

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES



INVITATION FOR BID DCAM-18-CS-0005

St. Elizabeths East Campus Stage 1 Phase 1 Infrastructure Improvements –
Temporary Surface Parking Lots

AMENDMENT NO. 3

Amendment Number 3 is hereby issued and posted on the Department's web site at dgs.dc.gov March 19, 2018. Except as otherwise noted, all other terms and conditions of the IFB remain unchanged.

1. Section A.2, first sentence

Delete: “The Department has already commissioned a set of Preliminary Drawings and Specifications for each location, copies of which are attached hereto as Attachment A.1, Attachment A2 and Attachment (“Preliminary Drawings and Specifications”).”

Insert: “The Department has already commissioned a set of Preliminary Drawings and Specifications for each location, copies of which are attached hereto as Attachment A.1, Attachment A2 and Attachment A3 (“Preliminary Drawings and Specifications”).”

2. Section A.4, second paragraph, second sentence

Delete: “will be required to obtain quotes from trade subcontractors”

Insert: “will hire trade subcontractors”

3. Section A

Insert:

A.12 Term and Termination

The period of performance under this Agreement shall commence from the date of execution of the Letter Contract by the Department and shall terminate upon the expiration of the Administrative Term or upon termination by the Department pursuant to Articles 5 and 6 of the Standard Contract Provisions. (Construction Contract) and Article 8 of the Standard Contract Provisions (Architectural & Engineering Services Contract).

4. Section B.1

Insert:

B.1.1.2 Relationship of Parties.

The Design-Builder accepts the relationship of trust and confidence established with the Department by this Agreement, and covenants with the Department to furnish the Design-Builder's reasonable skill and judgment and to cooperate with the Program Manager in furthering the interests of the Department. The Design-Builder shall use its best efforts to perform the Work and complete the Project in an expeditious and economical manner consistent with the interests of the Department. The Department shall endeavor to promote harmony and cooperation among the Department, Design-Builder, Program Manager, and other persons or entities employed by the Department for the Project. In performing its duties under this Agreement, the Design-Builder shall at all times use the standard of care used by Design-Builders that construct projects similar to the Project in type, size and scope in large, urban areas. Whenever the term "competent" is used herein to describe the Design-Builder's actions or duties that term shall refer to the level of competence customarily possessed by those Design-Builders that construct projects similar to the Project in type, size and scope in large, urban areas.

B.1.1.3 Program Manager.

The Department has engaged a Program Manager to provide certain program management functions. Such Program Manager shall, at all times, be acting solely for the benefit of the Department, not the Design-Builder. **The Design-Builder hereby acknowledges and agrees that only a duly authorized and designated contracting officer shall have the authority to issue Change Orders or Change Directives on the Department's behalf.**

5. B.3.8 Salvage

Delete: In its entirety

Insert:

B.3.8 Salvaged and Stored Items.

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

6. Section B.3 Construction Phase

Insert:

- B.3.9 Construction Progress Update.** Each monthly update shall contain a narrative description of the Project progress and a critical path method schedule in Primavera format, including any plans to correct defective or deficient work or for time lost due to delays.
- B.3.10 Economic Inclusion Report.** The monthly report shall include a detailed summary of the Design-Builder's efforts and results with respect to the economic inclusion goals set forth in this Agreement. Such report shall be in a format acceptable to the Department and shall include, at a minimum: (i) the Design-Builder's overall performance with respect to the goals; (ii) a listing of subcontracts and agreements with material suppliers during the month and the percentage of those subcontracts and agreements with material suppliers awarded to LSDBEs; (iii) a listing of subcontracts during the month and the estimated percentage of the labor hours to be worked by District of Columbia residents pursuant to those subcontracts; and (iv) a description of the major subcontracting and supply opportunities that will be solicited during the next three (3) months and the actions being taken to meet the subcontracting goals.
- B.3.11 Cash Flow Update.** If there have been any changes to the anticipated cash flow for the Project, such changes shall be disclosed and explained in the monthly report. If there are no such changes, the report shall so state.
- B.3.12 Warranties and Representations.**
- B.3.12.1** All disclosures, representations, warranties, and certifications the Design-Builder makes in its bid in response to the IFB shall remain binding and in effect throughout the term of the Agreement. The Design-Builder reaffirms that all such disclosures, representations, warranties, and certifications are true and correct.
- B.3.12.2** If any disclosure, representation, warranty or certification the Design-Builder has made or makes pursuant to the IFB or the Agreement, including, without limitation, representations concerning the Design-Builder's construction or design experience and qualifications, claims or litigation history or financial condition, is materially inaccurate, that shall constitute a material breach of the Agreement, entitling the Department to any and all available remedies.
- B.3.12.3** The terms and conditions of this Section 13.12 shall apply during both the Preconstruction and Construction Phases.

B.13.13 Sediment and Erosion Control.

The Design-Builder shall be responsible for installing sediment and erosion control measures, inclusive of, but not limited to: silt fencing, inlet protection, stabilized construction entrances, and other control measures.

7. Section B.6.5, Site Office

Delete: In its entirety (duplicate See B.3.3)

8. B.13.1, Design and Preconstruction Phase Deliverables

Delete: (e)

Insert: Reserved

Delete: (f)

Insert: Reserved

9. B.16 Time is of the Essence

Insert:

B.16.1 Acceleration.

Subject to the terms of this Section, the Department shall have the right to direct the Design-Builder to accelerate the Work if, in the reasonable judgment of Department: (i) the Design-Builder fails to supply a sufficiency of workers or to deliver the materials or equipment with such promptness as to prevent the delay in the progress of the Work; or (ii) the progress of the Work otherwise materially falls behind the projections contained in the then currently approved Project Schedule. In the event that the Department or its Program Manager determine that either of the events specified in the preceding sentence have occurred, the Department shall provide the Design-Builder with written notice of such event and the Design-Builder shall be required to provide the Department with a schedule recovery plan ("Recovery Plan") that is reasonably designed to address the concerns raised in such notice within three (3) days after receipt of such notice. If the Department and the Design-Builder are unable to agree on the terms of the Recovery Plan within five (5) days after the issuance of the notice (i.e. within forty eight (48) hours after the receipt of the proposed Recovery Plan), the Department shall have the right to direct such acceleration as the Department, in its reasonable judgment, deems necessary. Provided Department complies with the notice provisions of this Section, the cost of any acceleration directed under this Section shall not justify an adjustment to the Lump Sum on the Substantial Completion Date.

Given the nature of the Project and the fact that there is a fixed date upon which the Client Agency plans to occupy the building, the Design-Builder hereby: (i) acknowledges that this provision is a material inducement upon which the Department has relied in entering into this Agreement; and (ii) represents and warrants that it has included sufficient funding in the Lump Sum Price in order to

comply with the requirements of this Section.

10. Section K.5, Retention of Records and Inspections and Audits.

Delete: K.5.2 – K.5.7

11. Section K, Miscellaneous Provisions

Insert:

K.40 Confidentiality of Information

The Design-Builder shall assure and keep all information and data obtained throughout the performance of the Project whether related to the Agreement, the Work in all of its aspects, the Department and the Department's employees confidential, during and following the term of the Agreement, and shall not use the information in connection with any other matters; nor shall it disclose any such information to any other person, firm or corporation, unless disclosure is required pursuant to court order, subpoena or other regulatory authority. The Design-Builder shall not be divulged of confidential information without the individual's and the Department's written consent and only in accordance with the District's or Federal's laws, codes and regulations. The Design-Builder and any Subcontractors who utilize, access, or store personally identifiable information as part of the performance of this Agreement are required to safeguard this information and immediately notify the Department of any breach or suspected breach in the security of such information. The Design-Builder and all Subcontractors shall allow the Department to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. The Design-Builder, Subcontractors and their respective employees working on this Project may be required to sign a confidentiality statement.

K.41 Ownership and Use of Documents.

The Drawings, Specifications and other documents prepared by the Architect/Engineer and copies thereof furnished to the Design-Builder, are for use solely with respect to this Project. They are not to be used by the Design-Builder, Subcontractors, Sub-subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Department, and the Architect/Engineer. The referenced Drawing, Specifications and other documents shall become the property of the Department.

K.42 Payments to Subcontractors

K.42.1 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.

K.42.2 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 3rd day after the required payment date for meat or a meat product;
- (b) the 5th day after the required payment date for an agricultural commodity; or
- (c) the 15th day after the required payment date for any other item.

K.42.3 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.

K.42.4 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.

K.42.5 Subcontractor Quick Payment Clause Flow-Down Requirements

K.42.5.1 The Contractor shall include in each subcontract under this contract a provision requiring the subcontractor to include in its contract(s) with any lower-tier subcontractor or supplier the payment and interest clauses required under 14.4.2.1 and 14.4.2.2 hereinabove and paragraphs (1) and (2) of D.C. Official Code §2-221.02(d).

K.43 Requirements for Change Order payments

K.43.1 The Department and the Contractor are prohibited from requiring a prime contractor or a subcontractor to undertake any work that is determined to be beyond the original scope of the prime contractor's or a subcontractor's contract or subcontract, including work under a District-issued change order, when the additional work increases the contract price beyond the not-to-exceed price or negotiated maximum price of the underlying contract, unless the Contracting Officer:

- (a) Agrees with the prime contractor and, if applicable, the subcontractor on a price for the additional work;

- (b) Obtains a certification from the Chief Financial Officer that there are sufficient funds to compensate the prime contractor and, if applicable, the subcontractor for the additional work;
- (c) Has made a written, binding commitment with the prime contractor to pay for the additional work within 30 days after the prime contractor submits a proper invoice for the additional work to the contracting officer; and
- (d) Gives written notice of the funding certification from the Chief Financial Officer to the prime contractor;

K.43.2 The Contractor is required to include in its subcontracts a clause that requires the prime contractor to:

- (a) Within 5 business days of receipt of the notice required under subparagraph (A)(iv) of this paragraph, provide the subcontractor with notice of the approved amount to be paid to the subcontractor based on the portion of the additional work to be completed by the subcontractor;
- (b) Pay the subcontractor any undisputed amount to which the subcontractor is entitled for any additional work within 10 days of receipt of payment for the additional work from the District; and
- (c) If the prime contractor withholds payment from a subcontractor, notify the subcontractor in writing and state the reason why payment is being withheld and provide a copy of the notice to the contracting officer;

K.43.3 The Department, Contractor, prime contractor, or a subcontractor are prohibited from declaring another party to the contract to be in default or assessing, claiming, or pursuing damages for delays in the completion of the construction due to the inability of the parties to agree on a price for the additional work.

K.44 **Contract Work Hours And Safety Standards Act Provision.** The Design-Builder agrees that the applicable work performed under this Agreement shall be subject to the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333).

K.45 **Termination for Default.**

K.45.1 The Department may terminate the Agreement for default if the Design-Builder fails to perform any of its duties or obligations under the Agreement. In particular, but without limitation, the Department may terminate the Agreement if:

- (a) The Design-Builder fails to perform the Work diligently, in accordance with the Project Schedule or to make such progress in the Work as the Department reasonably believes is necessary to complete the Project within the time required by the Agreement; or

- (b) The Design-Builder fails to perform the Work in a good and workmanlike manner or to correct defects in the Work promptly upon notice by the Department; or
- (c) The Department reasonably determines that the Design-Builder has abandoned the Work, or has failed to pay laborers, mechanics, materialmen, Subcontractors or suppliers when payment is due; or
- (d) The Design Builder becomes insolvent, makes an assignment for the benefit of creditors, files a voluntary petition under any chapter of the Bankruptcy Code or has an involuntary petition filed against it under any chapter of the Bankruptcy Code, or the Design Builder has a receiver appointed, or files for dissolution or otherwise is dissolved; or
- (e) The Design-Builder fails to pay its debts in a timely manner or becomes insolvent, the Department reasonably determines that the Design-Builder does not have the financial ability to carry out its obligations under the Agreement and the Design-Builder fails to give the Department prompt and reasonable assurances of its ability to perform.
- (f) In the event the Design-Builder fails to meet the Substantial Completion Date for more than thirty (30) days, the Design-Builder consents to a Termination for Default.

K.45.1.1 The Department shall provide the Design-Builder with written notice of its intent to terminate the Agreement, under this Section 15.3, seven (7) calendar days before actually putting the termination into effect. If the Design-Builder has begun its corrective action and has made progress satisfactory to the Department within the seven days, the Department may so notify the Design-Builder and the termination will not take effect. Otherwise, the termination shall take effect after seven days without further notice or opportunity to cure.

K.45.1.2 If the Department terminates the Agreement for default, the Department will have the right to take over the Work, to accept assignment of some or all Subcontracts or agreements with material suppliers, to take possession of the Project, to take and use all tools, equipment and supplies then being used in connection with the Work, and to finish the Project by whatever method it deems expedient, including accepting assignment of all outstanding Subcontracts and Supply Agreements.

K.45.2 **Termination for Convenience.** The Department may, upon seven (7) calendar days written notice to the Design- Builder, terminate the Contract in whole or specified part, for its convenience, for any reason whether the Design-Builder is in breach of contract or not. The notice of termination shall state the effective date of termination, the extent of the termination, and any specific instructions. The termination for convenience that arises out of or under this Agreement shall be in accordance with the terms of the collective Standard Contract Provisions.

K.45.3 **Continued Responsibility After Termination.** If the Design-Builder is terminated, for default, for Convenience or otherwise, the Design-Builder shall

remain responsible for defects or non-conformities in all Work performed to the date of the termination.

12. Section L, Definitions:

Insert:

L.19 Administrative Term.

The Agreement shall have an administrative term (the "Administrative Term") that runs from the effective date of the Notice to Proceed to the Administrative Term Expiration Date set forth in the Project Information Section above. In addition, within this time the Design-Builder shall execute and submit a Final Release of Liens and Claims in a form and format required by the Contracting Officer, inclusive of providing the Department with a complete set of any product manuals (O&M) and training videos. The Administrative Term is established for the sole purpose of permitting the Department's Office of the Chief Financial Officer to process payments in the event any payments become due. Notwithstanding the foregoing, nothing herein shall be construed to: extend the Substantial Completion Date; extend the Final Completion Date; or, limit the Department's ability to assess liquidated damages thereon.

L.20 Agreement.

The term "Agreement" shall mean this entire, integrated agreement between the Department and the Design-Builder with respect to the Project, consisting of this document and the Exhibits thereto, including but not limited to the Standard Contract Provisions (Construction Contract), Standard Contract Provisions (Architectural & Engineering Services Contract) (collectively, Standard Contract Provisions), the Construction Documents released for the Design-Builder's use and any Change Orders or Change Directives that have been executed by the Department.

L.21 Client Agency.

The governmental or quasi-governmental entity represented by the Department, requesting the Project.

L.22 Construction Phase Services.

Services provided throughout the construction phase during which the Design-Builder shall carry out the bulk of the construction and manage the completion of the design for the Project.

L.23 Design & Preconstruction Phase Services.

The services to be provided under B.2 constituting the design & preconstruction phase services to be performed by the Design-Builder.

L.24 Self-Performed Work.

Trade work performed by employees of: (1) the Design-Builder; (2) any entity that is a partner or member of the entity comprising the Design-Builder; (3) any entity that controls, is controlled by, or is under common control with the Design-Builder; or (4) any entity that controls, is controlled by, or is under common control with any entity that is part of the Design-Builder. Self-Performed Work is distinguished from trade work performed by Subcontractors unaffiliated with the Design-Builder or the entities of which the Design-Builder is comprised.

L.25 Services.

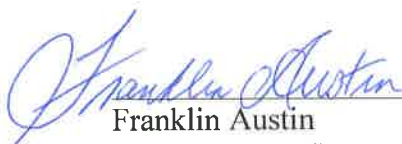
The services to be provided pursuant to the Agreement which shall include the Design & Preconstruction Phase Services and the Construction Phase Services.

L.26 Standard Contract Provisions.

The District of Columbia Department of General Services Standard Contract Provisions, General Provisions (Construction Contract), as amended, are attached hereto as Exhibit J.1 and incorporated herein. The District of Columbia Department of General Services Standard Contract Provisions, General Provisions (Architectural & Engineering Services Contract), as amended, are attached hereto as Exhibit J.2 and incorporated herein.

L.27 Work.

The term "Work" refers to any and all work done in performance of the Services necessary, at any and all phases of the Agreement, to Fully Complete the Project.


Franklin Austin
Contracting Officer

3/19/18
Date

End of Amendment No. 3