

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF GENERAL SERVICES



D.C. DEPARTMENT OF GENERAL SERVICES  
INVITATION FOR BIDS

SECURITY UPGRADE SERVICES FOR POOLS & RECREATION CENTERS – KELLY MILLER POOL, RANDALL POOL AND TURKEY THICKET RECREATION CENTER  
(Individually and collectively, the, “Project”)

March 29, 2018

This IFB is designated only for certified small business enterprise (CSBE) Contractors 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. ONLY Contractors that are certified by the District of Columbia Department of Small and Local Business Development (DSLBD) as a CBE are eligible. SBE are eligible.

**Solicitation Number:** DCAM-18-CS-0070

**Bid Due Date:** Friday, April 13, 2018 by 12:00 pm

**Delivery of Bids:** Department of General Services  
Contracts and Procurement Division  
Attention: George Lewis  
Frank D. Reeves Center  
2000 14<sup>th</sup> Street NW, 8<sup>th</sup> Floor  
Washington, DC 20009

**Site Visit and Pre-Bid Conference:** Tuesday, April 3, 2018 at 9:00 am. See Section A.7 for details

**Questions Due:** Thursday, April, 5, 2018 at 12:00 pm

**Contact:** Bernadette Catalan  
Contract Specialist  
Department of General Services  
1250 U Street, NW, 3<sup>rd</sup> Floor  
Washington, DC 20009  
(202) 724-4119  
Bernadette.catalan@dc.gov

## Executive Summary

### A.1 Project Schedule

The Project must be Substantially Complete no later than May 15, 2018.

### A.2 Drawings and Specifications

A basis of design for each Project location is attached hereto as **Attachments A1-A3** (individually and collectively, the “**Scope of Work, Drawings and Specifications**”). The selected Contractor will be required to provide all labor, tools, equipment, materials, and professional services necessary to perform the work called for in the Scope of Work, Drawings and Specifications, as well as any work that is not specifically identified in the Scope of Work, Drawings and Specifications but which is reasonably inferable therefrom. The Department expects that the Contractor will deliver a turn-key Project at each Project location.

### A.3 Project Phases

In order to ensure that the Project is completed in an efficient and timely manner, the Contractor shall be required to complete certain preconstruction activities prior to mobilizing to the Project site and commencing work. The preconstruction activities are more fully described in **Section B.2**. The Contractor shall then proceed with the Construction Phase.

### A.4 Permits

The Contractor will be responsible for procuring the General Building Permit, as well as any additional permits required for this Project.

### A.5 Fixed Price

This will be a Fixed Price contract. Bidders shall be required to provide a Firm fixed-price for each recreation center that they intend to submit a bid for; Bidders may bid on any, or all of the proposed recreation centers. The Department reserves the right to make multiple awards. The Firm fixed-price shall include sufficient funds to cover all the expenses necessary to fully complete the Project, including, but not limited to, profit, home and field office overhead, supervision, labor, materials, equipment, bonds, insurance. The Firm fixed-price shall also include sufficient funding to fund items that are not specifically identified on the Scope of Work, Drawings and Specifications but which are reasonably inferable therefrom. Bidders shall submit with their proposal an Offer Letter-Bid Form in substantially the form of **Attachment B** on the Bidder’s letterhead setting forth its Firm fixed-price and a schedule of values for each site. Bidders shall also include an allowance for permit costs in the amount of \$10,000, and an owner directed allowance of \$50,000 for each site.

## A.6 Contract Documents

The resulting contract will consist of: (i) Offer/Award Form; (ii) Pages 2-54 of this IFB; (iii) the Standard Contract Provisions, included here as **Attachment G**; (iv) the Drawings and Specifications; and (v) such other exhibits and attachments as are incorporated into the contract. See Section F.5 of this IFB.

## A.7 Procurement Schedule

The schedule for this procurement is as follows:

- Issue IFB: - March 29, 2018
- Site Visits\* and Pre-bid Conference - **April 3, 2018 at 9:00 AM in order of site visits:**
  - \*Locations:**
    1. **Turkey Thicket Recreation Center:** 1100 Michigan Ave, NE Washington DC 20017 (**Pre-bid Conference will be held at this site and the site tour**)
    2. **Kelly Miller Community Center Pool :** 4900 Brooks Street, NE Washington DC 20019
    3. **Randall Recreation Center Pool:** 25 I Street, SW Washington DC 20024
- Last Day for Questions/Clarifications - April 5, 2018 at 2:00 PM
- Bids Due - April 13, 2018 at 12:00PM
- Bid Opening - April 13, 2018 at 12:30PM

**To ensure the bid remains on schedule and timely award of the Project, questions will not be accepted after April 5, 2018 at 2:00 PM.**

## A.8 Attachments

- Attachment A-1** - Kelly Miller Pool: Scope of Work, Drawings and Specifications. Link: [Kelly Miller VE SOW.pdf](#)
- Attachment A-2** - Randall Pool: Scope of Work, Drawings and Specifications. Link: [Randall VE SOW.pdf](#)
- Attachment A-3** - Randall Pool: Scope of Work, Drawings and Specifications. Link: [Turkey Thicket VE SOW.pdf](#)
- Attachment B** - Form of Offer Letter-Bid Form
- Attachment C** - Bidder Offeror Certification Form
- Attachment D** - Tax Affidavit
- Attachment E** - Subcontracting Plan Form
- Attachment F** - Davis-Bacon Wage Rates

- Attachment G**
  - Attachment H**
  - Attachment I**
  - Attachment J**
  - Attachment K**
  - Attachment L**
  - Attachment M**
  - Attachment N**
  - Attachment O**
- Standard Contract Provisions - Construction
  - Bid Bond Form
  - Bid Guarantee Certification
  - Living Wage Act Notice and Fact Sheet
  - Certification to Furnish Performance & Payment Bonds
  - EEO Policy Statement
  - First Source Employment Agreement
  - Award Signature Page
  - Certification Letter for Cashier's Check or Irrevocable Letter of Credit
- LSDBE Certification Letter, if applicable

## **SECTION B           SCOPE OF WORK**

Details of the scope of work at each recreation center are given in the survey report of the respective recreation center. A summary of the scope of work at each recreation center is given below:

**Kelly Miller Pool:** Vendor Qualifications and Project Requirements attached hereto as Attachment A-1.

**Randall Pool:** Vendor Qualifications and Project Requirements attached hereto as Attachment A-2.

**Turkey Thicket Recreation Center:** Vendor Qualifications and Project Requirements attached hereto as Attachment A-3.

**B.1.1** In general, the selected Contractor(s) shall be required to provide all of the labor, tools, equipment, and materials necessary to perform the work called for in the Scope of Work, Drawings and Specifications attached as **Attachments A1-A3**. To the extent there is an inconsistency between the Drawings and Specifications, the Contractor shall be required to provide the more expensive requirement. Prior to submitting its proposal, each Bidder shall carefully review the Drawings and Specifications and shall bring any inconsistency or error in the drawings and specifications to the attention of the Department in writing. To the extent that a competent contractor could have identified any such inconsistency or error, such inconsistency or error shall not serve as the basis for a change order and the Contractor shall assume the risk of such inconsistency or error.

### **B.2    Preconstruction Activities**

Prior to mobilizing to the Project site and commencing work, the Contractor shall be required to complete those activities set forth in this **Section B.2**. Unless a delay in completing the preconstruction activities is the result of a delay by the Department or the Program Manager beyond the timeframes set forth herein or an event of force majeure, delays in completing the preconstruction activities shall not be considered excusable and shall not justify an extension of the Substantial Completion Date.

**B.2.1 Detailed Schedule.** Within three (3) days of the issuance of a Notice to Proceed, the Contractor shall submit to the Department for its approval a schedule of Project. Such schedule shall include a schedule for submittals that is reasonably acceptable to the Program Manager. The Program Manager shall have two (2) business days to review such submittal.

**B.2.2 Submittals.** On or before the dates specified in the approved detailed schedule, the Contractor shall submit the necessary information (i.e. shop drawings, submittals, sketches, etc.) to the Program Manager for his review and approval. Unless a different timeframe is established in the approved baseline schedule, the Program Manager shall have five (5) business days to review such documents. In the event the Program Manager finds such documents to be unacceptable, the Contractor shall be required to revise and resubmit such documents. The Contractor shall not commence construction activities unless and until such documents have been approved by the

Program Manager. Any delays that result from design resubmissions shall be considered Non-Excusable.

**B.2.3 Other Services.** Prior to providing its bid for the Project, the Contractor had an opportunity to review the Drawings and Specifications for the Project and to ascertain what additional services, if any, were necessary for the delivery of a fully functioning Project and has included in the Lump Sum Price the costs of any necessary services, including design services, and the Contractor shall be required to provide, at no additional cost to the Department, such services as are necessary to implement the Project. Within seven (7) days after the Contract is signed, the Contractor and the Project Manager shall agree upon the exact services to be required.

**B.2.4 Safety Plan.** Prior to the start of construction activities, the Contractor shall prepare a safety plan for the construction phase conforming to OSHA 29 CFR 1926 (such plan, the “**Safety Plan**”). The Safety Plan shall be submitted to the Department, and the Contractor shall incorporate such comments as the Department may reasonably request.

**B.2.4.1 Safety Barriers/Fences.** As part of its responsibility for Project safety, the Contractor shall install such barriers as may be necessary around the work area. The Contractor shall develop a plan that describes the proposed separation and the specific nature of the barriers that will be used. This plan will be submitted to the Department for their review and approval prior to the commencement of construction. Once such plan has been approved, the Contractor shall comply with it at all times during construction. The Contractor shall be required to revise the plan as may be reasonably requested by the Department. The cost of revising and complying with the revised plan shall not entitle the Contractor to an increase in the Lump Sum Price.

**B.2.4.2 Site Security.** The Contractor shall be responsible for keeping the work area cordoned off from the public throughout the Project.

**B.2.4.3 Exculpation.** The right of the Department to comment on the Safety Plan and the nature and location of the required barriers shall in no way absolve the Contractor from the obligation to maintain a safe site.

**B.2.5 Site Logistics Plan.** Prior to the start of construction activities, the Contractor shall prepare a Site Logistics Plan. The Site Logistics Plan shall address: (i) the manner in which the Contractor intends to organize the site; (ii) the location and description of safety barricades intended to prevent the public or student population from entering the elevator site; and (iv) parking restrictions and procedures that will apply to the employees of Contractor and its Subcontractors. The Contractor’s storage/laydown area will be limited to the limits of disturbances shown on the Drawings and Specifications.

**B.2.6 Potential Subcontractors and Suppliers.** The Contractor shall include with its bid a list of the significant subcontractors that the Contractor intends to engage to perform the work. Within seven (7) days after the issuance of a Notice to Proceed, the Contractor shall furnish to the Department and its Program Manager a list of the subcontractors and suppliers that will work on this Project as well as a general description of each such subcontractor’s scope of work. Within five (5) business days after such list is submitted, the Program Manager shall advise the Contractor if it has

any objection to any of the listed subcontractors or suppliers. In the event the Program Manager has a reasonable objection to any such subcontractor or supplier, the Parties shall discuss such objection and agree on an appropriate course of action. To the extent the Department rejects a subcontractor that was disclosed in the bid, the Contractor shall be entitled to an appropriate equitable adjustment as a result of such disapproval.

**B.2.7 Preconstruction Phase Deliverables.** The following deliverables are required during the Preconstruction Phase.

- .1 Detailed Schedules (B.2.1).
- .2 Safety Plan (B.2.4).
- .3 Site Logistics Plan (B.2.5).
- .4 List of Subcontractors and Suppliers (B.2.6).

**B.2.8 Permits.** It is understood that the Contractor shall be responsible for securing and paying for the building permit for the Project, as well as any other permits, governmental fees, licenses and inspections necessary for the execution and completion of the Work. The Department shall provide an allowance of \$10,000 per site for allowances. The Department shall cooperate with the Contractor in securing such permits, licenses and inspections; provided however, the Department shall not be required to pay the fees for such permits, licenses and inspections unless otherwise noted herein. The costs of any such fees or inspections are included in the Lump Sum Price.

### **B.3 Construction Phase**

The Construction Phase shall commence when the Department issues a written second Notice to Proceed for Construction. The Contractor shall construct the work described on the Drawings and Specifications including any work that is that is not specifically shown thereon but is reasonably inferable therefrom or necessary for a fully functioning 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.

**B.3.1 Supervision & Coordination.** The Contractor shall be required to properly supervise and coordinate its work. At a minimum, it is envisioned that the Contractor will be required to undertake the following tasks:

- .1 Participate and assist in Project/Planning meetings;
- .2 Maintain full-time on-site construction supervision and provide daily inspections, quality control, monitoring, coordination of various trades, record drawings, and daily work log;
- .3 Coordinate works with any on-site personnel so as to ensure that their activities are not adversely affected;
- .4 Not used;
- .5 Provide general safety signage and posting for the project and see that each subcontractor prepares and submits adequate safety program and monitoring throughout the project;

- .6 Obtain all job permits and approvals from the Department of Consumer and Regulatory Affairs that are required to perform and complete the Work, unless otherwise noted herein;
- .7 Prepare payment requests verify accuracy and forward to Department for approval and payment;
- .8 Assemble close-out documents required;
- .9 Provide assistance to the Department through all applicable warranty periods.
- .10 Coordinate its work with all third parties so as not to delay the critical path of the Project; and
- .11 Prepare and submit to the Department construction meeting minutes, progress meeting minutes, daily logs, inspection reports, preliminary and baseline schedules, (Primavera format) and schedule updates demonstrating the critical path of the Project (Primavera format).

**B.3.2 CBE Subcontractors.** The Contractor shall not substitute or replace any Subcontractor or supplier certified by the District of Columbia Department of Small and Local Business Development without the Department's prior written consent.

**B.3.3 Site Observations.** The Contractor will be required to visit the site, become familiar with local conditions under which the work is to be performed and correlate personal observations with requirements of the Drawings and Specifications. The Contractor shall carefully study and compare the Drawings and Specifications with each other and with information furnished by the Department. Before commencing activities, the Contractor shall (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Drawings and Specifications; and (3) promptly report errors, inconsistencies or omissions discovered to the Department. Once work is started, the Contractor assumes the responsibility and costs for the work and the cost of correcting work previously installed.

**B.3.4 Warranty of the Construction Work.** The Contractor warrants to the Department that materials and equipment furnished under the Contract will be of good quality and new unless otherwise expressly permitted in writing, and that for the one (1) year period following the Substantial Completion Date the construction work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the Construction Documents and/or any approved design documents. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. The Contractor and a representative of the Department shall walk the Project together eleven (11) months after the Substantial Completion Date to identify any necessary warranty work. In the event the Contractor fails to schedule such a walk, the Warranty period shall be extended until such time as the Contractor schedules such a walk.

**B.3.5 Extent of Responsibility and Site Conditions.** The Contractor shall be entitled to an equitable adjustment in accordance with the Standard Contract Provisions for differing site conditions only to the extent that: (i) such conditions could not have been discovered by a competent visual inspection of the site, are of unusual nature, and differ materially from those ordinarily encountered and generally recognized as inhering to work of the character provided for in the



Contract; or (ii) with regard to subsurface conditions on or adjacent to the Project site, such subsurface conditions that differ materially from those indicated in the geotechnical reports (such circumstances, “**Differing Site Conditions**”). Prior to commencing construction, the Contractor shall be required to conduct a thorough review of the Project site and the surrounding area and shall document its findings. In the event the Contractor fails to undertake and document such a thorough review, the Contractor shall be deemed to have known of those conditions which a thorough review would have detected. Any Change Request related to Differing Site Conditions shall be made pursuant to the Standard Contract Provisions.

### **B.3.6 Unsafe Materials and Hazardous Materials**

**B.3.6.1** The Contractor shall abate and legally dispose of any Hazardous Materials in the demolished facilities, in accordance with EPA and all jurisdictional agencies’ rules and regulations. The Contractor shall be responsible for all interior and exterior demolition, as required.

**B.3.6.2** The Contractor shall not bring, spill or release onto the site asbestos, PCBs, or any other Hazardous Material that is not customarily used in a facility of the type and similar to the Project, and shall bring to the Department’s attention any specification of such Hazardous Materials in the design documents. If the Contractor believes that anything in the Contract would require that it use or bring onto the site asbestos, PCBs, or any Hazardous Material that is not customarily used in a facility of the type and similar to the Project, it shall immediately inform the Department and seek direction before proceeding.

**B.3.6.3** If Hazardous Materials are discovered on the site beyond those which were disclosed in the solicitation documents, the Contractor shall immediately inform the Program Manager and the Department of such discovery. In such an event, the Contractor shall be entitled to an equitable adjustment in accordance with the Standard Contract Provisions for any Hazardous Materials abatement and disposal work. The Contractor shall comply with all laws, including, without limitation, the requirements of the EPA and all jurisdictional agencies as well as 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 Contractor shall also give those notices at the appropriate times. **The Contractor shall ensure abatement subcontractors and disposal sites are appropriately licensed and qualified. In addition, the Contractor 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.**

**B.3.6.4** The Contractor shall keep detailed records documenting Work done so that the Department may independently verify compliance with all laws, the number of units actually removed, treated, and/or disposed of, and the appropriate unit price(s) applicable to the Work.

**B.3.7 Progress Meetings.** The Contractor shall schedule and conduct progress meetings, as required, at which the Department, the Program Manager, the Contractor and appropriate Subcontractors can discuss the status of the Work. The Contractor shall prepare and promptly distribute meeting minutes.

**B.3.8 Written Reports.** The Contractor shall provide written reports to the Program Manager on the progress of the entire Work in accordance at least every other week, including, but not limited to, a baseline schedule and schedule updates with narrative demonstrating the critical path of the Project in Primavera format. The Contractor shall also maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, major equipment on the site, Work accomplished, problems encountered and other similar relevant data as the Department may reasonably require. The log shall be available to the Department and the Program Manager and on a monthly basis a copy of the log shall be submitted to the Department.

**B.3.9 Work by Separate Contractors.** The Department reserves the right to perform construction or operations related to the Project with the Department's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site.

**B.3.10 Site Safety and Clean-Up.** The Contractor will be required to: (i) provide a safe and efficient site, with controlled access, including the installation and provision of such safety barricades, enclosures and overhead protection as may reasonably be required by the Department and as may be necessary to ensure a safe workplace or as may be required by OSHA or other applicable law, and to remove such at the end of the Work and leave the site in broom clean condition; and (ii) be responsible for the security of its tools, equipment and materials that are stored at the site. The Contractor shall be responsible for the removal and legal disposal of all construction debris.

**B.3.11 Close-out.** The Contractor shall be required to prepare and submit at close-out a complete set of product files, including but not limited to: (i) a complete set of product manuals (O&M) and warranties; (ii) as-built record drawings; (iii) environmental, health, and safety documents; and (iv) all applicable inspection certificates/permits. The Contractor shall also provide the Department with any shop drawings prepared by the Contractor or its subcontractors along with any other documentation that may reasonably be requested by the Department or its Program Manager.

**B.3.12 Cutting and Patching.** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching. The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Department or separate Contractors by cutting, patching or otherwise altering such construction, or by excavation.

**B.3.13 Salvaging and Storing.** The Contractor shall be responsible for salvaging and storing all items identified by the Department. The salvage value of any piece of equipment or material found within the buildings to be demolished that has a value in excess of Ten Thousand Dollars (\$10,000) shall accrue to the benefit of the Department. The value of the salvaged materials (i.e. copper pipping, etc.) under the aforementioned threshold shall accrue to the benefit of the Contractor.

### **B.3.14 Correction of Work**

**B.3.14.1** The Department shall be at liberty to object and to require the Contractor to remove forthwith from the Project site and the Work and to promptly replace the Superintendent, any foreman, technical assistant, laborer, agent, representative, or other person used by the Contractor in or about the execution or maintenance of the Work, who in the sole opinion of the Department is misconducting himself or herself, or is incompetent or negligent in the proper performance of his or her duties, or whose performance in the Work is otherwise considered by the Department to be undesirable or unsatisfactory, and such person shall not be again employed upon the Project without the written permission of the Department.

**B.3.14.2** The Contractor shall promptly correct Work rejected by Department for failing to conform to the requirements of the Construction Documents or any approved design document or applicable law or regulations whether observed before or after the Project's completion and whether or not fabricated, installed or completed, and shall correct any Work found to be not in accordance with the requirements within a period of one (1) year from the date of completion or by terms of an applicable special warranty required by the Contract.

**B.3.14.3** If during the guarantee or warranty period, any material, equipment or system requires corrective Work because of defects in materials or workmanship, the Contractor shall commence corrective Work within forty-eight (48) hours after receiving the notice and work diligently until corrective Work is completed; provided, however, if such notice is received on the day before a weekend or a holiday, the Contractor will commence corrective Work on the next business day. If the Contractor does not, in accordance with the terms and provisions of the Contract Documents, commence all corrective Work within forty-eight (48) hours or if the Contractor commences such Work but does not pursue it in an expeditious manner, Department may either notify the bonding company (if any) to have such Work and/or obligations performed at no additional cost to Department or may perform such Work and/or obligations and charge the costs thereof to Contractor.

### **B.3.15 Manufacturers' Warranties**

**B.3.15.1** The Contractor warrants that all manufacturers' or other warranties on all labor, materials and equipment furnished by the Contractor or a Subcontractor or supplier shall run directly to or will be specifically assigned to Department on demand or upon Project completion without demand. In the event any issue or defect which would be covered by any warranty arises but is not addressed by the grantor of the warranty, the Contractor shall be required to act as the guarantor of the obligations under the warranty and to perform under the terms of the warranty.

**B.3.15.2** The Contractor warrants that the installation of all materials and equipment shall be in strict accordance with the manufacturers' requirements or specifications.

**B.3.16 Schedule Updates.** The Contractor shall submit bi-weekly schedule updates which shall reflect actual conditions of Project progress as of the date of the update. The update shall reflect the actual progress of construction, identify developing delays, regardless of their cause, and reflect the Contractor's best projection of the actual date by which Substantial Completion and Final Completion of the Project will be achieved. Via a narrative statement (not merely a critical path

method schedule), the Contractor shall identify the causes of any potential delay and state what, in the Contractor's judgment, must be done to avoid or reduce that delay. The Contractor shall point out, in its narrative, 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. Any significant variance from the previous schedule or update shall also be identified in a narrative, together with the reasons for the variance and its impact on Project completion. All schedule updates shall be in Primavera 6 format. The Department may make reasonable requests during the Project for changes to the format or for further explanation of information provided. Submission of updates showing that Substantial Completion or Final Completion of the Project will be achieved later than the applicable scheduled completion date shall not constitute requests for extension of time and shall not operate to change the scheduled completion date. The Department's receipt of, and lack of objection to, any schedule update showing Substantial Completion or Final Completion later than the dates agreed upon in the Project Schedule shall not be regarded as the Department's agreement that the Contractor may have an extension of time, or as a waiver of any of the Department's rights, but merely as the Contractor's representation that, as a matter of fact, Substantial Completion or Final Completion of the Project may not be completed by the agreed upon date in the Project Schedule. Changes to the scheduled completion dates may be made only in the circumstances and only by the methods set forth in the Contract.

**B.3.17 Acceleration.** Subject to the terms of this Section, the Department shall have the right to direct the Contractor to accelerate the Work if, in the reasonable judgment of Department, the Contractor fails to: (i) supply a sufficiency of workers or to deliver the materials or equipment with such promptness as to prevent the delay in the progress of the Work; or (ii) the progress of the Work materially falls behind the projections contained in the then currently approved Project Schedule. In the event that the Department or its Program Manager determine that either of the events specified in the preceding sentence have occurred, the Department shall provide the Contractor with written notice of such event and the Contractor shall be required to provide the Department with a corrective action plan that is reasonably designed to address the concerns raised in such notice within three (3) days after receipt of such notice. If the Department and the Contractor are unable to agree on the terms of such corrective action plan within five (5) days after the issuance of the notice (i.e. with forty eight (48) hours after the receipt of the proposed corrective action plan), the Department shall have the right to direct such acceleration as the Department, in its reasonable judgment, deems necessary. Provided the notice provisions of this Section are complied with, the cost of any acceleration directed under this Section shall not justify an adjustment to the Lump Sum Price or the Substantial Completion Date. The Contractor hereby acknowledges that this provision is a material inducement upon which the Department has relied in entering into the Contract; and represents and warrants that it has included sufficient funding in its Lump Sum Price in order to comply with the requirements of this Section.

**B.4 Substantial Completion Date.** The Contractor shall be substantially complete no later than the dates identified herein. For purposes of this requirement, the term “**Substantially Complete**” shall mean that all of the following have occurred: (1) the work has been completed with only minor punch list items remaining to be completed; (2) any and all required permits or approvals related to the work have been obtained; (3) all operating and maintenance manuals, training videotapes and warranties required by the Contract have been delivered to the Department; (4) any supplemental

training session required by the Contract for operating or maintenance personnel have been completed; (5) all clean-up required by the Contract has been completed; and (6) the Project is ready for the Department to use it for its intended purpose. “**Minor punch list items**” are defined for this purpose as items that, in the aggregate, can be completed within seven (7) days without interfering with the Department's normal use of the Project. Final Completion shall mean 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 have been received. Work is defined as the construction and services required by the Contract, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project.

The Project shall be at Final Completion no later than June 29, 2018. All systems shall be functional.

## **B.5 Administrative Matters**

**B.5.1 Use of Prolog.** The Contractor shall utilize the Department’s Prolog system to submit any and all documentation required to be provided by the Contractor for the Project, including, but not limited to, (i) requests for information; (ii) submittals; (iii) meeting minutes; (iv) proposed Changes; (v) certified payrolls (and at DGS’ option to upload via DOES LCP Tracker software which the District will make available to the Contractor); (vi) Drawings and Specifications; (vii) punch list; (viii) invoices/applications for payment (full package including all forms required by DGS); and (ix) other documents as may be designated by the Department.

**B.5.2 Liquidated Damages.** If the Contractor fails to achieve Substantial Completion by the Substantial Completion Date, the Parties acknowledge and agree that the actual damage to the Department for the delay will be impossible to determine, and in lieu thereof, the Contractor shall pay to the Department, as fixed, agreed and liquidated delay damages in the amount of Seven Hundred Seventy Five Dollars (\$775) per day for each calendar day of delay for failure to meet the Substantial Completion Date. 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. In the event the Contractor fails to meet the Substantial Completion Date for more than 50 days, the Contractor consents to a termination for default.

**B.5.3 Compensation.** The Contractor shall be paid its compensation in a series of progress payments and a final payment. Progress payments shall be based on a Schedule of Values that is agreed upon by the Parties as well as the Program Manager’s good faith estimate of the level of completion for each component of the Schedule of Values. Contractor shall prepare the Schedule of Values which breaks down the Lump Sum Price for the various parts of the Work. The Schedule of Values shall be maintained in such a manner to provide a breakdown of the Lump Sum Price in enough detail to facilitate continued evaluation of applications for payment and progress reports. Large subcontracts shall be broken into several line items where, in the opinion of the Program Manager, such detail is necessary to properly track the progress of the Work. The proposed schedule of values shall also include separate line items for each part of the Work if so required by the Program Manager. The Contractor and the Program Manager shall meet as necessary to maintain the schedule

of values for the Project in a manner acceptable to the Program Manager. No progress payments shall be made unless the then current Schedule of Values is acceptable to the Program Manager.

**B.6 Key Personnel**

The Contractor’s personnel should have the necessary experience and licenses to perform the required work. Toward that end, Bidders should include within the bid a description of the staff available to perform this work and their qualifications. If the Project is awarded to one (1) contractor, the key personnel shall oversee both Project sites.

Key personnel shall include, at a minimum, the following individuals: (i) the Field Superintendent; and (ii) the Project Manager who will be responsible for the Project. The Contractor will not be permitted to reassign any of the key personnel unless the Department approves the proposed reassignment and the proposed replacement. A list of the key personnel shall be attached to the contract that results from this IFB.

**B.7 Not used.**

**B.8 Construction Phase Deliverables.**

- .1 Progress Meeting Minutes (B.3.7).
- .2 Progress Reports (B.3.8).
- .3 Closes out Documents (B.3.11).
- .4 Copy of Manufacturer Warranties (B.3.15).
- .5 Bi-Weekly Schedule Updates (B.3.16).

## **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 35% 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 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.
- (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 (a) and C.2.1 (f), a prime contractor that is a CBE and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A CBE prime contractor that performs less than 35% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- (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, 35% of the subcontracting effort shall be with CBEs. A certified joint venture prime contractor that performs less than 50% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- (f) Each CBE utilized to meet these subcontracting requirements shall perform at least 35% of its contracting effort with its own organization and resources.
- (g) A prime contractor that is a CBE and has been granted a bid preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall



perform at least 50% of the on-site work with its own organization and resources if the contract is \$1 million or less.

- (h) A list of Certified Business Enterprises can be found on the District of Columbia, Department of Small and Local Business Development website at <http://dslbd.dc.gov/dc/DSLBD>, click on “Doing Business in the District”, click on “Find CBE Certified Contractors.”

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

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:

- i. At least 20% of journey worker hours by trade shall be performed by District residents;
- ii. At least 60% of apprentice hours by trade shall be performed by District residents;
- iii. At least 51% of skilled laborer hours by trade shall be performed by District residents; and
- iv. 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 M**) 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.

## **SECTION D**

### **FIRM FIXED PRICE**

**D.1 Firm Fixed Price.** The Contractor shall 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 Scope of Work, Drawings and Specifications (Attachments A1-A3), 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 has selected the Contractor because of its special expertise in constructing similar projects. Before agreeing to the Lump Sum Price, the Contractor reviewed the 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 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 Drawings is omitted from the Specifications, or vice versa (except when the 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 one (1) or more award(s) 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-Bid Form (**Attachment B**) and the price-related evaluation factors identified in the IFB. Where multiple projects are included in a single solicitation, Offerors are eligible to receive one award per project unless it is determined to not be in the District's best interest.

**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 an 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-17-CS-0070– Security Upgrade Services for Pools and Recreation Centers – (Kelly Miller Pool, Randall Pool and Turkey Thicket Recreation Center)"**

**F.2 Delivery or Mailing of Bids:**

Submissions shall be delivered or mailed to:

Department of General Services  
Attn: George G. Lewis  
Associate Director  
2000 14<sup>th</sup> Street, NW, 8<sup>th</sup> Floor  
Washington, D.C. 20009  
Phone: (202) 727-2800

**F.3 Pre-Bid Conference and Site Visit**

The pre-bid conference will be as set forth in Section A.7.

**F.4 Questions about the Solicitation.**

Questions about the solicitation shall be submitted via email no later than the date and time specified in Section A.7. The Department will post responses to all questions received on the Department's website at [www.dgs.dc.gov](http://www.dgs.dc.gov).

**F.5 Date and Time for Receiving Bids**

Submissions shall be received no later than **12:00pm** local time on **April 9, 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 **12:30pm** on **April 9, 2018** at **Adams Morgan Conference Room, 1250 U St NW, 3<sup>rd</sup> Floor**.

**F.7 Attachments and Other Bid Documents**

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

- (a) Acknowledgement of Amendments (Award/Signature Page Section 13)

- (b) The IFB pages 2 – 55
- (c) Form of Offer Letter and Bid Form - the Contractor shall submit a Form of Offer Letter and Bid Form (**Attachment B**) for each Pool and the Recreation Center (Kelly Miller Pool, Randall Pool and Turkey Thicket Recreation Center);
- (d) Bidder Offeror Certification Form – the 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 E**;
- (h) Davis-Bacon Wages Determination shall apply (**Attachment F**);
- (i) Standard Contract Provisions – Construction (**Attachment G**);
- (j) Bid Bond or Bid Guarantee Certification - Each Contractor shall submit a Bid Bond or Bid Guarantee Certification substantially in the form of **Attachment H** or **Attachment I**, respectively;
- (k) Living Wage Act Notice and Fact Sheet (**Attachment J**);
- (l) Certification to Furnish Performance & Payment Bonds (**Attachment K**);
- (m) EEO Policy Statement (**Attachment L**);
- (n) First Source Employment Agreement - Each Contractor shall submit the First Source Employment Agreement provided as (**Attachment M**);
- (o) A signed Award/Signature Page (**Attachment N**)
- (p) Certification Letter for Cashier’s Check or Irrevocable Letter of Credit (**Attachment O**); and
- (q) LSDBE Certification Letter, if applicable.

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

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

Bernadette Catalan  
Contract Specialist  
Department of General Services  
Contracts and Procurement Division  
1250 U Street, NW, 3<sup>rd</sup> Floor  
Washington, DC 20009  
Phone: (202) 724-4119  
Email: Bernadette.catalan@dc.gov

**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 amendments, 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. 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 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.

- (a) **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.

- (b) **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.
- (c) **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 BOND**  
**REQUIREMENTS**

**H.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.

**H.1.1** All required policies shall contain a waiver of subrogation provision in favor of the Government of the District of Columbia.

**H.1.2** 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.

**H.1.3** 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.

**A.** 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.

**B.** 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.

**C.** 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.

**D.** 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.

**E.** 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 \$10,000 per occurrence.

**F.** 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.

G. Installation-Floater Insurance - For projects not involving structures, the contractor shall provide an installation floater policy with a limit equal to the full contract value. The policy shall cover property while located at the project site, at temporary locations, or in transit; deductibles will be the sole responsibility of the contractor.

H. 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.

I. Sexual/Physical Abuse & Molestation - The Contractor shall provide evidence satisfactory to the Contracting Officer with respect to the services performed that it carries \$1,000,000 per occurrence limits; \$2,000,000 aggregate of affirmative abuse and molestation liability coverage. This insurance requirement will be considered met if the general liability insurance includes an affirmative sexual abuse and molestation endorsement for the required amounts. So called "silent" coverage under a commercial general liability or professional liability policy will not be acceptable.

J. 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) \$10,000,000 per occurrence and \$10,000,000 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.2. 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.3 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.4 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.5 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.6 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.

**H.7 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.8 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  
1250 U Street NW, 3<sup>rd</sup> Floor  
Washington, DC 20009  
(202) 727-7128  
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.9 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.10 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.11 BID BOND**

**H.11.1** Contractors shall submit with their bid a Bid Bond in the amount of **5%** of the Contractor's lump sum price. The Contractor's Bid Bond shall be submitted in substantially the form provided as **Attachment H**. 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.11.2** 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 O** and return, notarized, with the Contractor's bid.

### **H.12.1 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.12.2** In 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  
Contracts and Procurement  
Department of General Services  
1250 U Street NW, 3<sup>rd</sup> Floor, Washington, DC 20009  
Telephone: (202) 727-7128  
E-mail: [franklin.austin5@dc.gov](mailto: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:

Alphonso Fluelling  
Program Manager, DPR Cluster  
Capital Construction Services  
Department of General Services  
1250 U Street, NW, 4<sup>th</sup> Floor  
Washington, DC. 20009  
202-645-5836  
[alphonso.fluelling@dc.gov](mailto:alphonso.fluelling@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;

**I.2.2.2.6** Authorize the use of District property, except as specified under the Contract;  
or

**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 14<sup>th</sup> Street N.W., 5<sup>th</sup> 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 (25<sup>th</sup>) 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.

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

**I.3.3.4.2** 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.3.3.4.3** 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.3.3.4.4** the Contractor has failed to provide the monthly report in full compliance with this Section I.3.3.5 of this Agreement; or

**I.3.3.4.5** 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.3.3.4.6** 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.3.3.4.7** 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.3.3.4.8** the Department has reasonable evidence that the Work cannot be completed for the unpaid balance of the Lump Sum Price; or

**I.3.3.4.9** 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.3.3.4.10** the Application for Payment is incomplete, unsubstantiated and/or does not contain sufficient documentation for evaluation by the Contracting Officer.

**I.3.3.5 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.3.3.6 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.3.3.7 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.3.3.8 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.3.3.9 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.2.4** 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.3 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.4 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.5 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.6 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.7 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 \$775.00 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** 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 Department:

Franklin Austin  
Contracting Officer  
Department of General Services  
1250 U St, NW -3<sup>rd</sup> Floor  
Washington, DC 20009

If to the Contractor:

[CONTRACTOR INSERT INFO HERE]

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

**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 May 15, 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.38.3.3** 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.38.3.4** 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.

### **L.8 Final Completion**

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.9 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.10 Fully Complete/Full Completion**

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.11 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.12 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.13 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.14 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.15 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.16 Substantial Completion**

Substantial Completion shall have the meaning ascribed in Section B.4 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.