

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES



INVITATION FOR BIDS
SOLICITATION NUMBER: DCAM-18-CS-0005

**ST. ELIZABETHS EAST CAMPUS STAGE 1 PHASE 1 INFRASTRUCTURE
IMPROVEMENTS - TEMPORARY SURFACE PARKING LOTS**

Date Issued: March 2, 2018

Bid Due Date: March 27, 2018 by 2:00 p.m.

Bid Opening: March 27, 2018 by 3:00 p.m.
Reeves Center Community Room
2000 14th Street, NW 2nd Floor
Washington, DC 20009

Delivery of Bids: Department of General Services
Attn: George G. Lewis
Associate Director, Contracts and Procurement
2000 14th Street NW, 8th Floor
Washington, DC 20009
Phone: (202) 727-2800

**Pre-Bid Conference
& Site Visit:** March 8, 2018 at 11:00 AM
R.I.S.E. Demonstration Center
2730 Martin Luther King, Jr. Ave, SE
Washington, DC 20032

Contact: James H. Marshall
Senior Contract Specialist
Department of General Services
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Executive Summary

The Department is issuing this Invitation for Bid (IFB) to engage a Design-Builder to construct three (3) Temporary Surface Parking Lots on St. Elizabeths East Campus. The Design-Builder shall complete the designs and construct Temporary Surface Parking Lots at the Dorothea Dix Administration Building (DDX), R.I.S.E Demonstration Center (RISE), and Parcel 15 (collectively the "Project") located at 2730 Martin Luther King, Jr. Ave, SE in Washington DC. The Project includes, but is not limited to: design, preconstruction and construction services.

The three lots include an approximately 876 space temporary surface parking lot within portions of Assessment and Taxation ("A&T") A&T lots 830 and 831 (the DDX lot), an approximately 270 space temporary surface parking lot within A& T lot 825 (the RISE CENTER lot) which includes rebuilding and expanding the existing parking lot and expanding it, and an approximately 200 space temporary surface parking lot within A&T lot 810 (the Parcel 15 lot). The Project is in response to the ongoing redevelopment of the East Campus by the District, including the need for additional temporary parking for the Gateway Pavilion, and the Entertainment & Sports Arena (ESA) facility.

A.1 Project Background

In the redevelopment and implementation phase of the St. Elizabeths East Campus, the District is working closely with partner agencies to complete site development and supporting infrastructure for the phase 1 real estate development. One of the major projects currently under construction is the Entertainment and Sports Arena (ESA) facility that will be the practice facility for the NBA Washington Wizards and the home court for the WNBA Washington Mystics.

To assist in achieving the redevelopment of the East Campus, the Deputy Mayor for Planning & Economic Development (DMPED) prepared a parking master plan for the Campus in 2017. This parking master plan identified significant short term (5 to 7 years), and long term, on-site parking deficiencies. The parking space deficit is particularly large when events are held at the ESA facility simultaneous with an event at the existing Gateway Pavilion. To meet the short term demand for parking on East Campus DMPED is developing three (3) temporary surface parking lots.

Until long term redevelopment of parcel 2 (A&T lot 830) occurs, including office building and major parking garage construction, the short term (5 to 7 years) solution to the documented parking deficits is to develop a temporary surface parking lot on parcel 2 of East Campus. This temporary surface parking lot shall include a minimum total number of eight hundred and seventy-six (876) parking spaces, to include a portion reserved for ADA (16 spaces) and valet (60 spaces in aisles) parking. To accomplish this, the existing vacant and deteriorating 215,000 SF Dorothea Dix (**DDX**) former hospital administration building is being demolished under separate contract. This IFB covers the redevelopment of the site into a temporary surface parking lot with direct access to Martin Luther King, Jr. Avenue, SE (MLK) and safe pedestrian and shuttle access to the ESA site and the redeveloped areas of East Campus. Additionally, during the design and construction of the project, continuous safe pedestrian and vehicular access to the 801 Men's Shelter located in building 81A,

directly east of and abutting the project, must be maintained on a continuous basis, twenty-four (24) hours a day, seven (7) days a week. DMPED has tasked the District Department of General Services (DGS) with soliciting bids to deliver this critical Project

DMPED will be hiring a parking management firm to operate this surface parking lot and other parking facilities throughout East Campus. The Design-Builder will be required to coordinate with this management firm during development of the design documents. The second lot is a rebuilding and expansion of the existing surface parking lot at the RISE Demonstration Center with the addition of a new access driveway to 8th Street SE resulting in an expanded lot of 239 regular and 7 ADA spaces. The third lot is across the future Cherry Street SE from the new Entertainment and Sports Arena (ESA) site and is located on the vacant portion of Parcel 15. This lot is to have revenue control for daily operations and a minimum of 200 regular and 4 ADA spaces.

The subsequent sections of this IFB outline the work involved to develop the intermediate and final design plans for the construction of the three temporary surface parking lots. A minimum of eight hundred and seventy-six (876) spaces for the DDX lot, a minimum of two hundred seventy (246) spaces for the RISE Center lot, and a minimum of two hundred (204) spaces for the Parcel 15 lot. Construction trailers for the ESA project are presently located on Parcel 15 where the new temporary parking lot is proposed. These trailers will be removed from the site by May 15, 2018.

The attached Preliminary Plans & Specifications developed for the DDX temporary surface parking lot (**Attachment A1**) includes a minimum eight hundred (800) regular spaces, a minimum sixteen (16) ADA spaces and an additional minimum sixty (60) spaces when operated in a valet parking mode within the lower parking lot level. The Preliminary Plans for the RISE Center (**Attachment A2**) and Parcel 15 (**Attachment A3**) temporary surface lots were developed for 439 regular spaces and 11 ADA spaces (combined) with no requirement for any valet parking mode within the lots.

The Design-Builder is encouraged to use BIM, or similar type software (recognized in the industry), to develop and coordinate the Design Documents.

A.2 Preliminary Drawings and Specifications

The Department has already commissioned a set of Preliminary Drawings and Specifications for each location, copies of which are attached hereto as **Attachment A1, Attachment A2 and Attachment A3** (“**Preliminary Drawings and Specifications**”). In addition, a Phase 1 ESA Report, dated March 15, 2012 was prepared for the roadway system and covers the entire East Campus, has been provided as **Attachment A4**. **Attachment A5** provides a Geotechnical Report for the DDX lot. **Attachment A6** provides the CFA conceptual approval letter for the DDX lot. The CFA submittals for the RISE and Parcel 15 lots have been submitted and approval is expected in mid-March.

The selected Contractor shall provide all labor, tools, equipment, materials, and professional services necessary to perform the work called for in the Final Drawings and Specifications,

as well as any work that is not specifically identified in the Preliminary Drawings and Specifications but which is reasonably inferable therefrom. The Department expects that the Contractor will deliver a turn-key Project at each parking lot.

A.3 Procurement Schedule

The schedule for this procurement is as follows:

- | | |
|---|---------------------------|
| - Issue IFB | March 2, 2018 |
| - Pre-bid Conference & Site Visit | March 8, 2018 at 11:00am |
| - Last Day for Questions/Clarifications | March 12, 2018 by 4:00 pm |
| - Bids Due | March 27, 2018 at 2:00 pm |
| - Bid Opening | March 27, 2018 at 3:00 pm |
| - Notice of Award | April 6, 2018 |

A.4 Project Delivery Method and Schedule

The Department intends to implement the Project through a design-build approach. The scope of work for the Project (“Scope of Work”) will be divided into two phases: (i) the Design and Preconstruction Phase; and (ii) the Construction Phase.

During the Design and Preconstruction Phase, the selected Design-Builder, in consultation with the Department, the parking management firm hired by the District, and affected government agencies, will be required to (i) develop and advance the design in accordance with the Department’s programming requirements, and previously developed preliminary plans and specifications, to the level of permit drawings/specifications and submit for permit(s); (ii) progress the permit drawings/specifications for the Project to construction documents (“Construction Documents”); and (iii) participate in any on-going community engagement process for the Project. After developing the final construction documents, the Design-Builder will be required to obtain quotes from trade subcontractors based on the approved design documents. Early authorized work may also occur, if approved by the Department.

During the Construction Phase, the Design-Builder, in consultation with the Department, will be required to provide construction and construction administration services to (i) selectively demolish sections of the sites, including tree removals, and site & utility demolition, where required; (ii) conduct abatement of hazardous materials, if necessary; and (iii) construct any new parking lot sections, drainage facilities, lighting, operational systems, etc., as necessary.

The Project shall be completed and available for use by Gateway Pavilion and the ESA Facility no later than the Substantial Completion Dates listed in section 1.9.1 of this IFB. The Department contemplates that early work construction will begin on the project in June 2018, with general construction beginning shortly thereafter. The DDX and Parcel 15 lots are to be constructed initially, with limited phasing of work occurring on the RISE Center lot due to ongoing operations and the continuing need for use of portions of the existing RISE Center parking lot. The preliminary plans for the RISE Center lot outline a proposed 3 phase

Maintenance of Traffic (MOT) approach to allow construction of the RISE Center lot while continuing to provide access and parking for activities at the RISE Center. During the contract time period for this work, portions of existing Cypress Drive, including the entrance to MLK, may be closed and not accessible due to ongoing infrastructure improvements at East Campus that are presently under construction. Long lead items may be released earlier than the June date, if necessary. While the Department is amenable to shifting the interim design milestone dates, the Department requires that the two parking lots at DDX and P-15 be substantially completed by August 31, 2018, and the RISE Center lot be substantially completed by October 30, 2018. Any shift in the interim design milestone dates must be approved by DGS and must provide for the durations for DGS and other Agency design reviews required.

- Notice to Proceed/Letter Contract approximately April 10, 2018
- Project Kick Off meeting 1 week after NTP
- Final Design Submittals to Agencies and DGS May 18, 2018
- Released for Construction Docs and Permit Submittals June 08, 2018
- Substantial Completion – DDX and P-15 lots August 31, 2018
- Substantial Completion - RISE Center lot October 30, 2018
- Final Completion – DDX and P-15 lots September 28, 2018
- Final Completion – RISE Center lot November 27, 2018

A.5 Letter Contract

Certain of the preconstruction and preconstruction activities described in this IFB may be performed pursuant to a Letter Contract to be issued by the Department. Pursuant to the terms of the Letter Contract, upon execution of the Contract resulting from this IFB by the Department (the “Contract Effective Date”), the Letter Contract shall automatically terminate and shall merge into and be superseded by the definitive Contract. For avoidance of doubt, any services provided or work performed pursuant to the merged Letter Contract, and prior to the date that the Contract is effective, shall be governed by the terms and condition of the Contract.

A.6 Form of Contract

The Contract(s) resulting from this IFB will include the IFB in its entirety including all Attachments identified in Section A.7; provided however, that the completed Award/Signature page shall be included as the first page of the resulting Contract. The completed Award/Signature page (**Attachment N**) shall also include a completed Acknowledgement of Amendments (Award/Signature Page 1, Sec. 13). Any addenda issued to this IFB shall be included as attachments to the Contract

A.7 IFB Attachments

The documents included in this IFB consist of this IFB in all of its parts, all addenda, attachments and exhibits contained or identified in the IFB’s sections (collectively the “IFB Documents”). Each Bidder shall review the IFB Documents and provide questions or requests

for clarification, including but not limited to terms that it considers to be ambiguous or to which it takes exception. Such questions or requests for clarification will be submitted to the Department's POC within the time specified in this IFB. The Department will review all questions and/ or requests for clarification received and, if it deems appropriate, in its sole discretion, may modify the IFB Documents through addenda. Bidders shall base their Bids on the terms and conditions of the IFB Documents included in the latest issued addenda.

Attachments to this IFB include the following:

Attachment A1	Preliminary Plans and Specifications for DDX lot
Attachment A2	Preliminary Plans and Specifications for RISE Center lot
Attachment A3	Preliminary Plans and Specifications for Parcel 15 lot
Attachment A4	Phase 1 ESA Report 03-15-2012
Attachment A5	Geotechnical Report (HCEA) for DDX lot
Attachment A6	CFA Conceptual approval letter for DDX lot
Attachment B	Form of Offer Letter and Bid Form
Attachment C	Bidder/Offeror Certification Form
Attachment D	Tax Affidavit
Attachment E	Davis Bacon Wage Determination
Attachment F	SBE Subcontracting Plan Form
Attachment G	First Source Employment Agreement and Employment Plan
Attachment H	EEO Policy Statement
Attachment I	2018 Living Wage Act Notice and Fact Sheet
Attachment J1	Standard Contract Provisions General Provisions (Construction Contract)
Attachment J2	Standard Contract Provisions General Provisions (Architectural & Engineering Services Contracts)
Attachment K	Bid Bond Form
Attachment L	Bid Guaranty Certification
Attachment M	Release of Lien
Attachment N	Award/Signature Page
Attachment O	Notice to Proceed and Letter Contract

A.8 Obligation to Meet All the Requirements of the IFB Documents

If awarded the Agreement, the Design-Builder shall be obligated to meet all of the requirements of the IFB Documents for the Project Lump Sum Price and in accordance with the Agreement schedule.

A.9 Bidder's Pre-Bid Responsibilities and Representations

Each Bidder shall be solely responsible for examining the IFB Documents, including any addenda issued to the IFB, and all conditions which may in any way affect the Bidder's Bid or the performance of the Work on the Project, including but not limited to:

- a) Examine and carefully study the IFB Documents, including any addenda and other information or data identified in all the IFB Documents;
- b) Visit the Project site and become familiar with and satisfy itself as to the general, local, and site conditions that may affect the fees required to be submitted with the Bidder's Bid;
- c) Address all potential impacts with third parties and ensure all such impacts have been included in the Bidder's Bid;
- d) Become familiar with and aware of all federal, state, and local laws and regulations that may affect the cost, progress, or performance of its work on the Project;
- e) Determine that the IFB Documents are sufficient to indicate and convey understanding of all terms and conditions for the performance of Bidder's work on the Project; and
- f) Notify the Department in writing of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the IFB Documents.

Any failure to fulfill these responsibilities is at the Bidder's sole risk and no relief will be provided by the Department.

A.10 Fixed Price

This will be a Firm Fixed Price, or Lump Sum Price contract. Bidders will be required to provide a Firm Fixed Price which shall include sufficient funds to cover all the expenses necessary to complete the Project, including, but not limited to, profit, home and field office overhead, supervision, labor, materials, equipment, bonds, insurance and other services, including any professional design and engineering services, that may be required to obtain the necessary permits, and construct the work. The Firm Fixed Price shall also include sufficient funding to fund items that are not specifically identified in the Preliminary Drawings and Specifications but which are reasonably inferable therefrom. Bidders shall submit with their bid an Offer Letter in substantially the form of **Attachment B** on the Bidder's letterhead setting forth its Firm Fixed Price and a schedule of values.

A.11 Project Budget and Funding Limitations

The Department's current estimated value for this Project is in the range of \$10,000,000 to \$12,000,000. Accordingly, Bidders are to base their Bids on the estimated budget. Upon award, the Agreement for Design-Build Services, with the actual bid amount, will be submitted to the Council of the District of Columbia for approval.

SECTION B SCOPE OF WORK

B.1 Scope of Work

Under this IFB, the Department will engage a Design-Builder to provide all intermediate and final design, permitting, and construction services required to complete the Project. The Project shall be complete, operating and ready for use on or before the Substantial Completion Date and within the Project bid as specified in Section A.4 of this IFB.

The Project will be located at 2730 Martin Luther King, Jr. Ave., SE, Washington, DC 20032.

Generally, the Design-Builder's responsibilities shall include, but will not be limited to, the following:

- (a) To complete the intermediate and final design, permitting, and construction of the Project in accordance with the IFB Documents, including the preliminary plans and specifications and subsequent Agreement.
- (b) To provide all Project administrative services, design services and construction management services necessary to implement the goals of the Project inclusive of, but not limited to, the following: civil, environmental, drainage, architectural, electrical, structural, and mechanical design services as required for the Project; construction management services inclusive of budgeting, value engineering ("Value Engineering"), scheduling, project administration, management and coordination of subcontractors.
- (c) To conduct additional subsurface investigation work if and as required for the Project.
- (d) To furnish and provide all materials, management, personnel, equipment, hazardous material abatement, supervision, labor and other services necessary to complete the Project.

B.1.1 Design-Builder's Duties; General Intent

The Design-Builder shall work with the Department, the District's parking management firm, and affected government agencies, through a collaborative design process to complete intermediate and final design documents for the Project in accordance with the requirements of the Agreement. The Design-Builder shall engage in necessary preconstruction efforts to ensure that the design is developed in a manner consistent with the Department's goals for the Project (e.g., schedule and quality); to solicit competitive trade bids for the construction work and to develop an acceptable scope and schedule for the work; and to implement the requisite construction and other work necessary, for the DDX and P-15 lots, no later than August 31, 2018, and for the RISE Center lot no later than October 30, 2018. The Design-Builder will be required to provide a "turn-key" Project ready for occupancy and use by DMPED and shall be responsible for all items of cost except for those items set forth in B.12 of this IFB.

B.2 Design and Preconstruction Phase

B.2.1 Initial Deliverables

The Preconstruction Phase will start from the issuance of the notice to proceed, via the issuance of a letter contract for a portion of the contract sum based on the proposed schedule of values up to a maximum of \$950,000.00. The Department will issue a notice to proceed for preconstruction services (the “Preconstruction NTP” or “Letter Contract”), attached hereto as **Attachment O**. Bidders are advised that they are required to submit their Bids premised upon agreeing to the terms of the Preconstruction NTP. To the extent there are any ambiguities or inconsistencies between this IFB, the Standard Contract Provisions and the Preconstruction NTP, the order of precedence shall be: The Standard Contract Provisions; Preconstruction NTP; and the IFB. **A Bid that identifies or describes changes or exceptions to the Standard Contract Provisions or the Preconstruction NTP may be deemed non-responsive.**

The Design-Builder’s initial task will be to develop the intermediate design and schedule for the Project. As part of this effort, the Design-Builder shall prepare and provide the following initial deliverables:

B.2.1.1 Baseline Schedule. Within fourteen (14) days after the Preconstruction NTP is issued, the Design-Builder shall prepare and submit a Baseline Schedule for the Project (the “Baseline Schedule”). The Baseline Schedule shall be subject to review and approval by the Department and the Design-Builder shall incorporate such adjustments to the Baseline Schedule as may be reasonably requested by the Department. The Baseline Schedule shall be prepared in a critical path method (“CPM”) in a sufficient level of detail to permit the Department and the Design-Builder and any other affected parties to properly plan the Project. The Baseline Schedule shall show: (i) key design milestones and subcontractor bid packages; (ii) release dates for long lead items; (iii) release dates for key subcontractors; and (iv) Substantial and Final Completion Dates. The Baseline Schedule must also be submitted in Primavera 6 native format and shall be updated by the Design-Builder, at a minimum, on a bi-weekly basis.

B.2.1.2 Preliminary Design. The Department has previously completed the preliminary design plans and specifications and they are included as Attachment “A-1 through A-3” to this IFB. The preliminary plans consist of approximately 51 drawings for the DDX lot A-1), approximately 30 drawings for the RISE Center lot (A-2), and approximately 32 drawings for the Parcel 15 parking lot (A-3).

The Design-Builder is to use the preliminary plans and specifications to develop the intermediate and final design documents, plans and specifications, which shall include, but not be limited to, the following:

- a) Historic resources survey.

- b) Hazardous materials survey, if needed, for removal of existing utilities and site structures;
- c) Environmental Impact Screening Form (“EISF”) submission notification of exemption. The St. Elizabeths East Campus is exempt from this submission, but notification of the project and filing of the notice is still required.
- d) Summary of required agency review, timetables, including but not limited to: Office of Planning (“OP”), Commission of Fine Arts (“CFA”), and Historic Preservation Office (“HPO”), and National Capital Planning Commission (“NCPC”). The Department has previously obtained conceptual approval for the temporary surface parking lot from CFA.
- e) Parking lot plans and specifications.

B.2.1.3 Deliverables Liquidated Damages. The Design-Builder acknowledges that the Department is engaging the Design-Builder to provide preconstruction support services to minimize the potential for cost overruns, schedule delays or the need for extensive Value Engineering/re-design late in the Project and that the deliverables required under this **Section B.2.1** are key to identify the value of such services. In the event the Design-Builder fails to deliver any of the deliverables required in **Section B.2.1** (and unless such failure is the result of any event of Force Majeure), the Design-Builder shall be subject to liquidated damages in an amount of Five Thousand Dollars (\$5000) plus Five Hundred Dollars (\$500) per day after receiving written notice from the Contracting Officer of failure to submit such deliverables.

B.2.2 Design Management

Between the time the Preconstruction NTP is issued and the time the final design is accepted by the Department and the permit for construction is issued by DCRA, the Design-Builder shall use commercially reasonable best efforts to ensure that: (i) the design evolves in a manner that is consistent with the preliminary plans and specifications, Contractor’s Bid, and Department programmatic requirements; (ii) the design work is properly coordinated; and (iii) the required design deliverables are produced on or before the dates contemplated in the Project schedule. As part of this undertaking, the Design-Builder shall provide the following:

B.2.2.1 Intermediate Design. The Design-Builder shall prepare an intermediate (65% level) design that is a logical development of the approved preliminary design and is consistent with the Department’s schedule, budget and programmatic requirements. The intermediate design shall contain such detail as is typically required for an intermediate design under the Industry Best Practices. The design submittal shall specifically identify any deviations from the approved preliminary design and shall explain the rationale, cost and time implications associated with such deviation. The Department shall have the right to disapprove the intermediate design submittal for any reason. Following review of the intermediate design submission by the Department, the Design-Builder shall revise the intermediate design submission as necessary to incorporate comments, feedback to the satisfaction of the Department.

The Design-Builder's bid shall assume that such revisions will be required, and such revisions shall not entitle the Design-Builder to additional compensation.

In general, the Design-Builder shall be required to undertake the following tasks during this phase:

- (a) Further develop preliminary plans and incorporate design changes.
- (b) Conduct additional community meetings to solicit input and keep constituents informed.
- (c) Prepare necessary presentation materials (renderings) to communicate design and obtain approval of design direction.
- (d) Participate in Community Meetings
- (e) Conduct DOEE, DCRA, DDOT and DC Water Preliminary Design Review meetings.
- (f) If it is necessary for the Project, early inquiry with Public Utility Companies PEPCO and Washington Gas as well as Verizon should be conducted.
- (g) Intermediate specifications for materials, systems, equipment;
- (h) Draft code compliance analysis and drawing;
- (i) A preliminary lay-out for parking lot lighting and pavement markings including ADA requirements and shuttle pickup and drop off locations;
- (j) Preliminary designs for the revenue control systems for the DDX and Parcel 15 parking lot operations, security, and revenue generation for daily and special event operations and any related system appurtenances. The preliminary revenue control plan will address the District operational parameters for the DDX lot to use the upper parking level as a general daily use parking lot and the lower level of the parking lot as a valet lot for large event time periods. The plan will be developed with the assistance of the District's parking management firm and constructed as part of the project. The RISE Center and Parcel 15 lots will not have valet use operations.
- (k) Prepare a DDOT traffic warrant study for a possible traffic signal at the south driveway entrance to the DDX parking lot from Martin Luther King, Jr. Ave, SE. The north DDX parking lot entrance is anticipated to only be used for event parking and not during daily operations. For event parking DMPED will be providing Traffic Control Officers (TCO) at both entrances to the DDX parking lot and the Oak Street SE entrance to the Parcel 15 parking lot.

B.2.2.2 Mid-Point Construction Document Review. Based on the approved Intermediate Design Documents and any approved Value Engineering, the Design-Builder shall prepare a set of Final Construction Documents. It is contemplated that the Construction Documents may be issued in several different sets (i.e. early work packages, wet & dry utilities, site demolition, etc.). As each such set reaches a point where it is approximately Sixty Five percent (65%) complete, the Design-Builder shall prepare and submit a progress printing to the Department for its review and comment.

B.2.2.3 RESERVED

B.2.2.4 Construction Management Plan. The Design-Builder shall submit a draft of its construction management plan (CMP) within thirty (30) days of issuance of the Preconstruction NTP, which shall include, but not be limited to: noise control, hours for construction and deliveries, truck routes, trash and debris removal, traffic and parking control, communications procedures, emergency procedures, quality control/quality assurance procedures, dust control, public street cleaning and repair, planned occupancy of public ways, erosion control, tree protection, vibration monitoring, temporary fire protection measures, project signage, pest control, construction staging, and construction logistics.

B.2.2.5 Additional Preconstruction Services. In addition to those items enumerated above, the Design-Builder shall provide such preconstruction services as are necessary to properly advance the Project. These services shall include, but not be limited to; scheduling, estimating, shop-drawings, the ordering of long-lead materials, archeological studies (if necessary), recommended testing, additional geotechnical testing, and monitoring of historic assets.

B.2.2.6 Constructability/Sole Source/Long-Lead Time Memorandum. Concurrently with the Intermediate Design, the Design-Builder shall prepare a memorandum identifying key construction concerns related to the Project. Such memorandum shall: (i) assess the constructability issues related to the Project, including site logistics; (ii) identify any items where the design is predicated on a single manufacturer and, if so, identify at least two (2) comparable products; and (iii) identify any long-lead delivery items that could adversely affect the schedule contemplated in this IFB. To the extent any such long-lead items are identified, the memorandum shall make recommendations for addressing such items.

B.2.2.7 Final Design. The Design-Builder shall prepare a set of final design documents (“Final Design Documents”) that is a logical development of the approved intermediate design and is consistent with the Department’s schedule, budget and programmatic requirements. The Final Design Documents shall contain at least the level of detail required under Industry Best Practices. The final design submittal shall specifically identify any deviations from the approved intermediate design and shall explain the rationale and cost implications associated with such deviation. The Department shall have the right to disapprove the Final Design Documents submittal for any reason.

The final design submittal shall include at least the following:

- (a) Detailed and dimensioned plans and profiles;
- (b) Final specifications for materials, systems, equipment;
- (c) Completed code compliance analysis and drawing;
- (d) A proposed lay-out for parking lot lighting and pavement marking;

- (e) Final designs for the revenue control systems for parking lot operation, security, and revenue generation for daily and special event operations and any related system appurtenances for DDX and Parcel 15 parking lots. RISE Center lot will not have any revenue control or special security requirements.
- (f) Present the conceptual (if necessary), and final designs to CFA, NCPC, Office of Planning, and other regulatory agencies as required
- (g) Participation in community meetings.

B.2.2.8 Construction Document Review & Coordination. The Design-Builder shall complete each of the Construction Documents packages in a manner that addresses the concerns raised by the Department during the review contemplated in Section B.2.2.2 for such package. The Design-Builder shall issue one or more set of permit documents to the Department for its review and approval (“Permit Set”). With regard to each such set, the Design-Builder shall highlight (or bubble) any aspect of the design that represents a material deviation from the approved design documents and shall address in a narrative format the impact, if any, such departure shall have on the Project’s aesthetics, functionality or performance. The Department shall have the right to disapprove the Construction Documents for any reason. If the Department disapproves the Construction Documents, the Design-Builder will not be entitled to any additional compensation. If, however, the Department disapproves a Construction Document that is a logical extension of the approved Final Design Documents, the Design-Builder will be entitled to an adjustment to the Lump Sum Price and/or the Agreement schedule unless such a package departs from the Scope of Work fairly reflected in the Final Drawings and Specifications and in such event the Design-Builder shall be required to prepare a revised design that complies with the final drawings and specifications (“Drawings and Specifications”) and without any entitlement to an increase in the Lump Sum Price or an adjustment of the Agreement schedule. In the event the Department does not approve a document within fourteen (14) days after issuance, such document shall be deemed approved unless the Department advises that such document is still under review. In the event the Department’s review takes longer than fourteen (14) days, such additional review shall be deemed a change event.

B.2.2.9 Code Review. The Design-Builder shall submit the Permit Set to the Department of Consumer and Regulatory Affairs (“DCRA”) to obtain the necessary building permits to construct the Project. The Design-Builder shall monitor the permit process and shall incorporate any changes or adjustments required by the Code Official. The Design-Builder shall also issue any such changes to the Department for its review and approval. In this submittal, the Design-Builder shall highlight (or bubble) any aspect of the design that represents a material deviation from the permit set documents and shall address in a narrative format the impact, if any, such departure shall have on the Project’s aesthetics, functionality or performance. After obtaining any necessary permits, the Design-Builder shall prepare one or more sets of “issued for construction documents” (the “IFC Set(s)”).

B.2.2.10 Design Changes. If it should become necessary to amend any of the approved IFC Set(s), the Design-Builder shall prepare an amendment to the drawings and shall submit such amendment to the Department for its review and approval. In this submittal, the Design-Builder shall highlight (or bubble) any aspect of the design that represents a material deviation from the permit set documents and shall address in a narrative format the impact, if any, such departure shall have on the Project's aesthetics, functionality or performance. The department will use best efforts to review within 10 business days.

B.2.2.11 Permits. The Design-Builder shall be responsible for preparing and submitting all the required permit applications that are necessary to complete the Project. The Design-Builder shall develop a list of the required permits and shall track the progress of all such permits through the review process. The Design-Builder shall update the Department with the status of each permit that is required for the Project. The Design-Builder shall engage such permit expeditors as the Design-Builder deems necessary or appropriate considering the Project's schedule.

B.2.2.12 Entitlements. The Design-Builder shall prepare such materials and make such presentations as are necessary to obtain the required land use and entitlement approvals. Approvals may be required from (i) the Office of Zoning, (ii) OP, and (iii) the CFA. Given the nature of the Work, it is not envisioned that such approvals will require extensive hearings or submissions.

B. 2.3 Early Release/Abatement & Demolition

B.2.3.1 Abatement & Selective Demolition. Once the intermediate design has been approved, the Department may release the Design-Builder to commence hazardous material abatement and limited site and utility demolition, or other early activities, as applicable.

B.2.3.2 Long Lead Materials. The Department will release funding for long-lead items once the Final Design Documents have been approved. If the Design-Builder believes an earlier release is required to meet the Project schedule, it shall advise the Department and make a recommendation as to the requested release date. Any decision to authorize an early release shall be made by the Department in its sole and absolute discretion. Contractor will require employees to park off site.

B.3 Construction Phase

Based on the approved final (IFC) plans and specifications, the Design-Builder shall construct the Project. During the Construction Phase, the Design-Builder shall be required to cause the Work to be completed in a manner consistent with the design documents approved by the Department and shall provide all labor, materials, insurance, bonds and equipment necessary to fully complete the Project in accordance with the drawings, specifications, schedule and budget that are issued for the Project. The Design-Builder shall be responsible for paying for and obtaining all necessary permits and to pay all necessary

fees for utility connections and the like. The Work shall be accomplished in accordance with the following:

- B.3.1 Drawings & Specifications.** All of the Work shall be constructed in strict compliance and in accordance with the final Construction Documents (IFC) as approved by the Department.
- B.3.2 Compliance with Other Requirements.** In performing the Work, the Design-Builder and its subcontractors shall comply with all of the applicable provisions of the Standard Contract Provisions and the requirements set forth in Section B.4 (Site Safety), Section B.6 (Workhours; Coordination with DGS and the Community), and Section B.7 (Quality Control Plan) of this IFB.
- B.3.3 Site Office.** Throughout the Work, the Design-Builder shall provide and maintain a fully-equipped construction office on the Project site. The Department and the Design Builder will agree on a location after award of the contract. Reasonable location will be determined where utilities are available. The location is tentatively expected to be adjacent to the RISE Center parking lot expansion.
- B.3.4 Supervision.** Throughout the Work, the construction office shall be managed by personnel competent to oversee the Work at all times while construction is underway. Such personnel shall maintain full-time, on-site construction supervision and provide daily inspections, quality control, monitoring, coordination of various trades, record drawings, and daily work log.
- B.3.5 Weekly Progress Meetings.** Throughout the Work, the Design-Builder shall conduct weekly progress meetings following the Design-Builder's generated agenda with the Department's Project Manager and key trade subcontractors. The Design-Builder shall draft and circulate the meeting minutes on a weekly basis.
- B.3.6 Delay Liquidated Damages.** In addition to the liquidated damages provided for in Sections B.12.2 relating to Key Personnel, and B.12.3 relating to deliverables, if the Scope of Work is not substantially complete by the Substantial Completion Date, the Design-Builder shall be subject to liquidated damages in an amount of Seven Thousand Five Hundred Dollars (\$7,500) per day. These damages shall not apply if the delay is the result of Force Majeure and the Design-Builder otherwise complies with the provisions set forth in the Standard Contract Provisions.
- B.3.7 Hazardous Materials.** The Design-Builder's Scope of Work includes the abatement and removal of hazardous materials found anywhere on or within the Project site. In performing such work, the Design-Builder shall comply with all laws, including, without limitation, the requirements of the Environmental Protection Agency and all jurisdictional agencies and all laws relating to safety, health welfare, and protection of the environment, in removing, treating, encapsulating, passivating, and/or disposing of hazardous materials, including, but not limited to, removal, treatment, encapsulation, passivation, and/or disposal of the hazardous materials. If any notices to governmental authorities are required, the Design-Builder shall also give those notices at the appropriate times. The Design-Builder shall ensure

abatement subcontractors and disposal sites are appropriately licensed and qualified. In addition, the Design-Builder shall ensure that any subcontractors involved in the abatement of hazardous materials maintain a contractor's pollution legal liability insurance policy of at least Two Million Dollars (\$2,000,000) for the duration of the Project and a period of three (3) years after Substantial Completion of the Project, and that any disposal site to which hazardous materials are taken carries environmental impairment liability insurance for the duration of the Project and a period of three (3) years after Substantial Completion of the Project. The Design-Builder's obligations under this **Section B.3.7** shall include signing (as the agent for the Department) any manifests required for the disposal of hazardous materials.

B.3.8 Salvage Value. In general, the salvage value of construction material located on the site shall accrue to the Design-Builder and/or its subcontractor.

B.4 Site Safety

B.4.1 General Responsibility. The Design-Builder shall provide a safe and efficient site, with controlled access. As part of this obligation, the Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Project, and shall comply with the requirements set forth in **Article 16, Section F** of the Standard Contract Provisions (**Attachment J1**).

B.4.2 Safety Plan. Prior to the start of construction activities, the Design-Builder shall prepare a safety plan for the Construction Phase conforming to OSHA 29 CFR 1926. This Safety Plan developed by the Design-Builder shall describe the proposed separation and the specific nature of the safety measures to be undertaken including fences and barriers that will be used and the site security details. This Safety Plan will be submitted to the Department for review and approval prior to the commencement of construction. Once the Safety Plan has been approved, the Design-Builder shall comply with the plan at all times. The Design-Builder shall be required to revise the Safety Plan as may be required or as requested by the Department. The cost of revising and complying with the plan shall not entitle the Design-Builder to an increase in the bid price. The Design Builder will not be permitted to commence the Construction Phase until the Safety Plan is approved and in no event shall any resulting delay constitute an excusable delay. Additionally, the Design-Builder shall comply with the requirements of **Article 27, Section A** of the Standard Contract Provisions (**Attachment J1**).

B.4.3 Safety Barriers/Fences. As part of its responsibility for Project safety, the Design-Builder shall install such fences and barriers as may be necessary to separate the construction areas of the site from those areas that are then being used by the Department. The Design-Builder shall describe in the Safety Plan the proposed separation and the specific nature of the fences and barriers that will be used.

B.4.4 Site Security. The Design-Builder shall be responsible for site security and shall be required to provide such watchman as are necessary to protect the site from unwanted intrusion.

B.4.5 Exculpation. The right of the Department to comment on the Safety Plan and the nature and location of the required fences and barriers shall in no way absolve the Design-Builder from the obligation to maintain a safe site.

B.5 Reporting Requirements

The Design-Builder shall be required to submit the following reports:

B.5.1 Monthly Report. The Design-Builder shall provide written reports to the Department, on the progress of the entire Work at least monthly from Preconstruction NTP until Final Completion of the Project is achieved. The monthly report shall include: (i) an updated schedule analysis, including any plans to correct defective or deficient work or recover delays; (ii) an updated cost report; (iii) a monthly review of cash flow; (iv) a quality control report; and (v) progress photos.

B.5.2 Bi-Weekly Schedule Updates. The Design-Builder shall provide a Baseline Schedule update to the Department, on the progress of the entire Work at least monthly, in the same format set forth in **Section B.2.1.1** of this IFB. The update shall reflect the actual progress of the Project, identify developing or potential delays, regardless of their cause, and reflect the Design-Builder's best projection of the actual date by which Substantial Completion and Final Completion of the Project will be achieved. The Design-Builder shall also state what must be done to avoid or reduce that delay, changes that have occurred since the last update, including those related to major changes in the Scope of Work, activities modified since the last update, revised projections of durations, progress and completion, revisions to the schedule logic or assumptions, and other relevant changes.

B.5.3 Use of Prolog. The Design-Builder shall utilize the Department's Prolog system to submit any and all documentation required to be provided by the Design-Builder, including, but not limited to: (i) requests for information; (ii) submittals; (iii) meeting minutes; (iv) invoices/applications for payment (full package including all forms required by the Department); (v) certified payrolls (in addition to upload via LCP Tracker); (vi) drawings and specifications; (vii) punch list; and (viii) other documents as may be designated by the Department.

B.6 Workhours; Coordination with the Department, DDOT, and Community

B.6.1 Workhours. The Design-Builder shall comply with the Noise Ordinance and neither it nor its subcontractors shall undertake work on the Project site other than at the times and sound level permitted by the Noise Ordinance. It is anticipated that in order to meet this schedule the Design Builder will be required to work outside normal permitted work hours.

B.6.2 Parking. The Design-Builder shall organize its work in such a manner to minimize the impact of its operations on the surrounding community. To the extent that the number of workers on the site is likely to have an adverse impact on neighborhood parking, the Design-Builder shall develop a parking plan for those individuals working on the site that is reasonably acceptable to the Department.

B.6.3 Wheel Washing Stations. The Design-Builder shall provide wheel washing stations on site to prevent the accumulation of dirt and other refuse on the streets surrounding the Project site.

B.6.4 Outreach Plan. The Design-Builder shall keep the Department informed of the construction activities and their potential impact on the community. The Design-Builder shall submit the plan to the Department prior to its implementation and such plan shall be subject to the Department's review and approval.

B.6.5 Site Office. Throughout the Project, the Design-Builder shall provide and maintain a fully equipped construction office for the Project site.

B.7 Quality Control Plan

B.7.1 General Obligation. The Design-Builder shall be responsible for all activities necessary to manage, control, and document work to ensure compliance with the Contract Documents. The Design-Builder's responsibility includes ensuring adequate quality control services are provided by the Design-Builder's employees and its subcontractors at all levels. The Work activities shall include safety, submittal management, document reviews, reporting, and all other functions related to quality construction.

B.7.2 Quality Control Plan. Within ten (10) days after the Final Design Documents are approved, the Design-Builder shall update the quality control plan for the Project (the, "Quality Control Plan"). A draft of the Quality Control Plan shall be submitted to the Department and shall be subject to the Department's review and approval. The Quality Control Plan shall be tailored to the specific products/type of construction activities contemplated in the Intermediate and Final Design Documents, and in general, shall include a table of contents, quality control team organization, duties/responsibilities of quality control personnel, submittal procedures, inspection procedures, deficiency correction procedures, documentation process, and a list of any other specific actions or procedures that will be required for key elements of the Work.

B.7.3 Implementation. During the Construction Phase, the Design-Builder shall perform quality control inspections and create reports based on such inspections pursuant to the Quality Control Plan. These quality control reports shall be provided to the Department electronically on a daily basis. The Design-Builder shall incorporate a quality control section in the progress meetings to discuss outstanding deficiencies, testing/inspections, and upcoming work. The monthly report shall include a detailed summary of the steps that are being employed to provide quality construction and workmanship. The monthly report should specifically address issues or deficiencies raised during the month and outline the steps that are being used to address such issues. Deficiencies should be corrected in accordance with Department standard contract provisions.

B.7.4 Corrective Action Plan. The Department shall have the right to direct the Design-Builder to revise the Quality Control Plan in accordance with the Agreement.

B.8 Project Close-out

- B.8.1 Punchlist.** Promptly after Substantial Completion, the Design-Builder shall develop a punch list. Once the punch list is prepared, the Design-Builder shall inspect the Work along with representatives from the Department. The punch list shall be revised to reflect additional work items that are discovered during such inspection. The Design-Builder shall correct all punch list items no later than thirty (30) days after Substantial Completion is achieved.
- B.8.2 Training.** The Design-Builder shall provide training to Department staff on all the required systems such as revenue control and other mechanical systems on the project. The Design-Builder shall be required to schedule such training sessions and shall use commercially reasonable efforts to ensure all such training occurs prior to the Substantial Completion Date.
- B.8.3 Warranties & Manuals.** Following Substantial Completion Date, but no later than fifteen (15) days following the Substantial Completion Date, the Design-Builder shall prepare and submit the following documentation: (i) a complete set of product manuals (O&M), training videos, warranties, etc.; (ii) attic stock; (iii) an equipment schedule; (iv) a proposed schedule of maintenance; (v) environmental, health and safety documents; and (vi) all applicable inspection certificates/permits, etc.

No later than thirty (30) days following the Substantial Completion Date, the Design-Builder shall prepare and submit: (i) a complete set of its Project files; and (ii) a set of record drawings.

- B.8.4 Eleven Month Walk.** The Design-Builder shall use commercially reasonable efforts to schedule a joint inspection of the Project during the eleventh month after Substantial Completion is achieved. During such inspection, the Design-Builder and a representative of the Department shall walk the Project to identify any necessary warranty work.

B.9 Costs and Fees

- B.9.1 Reimbursable Costs** – all costs for the project are to be included in the Lump Sum Price bid for the project.

B.10 Design-Build Lump Sum Price

The Design-Builder's compensation shall consist of the Lump Sum Price bid by the selected Bidder. This Lump Sum Price shall include all costs for a complete project, including all subcontractor costs, general conditions, permit fees, pre-construction costs, labor, materials, installation costs of all components, and professional services, including any design or engineering services, necessary for the project.

B.11 Excluded Cost Elements

It is the Department's intent that the Design-Builder provide a turn-key solution for the implementation of the Project, and the bid price as described in **Section A.10 and Section D**

has been developed based on such framework. The Design-Builder shall advance the Project in a manner consistent with such bid and the understanding that only the following cost elements are excluded from the bid price set forth in **Section A.10** of the IFB:

- (a) Owner IA/IV Material Testing;
- (b) Owner IA/IV Inspections; and
- (c) Owner Plan Review.

B.12 Key Personnel; Diversion

B.12.1 Identification of Key Personnel. The following individuals shall be considered key personnel (“Key Personnel”) for the Builder: (i) the Project Executive; (ii) the Field Superintendent; (iii) the Project manager who will supervise the design and Work; and (iv) the Safety/Quality Assurance/Quality Control Manager that will manage quality control and interact with the Department’s quality control representative. The Key Personnel for the architect/engineer shall include (i) the design principal-in-charge; (ii) the project designer; (iii) the landscape architect; (iv) the civil engineer; and (v) the key geotechnical engineer. The Design-Builder will not be permitted to reassign any of the Key Personnel unless the Department approves the proposed reassignment and the proposed replacement.

B.12.2 Key Personnel Liquidated Damages. If the Design-Builder removes or reassigns one of the Key Personnel (excluding, however, instances where such personnel become unavailable due to Design-Builder) without the prior written consent of the Department, the Design-Builder shall pay to the Department the sum of Twenty-Five Thousand Dollars (\$25,000) as liquidated damages. These liquidated damage amount shall not bar recovery of any other damages, costs or expenses other than the Department’s internal administrative costs. In addition, the Department shall have the right, to be exercised in its sole discretion, to remove, replace or to reduce the scope of services of the Design-Builder if a member of the key personnel has been removed or replaced by the Design-Builder without the consent of the Department.

B.13 Deliverable List

The Design-Builder shall be required to prepare and submit the following, in addition to any other deliverables required under this IFB and the IFB Documents:

B.13.1 Design and Preconstruction Phase Deliverables

- (a) Project Schedule.
- (b) List of Long Lead Items that could adversely impact the Project’s schedule.
- (c) Permit Set of Construction Documents, including DCRA plan review responses.
- (d) Issued for Construction (IFC) Documents.
- (e) List of subcontractors from which the Design-Builder intends to solicit bids and bidding procedure.
- (f) Trade bid tabulations, including all subcontractor Bids.
- (g) Report outlining Value Engineering strategies.

- (h) Construction Phase Baseline Schedule.
- (i) Insurance Certificates
- (j) Payment and Performance Bonds

B.13.2 Construction Deliverables

- (a) Hazardous Material Abatement Subcontractor Insurance Certificates.
- (b) Hazardous Material Abatement Records.
- (c) Construction Document Packages.
- (d) Progress Meeting Minutes.
- (e) Project Schedule Updates.
- (f) Project Progress Reports.
- (g) Cost Variance Report.
- (h) OSHA Safety Plan.
- (i) Close out documents (Product Manuals, As Built Plans, Warranties, etc.).
- (j) Quality Control Plan.
- (k) Quality Control Inspection Reports.
- (l) Corrective Action Plan.
- (m) Prolog submissions.
- (n) Invoices and Acceptable Application for Payment with Release of Liens (**Attachment M**) and Claims.
- (o) Insurance Certificates.
- (p) Performance and Payment Bonds and Agreement of Indemnity
- (q) Certificate of Substantial Completion executed by the Project Architect/Engineer and submitted Department for review, concurrence and approval
- (r) Documents that may be required by Contracting Officer from time to time.

B.13.3 Close-Out Deliverables

- (a) A complete set of the Design-Builder's Project files.
- (b) A complete set of product manuals (O&M), training videos, warranties, etc.
- (c) As built record drawings.
- (d) Proposed schedule of maintenance.
- (e) Environmental, health & safety documents.

B.14 Licensing, Accreditation and Registration

The Design-Builder and all its subcontractors and subconsultants (regardless of tier) shall comply with all applicable District of Columbia, state, and federal licensing, accreditation, and registration requirements and standards necessary for the performance of the Agreement. Without limiting the generality of the foregoing, all drawings shall be signed and sealed by a professional Architect or engineer licensed in the District of Columbia.

B.15 Conformance with Laws

It shall be the responsibility of the Design-Builder to perform under the Agreement in conformance with the Department's Procurement Regulations and all statutes, laws, codes, ordinances, regulations, rules, requirements, orders, and policies of governmental bodies.

B.15.1 Davis-Bacon Act

The Davis-Bacon Act is applicable to this Project. As such, the Contractor and its trade subcontractors shall comply with the wage and reporting requirements imposed by this Act. Applicable wage determination rates are attached hereto as **Attachment E**.

B.15.2 SBE Subcontracting Plan

The Contractor shall provide a SBE Subcontracting Plan (**Attachment F**) as described in Section C.2.

B.15.3 First Source Employment Agreement and Employment Plan

The Contractor shall provide a First Source Employment Agreement and Employment Plan (**Attachment G**) as described in Section C.3.

B.15.4 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 **Attachment H**. An award cannot be made to any Contractor who has not satisfied the equal employment requirements.

B.15.5 Living Wage Act

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

B.15.6 Apprenticeship Act

The Apprenticeship Act shall comply with this contract and the Contractor and all of its trade subcontractors shall be required to comply with that act. In addition, thirty-five percent (35%) of all apprentice hours worked on the Project shall be worked by District residents.

B.16 Time is of the Essence

Time is of the essence with respect to the Design-Build Agreement. The Project must be Substantially Complete by the Substantial Completion Date. As such, by submitting a Bid, the Design-Builder agrees to dedicate such personnel and other resources as are necessary to

ensure that the Project is completed on-time and in a diligent, skilled, and professional manner.

B.17 Applicability of Standard Contract Provisions

The Standard Contract Provisions (General Provisions) Construction Contracts (**Attachment J**) and the Standard Contract Provisions (General Provisions) Architect & Engineering Contracts (**Attachment J.2**) are hereby incorporated into this IFB and resulting contract.

B.18 Special Standards of Responsibility

In accordance with DC Code 2-354.02 the Department has determined the following Special Standards of Responsibility will apply to ensure that bidders are properly qualified to perform the work. Bidders shall affirmatively respond to each of the Special Standards of Responsibility below as described in F.7.

1. The Bidder shall demonstrate that the Design Builder or the Design Builder's Team:
 - a. Have completed construction of three (3) projects in urban settings similar in size and scope within the past ten (10) years in the Maryland, Virginia and/or Washington DC area. Similar in size means projects with a total value of at least \$8 million. Similar in scope means parking lots with and without revenue control, paving and construction of roadways, and major urban sitework projects with significant hardscape elements.
 - b. Have completed the design and permitting of three (3) projects in urban settings similar in size and scope within the past ten (10) years in the Maryland, Virginia, and/or Washington DC area. Similar in size means projects with a total value of at least \$8 million. Similar in scope means parking lots with and without revenue control, paving and construction of roadways, and major urban sitework projects with significant hardscape elements.
 - c. Key Personnel, including the Civil Engineer, Landscape Architect, Overall Project Manager of the Design-Build team, Construction Field Superintendent, and Construction Project Manager (if different than Overall Project Manager) shall be identified and have a minimum of ten (10) years' experience working on projects similar in size and scope. Similar in size means projects with a total value of at least \$8 million. Similar in scope means parking lots with and without revenue control, paving and construction of roadways, and major urban sitework projects with significant hardscape elements.
2. The Bidder shall demonstrate that the Design-Builder or the Design-Builder team has completed at least three (3) design-build projects on a similar fast-track schedule within the past ten (10) years. Similar fast-track schedule shall mean a schedule requiring an accelerated design and permitting timeline, followed by an aggressive construction timeline, including early work opportunities for the project.

SECTION C ECONOMIC INCLUSION

C.1 Preference for Small, Local and Disadvantaged Business Enterprises

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

C.1.1 Application of Preferences

Under the provisions of the Act, preferences shall be given to Contractors that are certified by the Department of Small and Local Business Development as being a small business enterprise, having resident business ownership, having a longtime resident business, being a local business enterprise, being a disadvantaged business enterprise, or being a local business enterprise with its principal office located in an enterprise zone. (A copy of the certification acknowledgment letter must be submitted with the Contractor’s Bid.) A percentage reduction in price shall be granted to each bidder as follows:

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

C.1.2 Maximum Preference Points Awarded

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

C.1.3 Preferences for Certified Joint Ventures

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

C.1.4 Verification of Contractor’s Certification as a Certified Business Enterprise Any bidder seeking to receive preferences on this solicitation must be certified at the time of

submission of its Bid. The CO will verify the Contractor's certification with DSLBD, and the Contractor should not submit with its bid any additional documentation regarding its certification as a certified business enterprise.

- (a) Any vendor seeking certification in order to receive preferences under this solicitation should contact the:
Department of Small and Local Business Development
ATTN: CBE Certification Program
441 Fourth Street, NW, Suite 850N
Washington DC 20001
- (b) All vendors are encouraged to contact DSLBD at (202) 727-3900 if additional information is required on certification procedures and requirements.

C.2 LSDBE Utilization

C.2.1 The mandatory subcontracting requirements are as follows:

- (a) Unless the Director of the Department of Small and Local Business Development (DSLBD) has approved a waiver in writing in accordance with D.C. Official Code §2-218.51, for all contracts in excess of \$250,000, **at least 50% of the dollar volume of the contract shall be subcontracted to qualified small business enterprises (SBEs).**
- (b) If there are insufficient SBEs to completely fulfill the requirement of paragraph (a)(1), then the subcontracting may be satisfied by subcontracting 50% of the dollar volume to any qualified certified business enterprises (CBEs); provided, however, that all reasonable efforts shall be made to ensure that SBEs are significant participants in the overall subcontracting work.
- (c) A prime contractor that is certified by DSLBD as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of sections C.2.1 (a) and C.2.1 (b) of this clause.
- (d) Except as provided in C.2.1 (c) and C.2.1 (f), a prime contractor that is a CBE and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 50% of the subcontracting effort shall be with CBEs. A CBE prime contractor that performs less than 35% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- (e) A prime contractor that is a certified joint venture and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 50% of the subcontracting effort shall be with CBEs. A certified joint venture prime contractor that performs less than 50% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- (f) Each CBE utilized to meet these subcontracting requirements shall perform at least 35% of its contracting effort with its own organization and resources.

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

C.2.2 Subcontracting Plan

If a bidder is required by law to subcontract under this Contract, it must submit a subcontracting plan in accordance with D.C. Official Code § 2-218.46 (d). The plan shall be submitted as part of the bid and may only be amended with the prior written approval of the Contracting Officer (CO) and Director of DSLBD. Any reduction in the dollar volume of the subcontracted portion resulting from an amendment of the plan shall inure to the benefit of the District. Each subcontracting plan shall include the following:

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

C.2.3 Copies of Subcontracts

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

C.2.4 Subcontracting Plan Compliance Reporting

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

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

C.2.4.1 If the fully executed subcontract is not provided with the quarterly report, the prime contractor will not receive credit toward its subcontracting requirements for that subcontract.

C.2.5 Annual Meetings

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

C.2.6 Notices

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

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

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

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

C.2.7.3 If the CO determines the Contractor's failure to be a material breach of the contract, the CO shall have cause to terminate the Contract for default pursuant to the terms set forth in the Standard Contract Provisions.

C.3 Residency Hiring Requirements for Contractors & Subcontractors.

C.3.1 At least fifty-one percent (51%) of the Contractor's team and every sub-consultant's employees hired after the Contractor enters into a contract with the Department, or after such sub-consultant enters into a contract with the Contractor, to provide the required goods or services, shall be residents of the District of Columbia. In addition, the Contractor shall use commercially reasonable best efforts to comply with the workforce percentage requirements established by the adopted amendments to the First Source Employment Agreement Act of 1984 (D.C. Code §§ 2-219.01 *et seq.*) and any implementing regulations, including, but not limited to, the following requirements for contracts in excess of Five Million Dollars:

- (a) At least 20% of journey worker hours by trade shall be performed by District residents;

- (b) At least 60% of apprentice hours by trade shall be performed by District residents;
- (c) At least 51% of skilled laborer hours by trade shall be performed by District residents; and
- (d) At least 70% of common laborer hours by trade shall be performed by District residents.

C.3.2 Upon execution of the contract, the Contractor and all of its member firms, if any, and each of its subcontractors and sub-consultants shall submit to the Department a list of current employees that will be assigned to work under the contract, the date that they were hired and whether or not they live in the District of Columbia.

C.3.3 The Contractor shall comply with subchapter X of Chapter II of Title 2, and all successor acts thereto, including by not limited to the Workforce Intermediary Establishment and Reform of the First Source Amendment Act of 2011, and the rules and regulations promulgated thereunder. The Contractor and all member firms, subcontractors, tier subcontractors, sub-consultants, and suppliers with contracts in the amount of \$300,000 or more shall be required to comply with the following: (i) enter into a First Source Employment Agreement (**Attachment G**) with the D.C. Department of Employment Services (“DOES”) upon execution of the contract; (ii) submit an executed First Source Agreement to DOES prior to beginning project(s); (iii) make best efforts to hire at least 51% District residents for all new jobs created under the contract; (iv) list all employment vacancies with DOES; (v) submit monthly compliance reports to DOES by the 10th of each month; (vi) at least 51% apprentices and trainees employed must be residents of the District registered in a program approved by the D.C. Apprenticeship Council; and (vii) trade contractors and subcontractors with contracts in the amount of \$500,000 or more must register an apprenticeship program with the D.C. Apprenticeship Council.

C.4 Subcontracting Administration

The Contractor shall, through Subcontractors or its own forces, perform all of the Work necessary to construct the Project(s) so that it is complete, safe, and properly built in strict accordance with the Contract Documents. Without limitation, the Contractor shall provide all of the labor, materials, tools, equipment, temporary services, and facilities necessary to complete the construction and installation of the Project. The Work shall be carried out in a good and workmanlike, first-class manner, and in timely fashion. All materials and equipment to be incorporated into the Project shall be new and previously unused, unless otherwise specified, and shall be free of manufacturing or other defects. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. If required by the Department, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

- C.4.1** It is understood that the Contractor may, subject to the terms of this Contract, including but not limited to Sections C.2. and C.3 of this IFB, subcontract a portion of the work to a Subcontractor pursuant to written contract with the Contractor; provided, however, that the Contractor shall not be permitted to subcontract all or substantially all of the Work to a single Subcontractor.
- C.4.2** The Department may at any time direct the Contractor to terminate any Subcontractor or supplier performing services or providing goods on the Project and may require the Contractor to replace such Subcontractor or supplier.
- C.4.3** The Department may elect to review the form of any such subcontract or agreement with a material supplier to insure that such contract incorporates the contractual provisions required by this Agreement.
- C.4.4** The Contractor shall solidify all services and materials for the Project over \$25,000 (other than Self-Performed Work) via written subcontracts or, for contracts requiring provision of materials or equipment only, and not labor, via written supply agreements. All subcontracts and supply agreements shall include the following provisions:
- C.4.5** The Contractor agrees that all of its subcontracts and supply agreements for Work to be performed within the scope of this Agreement shall include the following provisions:
- C.4.5.1** that, to the extent of the Work or supply within the Contract's scope, the Subcontractor or supplier is bound to the Contractor for the performance of all obligations which the Contractor owes the Department under the Contract;
 - C.4.5.2** that the Subcontractor or supplier is not in privity with the Department and shall not seek compensation directly from the Department on any third-party beneficiary, quantum meruit, or unjust enrichment claim, or otherwise, except as may be permitted by any applicable mechanic's lien law;
 - C.4.5.3** that the Department is a third-party beneficiary of the subcontract or supply agreement, entitled to enforce any rights thereunder for its benefit;
 - C.4.5.4** that the Subcontractor or supplier consents to assignment of its agreement to the Department, at the Department's sole option, if the Contractor is terminated for default;

- C.4.5.5** that the Subcontractor or supplier shall comply immediately with a written order from the Department to the Contractor to suspend or stop work;
- C.4.5.6** that the Subcontractor or supplier shall maintain records of all Work it is requested or authorized to do on a time and material or cost-plus basis, or with respect to claims that it has asserted on a time and materials or cost-plus basis, during the Project and for a period of time specified in the General Conditions and requiring the Subcontractor or supplier to make those records available for review or audit by the Department during that time;
- C.4.5.7** that the Subcontractor shall obtain and maintain, throughout the Project, workers' compensation insurance in accordance with the laws of the District of Columbia (This provision is not applicable to supply agreements.);
- C.4.5.8** that, if the Department terminates the Contract for convenience, the Contractor may similarly terminate the subcontract or supply agreement for convenience, upon seven (7) days' written notice to the Subcontractor or supplier, and that the Subcontractor or supplier shall, in such a case, be entitled only to the costs set forth in the Standard Contract Provisions;
- C.4.5.9** that the Department shall have the right to enter into a contract with the Subcontractor or supplier for the same price as its subcontract or supply agreement price less amounts already paid, if the Contractor files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it;
- C.4.5.10** that the Subcontractor or supplier shall not be entitled to payment for defective or non-conforming work, materials or equipment, and shall be obligated promptly to repair or replace non-conforming work, materials or equipment at its own cost;
- C.4.5.11** that Subcontractors and suppliers promptly pay Subcontractors and suppliers at lower tiers, imposing upon the Subcontractors and suppliers a duty to pay interest on late payments, and barring reimbursement for interest paid to lower tier Subcontractors or suppliers due to a Subcontractor's or supplier's failure to pay them in timely fashion;
- C.4.5.12** that all Subcontractors at all tiers comply with the provisions of Sections C.2 and C.3 (LSDBE Utilization and Residency Hiring Requirements, respectively); provided, however, that the Contractor may, in its reasonable discretion impose a different LSDBE subcontracting goal on some or all of its Subcontractors; provided, further, however, that nothing in this provision shall be deemed to excuse the Contractor from using its best efforts to achieve the LSDBE subcontracting goal on an aggregate basis for the Project;

- C.4.5.13** that allows the Contractor to withhold payment from the Subcontractor if the Subcontractor does not meet the requirements of the Subcontract;
- C.4.5.14** that requires a lien and claim release as well as waiver provisions substantially identical to those in this Contract.
- C.4.5.15** Within seven (7) days of receiving any payment from the Department including amounts attributable to Work performed, or materials or equipment supplied, by a Subcontractor or supplier, the Contractor shall either pay the Subcontractor or supplier for its proportionate share of the amount paid to the Contractor for the Subcontractor's or supplier's Work or materials or equipment, or notify the Department and the Subcontractor or supplier, in writing, of the Contractor's intention to withhold all or part of the payment and state the reason for the withholding. All monies paid to the Contractor under the Contract shall be used first to pay amounts due to Subcontractors or suppliers supplying labor or materials for the Project and only money remaining after such payments are made may be retained by the Contractor.
- C.4.5.16** Monies paid to the Contractor for work performed or goods provided by a Subcontractor or supplier shall be deemed to have been fully paid to the Subcontractor or supplier. Any interest paid to Subcontractors or suppliers because the Contractor has failed to pay them in timely fashion shall not entitle the Contractor to a Change Order.
- C.4.5.17** The Contractor shall not substitute or replace any Subcontractor or supplier certified by DSBLD without the Department's prior written consent.
- C.4.5.18** The Department has the right to contact Subcontractors or suppliers at all tiers or material or equipment suppliers directly to confirm amounts due and owing to them or amounts paid to them for Work on the Project, and to ascertain from the Subcontractors or suppliers at all tiers their projections of the cost to complete their Work or to supply their material or equipment, or the existence of any claims or disputes. In doing so the Department shall not issue any directions to Subcontractors or suppliers at any tier.

C.5 Apprenticeship Act

The D.C. Apprenticeship Act of D.C. Law 2-156, ("Act") as amended shall apply to this Project. All subcontractors selected to perform work on the Project on a craft-by-craft basis shall be required to comply with this Act. All terms and conditions of the D.C. Apprenticeship Council Rules and Regulations shall be implemented. The Prime Contractor shall be liable for any subcontractor non-compliance.

SECTION D
FIRM FIXED PRICE

- D.1 Firm Fixed Price.** The Contractor will be paid a firm fixed-price (or lump sum price) to Fully Complete the Project.
- D.2 Certain Work Included in the Lump Sum Price.** The Contractor acknowledges and understands that the Lump Sum Price is based on the Preliminary Drawings and Specifications (**Attachment A**), which are incorporated into this Contract. It is understood and agreed that the Lump Sum Price represents the Contractor's offer to Fully Complete the Project. The Parties acknowledge and agree that it is their intent to have the Contractor provide all labor, materials, and equipment to fully complete the project as contemplated in the Contract Documents, for the Lump Sum Price and consistent with the Project Schedule. In furtherance of such intent, the Contractor hereby assumes the risks associated with and shall be responsible for (i) any changes in market conditions that affect the cost of labor or materials; (ii) coordination issues between the drawings; (iii) elements of work not shown on the Contract Documents, but which are reasonably inferable from the Contract Documents; (iv) cost associated with acceleration of the work and expediting of materials necessary to meet the Project Schedule which are the result of anything other than an Excusable Delay; and (v) the risk of subcontractor default or non-performance. It is understood and agreed by the parties that items (i) through (v) listed in the preceding sentence are not intended to be an exclusive list of the risks assumed by the Contractor and that such items represent a partial list of the risks assumed by the Contractor.
- D.3 Review of Contract Documents.** The Department intends to award the contract to a Contractor in part because of its expertise in constructing similar projects. Before agreeing to the Lump Sum Price, the Contractor has reviewed the Preliminary Drawings & Specifications for accuracy, constructability, and completeness and was required to bring such deficiencies to the attention of the Department and to address any such deficiencies. The Contractor acknowledges that any additional deficiencies identified after agreement upon the Lump Sum Price shall not be the basis for a change in the Lump Sum Price or delaying the Project Schedule to the extent that any such deficiencies in the Preliminary Drawings and Specifications could have been identified by such review by a competent Contractor.
- D.3.1** During the course of the Work, should any errors, omissions, ambiguities or discrepancies be found on the Contract Documents, or should there be found any discrepancies between the Contract Documents to which Contractor has failed to call attention before agreeing to the Lump Sum Price, the Contractor shall bring any such errors, omissions, ambiguities or discrepancies to the attention of Department, and the Department will interpret the intent of the Contract Documents. Contractor hereby agrees to abide by and to carry out the Work in accordance with the decision of the Department. Wherever the intent of the Contract Documents is not indicated clearly or there is a conflict between the Contract Documents, the Contractor will be held to have included in the Lump Sum Price the more expensive material or method of construction

and the quantity of material.

D.3.2 If any item or material shown on the Preliminary Drawings is omitted from the Specifications, or vice versa (except when the Preliminary Drawings and Specifications clearly exclude such omitted item), and such item or material is required to complete the detail shown or specified, and if additional details or instructions are required to complete the Work, then the Contractor is deemed to have made an allowance in the Lump Sum Price for the completion of the Work, consistent with adjoining or similar details and the best accepted practices of the trade for projects of this type and quality, whichever is more expensive, unless such additional information was not reasonably inferable from the Contract Documents. Without limiting the Contractor's other duties, in the case of a difference among the Contract Documents as to the Contractor's obligations, or an inconsistency in the Contract Documents, the Department will decide which requirement governs; however, the Contractor shall assume that the more expensive material or method of construction and the quantity of material shall be required without a change to the Lump Sum Price.

D.3.3 Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly examined all Contract Documents, including all details, plans, elevations, sections, schedules and diagrams, has visited the site, has become familiar with local conditions under which the Work is to be performed, has correlated personal observations with the requirements of the Contract Documents, and has satisfied himself before executing the Contract as to all matters that can affect the Work and its cost, including: (1) the nature of the land and subsoil; (2) the form and nature of the site and surrounding areas; (3) details and levels of existing pipe lines, conduits, sewers, drains, cables or other existing services; (4) the quantities, nature and availability of the materials, tools, equipment and labor necessary for the completion of the Work;(5) the means of access to the site and any accommodation he may require; (6) uncertainties of weather and physical conditions at the site; and in general to have himself obtained all necessary information as to risk contingencies, climatic, hydrological and natural conditions and other circumstances which may influence or affect his performance of the Work. The Contractor waives any and all claims against the Department arising from or relating to such contingencies and conditions that are reasonably inferable from the Contract Documents in light of the required preconstruction review and inspection and the Contractor's expertise in the field of construction.

SECTION E
EVALUATION AND AWARD CRITERIA

E.1 CONTRACT AWARD

- E.1.1** This procurement is being conducted in accordance with the provisions of §4720 of the Department's Procurement Regulations (27 DCMR, Chapter 47).
- E.1.2** The Department reserves the right to accept or reject bids resulting from this solicitation. The Chief Contracting Officer may reject all bids or waive any minor informality or irregularity in bids received whenever it is determined that such action is in the best interest of the District.
- E.1.3** The Department intends, but is not obligated to, make an award to the qualified, responsible Contractor(s) whose bid is responsive to the IFB and is most advantageous to the Department considering price as submitted in the Offer Letter and Bid Form (**Attachment B**) and the price-related evaluation factors identified in the IFB.

SECTION F
BID ORGANIZATION AND SUBMISSION

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

F.1 Bid Identification

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

“SOLICITATION NUMBER: DCAM-18-CS-0005
ST. ELIZABETHS EAST CAMPUS STAGE 1 PHASE 1 INFRASTRUCTURE
IMPROVEMENTS - TEMPORARY SURFACE PARKING LOTS

F.2 Delivery or Mailing of Bids:

Submissions shall be delivered or mailed to:

Department of General Services
Attn: George Lewis
Associate Director
2000 U Street NW, 8th Floor
Washington, D.C. 20009
George.Lewis@dc.gov

F3 Pre-Bid Conference and Site Visit

The pre-bid conference will take place **March 8, 2018 at 11:00am** at the R.I.S.E Demonstration Center located at 2730 Martin Luther King, Jr. Ave, SE, Washington, DC 20032

F.4 Questions about the Solicitation

Questions about the solicitation shall be submitted via email no later than **4:00pm, March 12, 2018** to james.marshall@dc.gov. The Department will post responses to all questions received on the Department's web site at dgs.dc.gov. Questions will not be accepted after this date.

F.5 Date and Time for Receiving Bids

Submissions shall be received no later than **2:00 pm** local time on **March 27, 2018**. The Contractor assumes the sole responsibility for timely delivery of its submission, regardless of the method of delivery.

F.6 Bid Opening

A public Bid Opening will be held at **3:00 pm** on **March 27, 2018** at the Reeves Center Community Room 2nd Floor 2000 14th Street, NW Washington, DC.

F.7 Attachments and Other Bid Documents

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

- (a) A signed Award/Signature Page (**Attachment M**);
- (b) Acknowledgement of Amendments (Award/Signature Page Section 13);
- (c) The IFB pages 2 – 72;
- (d) Form of Offer Letter and Bid Form - Each Contractor shall submit a Form of Offer Letter and Bid Form (**Attachment B**);
- (e) Bidder/Offeror Certification Form – Each Contractor shall submit a Bidder/Offeror Certification Form (**Attachment C**);
- (f) Tax Affidavit - Each Contractor shall submit a tax affidavit provided as **Attachment D**. In order to be eligible for this procurement, Contractors must be in full compliance with their tax obligations to the District of Columbia government;
- (g) Subcontracting Plan Form - Each Contractor shall submit a Subcontracting Plan Form provided as (**Attachment F**);
- (h) First Source Employment - Each Contractor shall submit the First Source Employment Agreement provided as (**Attachment G**);
- (i) EEO Policy Statement (**Attachment H**);
- (j) Bid Bond or Bid Guarantee Certification - Each Contractor shall submit a Bid Bond or Bid Guarantee Certification substantially in the form of (**Attachment K**) or (**Attachment L**), respectively;
- (k) Name, address, phone number and email address of the Bidder's designated point of contact
- (l) Bidders are required to provide a letter from the Bidder's insurance company that, if awarded the contract, Offeror can provide the Insurance coverage required per Section H.1 of the IFB. Such certification shall be in a form of a letter from Offeror's insurance carrier, and included as part of the Lump Sum Price;
- (m) Bidders are required to provide a letter from the Bidder's surety that, if awarded the contract, Offeror can provide the Payment and Performance Bonds required per Section H.2 of the IFB. Such certification shall be in a form of a letter from Offeror's insurance carrier, and included as part of the Lump Sum Price;
- (n) LSDBE Certification Letter (if applicable);
- (o) Responses Demonstrating Bidder's Compliance with the Special Standards of Responsibility discussed in B.18; Bidders shall provide at a minimum the following to demonstrate:

1. Design Builder or the Design Builder's Team Construction Experience in the last 10 years
 - a. Projects Completed in the past 10 years:
 - i. The name and location of the project
 - ii. Description of the project noting the similarities with the services required in this IFB and scope as defined in Section B.18
 - iii. Design Builder or Design Builder's Team member's Role in Project- Prime or Subcontractor
 - iv. Project Delivery Method
 - v. Initial Contract Value and Initial Substantial Completion Date
 - vi. Actual Contract Value and Actual Substantial Completion Date
 - vii. Name, verified phone and email address of the Project's Owner point of contact
 - b. Design Builder or the Design Builder's Team Design Experience in the last 10 years
 - i. The name and location of the project
 - ii. Description of the project noting the similarities with the services required in this IFB and scope as defined in Section B.18
 - iii. Design Builder or Design Builder's Team member's Role in Project- Prime or Subcontractor
 - iv. Project Delivery Method
 - v. Initial Contract Value and Initial Substantial Completion Date
 - vi. Actual Contract Value and Actual Substantial Completion Date
 - vii. Name, verified phone and email address of the Project's Owner point of contact
 - c. Key Personnel Experience in the past 10 years:
 - i. Name and Resume
 - ii. Description relevant projects noting the similarities with the services required in this IFB and scope as defined in Section B.18
2. Demonstrate Fast-Track Experience
 - a. Projects Completed in the past 10 years:
 - i. The name and location of the project
 - ii. Description of the project noting the similarities with the services required in this IFB and scope as defined in Section B.18
 - iii. Design Builder or Design Builder's Team member's Role in Project- Prime or Subcontractor
 - iv. Project Delivery Method

- v. Initial Contract Value and Initial Substantial Completion Date
- vi. Actual Contract Value and Actual Substantial Completion Date
- vii. Name, verified phone and email address of the Project's Owner point of contact

SECTION G
BIDDING PROCEDURES & PROTESTS

G.1 Contact Person. The contact person for this IFB is:

James H. Marshall
Senior Contract Specialist
Department of General Services
Contracts and Procurement Division
2000 14th Street, NW 8th Floor
Washington, DC 20009
Phone: 202 664-0416
Email: james.marshall@dc.gov

The Department disclaims the accuracy of information derived from any source other than the Department's POC, and the use of any such information is at the sole risk of the Bidder. All communications and requests for information shall be submitted by the Bidder's point of contact identified in the Submission. Written communications to the Department from Bidders shall specifically reference the correspondence as being associated with the DDX, RISE Center and Parcel 15 Temporary Surface Parking Lot Design-Build Services and DCAM-18-CS-0005.

G.2 Protests

Protests shall be governed by D.C. Official Code § 2-360.08 and Section 4734 of the Department's Procurement Regulations (27 DCMR).

G.3 Retention of Submissions

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

G.4 Examination of Bids

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

G.5 Late Bids and Modifications:

- (a) Any bid or best and final offer received at the address designated in this IFB after the exact time specified for receipt shall not be considered.

- (b) Any modification of a bid, including a modification resulting from the CO's requests for best and final offers, is subject to the same conditions as in G.5.(a) stated above.
- (c) The only acceptable evidence to establish the time of receipt at the Department's office is the time-date stamp of such installation on the Bid wrapper or other documentary evidence of receipt maintained by the installation.
- (d) Notwithstanding any other provisions of this Invitation for Bids to the contrary, a late modification of an otherwise successful bid which makes its terms more favorable to the Department may be considered at any time it is received and may be accepted.
- (e) Bids shall be irrevocable and remain in full force and effect for a period not less than 120 days after receipt of bids.

G.6 No Compensation for Preparation of Bids

The Department will not bear or assume any financial obligations or liabilities regarding the preparation of any Bids submitted in response to this IFB, or prepared in connection therewith, including, but not limited to, any Bids, statements, reports, data, information, materials or other documents or items.

G.7 Rejection of Bids

The Department reserves the right, in its sole discretion:

- (a) To cancel this solicitation or reject all bids;
- (b) To reject Bids that fail to prove the Contractor's responsibility;
- (c) To reject Bids that contain conditions and/or contingencies that in the Department's sole judgment, make the Bid indefinite, incomplete, otherwise non-responsive, or otherwise unacceptable for award;
- (d) To waive minor irregularities in any bid provided such waiver does not result in an unfair advantage to any Contractor;
- (e) To take any other action within the applicable Procurement Regulations or law;
- (f) To reject the Bid of any Contractor that has submitted a false or misleading statement, affidavit or certification in connection with such Bid or this Request for Bids.
- (g) To reject as non-responsive any Bid that fails to include a subcontracting plan that is required by law.
- (h) To reject submissions that indicate a lack of understanding of any aspect of the Project(s).
- (i) To reject submissions that are too costly, financially or otherwise, to the Department relative to other submissions and the Project budget.
- (j) To reject submissions where the bidder has altered any pricing element or line item by Thirty Percent (30%) from the initial offer

- or median price for that pricing element or line item in response to a Request for a Best and Final Offer (“BAFO”).
- (k) To reject submissions that are deemed non-responsive.

G.8 Limitation of Authority

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

G.9 Non-Responsive Bids

- (a) **Pricing.** In general, the Department will consider a bid non-responsive if any pricing element of the bidder’s price is Thirty Percent (30%) higher than the median price submitted by other bidders. If there are no more than two (2) bidders, the independent government estimate shall be used to establish a median price. The Department reserves the right to deem a bid non-responsive if any pricing element of the bidder’s price is Thirty Percent (30%) higher than the median price.
- (b) **Certification.** The Department may consider a bid non-responsive if the bidder fails to properly complete or provides inaccurate information on the Bidder/Offeror Certification Form.
- (c) **Exceptions.** The Department may consider a bid non-responsive if the bidder identifies any changes or exceptions to the Standard Contract Provisions, the Contract or attachments hereto.
- (d) **Core Competency.** The Department may consider a bid non-responsive if the bidder, whether by inclusion or omission, fails, in the Department’s sole judgment, to demonstrate an understanding and competence in every aspect of the Project.

SECTION H
INSURANCE AND BONDING REQUIREMENTS

H.1 Required Insurance. The Contractor shall maintain the following types of insurance throughout the life of the contract.

H.1.1 GENERAL REQUIREMENTS. The Contractor at its sole expense shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the CO giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A- / VII or higher. The Contractor shall require all of its subcontractors to carry the same insurance required herein.

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

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

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

H.1.1.1 Commercial General Liability Insurance (“CGL”) - The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries a CGL policy, written on an occurrence (not claims-made) basis, on Insurance Services Office, Inc. (“ISO”) form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by the CO in writing), covering liability for all ongoing and completed operations of the Contractor, including ongoing and completed operations under all subcontracts, and covering claims for bodily injury, including without limitation sickness, disease or death of any persons, injury to or destruction of property, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising out of an Insured Contract (including the tort liability of another assumed in a contract) and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than \$1,000,000 each occurrence, a \$2,000,000 general aggregate (including a per location or per project aggregate limit endorsement, if applicable) limit, a \$1,000,000 personal and advertising injury limit, and a \$2,000,000 products-completed operations aggregate limit.

H.1.1.2 Automobile Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of commercial (business) automobile liability insurance written on ISO form CA 00 01 10 13 (or another form with coverage at least as broad and approved by the CO in writing) including coverage for all owned, hired, borrowed and non-owned vehicles and equipment used by the Contractor, with minimum per accident limits equal to the greater of (i) the limits set forth in the Contractor’s commercial automobile liability policy or (ii) \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

H.1.1.3 Workers’ Compensation Insurance - The Contractor shall provide evidence satisfactory to the CO of Workers’ Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

H.1.1.4 Employer’s Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of employer’s liability insurance as follows: \$500,000 per accident for injury; \$500,000 per employee for disease; and \$500,000 for policy disease limit.

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

H.1.1.5 Crime Insurance (3rd Party Indemnity) - The Contractor shall provide a 3rd Party Crime policy to cover the dishonest acts of Contractor's employees which result in a loss to the District. The policy shall provide a limit of \$50,000 per occurrence.

H.1.1.6 Cyber Liability Insurance - The Contractor shall provide evidence satisfactory to the Contracting Officer of Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. This insurance requirement will be considered met if the general liability insurance includes an affirmative cyber endorsement for the required amounts and coverages.

H.1.1.7 Environmental Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of pollution legal liability insurance covering losses caused by pollution conditions that arise from the ongoing or completed operations of the Contractor. Completed operations coverage shall remain in effect for at least ten (10) years after completion of the work. Such insurance shall apply to bodily injury, property damage (including loss of use of damaged property or of property that has been physically injured), cleanup costs, liability and cleanup costs while in transit, and defense (including costs and expenses incurred in the investigation, defense and settlement of claims). There shall be neither an exclusion nor a sublimit for mold-related claims. The minimum limits required under this paragraph shall be equal to the greater of (i) the limits set forth in the Contractor's pollution legal liability policy or (ii) \$2,000,000 per occurrence and \$2,000,000 in the annual aggregate. If such coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverages under the policy precedes the Contractor's performance of any work under the Contract and that continuous coverage will be maintained or an extended reporting period will be exercised for at least ten (10) years after completion. The Contractor also must furnish to the Owner certificates of insurance evidencing pollution legal liability insurance maintained by the transportation and disposal site operators(s) used by the Contractor for losses arising from facility(ies) accepting, storing or disposing hazardous materials or other waste as a result of the Contractor's operations. Such coverages must be maintained with limits of at least the amounts set forth above.

H.1.1.8 Employment Practices Liability -Employment Practices Liability -

The Contractor shall provide evidence satisfactory to the Contracting Officer with respect to the operations performed to cover the defense of claims arising from employment related wrongful acts including but not limited to: Discrimination, Sexual Harassment, Wrongful Termination, or Workplace Torts, whether between employees of contractor or against third parties. Contractor will indemnify and defend the District of Columbia should it be named co-defendant or be subject to or party of any claim. Coverage shall also extend to Temporary Help Firms and Independent Contractors hired by Contractor. The policy shall provide limits of not less than \$1,000,000 for each wrongful act and \$2,000,000 annual aggregate for each wrongful act. The Contractor shall provide evidence satisfactory to the Contracting Officer with respect to the operations performed to cover the defense of claims which the District of Columbia would be named as a co-defendant in claims arising from employment related wrongful acts including but not limited to: Discrimination, Sexual Harassment, Wrongful Termination, or Workplace Torts. The policy shall include an endorsement naming the District of Columbia as a co-defendant or additional insured and shall also include the Client Company Endorsement for Temporary Help Firms and the Independent Contractors Endorsement. The policy shall provide limits of not less than \$1,000,000 for each wrongful act and \$2,000,000 annual aggregate for each wrongful act.

H.1.1.9 Professional Liability Insurance (Errors & Omissions) - The

Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of \$2,000,000 per claim or per occurrence for each wrongful act and \$4,000,000 annual aggregate. The Contractor warrants that any applicable retroactive date precedes the date the Contractor first performed any professional services for the Government of the District of Columbia and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least ten years after the completion of the professional services.

H.1.1.10 Commercial Umbrella or Excess Liability - The Contractor shall provide evidence satisfactory to the CO of commercial umbrella or excess liability insurance with minimum limits equal to the greater of (i) the limits set forth in the Contractor's umbrella or excess liability policy or (ii) \$15,000,000 per occurrence and \$15,000,000 in the annual aggregate, following the form and in excess of all liability policies. All liability coverages must be scheduled under the umbrella and/or excess policy. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by the District and the "other insurance" provision must be amended in accordance with this requirement and principles of vertical exhaustion.

H.1.2 Construction Projects Controlled by the District

For construction projects controlled by the District, the District will procure Builder's Risk Coverage with the District listed as the first named insured.

H.1.2.1 Builders Risk – The District shall purchase and maintain builders risk insurance at 100% replacement cost upon the entire Work at the site and portions of the Work stored off the site with the District's approval, and contingent transit coverage for portions of the Work in transit. This insurance shall include the interests of the District, the Contractor and the Subcontractors in the Work and shall insure against all risk of physical damage subject to standard exclusions. Losses not covered by the District's insurance or Contractor's insurance shall be borne pursuant to the provisions of the Contract. The builders risk policy will have a deductible of not more than \$ 10,000. Losses within the deductible will be paid by the Contractor or the responsible Subcontractor. If not covered under the builders risk insurance or otherwise provided in the Contract Documents, the Contractor shall effect and maintain similar property insurance on portions of the Work stored off the site or in transit. Coverage may be purchased through either the District's insurance broker or the Contractor's insurance broker in the sole discretion of the District.

H.1.3 PRIMARY AND NONCONTRIBUTORY INSURANCE

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

H.1.4 DURATION. The Contractor shall carry all required insurance until all contract work is accepted by the District of Columbia, and shall carry listed coverages for ten years for construction projects following final acceptance of the work performed under this contract and two years for non-construction related contracts.

H.1.5 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.**

H.1.6 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.

H.1.7 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.

H1.1.8 NOTIFICATION. The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event of coverage and / or limit changes or if the policy is canceled prior to the expiration date shown on the certificate. The Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium. The Contractor will also provide the CO with an updated Certificate of Insurance should its insurance coverages renew during the contract.

H.1.9 CERTIFICATES OF INSURANCE. The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Certificates of insurance must reference the corresponding contract number. Evidence of insurance shall be submitted to:

The Government of the District of Columbia

And mailed to the attention of:

Franklin Austin
Contracting Officer
Department of General Services
1250 U Street, N.W. – 3rd Floor
Washington, D.C. 20009
Telephone: (202) 727-7128
E-mail: franklin.austin5@dc.gov

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

H.1.10 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.

H.1.11 CARRIER RATINGS. All Contractor's and its subcontractors' insurance required in connection with this contract shall be written by insurance companies with an A.M. Best Insurance Guide rating of at least A- VII (or the equivalent by any other rating agency) and licensed in the in the District.

H.2 Bid Bond.

H.2.1 Contractors shall submit with their bid a Bid Bond in the amount of **5%** of the Contractor's lump sum price. For example, if the Bidder provides a Lump Sum Price of \$100,000, the Bid Bond shall be 5% of \$5,000. The Contractor's Bid Bond shall be submitted in substantially the form provided as **Attachment K**. All bonding companies shall be licensed to conduct business in the District of Columbia and be included on the United States Department of Treasury's website Listing of Approved Sureties.

H.2.2 Alternatively, Contractors may submit a cashier's check of credit in lieu of a Bid Bond. If the Contractor chooses to submit a cashier's check in lieu of a bid bond, the Contractor shall complete the form included as **Attachment L** and return, notarized, with the Contractor's bid.

H.2.3 Payment and Performance Bond

The Contractor shall be required to provide payment and performance bonds, each having a penal value equal to 100% of the Contract amount prior to performing any work on the contract. All bonding companies must be licensed to conduct business in the District of Columbia and be included on the Department of Treasury's Listing of Approved Sureties website.

H.2.4 **I n** the event a Contractor who is awarded this Contract fails to post a payment and performance bond for the full value of the Contract, the Contractor shall thereby forfeit the full amount of the cashier's check or the Bid Bond, and the Department will collect such funds as liquidated damages.

SECTION I
DEPARTMENT'S RESPONSIBILITIES

I.1 Information and Services. The Department will provide full information in a timely manner regarding the requirements of the Project.

I.2 Department's Designated Representatives.

I.2.1 Chief Contracting Officer (CCO). In accordance with 27 DCMR, Chapter 47, Section 4704, this Contract may be entered into and signed on behalf of the District Government only by CCO or, under circumstances, the CCO's Delegate. The address and telephone number of the CCO is:

Franklin Austin
Chief Contracting Officer
Department of General Services
1250 U Street, N.W. – 3rd Floor
Washington, D.C. 20009
Telephone: (202) 727-7128
E-mail: franklin.austin5@dc.gov

I.2.1.1 Authorized Changes by the Contracting Officer (CO) and the CCO:

I.2.1.1.1 The CCO, the CCO's Delegate and the CO are the only persons authorized to approve changes to any of the requirements of the Contract.

I.2.1.1.2 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 in accordance with Section I.2.1.1.1.

I.2.1.1.3 In the event the Contractor effects any change at any instruction or request not in compliance with this Section, the change will be considered to have been made without authority and no adjustment will be made in the Contract price to cover any cost increase incurred as a result thereof.

I.2.2 Contracting Officer Technical Representative (COTR):

I.2.2.1 The COTR is responsible for general administration of the Contract and advising the CO and CCO as to the Contractor's compliance or noncompliance with the Contract. The COTR has the responsibility for the day-to-day monitoring and supervision of the Contract, of ensuring the Project(s) conform(s) to the requirements of the Contract and such

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

I.2.2.1.1 Keeping the CO and CCO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO and CCO of any potential problem areas under the Contract;

I.2.2.1.2 Coordinating site entry for Contractor personnel, if applicable;

I.2.2.1.3 Reviewing invoices for completed work and recommending approval by the CCO if the Contractor's prices and costs are consistent with the Contract and progress is satisfactory and commensurate with the rate of expenditure;

I.2.2.1.4 Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions and the Contract; and

I.2.2.1.5 Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.

I.2.2.1.6 The address and telephone number of the COTR is:

Vanassa Simmons
Project Manager
Department of General Services – Capital Construction
1250 U Street, N.W. 4th Floor
Washington, DC 20009
Mobile: (202) 316-7169
E-mail: vanassa.simmmons@dc.gov

I.2.2.2 The COTR Shall NOT Have the Authority to:

I.2.2.2.1 Award, agrees to, or sign any Contract document, change order, change directive, delivery order or task order. Subject to Section I.2.1.1.1, only the CCO shall make contractual agreements, commitments or modifications;

- I.2.2.2.2** Grant deviations from or waive any of the terms and conditions of the Contract;
- I.2.2.2.3** Increase the dollar limit of the Contract or authorize work beyond the scope and dollar limit of the Contract,
- I.2.2.2.4** Authorize the expenditure of funds by the Contractor;
- I.2.2.2.5** Change the period of performance; or
- I.2.2.2.6** Authorize the use of District property, except as specified under the Contract.
- I.2.2.2.7** The Contractor shall be held fully responsible for any changes not authorized in advance, in writing, by the CCO or as otherwise provided in Section I.2.1.1.1, and may be denied compensation or other relief for any additional work performed that is not so authorized. In addition, Contractor may also be required at no additional cost to the District, to take all corrective action necessitated by reason of any unauthorized changes.

I.3 Payments.

I.3.1 Invoicing

The Contractor shall submit invoices to the Department on a monthly basis. Each such invoice shall itemize all goods and services provided during the previous month and must be submitted electronically to the COTR and upload the document into Prolog by the 25th of each month. The Department's reference address to use on invoices is as follows:

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

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

I.3.2 Retention

The Department shall withhold from each progress payment an amount equal to ten percent (10%) of each progress payment until such time as fifty percent (50%) of the Work has been completed at which point the Department may cease retaining

against such item. Once Substantial Completion has occurred, the Department will reduce the retention being withheld to an amount that is equal to Two Hundred percent (200%) of the Project Manager's good faith estimate of the remaining Work.

I.3.3 Documents Required with Application for Payment

Each Application for Payment shall be accompanied by the Contractor's job cost ledgers in a form satisfactory to the Department, the Subcontractors' and Suppliers' Applications for Payment on AIA Documents G702 and G703 or other form acceptable to the Department, and such other supporting documentation as the Department may reasonably request. Each Application for Payment shall include detailed documentation of costs as a condition to approving progress payments, but the Contractor shall nevertheless maintain complete documentation of the costs. The Contracting Officer may require the submission of any documentation necessary to support the Contractor's Application for Payment and the Application for Payment shall not be deemed complete until such documentation is produced and submitted to the Department.

I.3.3.1 Contractor's Certification

Each Application for Payment shall be accompanied by the Contractor's signed certification that all amounts paid to the Contractor on the previous Application for Payment that were attributable to Subcontractor Work or to materials or equipment being supplied by any supplier has been paid over to the appropriate Subcontractors and suppliers; that all amounts currently sought for Subcontractor Work or supply of materials or equipment are currently due and owing to the Subcontractors and material or equipment suppliers; and that all Work, materials or equipment for which payment is sought is, to the best of the Contractor's knowledge, free from defect and meets all of the Contract requirements. The Contractor shall not include in an Application Payment amounts for Work for which the Contractor does not intend to pay.

I.3.3.2 Lien Waivers

Each Application for Payment shall be accompanied by written waivers of the right to file a mechanic's lien and all other claims for the Contractor and all Subcontractors and material suppliers at all tiers who have supplied labor or material or both for which payment is requested, subject only to receipt of payment. If the Department so requests, the Contractor shall also submit unconditional waivers of liens for itself and all Subcontractors and material suppliers at all tiers with respect to Work or materials or equipment for which payment has been previously made, and additional forms of waiver acknowledging receipt of final payment under the Contract, and providing final release of such liens.

I.3.3.3 Warranty of Title

By submitting an Application for Payment, the Contractor warrants to the Department that title to all Work for which payment is sought will pass to the Department, without liens, claims, or other encumbrances, upon the receipt of payment by the Contractor. The Department may require execution of appropriate documents to confirm passage of clear title. Passage of title shall not operate to pass the risk of loss with respect to the Work in question. Risk of loss remains with the Contractor until Substantial Completion, unless otherwise agreed by the Department, in writing.

I.3.3.4 Submission

On the twenty-fifth (25th) day of each month the Contractor shall submit to the Department (with a copy to the Project Manager) an Application for Payment, which Application for Payment shall cover the entire month during which the Application for Payment is submitted. All amounts formally submitted via Application for Payment and not disputed by the Department shall be due and payable on the last day of the month following submission or, if that is not a business day, on the following business day.

I.3.3.5 Right to Withhold Payments

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

I.3.3.5.1 the Work is deficient, defective or otherwise not conforming to the Contract, and such deficiencies, defects or nonconformities have not been remedied; or

I.3.3.5.2 the Department has determined that the Contractor's progress has fallen behind the Project Schedule, and the Contractor fails, within ten (10) calendar days of the Department's written demand, to provide the Department with a realistic and acceptable plan to recover the delays; or

I.3.3.5.3 the Contractor's monthly schedule update reflects that the Contractor has fallen behind the Project Schedule, and the Contractor fails to include, in the same monthly report, a realistic and acceptable plan to recover the delays; or

- I.3.3.5.4** the Contractor has failed to provide the monthly report in full compliance with this Section I.3.3.5 of this Agreement; or
- I.3.3.5.5** the Contractor has failed to pay Subcontractors or suppliers promptly or has made false or inaccurate certifications that payments to Subcontractors or suppliers are due or have been made; or
- I.3.3.5.6** any mechanic's lien has been filed against the Department, the site or any portion thereof or interest therein, or any improvements on the site, even though the Department has paid all undisputed amounts due to the Contractor, and the Contractor, upon notice, has failed to remove the lien, by bonding it off or otherwise, within ten (10) calendar days; or
- I.3.3.5.7** the Department has reasonable evidence that the Work will not be completed by the Substantial Completion Dates, as required, that the unpaid balance of the Lump Sum Price would not be adequate to cover actual or liquidated damages arising from the anticipated delay; or
- I.3.3.5.8** the Department has reasonable evidence that the Work cannot be completed for the unpaid balance of the Lump Sum Price; or
- I.3.3.5.9** the Contractor is otherwise in substantial breach of this Contract (including, without limitation, failures to comply with LSDBE or CBE Utilization requirements in Section C).
- I.3.3.5.10** the Application for Payment is incomplete, unsubstantiated and/or does not contain sufficient documentation for evaluation by the Contracting Officer.

I.3.3.6 Payment Not Acceptance

Payment of any progress payment or final payment shall not constitute acceptance of Work that is defective or otherwise fails to conform to the Contract, or a waiver of any rights or remedies the Department may have with respect to defective or nonconforming Work.

I.3.3.7 Department Not Obligated to Others

The Department shall have no obligation to pay or be responsible in any way for payments to a consultant or subcontractor performing portions of the Work.

I.3.3.8 Final Payment

Final payment shall be made by the Department to the Contractor when (i) Final Completion has been achieved; (ii) certification by the Contractor that except for requested final payment, all subcontractors and suppliers have been paid in full and that appropriate partial lien releases have been obtained from such subcontractors and suppliers documenting such payments; and (iii) the Contractor submits a complete and final Application for Payment, acceptable to the Department. The Department may, if it so elects, require that copies of all such lien releases be provided as a condition to making final payment.

I.3.3.9 No Diversion of Funds

Contractor agrees that the funds it receives for the performance of this Agreement shall be held in trust by Contractor for the benefit of all its Subcontractors, Suppliers, and laborers, and Contractor shall not itself have any interest in such funds until all these obligations have been satisfied in full. Contractor further agrees that any funds received shall be used exclusively for the prosecution of the Work, and none will be diverted to satisfy other obligations of Contractor. The Department has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers' amounts paid by the Department to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Department shall have the right to contact Subcontractors to ascertain whether they have been properly paid.

I.3.3.10 Interest on Payments

Payments are due and payable in accordance with Section I.3 of this Agreement and not more than thirty (30) days after the Department receives documents set forth in Section I.3.3.8 and verifies the information contained therein. Amounts unpaid after the date of which payments due shall bear interest in accordance with the Quick Payment Act.

SECTION J CONTRACT CHANGES

J.1 Changes Authorized

The Department may, without invalidating the contract, and without notice to or approval of any surety, order changes in the Work, including additions, deletions or modifications. Any such change must be conveyed by the Department to the Contractor via written Change Directive, Modification or Change Order. *The CO is the only person authorized to approve changes in any of the requirements of this Contract.* The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this Contract, unless issued in writing and signed by the Contracting Officer. Notwithstanding the foregoing, nothing herein shall be construed to limit the Department's ability to unilaterally modify the Contract.

J.2 Changes to the Lump Sum Price

Subject to the condition precedent that the Contractor has complied with the notice and documentation provisions set forth in the Standard Contract Provisions, and subject to the limitations stated in this Agreement, the Contractor may be entitled to an equitable adjustment to the Lump Sum Price in the following cases:

J.2.1 If the Department issues a Change Directive or Change Order that directs the Contractor to proceed with work which is beyond the scope of Work included within the Lump Sum; or

J.2.2 The Contractor encounters Differing Soil Conditions or Hazardous Materials not identified in the Preconstruction Phase.

J.2.3 For Changes to the Lump Sum Price, the following conditions shall apply:

J.2.3.1 For increases in the Work which the Contractor is permitted to perform by Contractor's own forces, the Lump Sum Price shall be increased by the sum of: (i) the Direct Cost of the Work; and (ii) a fee (covering home office overhead, field supervision, general conditions and profit) of fifteen percent (15%) of the sum due under (i).

J.2.3.2 For increases in the Work performed by Subcontractors, the Lump Sum Price shall be increased by the sum of: (i) the Direct Cost of the Work incurred by the Subcontractor for the changed Work; (ii) a fee (covering home office overhead and profit) equal to fifteen percent (15%) of the sum due under (i) above for the Subcontractor performing such Work; and (iii) a fee (covering the Contractor's

home office overhead, field supervision, general conditions and profit) of five percent (5%) of the sum of items (i) and (ii).

Intervening tier Subcontractors shall be entitled to a mark-up of five percent (5%) (covering home office overhead, field supervision, general conditions and profit); provided, however, that in all situations and regardless of the number of tier Subcontractors involved, the maximum mark-up on the Direct Cost of the Work shall be twenty five percent (25%) and provided, further, that the Contractor shall not be entitled to the markup referred to in item (iii) on changes unless such changes exceed, either individually or in the aggregate, five percent (5%) of the Lump Sum Price.

J.2.3.3 When both additions and credits are involved in any one change in the Work, the Contractor's Change Order and markup shall be figured on the basis of the net increase, if any.

J.2.3.4 Fee will not be paid by Department for overtime or weekend work unless overtime is requested in writing and approved in writing by Department.

J.2.3.5 The amount of credit to be allowed by Contractor to Department for a deletion or change which results in a net decrease in the Lump Sum Price shall be the Cost avoided as confirmed by Department plus fifteen percent (15%) for profit on the deleted work.

J.2.3.6 Direct Cost of the Work shall mean labor, material and other costs reasonably and necessarily incurred in the proper performance of the Work as approved by the Department, and shall include, but is not limited to:

- (a) **Labor.** Payment will be made for direct labor cost plus indirect labor cost such as insurance, taxes, fringe benefits and welfare provided such costs are considered reasonable. Indirect costs shall be itemized and verified by receipted invoices. If verification is not possible, up to eighteen percent (18%) of direct labor costs may be allowed.
- (b) **Rented Equipment.** Payment for required equipment rented from an outside company that is neither an affiliate of, nor a subsidiary of, the Contractor will be based on receipted invoices which shall not exceed rates given in the current edition of the Rental Rate Blue Book for Construction Equipment published by Data Quest. If actual rental rates exceed manual rates, written justification shall be furnished to the Contracting Officer for consideration. No additional allowance will be made for overhead and profit. The Contractor shall submit written certification to the Contracting Officer that any required rented equipment is neither owned by nor rented from the Contractor or an affiliate of or subsidiary of the Contractor.

(c) **Contractor's Equipment.** Payment for required equipment owned by the Contractor or an affiliate of the Contractor will be based solely on an hourly rate derived by dividing the current appropriate monthly rate by 176 hours. No payment will be made under any circumstances for repair costs, freight and transportation charges, fuel, lubricants, insurance, any other costs and expenses, or overhead and profit. Payment for such equipment made idle by delays attributable to the Government will be based on one-half the derived hourly rate under this subsection.

Such costs, however, do not include home office overhead, field supervision, general conditions or profit of either the Subcontractor or the Contractor. No personnel above the level of a working foreman shall be considered a Direct Cost of the Work.

J.3 If the cost to Department of changed Work is determined by the lump sum method, Contractor warrants that the charge to Department shall not exceed the sum of: (a) any Subcontractor's charge to Contractor for such work; and (b) Contractor's best estimate of the actual cost of Contractor's work plus the permitted markup. If the cost to Department of changed Work is determined on a time and materials basis, Contractor warrants that the cost of any addition represents the true and actual cost, including Contractor's permitted markup, of such addition to Contractor, Subcontractor or Sub-subcontractor or other entity involved in such addition. If the changed Work will result in a reduction in the cost to Department, Contractor warrants that the amount of any deduction shall represent the amount of deduction to Contractor by the appropriate Subcontractor or the amount of Contractor's best estimate where the deduction involves Work, which Contractor will perform.

J.4 Executed Change Directive/Order Required

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

J.5 Prompt Notice

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

J.6 Deductive Change Orders

The Department is likewise entitled to issue deduct Change Orders (reducing the Lump Sum Price) when changes are effected, by Change Directive or otherwise, which will decrease the cost of completing the Work or the time within which it can be completed.

J.7 Executed Change Orders Final

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

J.8 Failure to Agree

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

**SECTION K
MISCELLANEOUS PROVISIONS**

K.1 Liquidated Damages

Liquidated Damages will be assessed in the amount of \$450.00 per day. The Contractor and the Department agree that the liquidated damages do not constitute and shall not be deemed a penalty, but represent a reasonable approximation of the damages to the Department associated with a delay in the Project.

K.2 Extent of Contract

The Contract, which includes the terms set forth in this IFB, the Attachments hereto, and other documents incorporated herein by reference, represents the entire and integrated agreement between the Department and Contractor and supersedes all prior negotiations representations or agreements, either written or oral. No modifications to the Contract shall be effective against the Department unless made by written instrument signed by both the Department and Contractor.

K.3 Governing Law

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

K.4 [Intentionally Omitted].

K.5 Retention of Records and Inspections and Audits.

K.5.1.1 The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance under the Contract in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Contract.

K.5.2 The Contractor shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the Department and the required cost submissions in effect on the date of execution of the Department.

K.5.3 The Department, the District of Columbia government, the District of Columbia Financial Responsibility and Management Assistance Office, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall have access to the books, records, documents and other evidence held, owned or maintained by the Contractor for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Contractor. The Contractor shall provide proper facilities for such access and inspection

K.5.4 The Contractor agrees to include the wording of this Section in all its subcontracts in excess of five thousand dollars (\$5,000) that directly relate to Project performance.

K.5.5 Audits conducted pursuant to this Section will be in accordance with generally acceptable auditing principles and established procedures and guidelines of the applicable reviewing or audit agency.

K.5.6 The Contractor agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Department. Where the audit concerns the Contractor, the auditing agency will afford the Contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

K.5.7 The Contractor shall preserve all records described herein from the effective date of the Contract completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.

K.6 Inspection for Supplies and Services.

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

K.6.2 Notwithstanding the Department's acceptance of or payment for any product or service delivered by Contractor, the Contractor shall remain liable for deficient work, defective work, latent defects, fraud, gross mistakes amounting to fraud and the Department's rights under any warranty or guarantee and work otherwise not in compliance with the Contract.

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

K.7 Laws and Regulations Incorporated by Reference

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

K.8 Tax Exemption Provision

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

K.9 Anti-Competitive Practices and Anti-Kickback Provisions

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

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

K.9.3 The Contractor represents and warrants that it did not, directly or indirectly, engage in any

collusive or other anti-competitive behavior in connection with the bid, negotiation or award of the Contract. In the event that it is discovered the Contractor has engaged in such conduct, the Department may terminate this Contract without liability.

K.10 Responsibility for Agents and Contractors

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

K.11 Ethical Standards for Department's Employees and Former Employees

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

K.12 Gratuities and Officers Not to Benefit Provisions

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

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

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

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

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

K.13 Covenant Against Contingent Fees Provisions

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

K.14 Non-Discrimination in Employment Provisions

K.14.1 The Contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap. The affirmative action shall include, but not be limited to, the following:

K.14.1.1 Employment, upgrading, or transfer;

- K.14.1.2** Recruitment or recruitment advertising;
- K.14.1.3** Demotion, layoff, or termination;
- K.14.1.4** Rates of pay, or other forms of compensation; and
- K.14.1.5** Selection for training and apprenticeship.

K.14.2 Unless otherwise permitted by law and directed by the Department, the Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Department setting forth the provisions of this Section concerning non-discrimination and affirmative action.

K.14.3 The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in this Section.

K.14.4 The Contractor agrees to send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice to be provided by the Department, advising each labor union or workers' representative of the Contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

K.14.5 The Contractor agrees to permit access by the Department to all books, records and accounts pertaining to its employment practices for purposes of investigation to ascertain compliance with this Section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

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

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

K.15 Buy American Act Provision

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

K.15.1 In accordance with the Buy American Act (41 U.S.C. § 10a-10d), and Executive Order 10582, December 17, 1954 (3 CFR, 1954-58 Comp., p. 230), as amended by Executive Order 11051, September 27, 1962 (3 CFR, 1059—63 Comp., p. 635), the Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors,

material men and suppliers in the performance of the Contract, except for non-domestic material listed in the Contract.

K.15.2 Domestic Construction Material. “Construction material” means any article, material or supply brought to the construction site for incorporation in the building or work. An unmanufactured construction material is a “domestic construction material” if it has been mined or produced in the United States. A manufactured construction material is a “domestic construction material” if it has been manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. “Component” means any article, material, or supply directly incorporated in a construction material.

K.15.3 Domestic Component. A component shall be considered to have been “mined, produced, or manufactured in the United States” regardless of its source, in fact, if the article, material or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

K.15.4 Foreign Material. When steel materials are used in a project a minimal use of foreign steel is permitted. The cost of such materials cannot exceed one-tenth of one percent of the total project cost, or \$2,500,000, whichever is greater.

K.16 Termination or Suspension

All terminations or suspensions arising out of or under this Contract shall be in accordance with the terms of the Standard Contract Provisions, as amended.

K.17 False Claims Act

Contractor shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to the government, including the prescriptions set forth in District of Columbia Code §§ 22-2514 and 2-381.01 *et seq.* In the event that it is discovered the Contractor has made a false, fraudulent or unsupported statement or claim to the Department, the Department may terminate this Contract without liability.

K.18 Interpretation of Contract

All of the documents comprising the Contract should be read as complementary, so that what is called for by one is called for by all. Ambiguities should be construed in favor of a broader scope of work for the Contractor, as the intent of the Contract is, with specific identified exceptions, to require the Contractor to assume entire responsibility for the construction and installations of the Project(s). If there is any inconsistency among the

documents comprising the Contract, the order of precedence among them is as follows, with the first listed document having the highest priority: this IFB, its Attachments, then the Construction Documents released by the Department. Any Change Order issued and executed by the Department shall supersede those portions of earlier dated Contract Documents to which it pertains.

K.19 Independent Contractor

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

K.20 Confidential Information

In the course of the Contractor's performance of the Work, the Department may make available to the Contractor information that the Department designates as trade secrets or other confidential engineering, technical and business information. As long as, and to the extent that, such information remains confidential and available to others only with the consent of the Department, or is not generally available to the public from other sources, the Contractor shall maintain such information in strict confidence and shall not disclose any such information to others (including its employees or Subcontractors), except to the extent necessary to enable the Contractor to carry out the Project. The Contractor shall similarly obligate any and all persons to whom such information is necessarily disclosed to maintain the information in strict confidence. The Contractor agrees that, in the event of any breach of this confidentiality obligation, the Department shall be entitled to equitable relief, including injunctive relief or specific performance, in addition to all other rights or remedies otherwise available.

K.21 No Third-Party Beneficiary Rights

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

K.22 Media Releases

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

K.23 Construction

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

K.24 Notices

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

If to the Contractor

[Contractor's Information – upon award]

If to the Department:

Franklin Austin
Chief Contracting Officer
Department of General Services
1250 U St NW– 3rd Floor
Washington, DC 20009

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

K.25 Limitations

The Contractor agrees that any statute of limitations applicable to any claim or suit by the Department arising from this Contract or its breach shall be controlled by applicable District of Columbia law.

K.26 Binding Effect; Assignment

The Contract shall inure to the benefit of, and be binding upon and enforceable by, the parties and their respective successors and permitted assigns. The Contractor acknowledges that, in entering into the Contract, the Department is relying on the particular qualifications of the Contractor, and the Contractor therefore shall not delegate or assign any of its duties or obligations under the Contract, except in accordance with the Contract's provisions relating to subcontracting, or pursuant to the Department's prior written consent. The Contractor shall not assign its rights under the Contract, including the right to all or a

portion of its compensation, without the Department's prior written consent. Any delegation or assignment made contrary to the provisions of this Paragraph shall be null and void.

K.27 Survival

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

K.28 No Waiver

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

K.29 Remedies Cumulative

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

K.30 Headings/Captions

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

K.31 Entire Agreement; Modification

The Contract supersedes all contemporaneous or prior negotiations, representations, course of dealing, or agreements, either written or oral. No modifications to the Contract shall be effective against the Department unless made in writing signed by both the Department and the Contractor, unless otherwise expressly provided to the contrary in the Contract. Notwithstanding the foregoing, nothing herein shall be construed to limit the Department's ability to unilaterally modify the Contract.

K.32 Severability

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

K.33 Anti-Deficiency Act

The Department's obligations and responsibilities under the terms of Contract and the Contract Documents are and shall remain subject to the provisions of the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1350, 1351, (ii) the District of Columbia Anti-Deficiency Act, D.C. Code §§ 47-355.01-47-103, (iii) the foregoing statutes may be amended from time to time, and (iv) Section 45.08, as the District of Columbia Home Rule Act. Neither the Contract nor any of the Contract Documents shall constitute an indebtedness of the Department, nor shall it constitute an amount which the Department is obligated to levy or pledge any form of taxation, or for which the Department has levied or pledged any form of taxation. IN ACCORDANCE WITH THE OF THE HOME RULE ACT, D.C. CODE § 1-204.46, NO DISTRICT OF COLUMBIA OFFICIAL IS AUTHORIZED TO OBLIGATE OR EXPEND ANY AMOUNT UNDER THE CONTRACT OR CONTRACT DOCUMENTS UNLESS SUCH AMOUNT HAS BEEN APPROVED, IS LAWFULLY AVAILABLE AND APPROPRIATED BY THE HOUSE OF CONGRESS.

K.34 Indemnification

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

K.37 Claims and Dispute Resolution.

All claims arising out of this Contract shall be governed by the terms of the Standard Contract Provisions, as amended.

K.38 Claims for Additional Time.

K.38.1 Time is of the essence for this Contract.

K.38.2 The Contractor shall perform the Work so that it achieves Full Completion no later than

August 21, 2018. Unless the failure to achieve Full Completion by the Full Completion Date is a result of an Excusable Delay, as defined in Section K.39, the delay shall be deemed Non-Excusable and the Contractor shall not be entitled to an extension of time. Without limiting the generality of the foregoing, delays for the following reasons shall be regarded as Non-Excusable and shall not entitle the Contractor to an extension of time:

- K.38.2.1** Delays due to job site labor disputes, work stoppages, or suspensions of work;
- K.38.2.2** Delays due to adverse weather, unless the Contractor establishes that the adverse weather was of a nature and duration in excess of averages established by data from the U.S. Department of Commerce, National Oceanic and Atmospheric Administration for the Project locale for the ten (10) years preceding the effective date of the Contract;
- K.38.3** Delays due to the failure of the Contractor or Subcontractors or material suppliers at any tier to perform in timely or proper fashion, without regard to concepts of negligence or fault; or
- K.38.4** Delays due to Site conditions whether known or unknown as of the effective date of the Contract, foreseeable or unforeseeable at that time, naturally occurring or man-made; provided, however, that delays due to Differing Site Conditions, or Hazardous Materials Remediation shall be deemed an Excusable Delay.

K.39 Excusable Delay

The Contractor shall be entitled to request an adjustment in the Substantial Completion Dates due to an Excusable Delay. The term “Excusable Delay” shall mean:

- K.39.1** Delays due to adverse weather other than those that are classified as a Non-Excusable delay;
- K.39.2** Delays due to acts of God, war, unavoidable casualties, civil unrest, and other similar causes of delay that are beyond the control of the Contractor; provided, however, that in no event shall a Non-Excusable delay or the action of the Contractor, or any of its employees, agents, Subcontractors or material suppliers be deemed an Excusable Delay; or
- K.39.3** Delays caused by Differing Site Conditions, or Hazardous Materials Remediation.
- K.39.4** In addition to the forgoing, a delay shall be deemed to be an Excusable Delay only to the extent that such delay (i) warrants an extension in the Substantial or Final Completion Dates; (ii) has not been caused by the Contractor or any of its employees, agents, Subcontractors or material suppliers; (iii) is on Project’s critical path; (iv) is in addition

to a time contingency of twenty-one (21) calendar days that is built into the critical path; and (v) is of a duration of not less than three (3) days.

- K.39.5** If the Contractor wishes to make a request for an increase in the Contract time, written notice as provided herein shall be given. The Contractor's written notice and request shall include an estimate of the cost and of the probable effect of delay on the progress of the Work. In the case of continuing delay, only one request is necessary. The information set forth in the Contractor's request, including, but not limited to any additional costs, shall be for the Department's consideration in determining whether to grant the Contractor's request for an increase in the Contract time and shall not be construed to entitle the Contractor to additional compensation or reimbursement of additional costs.
- K.39.6** In no event shall the Contractor be entitled to an increase in the Lump Sum Price a result of either an Excusable or Non-Excusable Delay.

SECTION L DEFINITIONS

L.1 Agreement

The term Agreement shall mean this IFB, including the Standard Contract Provisions, as amended and any document attached hereto and/or incorporated by reference.

L.2 Change Directive

A written direction signed and issued by the Department ordering the Contractor either to provide pricing and schedule impact information for a described change to the Work or to proceed with a described change and provide pricing and schedule impact information after beginning the changed Work.

L.3 Change Event

Any condition, event, act, omission or breach, other than the issuance of a Change Directive, which the Contractor believes entitles it to a change in the Lump Sum Price, or the Substantial or Final Completion Date.

L.4 Change Order

A written document, executed by the Department and the Contractor, setting forth the agreed terms upon which a change to the Contract has been made.

L.5 Construction Documents

The final Contract Documents, as prepared, sealed by the Architect/Engineer's design professional in accordance with the law, and issued by the Contractor for the purpose of obtaining bids from potential trade Subcontractors and material suppliers for use in constructing the Project.

L.6 Contract

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

L.7 Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and wherever issued, showing the design, locations and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

The point at which Substantial Completion has been achieved, all punch list items noted at Substantial Completion have been completed and all documents the Contractor is required to deliver to the Department as a condition to receiving final payment.

L.8 Final Completion Date

The date established herein by which the Contractor shall achieve Final Completion. The Final Completion Date may be modified only by Change Order or Change Directive in accordance with the Agreement.

L.9 Fully Complete

To undertake all of the Work necessary to fully construct and complete the Project and execute all tasks necessary to obtain the final Certificate of Occupancy for the Project from the District of Columbia; submit final lien releases from the Contractor and Subcontractors and material suppliers; complete all punch list items to the Department's approval and sign-off; and cause all representations, warranties and guarantees to be honored and otherwise fulfill all of the requirements set forth in the Contract.

L.10 Hazardous Material

Any toxic substance or hazardous chemical defined or regulated pursuant to federal, state or local laws relating to pollution, treatment, storage or disposal of waste, or protection of human health or the environment. Such laws include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Water Act, the Clean Air Act and laws relating to emission, spills, leaks, discharges, releases or threatened releases of toxic material. The term Hazardous Materials shall also include petroleum and petroleum bi-products. **Hazardous Material Remediation** shall mean the work performed to remove, treat and/or dispose of Hazardous Material.

L.11 Notice to Proceed

A written notice to proceed, signed by the Department, directing the Contractor to proceed with the Project or any portion of the Project.

L.12 Project Schedule

The schedule for the project agreed to by the Department and the Contractor herein. Such schedule shall not be changed except by a Change Order or Change Directive issued by the

Department. The schedule shall be in a form and contain such detail as may be agreed upon by the Parties.

L.13 Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

L.14 Subcontractor

Any person, natural or legal, to whom the Contractor delegates performance of any portion of the Work required by the Contract. The term "Subcontractor," used without a qualifier, shall mean a subcontractor in direct privity with the Contractor. "Subcontractors at all tiers" shall mean not only those Subcontractors in direct privity with the Contractor, but also those performing Work pursuant to sub-subcontracts, sub-sub-subcontracts, and so on. "Subcontractors" shall include both those who are retained to perform labor only and those who are retained both to perform labor and to supply material or equipment. "Subcontractors" shall also include design professionals who are not the Contractor's employees and to whom the Contractor delegates any part of its responsibilities under the Contract, except that references to "trade Subcontractors" shall exclude design professionals.

L.15 Substantial Completion

Substantial Completion shall have the meaning ascribed in Section B.3 above.

L.18 Substantial Completion Dates

The dates established herein by which the Contractor shall achieve Substantial Completion. The Substantial Completion Dates may be modified only by Change Order or Change Directive in accordance with the Agreement.