fixed audio-visual equipment, parking control equipment, kitchen and food service equipment, fixed casework and seating etc. The distinction for most equipment is whether it is attached, hard wired or plumbed directly to the building itself. The Contractor shall visually evaluate and note condition of fixed equipment and furnishings, and document findings with photo logs. List of equipment indicating make, manufacturer, rating/capacity, year of manufacture, and location installed shall also be provided in a tabular form.

#### **C.1.7.6 Other Building Construction**

The elements shall include special structures and systems that include special security systems, incinerators, kennels, storage tanks, building automation systems, special purpose rooms, etc. The Contractor shall visually evaluate and note the condition of these other building systems and document findings with photos.

#### **C.1.7.7 Building Site Improvements**

The elements include grading and drainage; slope stabilization, protection and erosion control; roadways and parking lots (pavement, curb, gutter and appurtenances), pedestrian paving (sidewalks, exterior steps, etc.), site development (fences and gates, recreational facilities, exterior furniture, bridges, flag poles, exterior signage, lighting, etc.), and landscaping (plantings, irrigation systems, etc.). The Contractor shall visually evaluate and note the condition of site improvements, and document findings. For grading and drainage, the Contractor shall observe the site systems for removal of storm water, and identify any that appear under-capacity or distressed. Also, the Contractor shall evaluate the site with respect to flood potential. The Contractor shall review and document the condition of pavements, curb and gutter, sidewalks and plazas, retaining walls, fences, signs, landscaping and irrigation and present findings with photos.

#### **C.1.7.8 Accessibility**

The Contractor shall evaluate Interior and exterior elements, that could present external or internal barriers to accessibility by disabled persons. The Contractor shall conduct a thorough site review to determine major barriers into the buildings, through the buildings, to restroom facilities, and to other service areas within the buildings. The Contractor shall also review and document ADA compliance requirements per applicable building code for each different type of facilities.

#### **C.1.7.9 Safety and Security**

The Contractor shall evaluate the current ability of the lower-level wall/window systems' performance with respect to blast shrapnel protection. A safety / security review to determine and document hazards and needed improvements in all areas of the building and surrounding site shall be conducted and provide supportive findings with photos. Thoroughly examine the adequacy of the installed fire protection and prevention systems and recommend necessary upgrades or modernization. Identify buildings that are grandfathered or covered under current District of Columbia Building Codes.

#### **C.1.7.10 Access Control**

The Contractor shall conduct a review of all potential points of access and determine and document effectiveness of access control including but not limited to doors and windows, including hardware and other components; intrusion detection systems and access control. The Contractor shall identify a pattern in faulty hardware system and controls.

#### **C.1.7.11 Hazardous Materials**

The Contractor shall identify suspected hazardous materials such as building components and stored materials suspected to contain hazardous materials e.g., asbestos, lead, petroleum products, etc. for further study and analysis.

#### **C.1.7.12 LEED Analysis**

The Contractor shall conduct study for design and installation of green roof systems to support Low Impact Development solutions. The Contractor shall thoroughly study existing roof structure, subsurface components, drainage system and structural load limits. The Contractor shall provide recommendations and associated costs for achieving and maintaining the District's goals with regard to LEED silver certification and the USGBC.

**C.1.8** The Contractor shall be equipped with a field computer to input data for the Assessments.

### **C.2. Initial Meeting**

Within five (5) working days after the contract is executed by the Contracting Officer ("CO"), an on-site meeting to review the Scope of Work ("SOW") with the Project Managers shall be conducted. The meeting shall be attended by key members of the consultants' personnel performing the evaluation.

### **C.3 Reports**

The Contractor shall develop a report through two submissions, corresponding to 75% and 100% completion. It is important that the deliverables noted below be completed for each submission. The percentage completion is secondary in importance to the requirements specified.

1. The facility condition assessment report shall include a thorough narrative of the subject property (current use of subject property).
2. A site plan of the subject property shall be included in the facility condition assessment report.
3. A complete chapter or significant narrative on handicapped access to the subject property.
4. Six (6) year maintenance forecast.
5. The report shall include location specific data, also known as metadata (name of neighborhood in Washington D.C., closest Metro fixed rail station, electoral subdivision or political ward, Advisory Neighborhood Commission neighborhood body).

**C.3.1** The Contractor shall submit the seventy-five percent (75%) submittal within 60 days of the contract award. Thirty (30) days will be allowed for the District review and comments. At this stage, the Contractor shall advise the District of any more in-depth investigation needed, including destructive testing to facilitate the evaluation. The Contractor will be given instruction by the Project Manager to proceed with the next submission.

**C.3.2** The Contractor shall submit the one hundred percent (100%) submittal in near complete form within forty-five (45) days of receipt of comments on the seventy-five percent (75%) submittal from the District. After review of the one hundred percent (100%) submission, the Contractor will be given instructions by the Project Manager to proceed with final submission.

#### **C.4 Project Safety**

The Contractor shall ensure that its work is conducted in a safe manner and that appropriate barricades and other safety procedures are employed to ensure the safety of District staff. All such construction barricades and safety procedures shall be subject to the approval of the Department and its Program Manager.

#### **C.5 Key Personnel**

The offeror shall set forth in its proposal the names and reporting relationships of the key personnel the offeror will use to perform the work under the proposed contract. Their resumes shall be included. The hours that each will devote to the contract shall be provided in total and broken down by task.

#### **C.6 Security Requirements**

The Contractor shall comply with all security requirements and procedures of the facility.

**C.6.1** The Contractor shall conduct routine pre-employment criminal record background checks of all of the Contractor's staff that will provide services under this contract as permitted by D.C. law. Except for professionals in accordance with D.C. Office Code 3-1201.01, et seq. The

Contractor shall not employ any staff in the fulfillment of the work under this contract unless said person has undergone a background check, to include National Criminal Information Center Report and Child Protective Services Report (Abuse and Neglect).

**C.6.2** The Contractor shall provide the results of the background checks for each employee proposed to deliver services under this contract. Background checks for subsequent staff intended to perform services under this contract shall be provided to the COTR. The Contractor(s)' staff may begin employment pending the results of the criminal background checks, but immediately be terminated should the Contractor or DGS determine the staff member is not suitable for employment based on the results of the criminal background checks. Additionally, the Contractor's staff may begin employment pending the results of the criminal background checks but the staff member shall be supervised at all times pending the results of the criminal background checks and at no time provide services to youth residences independent of supervision.

**C.6.3** The Contractor shall conduct the criminal record background checks on an annual basis and for newly acquired employees. The Contractor shall disclose to DGS through the COTR, any arrests or convictions that may occur subsequent to employment. Any conviction or arrest of the Contractor's employees after employment shall be reviewed by DGS, which will determine the employee's suitability for continued employment.

**C.6.4** The Contractor shall maintain staff records including applications, licenses, certifications, security and medical clearances, satisfactory criminal background clearance, child protection register clearance, drug and alcohol screening.

**C.6.5** The Contractor's staff shall wear neat, clean, and professional attire. The attire shall include distinctive apparel identifying staff as Contractor's employees.

**C.6.6** The Contractor's staff shall wear identification badges at all times. The identification badges shall provide company logo, employee's name, and employee photograph.

**C.6.7** The Contractor shall determine and provide additional personal protective equipment required for the safe performance of work. Protective clothing, equipment, and devices shall, at a minimum, conform to Occupational Safety and Health Administration (OSHA) standards (Applicable Document #1) for the products being used.

**C.6.8** The Contractor shall obtain Facility Access Badges for all staff and the staff of subcontractors, as applicable, prior to providing services: All contractors are required to obtain a contractor ID and access badge from the District. The Contractor is responsible for all costs associated with obtaining id and access credentials/badges. The Contractor shall obtain clearance and credentials by completing the following steps:

**C.6.9** Visit the Metropolitan Police Department Henry J. Daly Bldg., 300 Indiana Avenue NW;

**C.6.10** Complete a PD Form 70 (Criminal History Request) for a record check. This form is available at the Arrest and Criminal History Section; Room 3055. Most requests will be processed while you wait, generally between 15-45 minutes. One of the following documents is needed to make the request:

Government Issued Photo ID, such as, Driver's License or Non-Driver's ID

Original Birth Certificate and Social Security Card.

Pay a fee of \$7 is required (cash or money orders only, payable to DC Treasurer; no credit cards or personal checks);

Complete and sign the Non-Employee ID Credential Request form once Police Clearance has been obtained;

Submit the Police Clearance documentation, original ID Credential Request form and a legible copy of driver's license for each staff member to DGS for processing.

**SECTION D**  
**PACKAGING AND MARKING**

- D.1**        The packaging and marking requirements for the resultant contract shall be governed by Article number (2), Shipping Instructions-Consignment, of the Government of the District of Columbia's Department of General Services Standard Contract Provisions (Supplies and Services Contracts) (January 2016). **(Attachment J.1)**

## SECTION E

### INSPECTION AND ACCEPTANCE

**E.1**

The inspection and acceptance requirements for the resultant contract shall be governed by Article number five (5), Inspection of Supplies, and six (6), Inspection of Services, of the Government of the District of Columbia's Department of General Services Standard Contract Provisions (Supplies and Services Contracts) (January 2016). (**Attachment J.1**)

## **SECTION F DELIVERIES OR PERFORMANCE**

### **F.1 TERM OF CONTRACT**

The base term of the contract shall be for a period of one (1) year from date of award.

### **F.2 OPTION TO EXTEND THE TERM OF THE CONTRACT**

**F.2.1** The District may extend the term of this contract for a period of One (1) one-year option period, or successive fractions thereof, by written notice to the Contractor before the expiration of the contract; provided that the District will give the Contractor a preliminary written notice of its intent to extend at least thirty (30) days before the contract expires. The preliminary notice does not commit the District to an extension. The exercise of this option is subject to the availability of funds at the time of the exercise of this option. The Contractor may waive the thirty (30) day preliminary notice requirement by providing a written waiver to the Contracting Officer prior to expiration of the contract.

**F.2.2** If the District exercises the option, the extended contract shall be considered to include this option provision.

**F.2.3** The contract awarded pursuant to this Request for Proposal ("RFP") will be an Indefinite Quantity Indefinite Delivery contract. The Contractor method of compensation will be based on a fixed rate price per square foot for facilities condition assessment and CADD drawings each of the facilities listed on **B.5**. The rate will be the Contractor's sole compensation for the services required under the contract and any option period. In addition, the rate should include sufficient funding for all of the Contractor's costs associated with the work.

**F.2.4** The total duration of this contract, including the exercise of any options under this clause, shall not exceed Two (2) years.

**F.2.5** The exercise of this option is subject to the District's discretion and the availability of funds at the time of the exercise of the option.

**F.2.6** During any option year, contract requirements and deliverables remain the same as those of the base year.

### **F.3 DELIVERABLES**

The Contractor shall perform the activities required to successfully complete the District's requirements and submit one (1) hard copy and one (1) soft copy of each deliverable to the Contract Administrator ("CA") identified in Section G.9 in accordance with the following:



**F.3.1**

The Contractor shall submit to the District, as a deliverable, the report described in section H.5.5 of this contract that is required by the fifty-one percent (51%) District Residents New Hires Requirements and First Source Employment Agreement. If the Contractor does not submit the report as part of the deliverables, final payment to the Contractor shall not be paid pursuant to Section G.3.2.

## SECTION G CONTRACT ADMINISTRATION DATA

### **G.1 INVOICE PAYMENT**

- G1.1** The District will make payments to the Contractor, upon the submission of proper invoices, at the prices stipulated in this contract, for supplies delivered and accepted or services performed and accepted, less any discounts, allowances or adjustments provided for in this contract.
- G.1.2** The District will pay the Contractor on or before the 30<sup>th</sup> day after receiving a proper invoice from the Contractor.
- G.1.2.1** The Contractor will be paid for professional services, construction and specialty trades providing facility condition assessments on a monthly basis.

### **G.2 INVOICE SUBMITTAL**

- G.2.1** The Contractor shall submit invoices electronically to the DGS EASI Pay Portal located on the DGS Website: <https://dgs.onbaseonline.com>. All Contractors are required to register for access to EASI; for assistances with the registration process, technical assistances and or additional instructions please contact the Portal Help Desk at (301) 563-3025. Properly prepared invoices with the necessary backup shall be paid within thirty (30) days of receipt. Invoices not paid by that date shall bear interest in accordance with the Prompt Payment Act.
- G.2.2** To constitute a proper invoice, the Contractor shall submit the following information on the invoice:
- G.2.2.1** Contractor's name, federal tax ID and invoice date (Contractors shall date invoices as of the date of mailing or transmittal);
- G.2.2.2** Contract number, invoice number and appropriate Purchase Order;
- G.2.2.3** Description, price, quantity and the date(s) that the supplies or services were delivered or performed;
- G.2.2.4** Other supporting documentation or information, as required by the Contracting Officer;
- G.2.2.5** Name, title, telephone number and complete mailing address of the responsible official to whom payment is to be sent;
- G.2.2.6** Name, title, phone number of person preparing the invoice;

- G.2.2.7** Name, title, phone number and mailing address of person (if different from the person identified in G.2.2.6 above) to be notified in the event of a defective invoice; and
- G.2.2.8** Authorized signature.
- G.2.3** Invoice Submission to COTR
- G.2.3.1** For submission of all invoices to the COTR the following protocol must be observed.
- a. Email all invoices to the COTR as an attachment, preferably a PDF document attachment. Do not deliver invoices by fax, hand delivery, or mail.
  - b. When emailing invoices do the following:
    1. Title the invoice email with the following information:
      - i. Contractor Name INVOICES\_MonthYear\_Number of Invoices
      - a. Example:  
DoeIncINVOICES\_Feb2010\_10
    2. The email should only relate to invoices. This means do not reply to miscellaneous emails with invoices attached, do not attach other documents that are not relevant to the invoice.
    3. Send all invoices for one month of service in one email. Do not send multiple emails for different invoices.
    4. In the body of the email please list out all invoices submitted for that month and all totals for each invoice.
- G.2.3.2** To constitute a proper invoice for Reimbursable Services, the Contractor shall submit the following information on the invoice:
- a. A copy of the authorized work request;
  - b. A copy of the authorized quote for Reimbursable Services;
  - c. Contractor's name and invoice date (Contractors are encouraged to date invoices as close to the date of mailing or transmittal as possible);
  - d. Contract number;
  - e. Contractor assigned invoice number;
  - f. Once an invoice number is assigned by a Contractor it may not be used again for another invoice at a later date or a separate invoice within the same month.
  - g. Line item of for each date Reimbursable Service;
  - h. If applicable, description, price, quantity and the date(s) those additional supplies were delivered.
  - i. Line item total of all fees;
  - j. Name, title, telephone number, email address, and complete mailing address of the responsible official to whom payment is to be sent;

- k. Name, title, phone number, and email address of person preparing the invoice;
- l. Name, title, phone number and email address of person (if different from the person identified as preparer of invoice) to be notified in the event of a defective invoice; and
- m. Authorized signature.

**G.2.3.3**

The Contractor shall invoice the District for Reimbursable Services that are authorized by the District, on a single invoice per occurrence within thirty (30) days of completion and acceptance of work. This invoice shall clearly identify each Reimbursable Service, repair or additional, and show further breakdown into parts and labor components. The labor component shall indicate the total labor hours or cost, and the portion of the invoice claimed as reimbursable. If Reimbursable Services were subcontracted, copies of the subcontractor's invoices shall be attached. If the Contractor directly purchased parts or components, copies of receipts shall be attached.

**G.3**

**FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT**

**G.3.1**

For contracts subject to the fifty one percent (51%) District Residents New Hires Requirements and First Source Employment Agreement requirements, final request for payment must be accompanied by the report or a waiver of compliance discussed in section H.5.5.

**G.3.2**

No final payment shall be made to the Contractor until the CFO has received the Contracting Officer's final determination or approval of waiver of the Contractor's compliance with fifty one percent (51%) District Residents New Hires Requirements and First Source Employment Agreement requirements.

**G.3.3**

**PAYMENT**

For actual work performed and accepted, the District will pay the Contractor the amount due as stated in Section B.3 on a monthly basis after:

- a. Acceptance of the work; and
- b. Presentation of a properly executed invoice.

**G.4**

**ASSIGNMENT OF CONTRACT PAYMENTS**

**G.4.1**

In accordance with 27 DCMR 3250, the Contractor may assign to a bank, trust company, or other financing institution funds due or to become due as a result of the performance of this contract.

**G.4.2** Any assignment shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party.

**G.4.3** Notwithstanding an assignment of contract payments, the Contractor, not the assignee, is required to prepare invoices. Where such an assignment has been made, the original copy of the invoice must refer to the assignment and must show that payment of the invoice is to be made directly to the assignee as follows:

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

## **G.5 THE QUICK PAYMENT CLAUSE**

### **G.5.1 Interest Penalties to Contractors**

**G.5.1.1** The District will pay interest penalties on amounts due to the Contractor under the Quick Payment Act, D.C. Official Code §2-221.01 et seq., as amended, for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of One Percent (1%) per month. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before:

- a. the 3<sup>rd</sup> day after the required payment date for meat or a meat product;
- b. the 5<sup>th</sup> day after the required payment date for an agricultural commodity;
- or
- c. the 15<sup>th</sup> day after the required payment date for any other item.

**G.5.1.2** Any amount of an interest penalty which remains unpaid at the end of any 30-day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

### **G.5.2 Payments to Subcontractors**

**G.5.2.1** The Contractor must take one of the following actions within seven (7) days of receipt of any amount paid to the Contractor by the District for work performed by any subcontractor under this contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the District that is attributable to the subcontractor for work performed under the contract; or
- b. Notify the District and the subcontractor, in writing, of the Contractor's intention to withhold all or part of the subcontractor's payment and state the reason for the nonpayment.

**G.5.2.2** The Contractor must pay any subcontractor or supplier interest penalties on amounts due to the subcontractor or supplier beginning on the day after the payment is due and ending on the date on which the payment is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid on the following if payment for the completed delivery of the item of property or service is made on or before:

- a. the 3<sup>rd</sup> day after the required payment date for meat or a meat product;
- b. the 5<sup>th</sup> day after the required payment date for an agricultural commodity; or
- c. the 15<sup>th</sup> day after the required payment date for any other item.

**G.5.2.3** Any amount of an interest penalty which remains unpaid by the Contractor at the end of any 30-day period shall be added to the principal amount of the debt to the subcontractor and thereafter interest penalties shall accrue on the added amount.

**G.5.2.4** A dispute between the Contractor and subcontractor relating to the amounts or entitlement of a subcontractor to a payment or a late payment interest penalty under the Quick Payment Act does not constitute a dispute to which the District of Columbia is a party. The District of Columbia may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

**G.5.3 Subcontract requirements**

**G.5.3.1** The Contractor shall include in each subcontract under this contract a provision requiring the subcontractor to include in its contract with any lower-tier subcontractor or supplier the payment and interest clauses required under paragraphs (1) and (2) of D.C. Official Code §2-221.02(d).

**G.6 CONTRACTING OFFICER (CO)**

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

**George G. Lewis, CPPO**  
Associate Director Contracts & Procurement/Chief Contracting Officer  
Department of General Services  
2000 14th Street, NW, 8th Floor  
Washington, DC 20009

**G.7 AUTHORIZED CHANGES BY THE CONTRACTING OFFICER**

**G.7.1** The Contracting Officer is the only person authorized to approve changes in any of the requirements of this contract.

**G.7.2** 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 Contracting Officer.

**G.7.3** In the event the Contractor effects any change at the instruction or request of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

**G.8 CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)**

**G.8.1** The COTR is responsible for general administration of the contract and advising the Contracting Officer as to the Contractor's compliance or noncompliance with the contract. The COTR has the responsibility of ensuring that the work conforms to the requirements of this contract and such other responsibilities and authorities as may be specified in the contract. These include:

**G.8.1.1** Keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the contract;

**G.8.1.2** Coordinating site entry for Contractor personnel, if applicable;

**G.8.1.3** Reviewing invoices for completed work and recommending approval by the CO if the Contractor's prices and costs are consistent with the contractual amounts and progress is satisfactory and commensurate with the rate of expenditure;

**G.8.1.4** 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

**G.8.1.5** Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.

**G.8.2** **Contracting Officer's Technical Representative (COTR).** The contact information of the COTR

**Jeff Jennings**  
Planning Office  
Department of General Services  
2000 14<sup>th</sup> Street, NW, 5<sup>th</sup> Floor  
Washington, DC 20001  
Office: 202-727-2800  
[jeff.jennings@dc.gov](mailto:jeff.jennings@dc.gov)

**G.8.3** The COTR shall NOT have the authority to:

- a. Award, agree to, or sign any contract, delivery order or task order. Only the CO shall make contractual agreements, commitments or modifications;
- b. Grant deviations from or waive any of the terms and conditions of the contract;
- c. Increase the dollar limit of the contract or authorize work beyond the dollar limit of the contract,
- d. Authorize the expenditure of funds by the Contractor;
- e. Change the period of performance; or
- f. Authorize the use of District property, except as specified under the contract.

**G.8.4** The Contractor will be fully responsible for any changes not authorized in advance, in writing, by the CO; may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.

## **G.9 ORDERING CLAUSE**

**G.9.1** Any supplies and services to be furnished under this contract must be ordered by issuance of delivery orders or task orders by the CO. Such orders may be issued during the term of this contract.

**G.9.2** All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of a conflict between a delivery order or task order and this contract, the contract shall control.

**G.9.3** If mailed, a delivery order or task order is considered "issued" when the District deposits the order in the mail. Orders may be issued by facsimile or by electronic commerce methods.



## **SECTION H**

### **SPECIAL CONTRACT REQUIREMENTS**

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

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

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

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

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

The Contractor shall be bound by the Wage Determination No. 2015-4281, Revision No. 5, date of last revision: 03/17/2017, issued by the U.S. Department of Labor in accordance with the Service Contract Act (41 U.S.C. 351 et seq.) and incorporated herein as Section J.2 of this solicitation. The Contractor shall be bound by the wage rates for the term of the contract subject to revision as stated herein and in accordance with Section 24 of the SCP. If an option is exercised, the Contractor shall be bound by the applicable wage rate at the time of the option. If the option is exercised and the Contracting Officer obtains a revised wage determination, the revised wage determination is applicable for the option periods and the Contractor may be entitled to an equitable adjustment.

#### **H.3            PUBLICITY**

The Contractor shall at all times obtain the prior written approval from the Contracting Officer before the Contractor, any of its officers, agents, employees or subcontractors, either during or after expiration or termination of the contract, make any statement, or issue any material, for publication through any medium of communication, bearing on the work performed or data collected under this contract.

#### **H.4 FREEDOM OF INFORMATION ACT**

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

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

**H.5.1** The Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code §2-219.01 et seq. (“First Source Act”).

**H.5.2** The Contractor shall enter into and maintain, during the term of the contract, a First Source Employment Agreement, (Section J.4) in which the Contractor shall agree that:

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

**H.5.3** The Contractor shall submit to DOES, no later than the 10<sup>th</sup> each month following execution of the contract, a First Source Agreement Contract Compliance Report (“contract compliance report”) verifying its compliance with the First Source Agreement for the preceding month. The contract compliance report for the contract shall include the:

- (1) Number of employees needed;
- (2) Number of current employees transferred;
- (3) Number of new job openings created;
- (4) Number of job openings listed with DOES;

- (5) Total number of all District residents hired for the reporting period and the cumulative total number of District residents hired; and
- (6) Total number of all employees hired for the reporting period and the cumulative total number of employees hired, including:
  - (a) Name;
  - (b) Social security number;
  - (c) Job title;
  - (d) Hire date;
  - (e) Residence; and
  - (f) Referral source for all new hires.

**H.5.4** If the contract amount is equal to or greater than \$100,000, the Contractor agrees that 51% of the new employees hired for the contract shall be District residents.

**H.5.5** With the submission of the Contractor's final request for payment from the District, the Contractor shall:

- (1) Document in a report to the Contracting Officer its compliance with the section H.5.4 of this clause; or
- (2) Submit a request to the Contracting Officer for a waiver of compliance with section H.5.4 and include the following documentation:
  - (a) Material supporting a good faith effort to comply;
  - (b) Referrals provided by DOES and other referral sources;
  - (c) Advertisement of job openings listed with DOES and other referral sources; and
  - (d) Any documentation supporting the waiver request pursuant to section H.5.6.

**H.5.6** The Contracting Officer may waive the provisions of section H.5.4 if the CO finds that:

- (1) A good faith effort to comply is demonstrated by the Contractor;
- (2) The Contractor is located outside the Washington Standard Metropolitan Statistical Area and none of the contract work is performed inside the Washington Standard Metropolitan Statistical Area which includes the District of Columbia; the Virginia Cities of Alexandria, Falls Church, Manassas, Manassas Park, Fairfax, and Fredericksburg, the Virginia Counties of Fairfax, Arlington, Prince William, Loudoun, Stafford, Clarke, Warren, Fauquier, Culpeper, Spotsylvania, and King George; the Maryland Counties of Montgomery, Prince Georges, Charles, Frederick, and Calvert; and the West Virginia Counties of Berkeley and Jefferson.
- (3) The Contractor enters into a special workforce development training or placement arrangement with DOES; or
- (4) DOES certifies that there are insufficient numbers of District residents in the labor market possessing the skills required by the positions created as a result of the contract.

- H.5.7** Upon receipt of the Contractor's final payment request and related documentation pursuant to sections H.5.5 and H.5.6, the Contracting Officer shall determine whether the Contractor is in compliance with section H.5.4 or whether a waiver of compliance pursuant to section H.5.6 is justified. If the Contracting Officer determines that the Contractor is in compliance, or that a waiver of compliance is justified, the Contracting Officer shall, within two (2) business days of making the determination forward a copy of the determination to the Agency Chief Financial Officer and the COTR.
- H.5.8** Willful breach of the First Source Employment Agreement, or failure to submit the report pursuant to section H.5.5, or deliberate submission of falsified data, may be enforced by the Contracting Officer through imposition of penalties, including monetary fines of Five Percent (5%) of the total amount of the direct and indirect labor costs of the contract. The Contractor shall make payment to DOES. The Contractor may appeal to the D.C. Contract Appeals Board as provided in this contract any decision of the CO pursuant to this Section H.5.8
- H.5.9** The provisions of sections H.5.4 through H.5.8 do not apply to nonprofit organizations.
- H.6** **SECTION 504 OF THE REHABILITATION ACT OF 1973, as amended.**
- During the performance of the contract, the Contractor and any of its subcontractors shall comply with Section 504 of the Rehabilitation Act of 1973, as amended. This Act prohibits discrimination against disabled people in federally funded program and activities. See 29 U.S.C. §794 *et seq.*
- H.7** **AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)**
- During the performance of this contract, the Contractor and any of its subcontractors shall comply with the ADA. The ADA makes it unlawful to discriminate in employment against a qualified individual with a disability. See 42 U.S.C. §12101 *et seq.*
- H.8** **WAY TO WORK AMENDMENT ACT OF 2006**
- H.8.1** Except as described in H.8.8 below, the Contractor shall comply with Title I of the Way to Work Amendment Act of 2006, effective June 8, 2006 (D.C. Law 16-118, D.C. Official Code §2-220.01 *et seq.*) ("Living Wage Act of 2006"), for contracts for services in the amount of \$100,000 or more in a 12-month period.
- H.8.2** The Contractor shall pay its employees and subcontractors who perform services under the contract no less than the current living wage published on the OCP website at [www.ocp.dc.gov](http://www.ocp.dc.gov).

- H.8.3** The Contractor shall include in any subcontract for \$15,000 or more a provision requiring the subcontractor to pay its employees who perform services under the contract no less than the current living wage rate.
- H.8.4** The DOES may adjust the living wage annually and the OCP will publish the current living wage rate on its website at [www.ocp.dc.gov](http://www.ocp.dc.gov).
- H.8.5** The Contractor shall provide a copy of the Fact Sheet attached as J.6 to each employee and subcontractor who performs services under the contract. The Contractor shall also post the Notice attached as J.5 in a conspicuous place in its place of business. The Contractor shall include in any subcontract for \$15,000 or more a provision requiring the subcontractor to post the Notice in a conspicuous place in its place of business.
- H.8.6** The Contractor shall maintain its payroll records under the contract in the regular course of business for a period of at least three (3) years from the payroll date, and shall include this requirement in its subcontracts for \$15,000 or more under the contract.
- H.8.7** The payment of wages required under the Living Wage Act of 2006 shall be consistent with and subject to the provisions of D.C. Official Code §32-1301 *et seq.*
- H.8.8** The requirements of the Living Wage Act of 2006 do not apply to:
- (1) Contracts or other agreements that are subject to higher wage level determinations required by federal law;
  - (2) Existing and future collective bargaining agreements, provided, that the future collective bargaining agreement results in the employee being paid no less than the established living wage;
  - (3) Contracts for electricity, telephone, water, sewer or other services provided by a regulated utility;
  - (4) Contracts for services needed immediately to prevent or respond to a disaster or imminent threat to public health or safety declared by the Mayor;
  - (5) Contracts or other agreements that provide trainees with additional services including, but not limited to, case management and job readiness services; provided that the trainees do not replace employees subject to the Living Wage Act of 2006;
  - (6) An employee under 22 years of age employed during a school vacation period, or enrolled as a full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than 25 hours per week; provided that he or she does not replace employees subject to the Living Wage Act of 2006;
  - (7) Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia; provided, that the

tenant or retail establishment did not receive direct government assistance from the District;

- (8) Employees of nonprofit organizations that employ not more than 50 individuals and qualify for taxation exemption pursuant to section 501(c)(3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3);
- (9) Medicaid provider agreements for direct care services to Medicaid recipients, provided, that the direct care service is not provided through a home care agency, a community residence facility, or a group home for mentally retarded persons as those terms are defined in section 2 of the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501); and
- (10) Contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.

**H.8.9** The Mayor may exempt a contractor from the requirements of the Living Wage Act of 2006, subject to the approval of Council, in accordance with the provisions of Section 109 of the Living Wage Act of 2006.

## **H.9 SUBCONTRACTING REQUIREMENTS**

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

**H.9.1.1** For contracts in excess of \$250,000, at least 35% of the dollar volume shall be subcontracted to certified small business enterprises; provided, however, that the costs of materials, goods, and supplies shall not be counted towards the 35% subcontracting requirement unless such materials, goods and supplies are purchased from certified small business enterprises.

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

**H.9.1.3** A prime contractor which is certified as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of sections H.9.1.1 and H.9.1.2.

### **H.9.2 Subcontracting Plan**

If the prime contractor is required by law to subcontract under this contract, it must subcontract at least 35% of the dollar volume of this contract in accordance with the provisions of section H.9.1. The prime contractor responding to this solicitation which is required to subcontract shall be required to submit with its

proposal, a notarized statement detailing its subcontracting plan. Proposals responding to this RFP shall be deemed nonresponsive and shall be rejected if the Contractor is required to subcontract, but fails to submit a subcontracting plan with its bid. Once the plan is approved by the CO, changes to the plan will only occur with the prior written approval of the CO and the Director of DSLBD. Each subcontracting plan shall include the following:

- H.9.2.1** A description of the goods and services to be provided by SBEs or, if insufficient qualified SBEs are available, by any certified business enterprises;
- H.9.2.2** A statement of the dollar value of the bid that pertains to the subcontracts to be performed by the SBEs or, if insufficient qualified SBEs is available, by any certified business enterprises;
- H.9.2.3** The names and addresses of all proposed subcontractors who are SBEs or, if insufficient SBEs are available, who are certified business enterprises;
- H.9.2.4** The name of the individual employed by the prime contractor who will administer the subcontracting plan, and a description of the duties of the individual;
- H.9.2.5** A description of the efforts the prime contractor will make to ensure that SBEs, or, if insufficient SBEs are available, that certified business enterprises will have an equitable opportunity to compete for subcontracts;
- H.9.2.6** In all subcontracts that offer further subcontracting opportunities, assurances that the prime contractor will include a statement, approved by the contracting officer, that the subcontractor will adopt a subcontracting plan similar to the subcontracting plan required by the contract;
- H.9.2.7** Assurances that the prime contractor will cooperate in any studies or surveys that may be required by the contracting officer, and submit periodic reports, as requested by the contracting officer, to allow the District to determine the extent of compliance by the prime contractor with the subcontracting plan;
- H.9.2.8** A list of the type of records the prime contractor will maintain to demonstrate procedures adopted to comply with the requirements set forth in the subcontracting plan, and assurances that the prime contractor will make such records available for review upon the District's request; and
- H.9.2.9** A description of the prime contractor's recent effort to locate SBEs or, if insufficient SBEs are available, certified business enterprises, and to award subcontracts to them.

### **H.9.3 Subcontracting Plan Compliance Reporting**

If the Contractor has an approved subcontracting plan required by law under this contract, the Contractor shall submit to the CO and the Director of DSLBD, no later than the 21<sup>st</sup> of each month following execution of the contract, a Subcontracting Plan Compliance Report to verify its compliance with the subcontracting requirements for the preceding month. The monthly subcontracting plan compliance report shall include the following information:

- H.9.3.1** The dollar amount of the contract or procurement;
- H.9.3.2** A brief description of the goods procured or the services contracted for;
- H.9.3.3** The name of the business enterprise from which the goods were procured or services contracted;
- H.9.3.4** Whether the subcontractors to the contract are currently certified business enterprises;
- H.9.3.5** The dollar percentage of the contract awarded to SBEs, or if insufficient SBEs, to other certified business enterprises;
- H.9.3.6** A description of the activities the Contractor engaged in, in order to achieve the subcontracting requirements set forth in its plan; and
- H.9.3.7** A description of any changes to the activities the Contractor intends to make by the next month to achieve the requirements set forth in its plan.

### **H.9.4 Subcontractor Standards**

- H.9.4.1** A prime contractor shall ensure subcontractors meet the criteria for responsibility described in D.C. Official Code §2-353-02.

### **H.9.5 Enforcement and Penalties for Breach of Subcontracting Plan**

- H.9.5.1** If during the performance of this contract, the Contractor fails to comply with its approved subcontracting plan, and 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 clause of the Standard Contract Provisions.
- H.9.5.2** There shall be a rebuttable presumption that a contractor willfully breached its approved subcontracting plan if the Contractor (i) fails to submit any required monitoring or compliance report; or (ii) submits a monitoring or compliance report with the intent to defraud.



**H.9.5.3** A Contractor that is found to have willfully breached its approved subcontracting plan for utilization of certified business enterprises in the performance of a contract shall be subject to the imposition of penalties, including monetary fines of \$15,000 or 5% of the total amount of the work that the Contractor was to subcontract to certified business enterprises, whichever is greater, for each such breach.

**H.10** **DIVERSION, REASSIGNMENT AND REPLACEMENT OF KEY PERSONNEL**

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

**H.11** **AUDITS AND RECORDS**

**H.11.1** As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

**H.11.2** **Examination of Costs.** If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the CO, or an authorized representative of the CO, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

**H.11.3** **Cost or pricing data.** If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the CO, or an authorized representative of the CO, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to:

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

#### **H.11.4 Comptroller General**

**H.11.4.1** The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

**H.11.4.2** This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

**H.11.5 Reports.** If the Contractor is required to furnish cost, funding, or performance reports, the CO or an authorized representative of the CO shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating:

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

**H.11.6 Availability.** The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in clauses H.11.1 through H.11.5, for examination, audit, or reproduction, until three (3) years after final payment under this contract or for any shorter period specified in the solicitation, or for any longer period required by statute or by other clauses of this contract. In addition:

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

**H.11.7** The Contractor shall insert a clause containing all the terms of this clause, including this section H.11.7, in all subcontracts under this contract that exceed the small purchase threshold of \$100,000, and:

- a. That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable type or any combination of these;
- b. For which cost or pricing data are required; or
- c. That requires the subcontractor to furnish reports as discussed in H.11.5 of this clause.

## **H.12            ADVISORY AND ASSISTANCE SERVICES**

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

## **H.13            DISTRICT RESPONSIBILITIES**

### **H.13.1          District Furnished Property**

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

## **H.14            CONTRACTOR RESPONSIBILITIES**

**H.14.1**          The Contractor shall be responsible for providing Facility Condition Assessments services in accordance with the requirements of this contract.

**H.14.2**          The Contractor shall be responsible for obtaining all licenses and permits necessary for the performance of this contract.

**H.14.3**          The Contractor shall furnish all equipment needed for the performance of the work under this contract. All equipment must be properly guarded and meet all applicable OSHA standards.

**H.14.4          RESERVED**

**H.14.5          RESERVED**

#### **H.14.6 Allowable Subcontracting Requirements**

- H.14.6.1** The Contractor shall ensure that all activities carried out by any subcontractor conforms to the provisions of this Contract.
- H.14.6.2** It is the responsibility of the Contractor to ensure its subcontractors are capable of meeting the reporting requirements under this Contract and, if they cannot, the Contractor is not relieved of the reporting requirements.
- H.14.6.3** The Contractor shall notify the District Contracting Officer, in writing, of the termination of any subcontract for the provision of services, including the arrangements made to ensure continuation of the services covered by the terminated subcontract, not less than forty-five (45) days prior to the effective date of the termination, unless immediate termination of the contract is necessary to protect the health and safety of Enrollees or prevent fraud and abuse. In such an event, the Contractor shall notify COTR immediately upon taking such action.
- H.14.6.3.1** If the District determines that the termination or expiration of a subcontract materially affects the ability of the Contractor to carry out its responsibility under this contract; the District may terminate this Contract.
- H.14.6.3.2** The Contractor shall ensure subcontracts contain a provision that requires subcontracts to contain all provisions of the Contractor's contract with the District and that the subcontractor look solely to Contractor for payment for services rendered.

#### **H.15 STAFF ATTIRE AND IDENTIFICATION**

- H.15.1** The Contractor's staff shall wear neat, clean, and professional attire. The attire shall include distinctive apparel identifying staff as Contractor's employees.
- H.15.2** The Contractor's staff shall wear identification badges at all times. The identification badges shall provide company logo, employee's name, and employee photograph.

#### **H.16 SAFETY REQUIREMENTS**

- H.16.1** The Contractor shall be responsible for complying with all applicable District and Federal rules, regulations and practices relating to safety on the job site; for all injury to persons or damage to property that occurs as a result of the Contractor's negligence and shall take proper safety and health precautions to protect the work, the workers, the tenants and District property; and for all materials delivered and work performed until completion and acceptance of the entire work in writing by the COTR.
- H.16.2** The Contractor shall provide and ensure that all its personnel at the work sites properly wear all applicable safety devices and apparel required by the United States Occupational Safety and Health Administration (OSHA) including, but not limited to:

- H.16.2.1** Back support devices
- H.16.2.2** Eye protection
- H.16.2.3** Hearing protection
- H.16.2.4** Hand protection
- H.16.2.5** Head protection
- H.16.2.6** Foot protection

**H.16.3** The District has the right to inspect all areas for safety violations at its discretion, direct the Contractor to make immediate improvement of necessary conditions and/or procedures, and/or stop the work if other hazards are deemed to exist.

**H.16.4** Notwithstanding any provision to the contrary, the District shall not be obligated to make an equitable adjustment for any work stoppage that results from safety hazards created by the Contractor. In the event that the Contracting Officer directs the work to stop because of existing safety hazards after the Contractor has been notified and provided ample time to correct, the Contractor shall bear all costs for eliminating the hazard(s) and shall not be granted compensation for the work stoppage.

**H.16.5** The Contractor shall immediately notify the COTR if the job site is visited by an OSHA official for compliance of the Occupational Safety and Health Act or any other safety regulatory requirements.

## **H.17 FIRE PREVENTION**

**H.17.1** The Contractor shall be responsible for establishing and maintaining an effective fire prevention program for its employees and the District property being serviced on the job site.

**H.17.2** The Contractor shall be knowledgeable and train all its employees on the job site to fulfill the requirements of this Statement of Work on the procedures, means of egress and methods of reporting fires on the job sites.

## **H.18 SMOKE FREE ENVIRONMENT**

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

## **H.19 DELIVERY OF SERVICES**

The Contractor shall schedule its service deliveries during times that cause minimum disruption and inconvenience to District agency operations, including District of Columbia Public School (DCPS) operations. Unless otherwise approved by the COTR, the assessment services shall be made weekdays before 6:00 p.m. or on weekends. Upon conclusion of the District of Columbia Public Schools (DCPS)

academic year, the Contractor shall have more flexible hours to provide the assessment services.

## **H.20 COMMUNICATION**

At its own expense, the Contractor shall provide electronic pagers, transportable cellular telephones, or any other telecommunication devices adequate to effectively provide a communication link to District officials especially in emergency situations when the need to get hold of contractor personnel is greatest. The names of the individual officers and the telephone numbers for their respectively assigned pager and telephone number shall be provided to the Contracting Officer and the COTR at the start of the period of performance.

## **H.21 ACCIDENT REPORTS**

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

## **H.22 PROPERTY DAMAGE NOTIFICATION**

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

## **H.23 SUSPENSION OF WORK**

- H.23.1** In the event services are not provided or required by the District because the buildings is closed due to unanticipated circumstances, deductions to the Contractor price normally payable to Contractor will be computed as follows.
- H.23.2** The deduction rate in dollars per day will be equal to the per month contract price for the building, divided by twenty-one (21) days per month. (This will be adjusted as appropriate if some portion of the Contractor's requirements apply to weekends or holidays).
- H.23.3** The deduction rate in dollars per day multiplied by the number of days services were not provided or required will equal the total dollar deduction to be made.
- H.23.4** Deductions will not be made to the extent that the Contractor can demonstrate that payment to employees is required by an incorporated wage determination or union agreement.
- H.23.5** In the event services are provided for portion of days, appropriate adjustments will be made by the COTR to assure the Contractor is compensated for services provided.

**H.24****CONTRACT COMPLETION OR TERMINATION****H.24.1**

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

## **SECTION I CONTRACT CLAUSES**

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

The Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts dated January 14, 2016 (“SCP”) are incorporated as part of the contract. To obtain a copy of the SCP see **Attachment J.1**

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

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

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

All information obtained by the Contractor relating to any employee or customer of the District will be kept in absolute confidence and shall not be used by the Contractor in connection with any other matters, nor shall any such information be disclosed to any other person, firm, or corporation, in accordance with the District and Federal laws governing the confidentiality of records.

### **I.4 TIME**

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

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

**I.5.1** “Data,” as used herein, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

**I.5.2** The term “Technical Data”, as used herein, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work, or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical



reports, catalog item identifications, and related information, and computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.

- I.5.3** The term "Computer Software", as used herein means computer programs and computer databases. "Computer Programs", as used herein means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. "Computer Programs" include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort merge programs, and automated data processing equipment maintenance diagnostic programs, as well as applications programs such as payroll, inventory control and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general purpose in nature or designed to satisfy the requirements of a particular user.
- I.5.4** The term "computer databases", as used herein, means a collection of data in a form capable of being processed and operated on by a computer.
- I.5.5** All data first produced in the performance of this Contract shall be the sole property of the District. The Contractor hereby acknowledges that all data, including, without limitation, computer program codes, produced by Contractor for the District under this Contract, are works made for hire and are the sole property of the District; but, to the extent any such data may not, by operation of law, be works made for hire, Contractor hereby transfers and assigns to the District the ownership of copyright in such works, whether published or unpublished. The Contractor agrees to give the District all assistance reasonably necessary to perfect such rights including, but not limited to, the works and supporting documentation and the execution of any instrument required to register copyrights. The Contractor agrees not to assert any rights in common law or in equity in such data. The Contractor shall not publish or reproduce such data in whole or in part or in any manner or form, or authorize others to do so, without written consent of the District until such time as the District may have released such data to the public.
- I.5.6** The District will have restricted rights in data, including computer software and all accompanying documentation, manuals and instructional materials, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, provided however, notwithstanding any contrary provision in any such license or agreement, such restricted rights shall include, as a minimum the right to:
- I.5.6.1** Use the computer software and all accompanying documentation and manuals or instructional materials with the computer for which or with which it was acquired,

including use at any District installation to which the computer may be transferred by the District;

**I.5.6.2** Use the computer software and all accompanying documentation and manuals or instructional materials with a backup computer if the computer for which or with which it was acquired is inoperative;

**I.5.6.3** Copy computer programs for safekeeping (archives) or backup purposes; and modify the computer software and all accompanying documentation and manuals or instructional materials, or combine it with other software, subject to the provision that the modified portions shall remain subject to these restrictions.

**I.5.7** The restricted rights set forth in section I.5.6 are of no effect unless

a. the data is marked by the Contractor with the following legend:

**RESTRICTED RIGHTS LEGEND**

b. Use, duplication, or disclosure is subject to restrictions stated in Contract No. \_\_\_\_\_ With \_\_\_\_\_ (Contractor's Name); and

If the data is computer software, the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The Contractor may not place any legend on the computer software indicating restrictions on the District's rights in such software unless the restrictions are set forth in a license or agreement made a part of the contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the District of liability with respect to such unmarked software.

**I.5.8** In addition to the rights granted in Section I.5.6 above, the Contractor hereby grants to the District a nonexclusive, paid-up license throughout the world, of the same scope as restricted rights set forth in Section I.5.6 above, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the District under this contract. Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the District under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the District any rights necessary to perfect a copyright license of the scope specified in the first sentence of this paragraph.

**I.5.9** Whenever any data, including computer software, are to be obtained from a subcontractor under this contract, the Contractor shall use this clause, I.5, Rights in Data, in the subcontract, without alteration, and no other clause shall be used to

enlarge or diminish the District's or the Contractor's rights in that subcontractor data or computer software which is required for the District.

**I.5.10** For all computer software furnished to the District with the rights specified in Section I.5.5, the Contractor shall furnish to the District, a copy of the source code with such rights of the scope specified in Section I.5.5. For all computer software furnished to the District with the restricted rights specified in Section I.5.6, the District, if the Contractor, either directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided the District under this contract or any paid-up maintenance agreement, or if Contractor should be declared bankrupt or insolvent by a court of competent jurisdiction, shall have the right to obtain, for its own and sole use only, a single copy of the then current version of the source code supplied under this contract, and a single copy of the documentation associated therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.

**I.5.11** The Contractor shall indemnify and save and hold harmless the District, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or (ii) based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.

**I.5.12** Nothing contained in this clause shall imply a license to the District under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the District under any patent.

**I.5.13** Paragraphs I.5.6, I.5.7, I.5.8, I.5.11 and I.5.12 above are not applicable to material furnished to the Contractor by the District and incorporated in the work furnished under contract, provided that such incorporated material is identified by the Contractor at the time of delivery of such work

## **I.6 OTHER CONTRACTORS**

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

## **I.7 SUBCONTRACTS**

The Contractor hereunder shall not subcontract any of the Contractor's work or services to any subcontractor without the prior written consent of the Contracting Officer. Any work or service so subcontracted shall be performed pursuant to a subcontract agreement, which the District will have the right to review and approve prior to its execution by the Contractor. Any such subcontract shall specify that the Contractor and the subcontractor shall be subject to every

provision of this contract. Notwithstanding any such subcontract approved by the District, the Contractor shall remain liable to the District for all Contractor's work and services required hereunder.

## **I.8 INSURANCE**

**I.8.1 GENERAL REQUIREMENTS.** The Contractor shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the Contracting Officer giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the Contracting Officer. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A-VIII or higher. The Contractor shall require all of its subcontractors to carry the same insurance required herein. The Contractor shall ensure that all policies provide that the Contracting Officer shall be given thirty (30) days prior written notice in the event the stated limit in the declarations page of the policy is reduced via endorsement or the policy is canceled prior to the expiration date shown on the certificate. The Contractor shall provide the Contracting Officer with ten (10) days prior written notice in the event of non-payment of premium.

**I.8.1.1 Commercial General Liability Insurance.** The Contractor shall provide evidence satisfactory to the Contracting Officer with respect to the services performed that it carries \$1,000,000 per occurrence limits; \$2,000,000 aggregate; Bodily Injury and Property Damage including, but not limited to: premises-operations; broad form property damage; Products and Completed Operations; Personal and Advertising Injury; contractual liability and independent contractors. The policy coverage shall include the District of Columbia as an additional insured, shall be primary and non-contributory with any other insurance maintained by the District of Columbia, and shall contain a waiver of subrogation. The Contractor shall maintain Completed Operations coverage for five (5) years following final acceptance of the work performed under this contract.

**I.8.1.2 Automobile Liability Insurance.** The Contractor shall provide automobile liability insurance to cover all owned, hired or non-owned motor vehicles used in conjunction with the performance of this contract. The policy shall provide a \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

**I.8.1.3 Workers' Compensation Insurance.** The Contractor shall provide Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

- I.8.1.4**      Employer's Liability Insurance. The Contractor shall provide employer's liability insurance as follows: \$500,000 per accident for injury; \$500,000 per employee for disease; and \$500,000 for policy disease limit.
- I.8.1.5**      Umbrella or Excess Liability Insurance. The Contractor shall provide umbrella or excess liability (which is excess over employer's liability, general liability, and automobile liability) insurance as follows: \$2,000,000 per occurrence, including the District of Columbia as additional insured.
- I.8.2**      DURATION. The Contractor shall carry all required insurance until all contract work is accepted by the District, and shall carry the required General Liability; any required Professional Liability; and any required Employment Practices Liability insurance for five (5) years following final acceptance of the work performed under this contract.
- I.8.3**      LIABILITY. These are the required minimum insurance requirements established by the District of Columbia. HOWEVER, THE REQUIRED MINIMUM INSURANCE REQUIREMENTS PROVIDED ABOVE, WILL NOT IN ANY WAY LIMIT THE CONTRACTOR'S LIABILITY UNDER THIS CONTRACT.
- I.8.4**      CONTRACTOR'S PROPERTY. Contractor and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia.
- I.8.5**      MEASURE OF PAYMENT. The District shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price.
- I.8.6**      NOTIFICATION. The Contractor shall immediately provide the Contracting Officer with written notice in the event that its insurance coverage has or will be substantially changed, canceled or not renewed, and provide an updated certificate of insurance to the Contracting Officer.
- I.8.7**      CERTIFICATES OF INSURANCE. The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Evidence of insurance shall be submitted to:

**Ulrich Kossekpa**  
Department of General Services  
Contracting and Procurement Division  
2000 14<sup>th</sup> Street, NW, 8<sup>th</sup> Floor  
Washington, DC 20009  
[Ulrich.kossekpa2@dc.gov](mailto:Ulrich.kossekpa2@dc.gov)

**I.8.8**            **DISCLOSURE OF INFORMATION.** The Contractor agrees that the District may disclose the name and contact information of its insurers to any third party which presents a claim against the District for any damages or claims resulting from or arising out of work performed by the Contractor, its agents, employees, servants or subcontractors in the performance of this contract.

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

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

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

The contract awarded as a result of this RFP will contain the following clause:

**ORDER OF PRECEDENCE**

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

- a. An applicable Court Order, if any
- b. Contract document
- c. Standard Contract Provisions
- d. Contract attachments other than the Standard Contract Provisions
- e. RFP, as amended
- f. Offeror's BAFOs (in order of most recent to earliest)
- g. Offeror's Proposal

**I.11**            **CONTRACTS IN EXCESS OF ONE MILLION DOLLARS**

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

**I.12**            **GOVERNING LAW**

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

## **I.13 CONTINUITY OF SERVICES**

- I.13.1** The Contractor recognizes that the services provided under this contract are vital to the District of Columbia and must be continued without interruption and that, upon contract expiration or termination, a successor, either the District or another contractor, at the District's option, may continue to provide these services. To that end, the Contractor agrees to:
- I.13.1.1** Furnish phase-out, phase-in (transition) training; and
- I.13.1.2** Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- I.13.2** The Contractor shall, upon the Contracting Officer's written notice:
- I.13.2.1** Furnish phase-in, phase-out services for up to ninety (90) days after this contract expires and
- I.13.2.2** Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval.
- I.13.3** The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.
- I.13.4** The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.
- I.13.5** Only in accordance with a modification issued by the Contracting Officer, the Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

## **I.14 DISCRIMINATION CLAUSES**

- I.14.1** Anti-Discrimination Clause:  
The Contractor:

- I.14.1.1** Shall not discriminate in any manner against any employee or applicant for employment in violation of Section 211 of the District of Columbia Human Rights Act (DC Law 2-38; DC Official Code Section 2-1402.11);
- I.14.1.2** Shall include a similar clause in every subcontract, except subcontracts for standard commercial supplies or raw materials;
- I.14.1.3** Shall, along with all subcontractors, post in a conspicuous place available to employees and applicants for employment, a notice setting forth the provisions of the anti-discrimination clause set out in Section 251 of the District of Columbia Human Rights Act (DC Official Code Section 2-1402.51).
- I.14.2** Non-Discrimination Clause:
- I.14.2.1** The Contractor shall not discriminate in any manner against any employee or applicant for employment that would constitute a violation of the District of Columbia Human Rights Act, approved December 13, 1977, as amended (D. C. Law 2-38; D. C. Official Code §2-1402.11) (2001 Ed.)(“Act” as used in this Section). The Contractor shall include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials. In addition, Contractor agrees and any subcontractor shall agree to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause as provided in Section 251 of the Act.
- I.14.2.2** Pursuant to rules of the Office of Human Rights, published on August 15, 1986 in the D. C. Register and Mayor’s Order 2002-175 (10/23/02), 49 DCR 9883, the following clauses apply to this contract:
- I.14.2.2.1** The Contractor shall not discriminate against any employee or applicant for employment because of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act.
- I.14.2.2.2** The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, or place of residence or business. The affirmative action shall include, but not be limited to the following:

- a) employment, upgrading or transfer;



- b) recruitment, or recruitment advertising;
- c) demotion, layoff, or termination;
- d) rates of pay, or other forms of compensation; and
- e) selection for training and apprenticeship.

**I.14.2.2.3** The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Agency, setting forth the provisions in subsections

**I.14.2.2.1 and I.14.2.2.2** concerning non-discrimination and affirmative action.

**I.14.2.2.4** The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in subsection I.14.2.2.2.

**I.14.2.2.5** The Contractor agrees to send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the contracting agency, advising the said labor union or workers' representative of that contractor's commitments under this nondiscrimination clause and the Act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

**I.14.2.2.6** The Contractor agrees to permit access to his books, records and accounts pertaining to its employment practices, by the Chief Procurement Officer or designee, or the Director of Human Rights or designee, for purposes of investigation to ascertain compliance with this chapter, and to require under terms of any subcontractor agreement each subcontractor to permit access of such subcontractors' books, records, and accounts for such purposes.

**I.14.2.2.7** The Contractor agrees to comply with the provisions of this chapter and with all guidelines for equal employment opportunity applicable in the District of Columbia adopted by the Director of the Office of Human Rights, or any authorized official.

**I.14.2.2.8** The Contractor shall include in every subcontract the equal opportunity clauses, subsections I.14.2.2.1 through I.14.2.2.9 of this section, so that such provisions shall be binding upon each subcontractor or vendor.

**I.14.2.2.9** The Contractor shall take such action with respect to any subcontract as the CO may direct as a means of enforcing these provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the District to enter into such litigation to protect the interest of the District.

**SECTION J**  
**LIST OF ATTACHMENTS**

The following list of attachments is incorporated into the solicitation by reference.

<b>Attachment Number</b>	<b>Document</b>
<b>J.1</b>	Government of the District of Columbia Department of General Services Standard Contract Provisions (Supplies and Services Contracts) (January 2016)
<b>J.2</b>	U.S. Department of Labor Wage Determination (Wage Determination No. 2015-4281, Revision No. 5 dated 03/17/2017)
<b>J.3</b>	Office of Local Business Development Equal Employment Opportunity Information Report and Mayor's Order 85-85
<b>J.4</b>	Department of Employment Services First Source Employment Agreement
<b>J.5</b>	Way to Work Amendment Act of 2010 - Living Wage Notice
<b>J.6</b>	Way to Work Amendment Act of 2010 - Living Wage Fact Sheet
<b>J.7</b>	Tax Certification Affidavit
<b>J.8</b>	Bidder Offeror Certification Form
<b>J.9</b>	Subcontracting Plan Form
<b>J.10</b>	Past Performance Evaluation Form
<b>J.11</b>	MS Excel Price Proposal Form
<b>J. 12</b>	List of Facilities
<b>J.13</b>	Security Requirements and Background Check

**REPRESENTATIONS, CERTIFICATIONS AND  
OTHER STATEMENTS OF OFFERORS**

**PLEASE SEE ATTACHMENT J.8 FOR THE BIDDER/OFFEROR CERTIFICATION FORM**

## **SECTION L**

### **INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS**

#### **L.1 CONTRACT AWARD**

##### **L.1.1 MOST ADVANTAGEOUS TO THE DISTRICT**

The District intends to award a contract resulting from this solicitation to the responsible Offeror(s) whose offer(s) conforming to the solicitation will be most advantageous to the District, cost or price, technical and other factors, specified elsewhere in this solicitation considered.

##### **L.1.2 INITIAL OFFERS**

The District may award a contract on the basis of initial offers received, without discussion. Therefore, each initial offer should contain the offeror's best terms from a standpoint of cost or price, technical and other factors.

#### **L.2 PROPOSAL FORM, ORGANIZATION AND CONTENT**

One original and six (6) copies of the written proposals shall be submitted in two parts, titled "Technical Proposal" and "Price Proposal". Proposals shall be typewritten in 12 point font size on 8.5" by 11" bond paper. Telephonic, telegraphic, and facsimile proposals will not be accepted. Each proposal shall be submitted in a sealed envelope conspicuously marked:

DCAM-17-NC-0058    Technical    Proposal    -    **FACILITY    CONDITION  
ASSESSMENTS**

DCAM-17-NC-0058    Price    Proposal    -    **FACILITY    CONDITION  
ASSESSMENTS**

Offerors shall submit one (1) USB Flash Drive with both Technical and Price.

Offerors are directed to the specific proposal evaluation criteria found in Section M of this solicitation, Evaluation Factors. The offeror shall respond to each factor in a way that will allow the District to evaluate the offeror's response. The Offeror shall submit the information requested in L.2 in a clear, concise, factual and logical manner providing a comprehensive description of the required services and delivery thereof. The information requested below for the technical proposal shall facilitate evaluation for all proposals. The technical proposal must contain sufficient detail to provide a clear and concise response fully reflecting the manner in which the offeror proposes to fully meet the requirements in Section C.

## **L.2.1**

### **GENERAL PROPOSAL REQUIREMENTS**

- a. Transmittal Letter - The Offeror's Technical and Price Proposals shall contain a Transmittal Letter to include at a minimum the following:
  1. The Offeror's full legal name, address, and phone number
  2. Identification of the Offeror's authorized representative, the representative's title, phone number and e-mail address
  3. Identification of the Offeror's Contact Person for the proposal, if different from the representative; the Contact person's address, phone number, and e-mail address
  4. Description of the Offeror's organization
  5. A statement affirming the Offeror's acceptance of the contract provisions as described in Sections A – K including the Standard Contract Provisions of the solicitation; and
  6. Signature of an authorized representative of the Offeror's organization.
- b. Table of Contents - The Offeror's Technical and Price Proposals shall include a Table of Contents providing the page numbers and location for each section and subsection of the Offeror's proposal as described in Section L.2.2.
- c. The original Technical and Price proposals shall be single-sided; copies may be double-sided

## **L.2.2**

### **TECHNICAL PROPOSAL**

### **L.2.2.1**

#### **Relative Experience and Past Performance**

- A. Detailed descriptions of no more than eight (8) projects that best illustrate the team's experience and capabilities performing work similar in size and scope and relevant to this project as described in section C.1. On each project description, please provide all of the following information in consistent order:
  - i. Project or contract name and location;
  - ii. Name, address, contact person and telephone number and email address for owner reference(s);
  - iii. Brief project description including project cost, contract number (if applicable), duration, total value of project or contract, square footage, firm's scope of work, and key firm strengths exhibited;
  - iv. Identification of personnel involved in the selected project who are proposed to work on this project; and

- vi. Project process and schedule data including delivery method and completion date (any unusual events or occurrences that affected the schedule should be explained).

#### **L.2.2.2 Relevant Experience of Key Personnel**

The Department desires that senior personnel be assigned to this project will have experience in completing similar projects. The availability and experience of the key individuals assigned to this project will be evaluated as part of this element. In addition, Offeror shall provide proof of applicable certifications.

- a. A commitment letter shall be included with the proposal on company letter head committing each key personnel.
- b. Offerors shall provide three (3) client references for each key personnel below to assess the skills and qualifications of each (See Below). Offerors shall provide the following information for each client reference:
  - 1. Name, location and owner of facility
  - 2. Job title and description
  - 3. Contract amount and time period (start and finish dates)
  - 4. Gross square footage (GSF) area for each facility
  - 5. Name, title, address, email address and telephone number of a verifiable representative of the client. The Offeror shall be responsible for ensuring contact information is accurate information for reference checks.

#### **L.2.2.3 Project Management Plan**

Offerors are required to submit a Project Management Plan. The Project Management Plan should clearly explain how the contractor intends to manage and implement the Project. It should demonstrate a knowledge of the process and impediments that must be overcome and ensure that sufficient staffing will be provided. At a minimum, the plan should:

- i. Description of Offeror's plan to successfully complete the required work and how it intends to manage and implement the project;
- ii. Delineation of the roles and responsibilities of key team members relative to project scope;
- iii. Description of the challenges inherent in the project and the approach to mitigating identified risk;
- iv. Formulation of project schedule to assure timely achievement of key milestones; and
- v. Description of cost control management structures to assure on-budget project delivery

### **L.2.3 PRICE**

The price evaluation will be objective. The Offeror with the lowest price will receive the maximum price points. The offeror must submit a price for all CLINs for the base and one (1) option year in order to be considered. All other proposals will receive a proportionately lower total score. The following formula will be used to determine each Offeror's evaluated price score:

$$\frac{\text{Lowest price proposal 20}}{\text{Price of proposal being evaluated}} \times \text{weight} = \text{Evaluated price score}$$

### **L.3 PROPOSAL SUBMISSION DATE AND TIME, AND LATE SUBMISSIONS, LATE MODIFICATIONS, WITHDRAWAL OR MODIFICATION OF PROPOSALS AND LATE PROPOSALS**

#### **L.3.1 PROPOSAL SUBMISSION**

Proposals must be submitted no later than **2:00 pm EST on May 4, 2017**. Proposals, modifications to proposals, or requests for withdrawals that are received in the designated District office after the exact local time specified above, are "late" and shall be considered only if they are received before the award is made and one (1) or more of the following circumstances apply:

- (a) The proposal or modification was sent by registered or certified mail not later than the fifth (5th) day before the date specified for receipt of offers;
- (b) The proposal or modification was sent by mail and it is determined by the CO that the late receipt at the location specified in the solicitation was caused by mishandling by the District, or
- (c) The proposal is the only proposal received.

#### **L.3.2 Withdrawal or Modification of Proposals**

An offeror may modify or withdraw its proposal upon written, telegraphic notice, or facsimile transmission if received at the location designated in the solicitation for submission of proposals, but not later than the closing date and time for receipt of proposals.

#### **L.3.3 Postmarks**

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

#### **L.3.4 Late Modifications**

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

#### **L.3.5 Late Proposals**

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

### **L.4 EXPLANATION TO PROSPECTIVE OFFERORS**

If a prospective offeror has any questions relating to this solicitation, the prospective offeror shall submit the question in writing to the contact person, identified on page one. The prospective offeror shall submit questions no later than on **April 24, 2017**. The District will furnish responses promptly to all prospective offerors. An amendment to the solicitation will be issued if the CO decides that information is necessary in submitting offers, or if the lack of it would be prejudicial to any prospective offeror. Oral explanations or instructions given by District officials before the award of the contract will not be binding.

### **L.5 FAILURE TO SUBMIT OFFERS**

Recipients of this solicitation not responding with an offer should not return this solicitation. Instead, they should advise the CO, specified in Section G.7, by letter or postcard whether they want to receive future solicitations for similar requirements. It is also requested that such recipients advise the CO of the reason for not submitting a proposal in response to this solicitation. If a recipient does not submit an offer and does not notify the CO that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.



## **L.6 RESTRICTION ON DISCLOSURE AND USE OF DATA**

- L.6.1** Offerors who include in their proposal data that they do not want disclosed to the public or used by the District except for use in the procurement process shall mark the title page with the following legend:

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

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

- L.6.2** Mark each sheet of data it wishes to restrict with the following legend:

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

## **L.7 PROPOSALS WITH OPTION YEARS**

The offeror shall include option year prices in its price/cost proposal. An offer may be determined to be unacceptable if it fails to include pricing for the option year(s).

## **L.8 PROPOSAL PROTESTS**

Any actual or prospective offeror or contractor, who is aggrieved in connection with the solicitation or award of a contract, must file with the D.C. Contract Appeals Board (Board) a protest no later than ten (10) business days after the basis of protest is known or should have been known, whichever is earlier. A protest based on alleged improprieties in a solicitation which are apparent at the time set for receipt of initial proposals shall be filed with the Board prior to the time set for receipt of initial proposals. In procurements in which proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, must be protested no later than the next closing time for receipt of proposals following the incorporation. The protest shall be filed in writing, with the Contract Appeals Board, 441 4<sup>th</sup> Street, N.W., Suite 350N, Washington, D.C. 20001. The aggrieved person shall also mail a copy of the protest to the Contracting Officer for the solicitation.

**L.9                   SIGNING OF OFFERS**

The offeror shall sign the offer and print or type its name on the Solicitation, Offer and Award form of this solicitation. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the Contracting Officer.

**L.10                  UNNECESSARILY ELABORATE PROPOSALS**

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

**L.11                  RETENTION OF PROPOSALS**

All proposal documents will be the property of the District and retained by the District, and therefore will not be returned to the offerors.

**L.12                  PROPOSAL COSTS**

The District is not liable for any costs incurred by the offerors in submitting proposals in response to this solicitation.

**L.13                  ELECTRONIC COPY OF PROPOSALS FOR FREEDOM OF INFORMATION ACT REQUESTS**

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

**L.14**

**CERTIFICATES OF INSURANCE**

Prior to commencing work, the Contractor shall have its insurance broker or insurance company submit certificates of insurance giving evidence of the required coverages as specified in Section I.8 to the Contracting Officer

**L.15                   ACKNOWLEDGMENT OF AMENDMENTS**

The offeror shall acknowledge receipt of any amendment to this solicitation (a) by signing and returning the amendment; (b) by identifying the amendment number and date in the space provided for this purpose in Section A, Solicitation, Offer and Award form; or (c) by letter, telegram or e-mail from an authorized negotiator. The District must receive the acknowledgment by the date and time specified for receipt of proposals. An offeror's failure to acknowledge an amendment may result in rejection of its offer.

**L.16                   BEST AND FINAL OFFERS**

If, subsequent to receiving original proposals, negotiations are conducted, all offerors within the competitive range will be so notified and will be provided an opportunity to submit written best and final offers at the designated date and time. Best and final offers will be subject to the Late Submissions, Late Modifications and Late Withdrawals of Proposals provisions of the solicitation. After receipt of best and final offers, no discussions will be reopened unless the CO determines that it is clearly in the District's best interest to do so, e.g., it is clear that information available at that time is inadequate to reasonably justify contractor selection and award based on the best and final offers received. If discussions are reopened, the CO shall issue an additional request for best and final offers to all offerors still within the competitive range.

**L.17                   LEGAL STATUS OF OFFEROR**

Each proposal must provide the following information:

**L.17.1**           Name, address, telephone number and federal tax identification number of offeror;

**L.17.2**           A copy of each District of Columbia license, registration or certification that the offeror is required by law to obtain. This mandate also requires the offeror to provide a copy of the executed "Clean Hands Certification" that is referenced in D.C. Official Code §47-2862, if the offeror is required by law to make such certification. If the offeror is a corporation or partnership and does not provide a copy of its license, registration or certification to transact business in the District of Columbia, the offer shall certify its intent to obtain the necessary license,

registration or certification prior to contract award or its exemption from such requirements; and

- L.17.3** If the offeror is a partnership or joint venture, the names and addresses of the general partners or individual members of the joint venture, and copies of any joint venture or teaming agreements.

**L.18 FAMILIARIZATION WITH CONDITIONS**

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

**L.19 GENERAL STANDARDS OF RESPONSIBILITY**

The prospective contractor must demonstrate to the satisfaction of the District its capability in all respects to perform fully the contract requirements; therefore, the prospective contractor must submit the documentation listed below, within five (5) days of the request by the District.

- L.19.1** Evidence of adequate financial resources, credit or the ability to obtain such resources as required during the performance of the contract.
- L.19.2** Evidence of the ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.
- L.19.3** Evidence of the necessary organization, experience, accounting and operational control, technical skills or the ability to obtain them.
- L.19.4** Evidence of compliance with the applicable District licensing and tax laws and regulations.
- L.19.5** Evidence of a satisfactory performance record, record of integrity and business ethics.
- L.19.6** Evidence of the necessary production, construction and technical equipment and facilities or the ability to obtain them.
- L.19.7** Evidence of other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations.

**L.19.8** If the prospective contractor fails to supply the information requested, the CO shall make the determination of responsibility or no responsibility based upon available information. If the available information is insufficient to make a determination of responsibility, the CO shall determine the prospective contractor to be nonresponsible.

**L.20 PRE-PROPOSAL CONFERENCE**

A pre-proposal conference will be held on **April 20, 2017 at 2:00 p.m. (EST)** at **Reeves Center 6<sup>th</sup> Floor, DPW Conference room, Washington DC 20009**. Prospective Offerors will be given an opportunity to ask questions regarding this solicitation at the conference. The purpose for the conference is to provide a structured and formal opportunity for the District to accept questions from Offerors on the solicitation document as well as to clarify the contents of the solicitation. Attending Offerors must complete the pre-proposal conference Attendance Roster at the conference so that their attendance can be properly recorded.

Impromptu questions will be permitted and spontaneous answers will be provided at the District's discretion. Verbal answers given at the pre-proposal conference are only intended for general discussion and do not represent the Department's final position. All oral questions must be submitted in writing following the close of the pre-proposal conference but no later than **April 24, 2017** in order to generate an official answer. Official answers will be posted on the DGS website at [www.dgs.dc.gov](http://www.dgs.dc.gov) via an addendum.

## **SECTION M EVALUATION FACTORS**

### **M.1 EVALUATION FOR AWARD**

The contract will be awarded to the responsible offeror (s) whose offer is most advantageous to the District, based upon the evaluation criteria specified below. Thus, while the points in the evaluation criteria indicate their relative importance, the total scores will not necessarily be determinative of the award. Rather, the total scores will guide the District in making an intelligent award decision based upon the evaluation criteria.

Each proposal will be scored on a scale of 1 to 100 points. In addition, Offerors will be eligible to receive up to 12 preference points as described in **Section M.4** of this RFP for participation by Local, Small or Disadvantaged Business Enterprises. Thus, the maximum number of points possible is 112.

### **M.2 EVALUATION CRITERIA**

#### **M.2.1 TECHNICAL PROPOSALS**

Technical Proposals will be evaluated based on the following evaluation factors in the manner described below:

##### **M.2.1.1 Relative Experience and Past Performance of the Team – 20 Points**

DGS desires to engage a Contractor with the experience necessary to perform the requirements as described in Section C of this RFP and Attachments J.9, J.10, J.12, of this solicitation. Offerors will be evaluated on the basis of the information provided in response to L.2.2.1

##### **M.2.1.2 Relative Experience of Key Personnel – 20 POINTS**

Offerors will be evaluated on the basis of the information provided in response to L.2.2.2.

##### **M.2.1.3 Project Management Plan –40 POINTS**

Offerors will be evaluated on the basis of the information provided in response to L.2.2.3

**M.2.2 Price – 20 Points**

**M.2.3 Local, Small or Disadvantaged Business Enterprises – 12 Points**

Maximum of 12 CBE preference points allocable after all other points have been calculated.

**M.2.4 TOTAL POINTS – 112 MAXIMUM POINTS**

Total points shall be the cumulative total of the Offeror's technical criteria points, price criterion points and preference points, if any.

**M.3 EVALUATION OF OPTION YEARS**

The District will evaluate offers for award purposes by evaluating the total price for all options as well as the base year. Evaluation of options shall not obligate the District to exercise them. The total District's requirements may change during the option years. Quantities to be awarded will be determined at the time each option is exercised.

**M.4 PREFERENCES FOR CERTIFIED SMALL BUSINESS ENTERPRISES**

Under the provisions of the "Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005", as amended, D.C. Official Code § 2-218.01 *et seq.* (the Act), the District shall apply preferences in evaluating proposals from businesses that are small, local, disadvantaged, resident-owned, longtime resident, veteran-owned, local manufacturing, or local with a principal office located in an enterprise zone of the District of Columbia.

**M.4.1 APPLICATION OF PREFERENCES**

For evaluation purposes, the allowable preferences under the Act for this procurement shall be applicable to prime contractors as follows:

**M.4.1.1** Any prime contractor that is a small business enterprise (SBE) certified by the Department of Small and Local Business Development (DSLBD) will receive the addition of three points on a 100-point scale added to the overall score for proposals submitted by the SBE in response to this Request for Proposals (RFP).

**M.4.1.2** Any prime contractor that is a resident-owned business (ROB) certified by DSLBD will receive the addition of five points on a 100-point scale added to the overall score for proposals submitted by the ROB in response to this RFP.

**M.4.1.3** Any prime contractor that is a longtime resident business (LRB) certified by DSLBD will receive the addition of five points on a 100-point scale added to the overall score for proposals submitted by the LRB in response to this RFP.

- M.4.1.4** Any prime contractor that is a local business enterprise (LBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the LBE in response to this RFP.
- M.4.1.5** Any prime contractor that is a local business enterprise with its principal offices located in an enterprise zone (DZE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the DZE in response to this RFP.
- M.4.1.6** Any prime contractor that is a disadvantaged business enterprise (DBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the DBE in response to this RFP.
- M.4.1.7** Any prime contractor that is a veteran-owned business (VOB) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the VOB in response to this RFP.
- M.4.1.8** Any prime contractor that is a local manufacturing business enterprise (LMBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the LMBE in response to this RFP.

**M.4.2 MAXIMUM PREFERENCE AWARDED**

Notwithstanding the availability of the preceding preferences, the maximum total preference to which a certified business enterprise is entitled under the Act is the equivalent of twelve (12) points on a 100-point scale for proposals submitted in response to this RFP. There will be no preference awarded for subcontracting by the prime contractor with certified business enterprises.

**M.4.3 PREFERENCES FOR CERTIFIED JOINT VENTURES**

When DSLBD certifies a joint venture, the certified joint venture will receive preferences as a prime contractor for categories in which the joint venture and the certified joint venture partner are certified, subject to the maximum preference limitation set forth in the preceding paragraph.

**M.4.4 VERIFICATION OF OFFEROR'S CERTIFICATION AS A CERTIFIED SMALL BUSINESS ENTERPRISE**

- M.4.4.1** Any vendor seeking to receive preferences on this solicitation must be certified at the time of submission of its proposal. The contracting officer will verify the offeror's certification with DSLBD, and the offeror should not submit with its proposal any documentation regarding its certification as a certified small business enterprise.



**M.4.4.2** Any vendor seeking certification or provisional certification in order to receive preferences under this solicitation should contact the:

Department of Small and Local Business Development  
ATTN: SBE Certification Program  
441 Fourth Street, NW, Suite 970N  
Washington, D.C. 20001

**M.4.4.3** All vendors are encouraged to contact DSLBD at (202) 727-3900 if additional information is required on certification procedures and requirements.

**M.5 EVALUATION OF PROMPT PAYMENT DISCOUNT**

**M.5.1** Prompt payment discounts shall not be considered in the evaluation of offers. However, any discount offered will form a part of the award and will be taken by the District if payment is made within the discount period specified by the Offeror.

**M.5.2** In connection with any discount offered, time will be computed from the date of delivery of the supplies to carrier when delivery and acceptance are at point of origin, or from date of delivery at destination when delivery, installation and acceptance are at that, or from the date correct invoice or voucher is received in the office specified by the District, if the latter date is later than date of delivery. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the District check.

## Attachment J.1

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# **District of Columbia Department of General Services**

## **Standard Contract Provisions**

### **GENERAL PROVISIONS (Supplies and Services Contract)**

#### **Article 1. Covenant Against Contingent Fees:**

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 District will 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 commission, percentage, brokerage, or contingent fee.

#### **Article 2. Shipping Instructions – Consignment:**

Unless otherwise specified in this Invitation for Bids/Request for Proposals, each case, crate, barrel, package, etc., delivered under this contract must be plainly stencil marked or securely tagged, stating the Contractor's name, contract number and delivery address as noted in the contract. In case of carload lots, the Contractor shall tag the car, stating Contractor's name and contract number. Any failure to comply with these instructions will place the material at the Contractor's risk. Deliveries by rail, water, truck or otherwise, must be within the working hours and in ample time to allow for unloading and if necessary, the storing of the materials or supplies before closing time. Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the contact person identified in the contract at the delivery point.

#### **Article 3. Patents:**

The Contractor shall hold and save the District, its officers, agents, servants, and employees harmless from liability of any nature or kind, including costs, expenses, for or on account of any patented or unpatented invention, article, process, or appliance, manufactured or used in the performance of this contract, including their use by the District, unless otherwise specifically stipulated in the contract.

#### **Article 4. Quality:**

Contractor's workmanship shall be of the highest grade, and all materials provided under this Contract shall be new, of the best quality and grade, and suitable in every respect for the purpose intended.

#### **Article 5. Inspection Of Supplies:**

(a) Definition. "Supplies," as used in this clause, includes, but is not limited to raw materials, components, intermediate assemblies, end products, source code, object code, and lots of supplies.

(b) The Contractor shall be responsible for the materials or supplies covered by this contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notification of rejection. Upon the Contractor's failure to cure within ten (10) days after date of notification, the District may return the rejected materials or supplies to the Contractor at the Contractor's risk and expense.

(c) The Contractor shall provide and maintain an inspection system acceptable to the District covering supplies under this contract and shall tender to the District for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Contractor to be in conformity with contract requirements. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the District during contract performance and for as long afterwards as the contract requires. The District may perform reviews and evaluations as reasonably necessary to ascertain

compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under this contract.

(d) The District has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The District will perform inspections and tests in a manner that will not unduly delay the work. The District assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in the contract. The Contractor shall remain obligated to test and integrate supplies. The Contractor shall remain obligated to deliver supplies suitable for their intended purpose.

(e) If the District performs inspection or test on the premises of the Contractor or subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, the District will bear the expense of District inspections or tests made at other than Contractor's or subcontractor's premises; provided, that in case of rejection, the District will not be liable for any reduction in the value of inspection or test samples.

(1) When supplies are not ready at the time specified by the Contractor for inspection or test, the Contracting Officer may charge to the Contractor the additional cost of inspection or test.

(2) Contracting Officer may also charge the Contractor for any additional cost of inspection or test when prior rejection makes re-inspection or retest.

(f) The District has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship, are not suitable for the purposes intended, or otherwise not in conformity with contract requirements. The District may reject nonconforming supplies, at any time, with or without disposition instructions and regardless of any prior acceptances.

(g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and when required, shall disclose the corrective action taken.

(h) If the Contractor fails to remove, replace, or correct rejected supplies that are required to be replaced or corrected within ten (10) days, the District may either

(1) by contract or otherwise, remove, replace or correct the supplies and charge the cost to the Contractor; or,

(2) terminate the contract for default. Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Contracting Officer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

(i) If this contract provides for the performance of District quality assurance at source, and if requested by the District, the Contractor shall furnish advance notification of the time (i) when Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract, and (ii) when the supplies will be ready for District inspection.

(j) The District request shall specify the period and method of the advance notification and the District representative to whom it shall be furnished. Requests shall not require more than 2 business days of advance notification if the District representative is in residence in the Contractor's plant, nor more than 7 business days in other instances.

(k) The District will accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. District failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability upon the District, for non-conforming supplies.

(l) Inspections and tests by the District do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements. Acceptance shall be conclusive, except for latent defects, defects affecting fitness for a particular purpose, a failure of integration tests, a failure of system tests, a failure of any tests affecting performance, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

(m) If acceptance is not conclusive for any of the reasons in subparagraph (l) hereof, the District, in addition to any other rights and remedies provided by law, or under provisions of this contract, shall have the right to require the Contractor (1) at no increase in contract price, to correct or replace the defective or non-conforming supplies at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; provided, that the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Contractor of notice of defects or noncompliance, to repay such portion of the contract as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement.

When supplies are returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the District will have the right to return the rejected materials at Contractor's risk and expense or contract or otherwise to replace or correct such supplies and charge to the Contractor the cost occasioned the District thereby. Notwithstanding the foregoing, in addition to all other remedies set forth herein, nothing herein shall be construed to limit the Contracting Officer's ability to assess liquidated damages.

#### **Article 6. Inspection Of Services:**

(a) Definition. "Services" as used in this clause includes services performed, workmanship, and material furnished or utilized in the performance of services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the District covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the District during contract performance and for as long afterwards as the contract requires.

(c) The District has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The District will perform inspections and tests in a manner that will not unduly delay the work.

(d) If the District performs inspections or tests on the premises of the Contractor or subcontractor, the Contractor shall furnish, without additional charge, all reasonable facilities and assistance for the safety and convenient performance of these duties.

(e) If any of the services do not conform to the contract requirements, the District may require the Contractor to perform these services again in conformity with contract requirements, at no increase in contract amount. When the defects in services are not corrected by performance, the District may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect value of services performed. Further, the District may have the nonconforming services provided by a person or entity other than the Contractor and charge the cost of such performance to the Contractor. Finally, the District may require the repayment of

funds by the Contractor of any amounts paid for non-conforming services. The District's remedies hereunder are cumulative and are not exclusive.

(f) If the Contractor fails to promptly perform the services again or take the necessary action acceptable to the Contracting Officer to ensure future performance in conformity to contract requirements, the District may (1) by contract or otherwise, perform the services and charge the Contractor any cost incurred by the District, (2) assess liquidated damages, or (3) terminate the contract for default. The District's remedies hereunder are cumulative and not exclusive.

#### **Article 7. Waiver:**

No Governmental waiver of any breach of any provision of the Contract shall operate as a waiver of such provision or of the Contract or as a waiver of subsequent or other breaches of the same or any other provision of the Contract; nor shall any action or non-action by the Contracting Officer or by the Government be construed as a waiver of any provision of the Contract or of any breach thereof unless the same has been expressly declared or recognized as a waiver by the Contracting Officer or the Government in writing.

#### **Article 8. Default:**

(a) The District may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:

(1) If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or

(2) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the District terminates this contract in whole or in part as provided in paragraph (a) of this clause, the District may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or service similar to those so terminated, and the Contractor shall be liable to the District for any excess costs for similar supplies or services; provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the District or Federal Government in either their sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without fault or negligence of the Contractor. If the failure to perform is caused by the default of the subcontractor, and if such default arises out of causes beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess cost for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the District, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the District, in the manner and to the extent directed by the Contracting Officer, (i) completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures plans, drawing information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the District has an interest.



Payment for completed supplies delivered to and accepted by the District will be at the contract price. Payment for manufacturing materials delivered to and accepted by the District will be at the contract price. Payment for manufacturing materials delivered to and accepted by the District and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". The District may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the District against loss because of outstanding liens or claims of former lien holders.

(e) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination of convenience of the District, be the same as if the notice of termination had been issued pursuant to such clause. See Clause 20 for Termination for Convenience of the District.

(f) The rights and remedies of the District provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(g) As used in paragraph (c) of this clause, the terms "subcontractor(s)" means subcontractor(s) at any tier.

#### **Article 9. Indemnification:**

The Contractor agrees to defend, indemnify and hold harmless the District, its officers, agencies, departments, agents, and employees (collectively the "District") from and against any and all claims, losses, liabilities, penalties, fines, forfeitures, demands, causes of action, suits, costs and expenses incidental thereto (including cost of defense and attorneys' fees), resulting from, arising out of, or in any way connected to activities or work performed by the Contractor, Contractor's officers, employees, agents, servants, subcontractors, or any other person acting for or by permission of the Contractor in performance of this Contract. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed in performance of this Contract. The Contractor shall also repair or replace any District property that is damaged by the Contractor, Contractor's officers, employees, agents, servants, subcontractors, or any other person acting for or by permission of the Contractor while performing work hereunder.

The indemnification obligation under this section shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor, and shall survive the termination of this Contract. The District agrees to give Contractor written notice of any claim of indemnity under this section. Additionally, Contractor shall have the right and sole authority to control the defense or settlement of such claim, provided that no contribution or action by the District is required in connection with the settlement. Monies due or to become due the Contractor under the contract may be retained by the District as necessary to satisfy any outstanding claim which the District may have against the Contractor.

Disputes between the Contractor and any subcontractors, material suppliers, or any other third parties over payments allegedly owed by the Contractor to a third party shall be resolved exclusively between the Contractor and the third party; the Contractor shall permit no pass-through suits to be brought against the Government by a third party in the Contractor's name. However, nothing herein shall be construed to prevent the Contractor from paying a subcontractor's claim and seeking a timely equitable adjustment hereunder.

#### **Article 10. Transfer:**

No contract or any interest therein shall be transferred by the parties to whom the award is made; such transfer will be null and void and will be cause to annul the contract.

**Article 11. Taxes:**

(a) The Government of the District of Columbia is exempt from and will not pay Federal Excise Tax, Transportation Tax, and the District of Columbia Sales and Use Taxes.

(b) Tax exemption certificates are no longer issued by the District for Federal Excise Tax. The following statement may be used by the supplier when claiming tax deductions for Federal Excise Tax exempt items sold to the District.

"The District of Columbia Government is Exempt from Federal Excise Tax –Registration No. 52-73-0206-K, Internal Revenue Service, Baltimore, Maryland." Exempt From Maryland Sales Tax, Registered With The Comptroller Of The Treasury As Follows:

a) Deliveries to Glenn Dale Hospital – Exemption No. 4647

b) Deliveries to Children's Center – Exemption No. 4648

c) Deliveries to other District Departments or Agencies – Exemption No. 09339

"The District of Columbia Government is Exempt from Sales and Use Tax –Registration No. 53-600, The District of Columbia Office of Tax and Revenue."

**Article 12. Appointment of Attorney:**

(a) The bidder/offeror or contractor (whichever the case may be) does hereby irrevocably designate and appoint the Clerk of the District of Columbia Superior Court and his successor in office as the true and lawful attorney of the Contractor for the purpose of receiving service of all notices and processes issued by any court in the District of Columbia, as well as service of all pleadings and other papers, in relation to any action or legal proceeding arising out of or pertaining to this contract or the work required or performed hereunder.

(b) The bidder/offeror or contractor (whichever the case may be) expressly agrees that the validity of any service upon the said Clerk as herein authorized shall not be affected either by the fact that the contractor was personally within the District of Columbia and otherwise subject to personal service at the time of such service upon the said Clerk or by the fact that the contractor failed to receive a copy of such process, notice or other paper so served upon the said Clerk provided the said Clerk shall have deposited in the United States mail, registered and postage prepaid, a copy of such process, notice, pleading or other paper addressed to the bidder/offeror or contractor at the address stated in this contract.

**Article 13. Gratuities and District Employees Not To Benefit:**

A. If it is found 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 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 without liability and may pursue such other rights and remedies provided by law and under the Contract.

B. In the event the Contract is terminated as provided above, the Department shall be entitled:

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
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.



- C. Unless a determination is made as provided herein, no officer or employee of the District will be admitted to any share or part of this contract or to any benefit that may arise therefrom, and any contract made by the Contracting Officer or any District employee authorized to execute contracts in which they or an employee of the District will be personally interested shall be void, and no payment shall be made thereon by the District or any officer thereof, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit. A District employee shall not be a party to a contract with the District and will not knowingly cause or allow a business concern or other organization owned or substantially owned or controlled by the employee to be a party to such a contract, unless a written determination has been made by the head of the procuring agency that there is a compelling reason for contracting with the employee, such as when the District's needs cannot reasonably otherwise be met. (DC Procurement Practices Act of 1985, D.C. Law 6-85, D.C. Official Code, section 2-310.01, and Chapter 18 of the DC Personnel Regulations) The Contractor represents and covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants not to employ any person having such known interests in the performance of the contract.

**Article 14. Disputes:**

A. All disputes arising under or relating to this contract shall be resolved as provided herein.

B. Claims by a Contractor against the Government.

- (1) Claim, as used in Section B of this clause, means a written assertion by the Contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.
- (a) All claims by a Contractor against the Government arising under or relating to a contract shall be in writing and shall be submitted to the Contracting Officer for a decision.
- (b) Within 120 days after receipt of a claim, the Contracting Officer shall issue a decision, whenever possible taking into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.
- (c) Any failure by the Contracting Officer to issue a decision on a contract claim within the required time period shall be deemed to be a denial of the claim and shall authorize the commencement of an appeal on the claim as otherwise provided.
- (d) (1) If a Contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the Government for an amount equal to the unsupported part of the claim in addition to all costs to the Government attributable to the cost of reviewing that part of the Contractor's claim.  
(2) Liability under this section shall be determined within 6 years of the commission of the misrepresentation of fact or fraud.
- (e) All cost data, pricing data, and task data of claims hereunder must be certified as accurate, complete, required, and necessary to the best of the Contractor's knowledge and belief. Further, all task or work data in the claim must be described therein to the smallest unit of work or task. The Contracting Officer may require any additional certifications, descriptions or explanations of the claim.
- (f) The parties agree that time is of the essence and all claims hereunder must be presented to the Contracting Officer for a final decision within thirty (30) days of the occurrence of the circumstances giving rise to such claim or within thirty (30) days of when the Contractor knew

or should have known of the circumstances giving rise to such claim, otherwise compensation for that claim is waived.

- (g) The parties agree that there shall be no claims for unabsorbed home office overhead.
- (2) The Contractor's claim shall contain at least the following:
  - (a) A description of the claim and the amount in dispute;
  - (b) Any data or other information in support of the claim;
  - (c) A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and
  - (d) The Contractor's request for relief or other action by the Contracting Officer.
  - (e) The certification of the accuracy, completeness, requirement, and necessity of all aspects of the claim.
- (3) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor.
- (4) Pending final decision of an appeal, action, or final settlement, a Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

#### C. Claims by the Government against a Contractor

(a) Claim as used in Section C of this clause, means a written demand or written assertion by the Government, including the Contracting Officer, seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. Nothing herein shall be construed to require the Government to notify the Contractor prior to the issuance of the Contracting Officer's final decision.

- (b) (1) All claims by the Government against a Contractor arising under or relating to a contract shall be decided by the Contracting Officer, who shall issue a decision in writing and furnish a copy of the decision to the Contractor.
- (2) The decision shall be supported by reasons and shall inform the Contractor of his or her rights. Specific findings of fact shall not be required.
- (3) This clause shall not authorize the Contracting Officer to settle, compromise, pay, or otherwise adjust any claim involving fraud.
- (4) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor.
- (5) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

#### Article 15. Changes:

The Contracting Officer may, at any time, by written order, and without notice to the surety, if any, make changes in the contract within the general scope hereof. If such change causes an increase or decrease in the cost of performance of this contract, or in the time required for performance, an equitable adjustment shall be made. Any claim for adjustment under this paragraph must be asserted within ten (10) days from the date the change is offered; provided, however, that the Contracting Officer, if he or she determines that the facts justify such action, may receive, consider and adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in the Disputes clause at Section 18. Nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

**Article 16. Termination-Generally:**

Termination, whether for default or convenience, is not a Government claim. The Contracting Officer may terminate a contract for default, in whole or in part, if the termination is in the best interests of the Government, and the Contractor does any of the following:

- (a) Fails to deliver the goods or complete the work or services within the time specified in the contract or any modification;
- (b) Fails to make sufficient progress on contract performance so as to endanger performance of the contract within the time specified or in the manner specified in the contract;
- (c) Fails or refuses to go forward with the work in accordance with the direction of the Contracting Officer;
- (d) Expresses through word or conduct an intention not to complete the work in accordance with the directions of the Contracting Officer;
- (e) Fails to perform any of the other provisions of the contract;
- (f) Materially deviates from the representations and capabilities set forth in the Contractor's response to the solicitation.

A termination for default is a final decision of a Contracting Officer. In order to contest a termination for default, the Contractor must submit a certified request to convert the termination for default to a termination for convenience with all documents supporting such conversion and comply with all contract provisions and laws relating to terminations for convenience, including the submission of a certified termination for convenience settlement proposal. The submission of the certified request for conversion to a termination for convenience and certified termination settlement proposal to the Contracting Officer must occur prior to 90 days from the date of the Contracting Officer's final decision.

**DELAYS**—If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in the Contract, or any extension thereof, or fails to complete said work within specified time, the Government may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work involving the delay. In such event the Government may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may have been paid for by the Government or may be on the site of the work and necessary therefore. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any liability to the Government resulting from his refusal or failure to complete the work within the specified time.

If fixed and agreed liquidated damages are provided in the Contract and if the Government does not so terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed and accepted.

The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

1. The delay in the completion the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, climatic conditions beyond the normal which

could be anticipated, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers (the term subcontractors or suppliers shall mean subcontractors or suppliers at any tier); and

2. The Contractor, within 72 hours from the beginning of any such delay, (unless the Contracting Officer grants a further period of time before the date of final payment under the Contract) notifies the Contracting Officer in writing of the causes of delay.

The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in Article 14 herein.

If, after notice of termination of the Contractor's right to proceed under the provisions of this Article, it is determined for any reason that the Contractor was not in default under the provisions of this Article, or that the delay was excusable under the provisions of this Article, the rights and obligations of the parties shall be in accordance with Article 6 herein. Failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of Article 7 herein.

The rights and remedies of the Government provided in this Article are in addition to any other rights and remedies provided by law or under the Contract.

**Article 17. Termination For Convenience Of The District:**

(a) The District may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the District's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all contracts to the extent they relate to the work terminated.

(4) Assign to the District, as directed by the Contracting Officer, all rights, title and interest of the Contractor under the subcontracts terminated, in which case the District will have the right to settle or pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts. The approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the District (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other materials produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract has been completed, would be required to be furnished to the District.

(7) Complete performance of the work not terminated.



(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the District has or may acquire an interest. For items or components in the Contractor's possession that have not been delivered to the District, the Contractor must return those items to their vendor of origin and provide to the District all documentation of the return and all evidence of any restocking fees paid. Otherwise, such items and components must be inventoried and documented by part number or serial number and delivered to the Contracting Officer in the manner so instructed.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (6) above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the District under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) After the expiration of thirty (30) days (or such longer period as may be agreed to) after receipt by the Contracting Officer of acceptable inventory schedules, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality of termination inventory not previously disposed of excluding items authorized for disposition by the Contracting Officer. The Contractor may request the District to remove those items or enter into an agreement for their storage. Within fifteen (15) days, the District will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within forty five (45) days from submission of the list, and shall correct the list, as necessary, before final settlement.

(d) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than ninety (90) days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 90 day period. In the event the Contractor was terminated for default and it asserts that it is entitled to a termination for convenience, its certified request for the conversion of the default termination to one for convenience and its certified termination settlement proposal must be submitted to the Contracting Officer prior to the expiration of 90 days from the date of the default termination. With respect to a termination for convenience, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one year period or extension thereof. Nothing herein shall be construed to extend the time for the submission of a claim hereunder for a defaulted Contractor beyond 90 days from the date of the default termination. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any review required by the Government's procedures in effect as of the date of execution of the Contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined. The Parties agree that such a determination is final and binding.

(e) Subject to paragraph (d) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) below, exclusive of costs shown in subparagraph (f)(3) below, may not exceed the total contract price as reduced by (1) the amount of payment previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Contractor paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(f) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination work, the Contracting Officer shall pay the Contractor the amounts determined by the

Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (e) above:

(1) The contract price for completed supplies or services accepted by the District (or sold or acquired under subparagraph (b)(9) above) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of: (i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (f)(1) above; (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (f)(1) above; and (iii) A sum, as profit on subparagraph f(1) above, determined by the Contracting Officer to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subparagraph (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable cost of settlement of the work terminated, including: (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data; (ii) The termination and settlement of subcontractors (excluding the amounts of such settlements); and (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(g) Except for normal spoilage, and except to the extent that the District expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (f) above, the fair value as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the District or to a buyer.

(h) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraphs (d), (f) or (j), except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) or (j), and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (d), (f) or (j), the District will pay the Contractor (1) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

(i) In arriving at the amount due the Contractor under this clause, there shall be deducted:

(1) All unliquidated advances or other payments to the Contractor under the termination portion of the contract;

(2) Any claim which the District has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the District.

(j) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be submitted within ninety (90) days from the effective date of termination unless extended in writing by the Contracting Officer.

(k) (1) The District may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the

Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor shall be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the District upon demand together with interest computed at the rate of 10 percent (10%) per year. Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess payment is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(l) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the District, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, micrographs, or other authentic reproductions may be maintained instead of original records and documents.

#### **Article 18. Recovery Of Debts Owed The District:**

The Contractor hereby agrees that the District may use all or any portion of any payment, consideration or refund due the Contractor under the present contract to satisfy, in whole or part, any debt due the District.

#### **Article 19. Retention and Examination Of Records:**

The Contractor shall establish and maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting principles and practices which sufficiently and properly reflect all revenues and expenditures of funds provided by the District under the contract that results from this solicitation.

The Contractor shall retain all records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to the contract for a period of three (3) years after termination of the contract, or if an audit has been initiated and audit findings have not been resolved at the end of three (3) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of the contract.

The Contractor shall assure that these records shall be subject at all reasonable times to inspection, review, or audit by Federal, District, or other personnel duly authorized by the Contracting Officer. The Contracting Officer, the Inspector General and the District of Columbia Auditor, or any of their duly authorized representatives shall, until three years after final payment, have the right to examine any directly pertinent books, documents, papers and records of the Contractor involving transactions related to the contract.

#### **Article 20. Non-Discrimination Clause:**

(a) The Contractor shall not discriminate in any manner against any employee or applicant for employment that would constitute a violation of the District of Columbia Human Rights Act, approved December 13, 1977, as amended (D. C. Law 2-38; D. C. Official Code §2-1402.11) (2001 Ed.) ("Act" as used in this Section). The Contractor shall include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials. In addition, Contractor agrees and any subcontractor shall agree to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause as provided in Section 251 of the Act.

(b) Pursuant to rules of the Office of Human Rights, published on August 15, 1986 in the D. C. Register, Mayor's Order 2002-175 (10/23/02), 49 DCR 9883 and Mayor's Order 2006-151 (11/17/06), 52 DCR 9351, the following clauses apply to this contract:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, genetic information, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act.

(2) The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, genetic information, source of income, or place of residence or business. The affirmative action shall include, but not be limited to the following:

- (a) employment, upgrading or transfer;
- (b) recruitment, or recruitment advertising;
- (c) demotion, layoff, or termination;
- (d) rates of pay, or other forms of compensation; and
- (e) selection for training and apprenticeship.

(3) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Agency, setting forth the provisions in subsections (b)(1) and (b)(2) concerning non-discrimination and affirmative action.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in subsection (b)(2).

(5) The Contractor agrees to send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the contracting agency, advising the said labor union or workers' representative of that contractor's commitments under this nondiscrimination clause and the Act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor agrees to permit access to his books, records and accounts pertaining to its employment practices, by the Chief Procurement Officer or designee, or the Director of Human Rights or designee, for purposes of investigation to ascertain compliance with this chapter, and to require under terms of any subcontractor agreement each subcontractor to permit access of such subcontractors' books, records, and accounts for such purposes.

(7) The Contractor agrees to comply with the provisions of this chapter and with all guidelines for equal employment opportunity applicable in the District of Columbia adopted by the Director of the Office of Human Rights, or any authorized official.

(8) The Contractor shall include in every subcontract the equal opportunity clauses, subsections (b)(1) through (b)(9) of this section, so that such provisions shall be binding upon each subcontractor or vendor.

(9) The Contractor shall take such action with respect to any subcontract as the Contracting Officer may direct as a means of enforcing these provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is



threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the District to enter into such litigation to protect the interest of the District.

**Article 21. Definitions:**

(a) The term "District" or "Government" will mean the District of Columbia Department of General Services.

(b) The term "Mayor" will mean the Mayor of the District of Columbia.

(c) The term "Chief Procurement Officer" or "Contracting Officer" will be the Director of the Department of General Services or his/her designee.

(d) The term "Board" or "CAB" means the Contract Appeals Board of the District of Columbia.

(e) If the Contractor is an individual, the term Contractor shall mean the Contractor, his heirs, his representatives, his executor and his administrator. If the Contractor is a corporation, the term Contractor shall mean the Contractor and its successors and assigns.

**Article 22. Health And Safety Standards:**

Items delivered under this contract shall conform to all requirements of the Occupational Safety and Health Act of 1970, as amended ("OSHA"), and Department of Labor Regulations under OSHA, and all Federal requirements in effect at time of bid opening/proposal submission.

**Article 23. Appropriation Of Funds:**

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

**Article 24. [intentionally omitted]**

**Article 25. Service Contract Act of 1965:**

(a) Definitions. "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. §351, *et seq.*).

(1) "Contractor," as used in this clause, means the prime Contractor or any subcontractor at any tier.

(2) "Service employee," as used in this clause, means any person (other than a person employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR 541) engaged in performing a District contract not exempted under 41 U.S.C. §356, the principal purpose of which is to furnish services in the United States, as defined in section 22.1001 of the Federal Acquisition Regulation. It includes all such persons regardless of the actual or alleged contractual relationship between them and a contractor.

(b) Applicability. To the extent that the Act applies, this contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (20 CFR part 4). All interpretations of the Act in Subpart C of 29 CFR 4 are incorporated in this contract by reference. This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. §356, as interpreted in Subpart C of 29 CFR 4.

(c) Compensation.

(1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of

Labor or the Secretary's authorized representative, as specified in any wage determination attached to this contract.

(2) If a wage determination is attached to this contract, the Contractor shall classify any class of service employees not listed in it, but to be employed under this contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph. This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee:

(a) The Contractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration (ESA), Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary;

(b) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contracting Officer with a written copy of such determination or it shall be posted as a part of the wage determination;

(c) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed;

(d) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds to a contract under which the classification in question was previously conformed pursuant to this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in this clause need not be followed;

(e) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended;

(f) The wage rate and fringe benefits finally determined under this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract;

(g) Upon discovery of failure to comply with this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) If the term of this contract is more than 1 year, the minimum wages and fringe benefits required for service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by ESA.

(4) The Contractor can discharge the obligation to furnish fringe benefits specified in the attachment or determined under paragraph (2) of this clause by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, in accordance with Subpart B and C of 29 CFR 4.

(d) Minimum wage: In the absence of a minimum wage attachment for this contract, the Contractor shall not pay any service or other employees performing this contract less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §206). Nothing in this clause shall relieve the Contractor of any other legal or contractual obligation to pay a higher wage to any employee.

(e) Successor contracts: If this contract succeeds a contract subject to the Act under which substantially the same services were furnished and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, then, in the absence of a minimum wage attachment to this contract, the Contractor may not pay any service employee performing this contract less than the wages and benefits, including those accrued and any prospective increases, provided for under that agreement. No Contractor may be relieved of this obligation unless the limitations of 29 CFR 4.1c(b) apply or unless the Secretary of Labor or the Secretary's authorized representative:

(1) Determines that the agreement under the predecessor was not the result of arms-length negotiations; or

(2) Finds, after a hearing under 29 CFR 4.10, that the wages and benefits provided for by that agreement vary substantially from those prevailing for similar services in the locality or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and 4.11 and parts 6 and 8 that some or all of the wages and fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of

Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(f) Notification to employees: The Contractor shall notify each service employee commencing work on this contract of a minimum wage and any fringe benefits required to be paid, or shall post a notice of these wages and benefits in a prominent and accessible place at the worksite, using such poster as may be provided by the Department of Labor.

(g) Safe and sanitary working conditions: The Contractor shall not permit services called for by this contract to be performed in buildings or surroundings or underworking conditions provided by or under the control or supervision of the Contractor that are unsanitary, hazardous, or dangerous to the health or safety of service employees. The Contractor shall comply with the health standards applied under 29 CFR Part 1925.

(h) Records: The Contractor shall maintain for 3 years from the completion of work, and make available for inspection and transcription by authorized ESA representatives, a record of the following:

(1) For each employee subject to the Act:

(a) Name and address;

(b) Work classification or classifications, rate or rates of wages and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(c) Daily and weekly hours worked; and

(d) Any deductions, rebates, or refunds from total daily or weekly compensation.

(2) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by ESA under the terms of paragraph (c)(3) of this clause. A copy of the report required by paragraph (e) of this clause will fulfill this requirement.

(3) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by this clause. The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division. Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases. The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(i) Pay periods: The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(j) Withholding of payments and termination of contract: The Contracting Officer shall withhold from the prime Contractor under this or any other District contract with the prime contractor any sums the Contracting Officer, or an appropriate officer of the Labor Department, decides may be necessary to pay

underpaid employees. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination for default. In such event, the District may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(k) Subcontracts: The Contractor agrees to insert this clause in all subcontracts.

(l) Contractor's report:

(1) If there is a wage determination attachment to this contract and any classes of service employees not listed on it are to be employed under the contract, the Contractor shall report promptly to the Contracting Officer the wages to be paid and the fringe benefits to be provided each of these classes, when determined under paragraph (c) of this clause.

(2) If wages to be paid or fringe benefits to be furnished any service employees under the contract are covered in a collective bargaining agreement effective at any time when the contract is being performed, the Contractor shall provide to the Contracting Officer a copy of the agreement and full information on the application and accrual of wages and benefits (including any prospective increases) to service employees working on the contract. The Contractor shall report when contract performance begins, in the case of agreements then in effect, and shall report subsequently effective agreements, provisions, or amendments promptly after they are negotiated.

(m) Contractor's Certification: By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded District contracts by virtue of the sanctions imposed under section 5 of the Act. No part of this contract shall be subcontracted to any person or firm ineligible for award of a District contract under section 5 of the Act. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. §1001.

(n) Variations, tolerances, and exemptions involving employment: Notwithstanding any of the provisions in paragraphs (c) through (l) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions authorized by the Secretary of Labor.

(1)(i) In accordance with regulations issued under Section 14 of the Fair Labor Standards Act of 1938 by the Administrator of the Wage and Hour Division, ESA (29 CFR 520, 521, 524, and 525), apprentices, student learners, and workers whose earning capacity is impaired by age or by physical or mental deficiency or injury, may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act, without diminishing any fringe benefits or payments in lieu of these benefits required under section 2(a)(2) of the Act.

(ii) The Administrator will issue certificates under the Act for employing apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages, but without changing requirements concerning fringe benefits or supplementary cash payments in lieu of these benefits.

(iii) The Administrator may also withdraw, annul, or cancel such certificates under 29 CFR 525 and 528.

(2) An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips shall be credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with regulations in



29 CFR 531. However, the amount of credit shall not exceed 40 percent of the minimum rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 as amended.

**Article 26. Cost and Pricing Data:**

(a) This paragraph and paragraphs (b) through (e) below shall apply to contractors or offerors in regards to: (1) any procurement in excess of \$100,000, (2) any contract awarded through competitive sealed proposals, (3) any contract awarded through sole source procurement, or (4) any change order or contract modification. In its response to a solicitation, submission of an offer, submission of any proposed change, submission of any proposed modification, and submission of any request for an equitable adjustment, the Contractor or offeror must certify that, to the best of the Contractor's or offeror's knowledge and belief, any cost and pricing data submitted was accurate, complete and current as of the date specified in the contract, offer, proposed change, proposed modification and or request for an equitable adjustment.

(b) Unless otherwise provided in the solicitation, the offeror or Contractor shall, before entering into any contract awarded through competitive sealed proposals or through sole source procurement or before negotiating any price adjustments pursuant to a change order or modification, submit cost or pricing data and certification that, to the best of the Contractor's knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of the date of award of this contract or as of the date of negotiation of the change order or modification.

(c) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified by the Contractor, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified by the Contractor, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(d) Any reduction in the contract price under paragraph (c) above due to defective data from a prospective subcontractor that was not subsequently awarded, the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided that the actual subcontract price was not itself affected by defective cost or pricing data.

(e) Cost or pricing data includes all facts as of the time of price agreement that prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective Contractor's judgment about estimated future costs or projections, cost or pricing data do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred.

(f) The following specific information should be included as cost or pricing data, as applicable:

- (1) Vendor quotations;
- (2) Nonrecurring costs;
- (3) Information on changes in production methods or purchasing volume;
- (4) Data supporting projections of business prospects and objectives and related operations costs;

(5) Unit – cost trends such as those associated with labor efficiency and complete breakdown of unit prices;

(6) Make or buy decisions;

(7) Estimated resources to attain business goals;

(8) Information on management decisions that could have a significant bearing on costs.

(g) If the offeror or contractor is required by law to submit cost or pricing data in connection with pricing this contract or any change order or modification of this contract, the Contracting Officer or representatives of the Contracting Officer shall have the right to examine all books, records, documents and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the contract, change order or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. Contractor shall make available at its office at all reasonable times the materials described above for examination, audit, or reproduction until three years after the later of:

(1) final payment under the contract;

(2) final termination settlement; or

(3) the final disposition of any appeals under the disputes clause or of litigation or the settlement of claims arising under or relating to the contract.

#### **Article 27. Multiyear Contract:**

If this contract is a multiyear contract, then the following provision is made part of this contract:

If funds are not appropriated or otherwise made available for the continued performance in a subsequent year of a multiyear contract, the contract for the subsequent year shall be terminated, either automatically or in accordance with the termination clause of the contract. Unless otherwise provided for in the contract, the effect of termination is to discharge both the District and the Contractor from future performance of the contract, but not from the existing obligations. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract.

#### **Article 28. Termination Of Contracts For Certain Crimes And Violations:**

(a) The District may terminate without liability any contract and may deduct from the contract price or otherwise recover the full amount of any fee, commission, percentage, gift, or consideration paid in violation of this title if:

(1) The Contractor has been convicted of a crime arising out of or in connection with the procurement of any work to be done or any payment to be made under the contract; or

(2) There has been any breach or violation of:

(A) Any provision of the Procurement Practices Act of 1985, as amended, or

(B) The contract provision against contingent fees.

(b) If a contract is terminated pursuant to this section, the Contractor:

(1) May be paid only the actual costs of the work performed to the date of termination, plus termination costs, if any; and