

SECTION H SPECIAL CONTRACT REQUIREMENTS

H.1 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES

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

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

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

H.2 DEPARTMENT OF LABOR WAGE DETERMINATIONS

The Contractor shall be bound by the *Wage Determination No. 2015-4281, Revision No.: 16, dated 23-April-2020 – Attachment J.2*, issued by the U.S. Department of Labor in accordance with the Service Contract Act, 41 U.S.C. § 351 *et seq.*, and incorporated herein as *Attachment J.2*. The Contractor shall be bound by the wage rates for the term of the Contract subject to revision as stated herein and in accordance with **Article 25 of the SCP**. If an option is exercised, the Contractor ***shall be*** bound by the applicable wage rates at the time of the exercise of the option. If the option is exercised and the CO obtains a revised wage determination, the revised wage determination is applicable for the option periods.

H.3 PREGNANT WORKERS FAIRNESS

H.3.1 The Contractor shall comply with the Protecting Pregnant Workers Fairness Act of 2016, D.C. Official Code § 32-1231.01 *et seq.* (PPWF Act).

H.3.2 The Contractor shall not:

(a) Refuse to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding for an employee, unless the Contractor can demonstrate that the accommodation would impose an undue hardship;

(b) Take an adverse action against an employee who requests or uses a reasonable accommodation in regard to the employee's conditions or privileges of

employment, including failing to reinstate the employee when the need for reasonable accommodations ceases to the employee's original job or to an equivalent position with equivalent:

- (1) Pay;
- (2) Accumulated seniority and retirement;
- (3) Benefits; and
- (4) Other applicable service credits;

(c) Deny employment opportunities to an employee, or a job applicant, if the denial is based on the need of the employer to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding;

(d) Require an employee affected by pregnancy, childbirth, related medical conditions, or breastfeeding to accept an accommodation that the employee chooses not to accept if the employee does not have a known limitation related to pregnancy, childbirth, related medical conditions, or breastfeeding or the accommodation is not necessary for the employee to perform her duties;

(e) Require an employee to take leave if a reasonable accommodation can be provided; or

(f) Take adverse action against an employee who has been absent from work as a result of a pregnancy-related condition, including a pre-birth complication.

H.3.3 The Contractor shall post and maintain in a conspicuous place a notice of rights in both English and Spanish and provide written notice of an employee's right to a needed reasonable accommodation related to pregnancy, childbirth, related medical conditions, or breastfeeding pursuant to the PPWF Act to:

- (1) New employees at the commencement of employment;
- (2) Existing employees; and
- (3) An employee who notifies the employer of her pregnancy, or other condition covered by the PPWF Act, within 10 days of the notification.

H.3.4 The Contractor shall provide an accurate written translation of the notice of rights to any non-English or non-Spanish speaking employee.

H.3.5 Violations of the PPWF Act shall be subject to civil penalties as described in the Act.

H.4 UNEMPLOYED ANTI-DISCRIMINATION

H.4.1 The Contractor shall comply with the Unemployed Anti-Discrimination Act of 2012, D.C. Official Code § 32-1361 *et seq.*

H.4.2 The Contractor shall not:

(a) Fail or refuse to consider for employment, or fail or refuse to hire, an individual as an employee because of the individual's status as unemployed; or

(b) Publish, in print, on the Internet, or in any other medium, an advertisement or announcement for any vacancy in a job for employment that includes:

(1) Any provision stating or indicating that an individual's status as unemployed disqualifies the individual for the job; or

(2) Any provision stating or indicating that an employment agency will not consider or hire an individual for employment based on that individual's status as unemployed.

H.4.3 Violations of the Unemployed Anti-Discrimination Act shall be subject to civil penalties as described in the Act.

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

H.5.1 For Contracts for services in the amount of \$300,000 or more, the Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code § 2-219.01 et seq. (First Source Act).

H.5.2 The Contractor shall enter into and maintain during the term of the Contract, a First Source Employment Agreement (Employment Agreement) with the District of Columbia Department of Employment Service's (DOES), in which the Contractor shall agree that:

(a) The first source for finding employees to fill all jobs created in order to perform the Contract shall be the First Source Register; and

(b) The first source for finding employees to fill any vacancy occurring in all jobs covered by the Employment Agreement shall be the First Source Register.

H.5.3 The Contractor shall not begin performance of the Contract until its Employment Agreement has been accepted by DOES. Once approved, the Employment Agreement shall not be amended except with the approval of DOES.

H.5.4 The Contractor agrees that at least 51% of the new employees hired to perform the Contract shall be District residents.

H.5.5 The Contractor's hiring and reporting requirements under the First Source Act and any rules promulgated thereunder shall continue for the term of the Contract.

H.5.6 The CO may impose penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the Contract, for a willful breach of the

Employment Agreement, failure to submit the required hiring compliance reports, or deliberate submission of falsified data.

H.5.7 If the Contractor does not receive a good faith waiver, the CO may also impose an additional penalty equal to 1/8 of 1% of the total amount of the direct and indirect labor costs of the Contract for each percentage by which the Contractor fails to meet its hiring requirements.

H.5.8 Any Contractor which violates, more than once within a 10-year timeframe, the hiring or reporting requirements of the First Source Act shall be referred for debarment for not more than five (5) years.

H.5.9 The Contractor may appeal any decision of the CO pursuant to this clause to the D.C. Contract Appeals Board as provided in **Article 14 of the District of Columbia's Department of General Services Standard Contract Provisions (SCP) for Supplies and Services Contracts, January 2016, Disputes.**

H.5.10 The provisions of the First Source Act do not apply to nonprofit organizations which employ 50 employees or less.

H.6 **DIVERSION, REASSIGNMENT AND REPLACEMENT OF KEY PERSONNEL**

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

H.7 **AUDITS AND RECORDS**

H.7.1 As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

H.7.2 **Examination of Costs.** If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable Contract, or any combination of these, the Contractor shall maintain and the CO, or an authorized representative of the CO, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the Contract.

H.7.3 Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this Contract, the CO, or an authorized representative of the CO, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to:

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

H.7.4 Comptroller General

H.7.4.1 The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this Contract or a subContract hereunder.

H.7.4.2 This paragraph may not be construed to require the Contractor or subContractor to create or maintain any record that the Contractor or subContractor does not maintain in the ordinary course of business or pursuant to a provision of law.

H.7.5 Reports. If the Contractor is required to furnish cost, funding, or performance reports, the CO or an authorized representative of the CO shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating:

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

H.7.6 Availability. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in **Sections [H.7.1]** through **[H.7.5]**, for examination, audit, or reproduction, until three (3) years after final payment under this Contract or for any shorter period specified in the solicitation, or for any longer period required by statute or by other clauses of this Contract. In addition:

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

H.7.7 The Contractor shall insert a clause containing all the terms of this clause, including this **Section [H.7.7]**, in all subContracts under this Contract that exceed the small purchase threshold of \$100,000, and:

- a) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
- b) For which cost, or pricing data are required; or
- c) That requires the subContractor to furnish reports as discussed in **Section [H.7.5]** of this clause.

H.8 ADVISORY AND ASSISTANCE SERVICES

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

H.9 SUBCONTRACTING REQUIREMENTS

H.9.1 Mandatory SubContracting Requirements

H.9.1.1 For all Contracts in excess of \$250,000, at least **35%** of the dollar volume of the Contract shall be subContracted to qualified small business enterprises (SBEs).

H.9.1.2 If there are insufficient SBEs to completely fulfill the requirement of **Section [H.9.1.1]**, then the subContracting may be satisfied by subContracting **35%** 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.

H.9.1.3 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 [H.9.1.1]** and **[H.9.1.2]**.

H.9.1.4 Except as provided in **Section [H.9.1.5]** and **[H.9.1.7]**, a prime Contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least **35%** of the Contracting effort with its own organization and resources and, if it

subContracts, 35% of the subContracting effort shall be with CBEs. A CBE prime Contractor that performs less than 35% of the Contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

H.9.1.5 If the prime Contractor 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, the CBE member of the certified joint venture shall perform at least 35% of the Contracting effort with its own organization and resources and, if it subContracts, 35% of the subContracting effort shall be with CBEs. If the CBE member of the certified joint venture prime Contractor performs less than 35% of the Contracting effort, the certified joint venture shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

H.9.1.6 Each CBE utilized to meet these subContracting requirements shall perform at least 35% of its Contracting effort with its own organization and resources.

H.9.1.7 A prime Contractor that is a CBE and has been granted a proposal 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 on-site work with its own organization and resources if the Contract is \$1 million or less.

H.10 FAIR CRIMINAL RECORD SCREENING

H.10.1 The Contractor shall comply with the provisions of the Fair Criminal Record Screening Amendment Act of 2014, effective December 17, 2014 (D.C. Law 20-152) (the “Act” as used in this section). This section applies to any employment, including employment on a temporary or Contractual basis, where the physical location of the employment is in whole or substantial part within the District of Columbia.

H.10.2 Prior to making a conditional offer of employment, the Contractor shall not require an applicant for employment, or a person who has requested consideration for employment by the Contractor, to reveal or disclose an arrest or criminal accusation that is not then pending or did not result in a criminal conviction.

H.10.3 After making a conditional offer of employment, the Contractor may require an applicant to disclose or reveal a criminal conviction.

H.10.4 The Contractor may only withdraw a conditional offer of employment, or take adverse action against an applicant, for a legitimate business reason as described in the Act.

H.10.5 This section and the provisions of the Act shall not apply:

(a) Where a federal or District law or regulation requires the consideration of an applicant’s criminal history for the purposes of employment;

(b) To a position designated by the employer as part of a federal or District government program or obligation that is designed to encourage the employment of those with criminal histories;

(c) To any facility or employer that provides programs, services, or direct care to, children, youth, or vulnerable adults; or

(d) To employers that employ less than 11 employees.

H.10.6 A person claiming to be aggrieved by a violation of the Act may file an administrative complaint with the District of Columbia Office of Human Rights, and the Commission on Human Rights may impose monetary penalties against the Contractor.

H.11 **DISTRICT RESPONSIBILITIES - *RESERVED [Intentionally Omitted]***

H.12 **CONTRACTOR RESPONSIBILITIES**

H.12.1 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/services.

H.12.2 The Contractor shall be responsible for providing services in accordance with the requirements of this Contract.

H.12.3 The Contractor shall be responsible for obtaining any and all licenses and permits, unless otherwise stated herein necessary for the performance of this Contract.

H.12.4 The Contractor shall furnish all equipment needed for the performance of the work under the resultant Contract. All equipment must be properly guarded and meet all applicable OSHA standards.

H.14.5 The Contractor shall assume full responsibility and liability for compliance with all applicable regulations pertaining to the health and safety of personnel during the execution of work and shall hold the District harmless for any action on his part or that of his employees or subContractors, which results in illness, injury or death.

H.12.6 The Contractor shall furnish all MSDS for any materials used in the performance of this Contract. The Contractor shall make efforts to use recycled paper products and environmentally preferable materials.

H.12.7 The Contractor shall be responsible for the base operations of the building only, which excludes retail space specific services, not provided to retailers by the building.

- a) The Contractor shall be liable for all fines and shall comply with all District regulations for safe handling, storage, disposal, and use of any hazardous materials and chemicals.
- b) The Contractor shall be charged the cost, in the event of fines or penalties levied by the EPA or an Air Quality Management Authority.

H.12.8 Bond Requirements

H.12.8.1 Bid Bond *RESERVED [Intentionally Removed]*

H.12.8.2 Performance and Payment Bond

H.12.8.2.1 The Contractor will be required to post a Performance and Payment Bond *Attachment J.15* having a penal value against the individual Asset Class Group as imposed below:

Asset Class Group A (Department of Parks and Recreation) - a penal value of **35%** of the Contract value, at the time the Agreement is executed.

Asset Class Group B (Public Safety) - a penal value of **35%** of the Contract value, at the time the Agreement is executed.

H.12.8.2.2 The Contractor shall, before commencing the exercise of any option period, provide to the Department a payment bond and performance bond, each with a penal sum equal to 35% of the subject Contract period price (i.e. base period and/or each of the individual option periods). Such bond shall remain in full force and effect until the Contract period reaches term and the Department shall be able to draw upon such bond regardless of the amount paid by the Department to the Contractor, even if such amount exceeds the penal value of such bond.

H.12.8.2.3 All bonding companies must be included on the Department of Treasury's Listing of Approved Sureties.

H.12.9 Allowable SubContracting Requirements

H.12.9.1 The Contractor shall ensure that all activities carried out by any subContractor conforms to the provisions of this Contract.

H.12.9.2 It is the responsibility of the Contractor to ensure its subContractors are capable of meeting the reporting requirements under this Contract and, if they cannot, the Contractor is not relieved of the reporting requirements.

H.12.9.3 The Contractor shall notify the District Contracting Officer, in writing, of the termination of any subContract for the provision of services, including the arrangements made to ensure continuation of the services covered by the terminated subContract, not less than forty-five (45) days prior to the effective date of the termination, unless immediate termination of the Contract is necessary to protect the health and safety of Enrollees or prevent fraud and abuse. In such an event, the Contractor shall notify COTR immediately upon taking such action.

H.12.9.3.1 If the District determines that the termination or expiration of a subContract materially affects the ability of the Contractor to carry out its responsibility under this Contract; the District may terminate this Contract.

H.12.9.3.2 The Contractor shall ensure subContracts contain a provision that requires subContracts to contain all provisions of the Contractor's Contract with the District and that the subContractor look solely to Contractor for payment for services rendered.

H.12.10 Staff Attire and Identification

H.12.10.1 The Contractor's staff shall wear neat, clean, and professional attire. The attire shall include distinctive apparel identifying staff as Contractor's employees.

H.12.10.2 The Contractor's staff shall wear identification badges at all times. The identification badges shall provide company logo, employee's name, and employee photograph.

H.12.11 Safety Requirements – *if and where applicable*

H.12.11.1 The Contractor shall be responsible for complying with all applicable District and Federal rules, regulations and practices relating to safety on the job site; for all injury to persons or damage to property that occurs as a result of the Contractor's negligence and shall take proper safety and health precautions to protect the work, the workers, the tenants and District property; and for all materials delivered and work performed until completion and acceptance of the entire work in writing by the COTR.

H.12.11.2 The Contractor shall provide and ensure that all its personnel at the work sites properly wear all applicable safety devices and apparel required by the United States Occupational Safety and Health Administration (OSHA) including, but not limited to:

H.12.11.2.1 Back support devices

H.12.11.2.2 Eye protection

H.12.11.2.3 Hearing protection

H.12.11.2.4 Hand protection

H.12.11.2.5 Head protection

H.12.11.2.6 Foot protection

H.12.11.3 The District has the right to inspect all areas for safety violations at its discretion, direct the Contractor to make immediate improvement of necessary conditions and/or procedures, and/or stop the work if other hazards are deemed to exist.

H.12.11.4 Notwithstanding any provision to the contrary, the District shall not be obligated to make an equitable adjustment for any work stoppage that results from safety hazards created by the Contractor. In the event that the Contracting Officer directs the work to stop because of existing safety hazards after the Contractor has been notified and provided ample time to correct, the Contractor shall bear all costs for eliminating the hazard(s) and shall not be granted compensation for the work stoppage.

H.12.11.5 The Contractor shall immediately notify the COTR if the job site is visited by an OSHA official for compliance of the Occupational Safety and Health Act or any other safety regulatory requirements.

H.12.1 Fire Prevention

H.12.12.1 The Contractor shall be responsible for establishing and maintaining an effective fire prevention program for its employees and the District property being serviced on the job site.

H.12.12.2 The Contractor shall be knowledgeable and train all its employees on the job site to fulfill the requirements of this Statement of Work on the procedures, means of egress and methods of reporting fires on the job sites.

H.12.13 Smoke Free Environment

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

H.12.14 Delivery of Services – *RESERVED [Intentionally Removed]*

H.12.15 Communication

At its own expense, the Contractor shall provide electronic pagers, transportable cellular telephones, or any other telecommunication devices adequate to effectively

provide a communication link to District officials especially in emergency situations when the need to get hold of Contractor personnel is greatest. The names of the individual officers and the telephone numbers for their respectively assigned pager and telephone number shall be provided to the Contracting Officer and the COTR at the start of the period of performance.

H.12.16 Accident Reports

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

H.12.17 Property Damage Notification

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

H.12.18 Suspension of Work

H.12.18.1 In the event services are not provided or required by the District because the buildings is closed due to unanticipated circumstances modification(s) to the contract shall be issued to reflect any change in circumstance.

H.12.18.2 Therefor in accordance with **Section [G.11] – Ordering Clause**, a modification to the affected Task Order(s) will be issued reflecting the modification to operations, staffing and service hours.

H.12.19 Contract Completion or Termination

H.12.19.1 The Contractor shall turn over all plans codes, manuals, records, files, reports, databases spare inventory and or any such relevant materials developed or purchased in the course of the Contract to the COTR within thirty (30) calendar days after Contract completion or termination.

H.13 DISINCENTIVE FEE SCHEDULE - (MONETARY ADJUSTMENTS – FINES/FEES)

H.13.1 The Contractor is on notice that the security services provided pursuant to the terms of this Contract are critical in nature, thus it is the District's expectation that the Contractor vigilantly ensure the safety and security of all District facilities under its care. The Contractor's failure to meet the security performance standards will result in the Departments assessment of the specific performance violations Disincentive Fee defined below. All Disincentive Fees will result in the application of monetary adjustments against monthly invoices for non-compliance as follows:

H.13.1.1 Penalties Related to Performance

H.13.1.1.1 PSD will conduct random checks of Contractor's use of the District's detection devices, such as X-Ray machines, magnetometers, hand-held devices, etc. PSD and/or District employees will attempt to bring one (1) of the below listed weapons into a building utilizing the aforementioned detection devices:

H.13.1.1.1.1 The Contractor shall detect *all weapons* on a PSD and or District's employee, including but not limited to, the following: (i) a knife or sharp instrument with a blade that is six (6") inches or more in length; (ii) any handgun or firearm (whether operable or not); or (iii) any rifle or shotgun (whether operable or not) that is on a person (concealed or not) or inside a person's bag. **Section [C.6.4.6] and [C.6.4.10].**

H.13.1.1.1.2 If the Contractor's employee(s) fails to detect a weapon of any type (except bombs **Section [H.13.1.1.1.3]** below), the Contractor shall be assessed a Disincentive Fee of one thousand dollars (\$1,000) for the first violation by any employee, with an additional five hundred dollars for every subsequent violation by the same employee (\$1,000 + \$500 for the second violation; \$1,000 + \$1000 for the third Violation, etc.). Failure of the Contractor to detect any weapon may also cancel and *terminate* this Contract, pursuant to the District of Columbia Standard Contract Provisions (SCP) (January 14, 2016), Article 8 (Default). The COTR must be notified *immediately* of any infractions. **Section [C.6.4.6] and [C.6.4.10].**

H.13.1.1.1.3 If the Contractor's employee(s) fails to detect a bomb of any type (real or simulated), the Contractor shall be assessed a Disincentive Fee of two thousand five hundred dollars (\$2,500) for the first violation by any employee, with an additional one thousand dollars for every subsequent violation by the same employee (\$2,500 + \$1,000 for the second violation; \$2,500 + \$2,000 for the third Violation, etc.). Failure of the Contractor to detect any bomb may also cancel and *terminate* this Contract, pursuant to the District of Columbia Standard Contract Provisions (SCP) (January 14, 2016), Article 8 (Default). The COTR must be notified *immediately* of any infractions. **Section [C.6.4.6] and [C.6.4.10].**

H.13.1.1.2 Failure of the Contractor's employees to control entry and egress access by screening persons, vehicles (if, applicable), and packages coming into District Government buildings, facilities or properties to ensure that no unauthorized, prohibited or illegal property is brought into or removed from such locations **Sections [C.6.4.4], [C.6.4.6], and [C.6.4.10]** will result in the Contractor being assessed a Disincentive Fee of two hundred fifty dollars (\$250) per incident. The COTR must be notified *immediately* of any infractions.

H.13.1.1.3 The Contractor shall discover, report, and detain (SPOs only) **Sections [C.6.4.4], [C.6.4.6] and [C.6.4.8]** persons attempting to gain unauthorized access to, or having unlawfully entered a property or secured areas; this includes monitoring

building intrusion detection systems, conducting random roving patrols and all other related duties as determined by the COTR. The Contractor shall turn over all reports and detainees to PSD and/or MPD. Should investigation reveal failures to prevent, detail or report said access or failure to monitor intrusion detection systems, conduct random patrols or other duties as required by Contractor employee(s), the incident will be memorialized as a Contract failure (non-compliance) and the Contractor will be assessed a Disincentive Fee of five hundred dollars (\$500) per incident. Continued and sustained violations of this section may also result in termination of the Contract. The COTR must be notified ***immediately*** of any infractions.

H.13.1.1.4 If the Contractor's employees fail to report for duty on time, in full uniform and equipped with all necessary security equipment **Section [C.7.2.1]**, the Contractor will be assessed a Disincentive Fee of two hundred and fifty dollars (\$250) per uniform or equipment infraction, or any fraction thereof.

H.13.1.1.5 Failure of Contractor employees to pay full time and attention to duties (playing video games, watching television or movies, or being otherwise distracted from required duties) or sleeping while on duty **Section [C.7.1.4] and [C.23.3.12]** will result in the Contractor being assessed a Disincentive Fee of two hundred fifty dollars (\$250) per incident and the Contractor immediately removing/replacing the employee. Continued and sustained violations of this section may also result in a recommendation to the Contractor that the employee be terminated from the Contract. The COTR must be notified ***immediately*** of any infractions.

H.13.1.1.6 If the Contractor fails to maintain the required over supply of guards as required by the Contract **Section [C.7.1.3] and [C.7.2.2]**, the Contractor will be assessed a Disincentive Fee of one hundred dollars (\$100) per hour, per infraction or any fraction thereof.

H.13.1.1.7 The Contractor will be assessed a Disincentive Fee of one hundred dollars (\$100) per hour, per infraction for unstaffed (vacant) posts **Section [C.7.2.1]**.

H.13.1.1.8 Failure to Perform Security Duties – Any acts of vandalism, sabotage or theft of District vehicles, buildings or equipment that is the direct result of the Contractor, or Contractor's employees, agents or representatives failing to perform duties as required by the Contract and detailed in the Post Orders, shall result in the Contractor being assessed a Disincentive Fee of one hundred (100%) percent of the cost of repair or replacement of the lost, damaged, or stolen asset, **plus** all applicable administrative costs and fees **Section [C.5.3]**.

H.13.1.1.9 Failure of the Contractor's employees to prevent and report safety and security violations, risks, damage, pilferage, removal, misuse, larceny, theft, or any other improper or unlawful threats, or disposition of District or personal property to the COTR or designated Point(s) of Contact (POC) (should investigation reveal that

any failure to prevent or report said security violations were due to Contractor employee negligence or inaction) the Contractor will be assessed a Disincentive Fee of up to one hundred (100%) percent of the cost of repair or replacement of the lost, damaged, or stolen asset, **plus** all applicable administrative costs and fees **Section [C.5.3]**.

H.13.1.1.10 Failure to reassign, remove, or replace Officers as set forth in this Contract or as requested by the COTR within the timeframes of this agreement will result in the Contractor being assessed a Disincentive Fee of one hundred dollars (\$100) per hour, and fraction thereof, for each incident of delay. **Section [C.23]**.

H.13.1.1.11 Participation in prohibited/unethical behaviors by Contract employees, as detailed in **Section [C.23.15]**, or the Contractor's failure to investigate, discipline, or remove an employee for such violations, will result in the Contractor being assessed a Disincentive Fee of one hundred dollars (\$100) per violation or per incident of failure to investigate, discipline, remove, or replace an employee for such violation(s) **Section [C.23]**.

H.13.1.1.12 Failure of the Contractor's employees to return any keys or card keys issued by the D.C. Government for their use at any site upon transfer to another site, resignation, termination, or dismissal of the employee for any reason, shall result in the Contractor being assessed a Disincentive Fee of one hundred dollars (\$100) per violation **Section [C.24.1.3]**.

H.13.1.1.13 Failure of the Contractor or Employee to report the arrest or conviction of any employee for a Traffic or Misdemeanor Offense in Washington, DC, or for an arrest in any other jurisdiction that would constitute a Traffic or Misdemeanor arrest if such act had occurred in Washington, DC, will result in the Contractor being assessed a Disincentive Fee of five hundred dollars (\$500) per violation **Section [C.9.2.7]**.

H.13.1.1.14 Failure of the Contractor or Employee to report the arrest or conviction of any employee for a Felony Offense in Washington, DC, or for an arrest in any other jurisdiction that would constitute a Felony arrest if such act occurred in Washington, DC, will result in the Contractor being assessed a Disincentive Fee of one thousand dollars (\$1,000) per violation **Section [C.9.2.7]**.

H.13.1.1.15 Failure of the Contractor or Employee to report the arrest or conviction of any employee commissioned as an Armed SPO for a Domestic Violence Offense in Washington, DC, or for an arrest in any other jurisdiction that would constitute a Domestic Violence arrest if such act occurred in Washington, DC, will result in the Contractor being assessed a Disincentive Fee of two thousand five hundred dollars (\$2,500) per violation **Section [C.9.2.7]**.

H.13.1.2 Penalties Related to Training Requirements:

- H.13.1.2.1** Failure to provide all training materials to the COTR, or his designee, for review and approval prior to use or failure to submit all changes to approved materials to the COTR for approval prior to use will result in the Contractor being assessed a Disincentive Fee of one hundred dollars (\$100) per twenty four (24) hour period of delay **Section [C.18.4]**.
- H.13.1.2.2** Failure to maintain training records or provide proof/certificates of Training as set forth in **Section [C.18]** will result in the Contractor being assessed a Disincentive Fee of one hundred dollars (\$100) per employee.
- H.13.1.2.3** Submitting any false affidavits, records, or certifications for training verification will result in the Contractor being assessed a Disincentive Fee of one thousand dollars (\$1000) per incident. Fraudulent behavior also constitutes a *material breach* of this Contract. Continued and sustained violations of this section may also result in a recommendation to the Contractor that the responsible employee(s) be terminated from the Contract. The COTR must be notified immediately of any infractions. **Section [C.18]**.
- H.13.1.2.4** Failure of the Contractor to review and certify that all employees previously employed by another security agency and received that other security agency's pre-assignment training meet the requirements described in **Section [C.18.9]**. Violations of this section will result in the Contractor being assessed a Disincentive Fee of one hundred dollars (\$100) per employee. **Section [C.18]**.
- H.13.1.2.5** Violations of any other training mandates not listed in **Sections [H.13.1.2.1]** through **H.13.1.2.4** will result in the Contractor being assessed a Disincentive Fee of one hundred dollars (\$100) per employee/incident **Section [C.16]**.
- H.13.1.2.6** Violations of any firearm training mandates will result in the in the Contractor being assessed a Disincentive Fee of two hundred fifty dollars (\$250) per employee/incident **Section [C.18.7]**.
- H.13.1.2.7** Violations of any On-the-Job (OJT) or Job [Site] Orientation training mandates will result in the Contractor being assessed a Disincentive Fee of one hundred dollars (\$100) per employee **Section [C.18.8]**.
- H.13.1.2.8** Violations of utilizing certified instructors, as required by regulation or this Contract, in addition to (re)conducting the training with the required certified trainer, at no additional cost to the Government, the Contractor will be assessed a Disincentive Fee of one hundred dollars (\$100) per affected employee **Section [C.18.4.2]**.
- H.13.1.3 Penalties Related to Administrative Functions**
- H.13.1.3.1** Failure to maintain medical files and provide all employee names and documentation of mandated drug testing to PSD, upon request, for each Security

Officer (SO) and Special Police Officer (SPO) working under the Contract as set forth in **Section [C.18.9.2]**, shall result in the Contractor being assessed a Disincentive Fee of two hundred and fifty dollars (\$250) per incident.

H.13.1.3.2 Failure to provide Contract Security Administrative Support (Project Manager) as set forth and detailed in **Section [C.7.3.1]** shall result in the Contractor being assessed a Disincentive Fee of two hundred and fifty dollars (\$250) per incident.

H.13.1.3.3 Failure to provide any required personnel and hours of coverage for the Contract as set forth and detailed in **Section [C.7]** shall result in the Contractor being assessed a Disincentive Fee of five hundred dollars (\$500) per day per staff person not provided.

H.13.1.3.4 Failure of the Contractor's PM (or other officially designated personnel) to attend weekly meetings with the COTR as set forth and detailed in **Section [C.21]** shall result in the Contractor being assessed a Disincentive Fee of one hundred dollars (\$100) per incident.

H.13.1.3.5 Failure of the Contractor to provide staffing to cover all posts and duty hours as outlined in **Section [J.1.1]**, as amended, to ensure that no employee of the Contractor shall provide more than twelve (12) hours of service on one (1) or more Contracts in a twenty-four (24) hour period, unless the work periods are separated by an eight (8) hour non-duty period. (This limitation may be waived, in writing, by the COTR in situations deemed to constitute an emergency, e.g., severe weather, civil disturbance, or other unusual events.). In the absence of a written confirmation of a waiver from the COTR for each instance, the Contractor will be assessed a Disincentive Fee of one hundred dollars (\$100) per hour for every hour over the twelve (12) hour limit, per employee per shift **Section [C.7.1.3]**.

H.13.1.3.6 Activity Logbooks are the property of the District of Columbia and are subject to administrative audits and the provisions of the Freedom of Information Act (FOIA), as amended **Section [C.19]**. Failure of Contractor employees to properly annotate and maintain Activity Logbooks at all facilities/posts will result in the Contractor being assessed a Disincentive Fee of fifty dollars (\$50) per failed entry **Section [C.19.1]**.

H.13.1.3.7 The Contractor is reminded that false or fraudulent entries into, or the willful destruction of Activity Log Books, Post Orders, or any other Government equipment may result in criminal prosecution and will cause the offending employee to be permanently and immediately released from this Contract **Section [C.23.3.3]**.

H.13.1.3.8 All violations of **Section [C.9.2]** will be memorialized as a Contract failure (non-

compliance) and the Contractor will be assessed a Disincentive Fee of one hundred dollars (\$100) per hour, per employee. The offending employee shall not be allowed to continue work on the Contract until written proof of minimum eligibility has been submitted and approved by the COTR.

- H.13.1.3.9** *Continued and sustained violations* of **Section [C.9.2]** will be considered a *material breach* of this Contract and will result in punitive action up to Contract termination.
- H.13.1.3.10** Failure of the Contractor to provide Relief Officers to relieve other security employees at their assigned posts for rest/lunch breaks as detailed in **Section [C.13.1]** will result in the Contractor being assessed a Disincentive Fee of fifty dollars (\$50) per failed break.
- H.13.1.3.11** Failure to maintain format and content of all personnel and training files for required documentation necessary to validate the qualifications, licensing and evidence of required training for each of the Contractor's employees to perform under the Contract as set forth in **Section [C.18.9]** shall result in the Contractor being assessed a Disincentive Fee of one hundred dollars (\$100) per employee/incident.
- H.13.1.3.12** Violations of employee/Contractor investigative cooperation as detailed in Sections **[C.6.4.20]** and **[C.20]**, will result in the Contractor being assessed a monetary adjustment of one hundred dollars (\$100) for **each** incident **[C.21.3]**.
- H.13.1.4 Penalties Related to Contract Deliverable Violations**
- H.13.1.4.1** Failure of the Contractor to provide any report as set forth in **Section [F.3] (Deliverables)** will result in the Contractor being assessed a Disincentive Fee of two hundred and fifty (\$250) per incident. This monetary adjustment in no way alleviates the Contractor's requirement to submit deliverables as required by the Contract.
- H.13.1.4.2** Failure to submit Incident Report Form(s) on demand as set forth in this Contract, shall result in the Contractor being assessed a Disincentive Fee of fifty dollars (\$50) per twenty-four (24) hour period of delay **Section [C.19.5]**.
- H.13.2 Notification and Application Disincentive Fee /Monetary Adjustments**
- H.13.2.1** Notification of claims by the District government against the Contractor.
- H.13.2.1.1** The COTR, or his/her designee, shall review reports and notify the Contractor in writing, within three (3) business days of the event/incident that is the subject of the discrepancy and assessment of the Disincentive Fee.
- H.13.2.1.2** The Contractor has ten (10) calendar days from receipt to appeal, refute, dispute, or explain all reported discrepancies, in writing, to the COTR. If the Contractor

fails to respond to the notification, the Disincentive Fee will be considered sustained and the monetary adjustment will be automatically applied.

- H.13.2.1.3** The COTR shall investigate all appealed, refuted, disputed, or explained Disincentive Fee reports returned from the Contractor and provide a **recommendation** (based on the Contractor's response) to the Associate Director for Security for PSD.
- H.13.2.1.4** The Chief of Contracts and Procurement, Chief Procurement Officer, shall render the **final determination** for all Disincentive Fee/monetary adjustments under this Contract.
- H.13.2.1.5** Three (3) sustained Disincentive Fees/monetary adjustments **Section [H.13.1]** assessments shall constitute "*continued and sustained violations*" for failure to supply Contracted services at any location and the Contracting Officer (CO) may remove that location from the Contractor's list of locations and either undertake to provide security services at that location directly, or reassign responsibility (and assets) for that location to another Contractor.
- H.13.2.1.6** Sustained Disincentive Fees/monetary adjustments will be considered in the Contractor's annual performance evaluation.