

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

ON-CALL ROOFING REPAIRS

Solicitation #: DCAM-14-NC-0056

**Addendum No. 2
Issued: October 2, 2013**

This Addendum Number 02 is issued by e-mail on October 2, 2013. Except as modified hereby, the Request for Proposals (“RFP”) remains unmodified.

Item #1

Form of Contract: Attached to this Addendum is the Form of Contract. THE TERMS OF THE FORM OF CONTRACT SHALL PREVAIL OVER THE RFP. TO THE EXTENT THERE IS AN INCONSISTENCY BETWEEN THE FORM OF CONTRACT ISSUED HERewith AND THE RFP, THE FORM OF CONTRACT SHALL GOVERN.

Item #2

Overtime Rates: Overtime rates are applicable as follows:

- Contractors are not approved to charge overtime between the hours of 6am – 5pm on weekdays
- Contractors are approved to charge overtime if they respond between the hours of 5pm and 6am
- Contractors are approved to charge overtime on weekends
- Contractors are approved to charge overtime on holidays

Item #3

The bid date remains unchanged. Proposals are due by **October 10, 2013 at 2:00 pm EDT.** Proposals that are hand-delivered should be delivered to the attention of: Tia Mercer, Contract Specialist, at **Frank D. Reeves Center, 2000 14th Street, NW, 8th floor, Washington, DC 20009.**

- End of Addendum No. 2 -

FORM OF CONTRACT

CONTRACT FOR ON-CALL ROOFING REPAIRS DCAM-14-NC-0056

THIS CONTRACT FOR ON-CALL ROOFING REPAIRS (“Agreement”) is entered into by and between the District of Columbia government acting by and through its **DEPARTMENT OF GENERAL SERVICES** (“Department” or “DGS”) and [CONTRACTOR] (“Contractor”).

WITNESSETH:

WHEREAS, the Department is charged with maintaining and repairing approximately four hundred (400) schools, Fire Stations, Police Stations, Recreation Centers and DGS Real Estate Facilities in the District of Columbia (the “Project Facilities”).

WHEREAS, the Department issued a Request for Proposals to engage a contractor to provide on-call maintenance and emergency roof repair services at various Project Facilities.

WHEREAS, the Department has engaged a roof management consultant (“BLUEFIN”) to assist the Department in managing its roof assets.

WHEREAS, the Contractor submitted a proposal in response to the Request for Proposals, and the Department wishes to engage the Contractor to provide the requested services.

WHEREAS, the Department desires that the Project be completed over the course of Fiscal Year 2014, with the Department to retain the ability to exercise option years for Fiscal Year 2015 and Fiscal Year 2016.

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the sufficiency and adequacy of which is hereby acknowledged, the parties to this Agreement agree as follows:

Agreement:

Section 1 **Scope of Work.**

Section 1.1 **General Scope of Work & Intent of Contract.** Subject to the terms and conditions of this Agreement, the Contractor shall provide all labor, supervision, tools, material, equipment, transportation, and management necessary to provide “on-call” maintenance and emergency roof repairs at the various Project Facilities (the “Project”). This Agreement will require the Contractor to provide any necessary upkeep and/or repair of identified roofs and be available to address any future roofing problems as directed by the Department. In addition, the Contractor be required to demolish and remove existing roof materials and dispose of all waste material. Work to be performed under this contract will include, but is not limited to, the

following repairs: (i) Cracks; (ii) Blisters; (iii) Drains; (iv) Vents; (v); Scuppers; (vi) Gutters; (vii) Jacks; (viii); (ix) Roof hatches; (x) Sleepers; (xi) Flashing; (xii) Copings; (xiii) Downspouts; (xiv) Dormers; (xv) Facia; (xvi) Gravel stops; (xvii) Parapet walls; (xviii) Pitch pans/pocket; (xix) Vents; and (xx) Expansion joint.

Other Services may include: (a) Roof inspections; (b) Leak tests and repairs; (c) Waterproofing; (d) Minor restoration; (e) Core samples/testing; and (f) Moisture surveys. The contractor and all personnel utilized in the performance of the work shall have experience with the types of roof systems and materials listed on **Exhibit A**. **At no time during a repair shall a torch be used to install roofing membrane.**

Section 1.2 Contractor's Operations. At all times while this Agreement is in effect, the Contractor shall comply with the following requirements:

- .1 Dispatching Office.** The Contractor will be required to provide a staffed central office from which personnel are dispatched. At a minimum, this office shall be staffed between 7:00 am and 5:30 pm, Monday through Friday. The Contractor should also provide an “after hours” point of contact for dispatching staff on a 24/7 basis.
- .2 Work Records; Weekly Reports.** The Contractor shall maintain a job tracking system that, at a minimum, records: (i) the date and time a request was received by the Contractor; (ii) the date and time a crew was dispatched to the site; (iii) the date and time the crew arrived at the site; (iv) a description of the problem and corrective work required; (v) the amount of time spent on the site by the Contractor's personnel; (vi) the materials and spare parts used by the Contractor; and (vii) the date and time the work or repair was accepted by DGS. The Contractor shall provide DGS with a report that summarizes all such activity on a weekly basis.
- .3 Time Cards.** The Contractor shall maintain a system that requires each employee to track his or her time on an hourly basis. At a minimum, such a system shall require each employee to clock in and out and to sign time cards.
- .4 Equipped Personnel.** The Contractor shall ensure that all of its personnel assigned to tasks on the contract are properly trained, equipped and, as necessary, licensed. Contractor personnel shall be provided with a fully equipped truck or service van that includes appropriate small tools and spare parts.
- .5 Qualified Personnel.** Each Contractor will be required to provide personnel who have experience in managing large multi-facility roof maintenance as well as: roof inspections, leak tests and repairs; waterproofing; minor restoration; core samples/testing; and moisture surveys. Additionally, all personnel must have experience with the types of roof systems and materials listed on **Exhibit A**. All such personnel shall be properly licensed and fully qualified to perform the expected services.

- .6 **Security Checks & Procedures.** The Contractor will be required to comply with all DCPS and other District building standard security procedures. Contractor personnel will not be permitted to enter facilities unless such personnel are properly “badged” in accordance with DCPS and other District building procedures, and the Contractor shall have available a sufficient pool of pre-screened and “badged” personnel to discharge its functions.

Section 1.3 Work Procedures. The Contractor will be required to provide supervision, labor, materials and equipment necessary to perform the “on-call” services required under its contract. In performing these activities, the Contractor shall comply with the following procedures:

- .1 Provide qualified workers to perform roof repairs and upkeep services and adequate onsite supervision on a twenty-four (24) hour basis. Roofing work by its nature can be difficult and dangerous for inexperienced, untrained workers. The repair standards and procedures required by this Contract require varying levels of competency and training in order to be effective. The misuse or lack of training on the part of workers can create more problems than solutions. The Contractor shall ensure that qualified personnel are assigned or contracted to accomplish the repair work per all applicable NRCA guidelines.
- .2 Employ and have sufficient technical personnel capable of responding to multiple dispatches simultaneously. The Contractor shall also provide DGS a twenty-four (24) hour emergency telephone number that will serve as the notification and dispatch center for service calls from DGS.
- .3 When an emergency roofing issue arises, DGS shall notify a Contractor that there is a need for maintenance and/or emergency repair at a particular Project Facility. If the Contractor has been notified of a leak before 10:00 am, then the Contractor must visit the specified site to examine the scope of work required to effect repairs the same day. If the Contractor is notified of a leak after 10:00 am, then the Contractor must visit the site to examine the scope of work no later than the following business day. Upon determination of the extent of the work required, the Contractor may complete work with a cost of up to \$750 immediately. For any work in excess of \$750, the Contractor shall submit a written estimate (email is acceptable) specifying the labor and materials required to repair the damaged area(s) to “as new” condition. DGS shall, at its discretion, authorize the repairs by verbally instructing the Contractor to complete the work, or by the issuance of a written purchase order. The Contractor will be required to provide a written description of any work performed along with before/after photos of every leak response call in digital form, to be uploaded to BLUEFIN’s roof management database.

- .4 Contractor is responsible for safety and security precautions during the project to minimize risk of injury or theft. Reasonable access to parking, materials storage, restrooms, temporary power, and water will be provided onsite by DGS.
- .5 Notify DGS of any “temporary” repairs that are necessary due to the unavailability of parts or materials. Permanent capital improvements must be made upon receipt required parts/materials. DGS reserves the right to bring in any other contractor in order to complete a repair that is not completed by Contractor in a timely fashion.
- .6 The Contractor shall not interfere with normal operation of DGS or the building facilities or the work of any other contractors working therein. Work shall be scheduled in such a manner as to minimize disruption of ongoing work and activities.
- .7 Contractor shall notify DGS of any conditions that potentially may cause a roof to relapse into a defective condition if preventive maintenance is not performed.
- .8 Use non-hazardous materials that meet the requirements established by DGS or obtain prior approval to use substitute materials. Any hazardous material that must be incorporated into Contractor’s work shall be approved for use, prior to being brought onto the worksite. The Contractor shall provide MSDS Sheets for all materials used on-site, whenever applicable.
- .9 Provide all equipments necessary to complete assigned work activity. Contractor shall be responsible for safeguarding their own materials, tools, and equipment. DGS shall not assume any responsibility for vandalism and/or theft of materials, tools and/or equipment.
- .10 Provide a company cellular telephone for employees on-site for making and receiving calls. The cellular telephone number must be provided to DGS. Personal or business phone calls are not to be made on DGS phones unless it is an “emergency”.
- .11 Contractor must obtain written consent from DGS before utilizing the services of any subcontractor(s). If use of a subcontractor is approved by DGS, all work must be coordinated with DGS. Please submit the names and business addresses of each subcontractor proposed to perform work under the contract and list the type of the work which will be done by each subcontractor. If approved by the Department, the Contractor shall not substitute any person as subcontractor in place of the subcontractor designated in the original list of subcontractors, without the express written permission of DGS.
- .12 All completed work shall be subject to inspection by one or more representatives of DGS. Service area must be restored to the condition that existed prior to the start of the work with emphasis on any special finish damage that may have

occurred during the work. All work performed under this contract shall be in strict accordance with all federal, state and local codes, ordinances, rules, and regulations of all public administrative authorities having jurisdiction over the work. All work must meet standards and guidelines set forth in the latest edition of the National Roofing Contractors Association Manual. Any work that is found to not be in compliance with Federal, District, Local Safety/Fire codes, and/or the latest edition of the National Roofing Contractors Association Handbook shall be corrected at the Contractor's expense.

- .13** Contractor shall be responsible for the proper and safe removal and disposal of all debris and materials generated as part of the capital improvement.

Section 1.4 Coordination with DCPS and Other District Agencies. The Contractor will be required to coordinate its work with DCPS school activities and other District agency municipal activities. The work will be performed in occupied buildings and the Contractor may be required to work after hours or on weekends and holidays so as to not adversely impact educational or other municipal activities. The Contractor will be required to develop work plans that are coordinated with and acceptable to the school principals and other agency directors. In general, all facilities have personnel assigned to them during normal hours, 7:00 am to 8:00 pm that will provide access to the facilities. After-hours access can be arranged at any facility at any time necessary.

Section 1.5 Project Site Safety. The Contractor will be required to ensure that its work is conducted in a safe manner and that appropriate barricades and other life safety procedures are employed to ensure the safety of students, teachers, school and municipal staff. All such construction barricades and life safety procedures shall be subject to the approval of the Department and its Program Manager.

Section 1.6 Licensing, Accreditation and Registration. The Contractor and all of its subcontractors and subconsultants (regardless of tier) shall comply with the applicable District of Columbia, state, and federal licensing, accreditation, and registration requirements and standards necessary for the performance of the contract.

Section 1.7 Warranty. Workmanship of the Contractor and its subcontractors, if any, shall be warranted free of defects in materials and workmanship for one (1) year from the date of final acceptance by DGS.

Section 2 Contractor's Compensation.

Section 2.1 Type of Contract. This is a time and materials contract. Contractor shall be compensated at the hourly rates established in **Exhibit B** for the personnel classifications set forth therein. Other than the Cost of Parts and Materials, which will be reimbursed at a mutually agreed upon mark-up rate, these rates will be the Contractor's sole compensation for work performed and as such should include adequate amounts to cover the Contractor's labor, field equipment (i.e. small tools, transportation, trucks and vans, etc.), overhead, insurance and profit and regardless of whether such services are provided by the Contractor's own forces or a

subcontractor. **Exhibit B** includes a premium rate that shall apply to any calls for which work must be performed between the hours of 5:00 PM and 6:00 AM or which is required on weekends or on Federal Holidays.

Section 2.2 Cost of Materials. The Contractor shall be reimbursed for any parts or materials that are incorporated into the Project Facilities. The Contractor shall be reimbursed for such parts and materials at a mutually agreed upon mark-up rate of [INSERT] percent (___%). The Contractor shall be entitled to a [INSERT] percent (___%) markup on all such parts and materials.

Section 2.3 Travel Time. Contractor shall be compensated for reasonable travel time of its personnel.

Section 2.6 Subcontracted Work. The Contractor will be permitted to subcontract the work in order to meet surge volumes that occur during peak repair periods or to meet LSDBE utilization goals, in accordance with Section 7 herein. However, for all work, the Contractor's compensation will be based on the hourly rates established in **Exhibit B**, and thus, such rates must be sufficient to cover the cost of subcontracting in the event the Offeror plans to satisfy its contractual obligations through subcontracting.

Section 3 Term.

Section 3.1 Time of the Essence. Time is of the essence in the performance of the Contractor's obligations under this Agreement.

Section 3.2 Term. This Agreement shall begin on upon execution by the Parties and shall terminate on September 30, 2014. The Contractor shall be required to provide on-call roofing repair services for all of the Project Facilities during the term of this Agreement.

Section 3.3 Option Year. The Department shall have the right to extend the term of this Agreement for two additional years, the first of which beginning on October 1, 2014 and ending on September 30, 2015 (such period, the "First Option Year"); and the second beginning on October 1, 2015 and ending on September 30, 2016 (such period, the "Second Option Year"). In the event the Department desires to extend the Agreement to cover an Option Year, the Department shall give the Contractor written notice of such election at least sixty (60) days prior to the beginning of the Option Year. Promptly after issuing such notice, the Department and the Contractor shall meet to negotiate the exact services and the cost thereof that will be provided during the Option Year. In the event the Department and the Contractor cannot agree on such services and pricing, then the Department shall have the right to assign this work to another contractor or to perform such work with its own forces.

Section 4 Changes.

Section 4.1 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 or Change Order.

Section 4.2 Executed Change Directive/Order Required. Changes to the Contract may be made only by a written Change Directive or Change Order executed by the Department.

Section 4.3 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.

Section 4.4 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.

Section 4.5 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 contract, 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 as provided in Section 9 of this Agreement. 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 5 Payments.

Section 5.1 Invoicing. The Contractor shall bill the Department on a monthly basis. Each such invoice shall cover all of the work performed during the preceding month and shall be broken down by service call. For each such service call, the invoice shall include: (i) a listing of hours worked including the date(s) on which such labor was performed, the name of the worker, the classification of the worker and the hourly rate applicable to each such hour; (ii) a listing of parts and materials used; (iii) a brief description of the problem; (iv) a statement as to whether the problem was resolved; and (v) the facility name and address.

Section 5.2 Supporting Documentation. The Contractor shall submit with each invoice cost backup supporting such invoice. Such back-up information shall include: (i) time sheets for all reimbursable labor; and (ii) a log of all materials used during that period.

Section 5.3 Right to Withhold Payments. The Department will notify the Contractor within fifteen (15) calendar days after receiving any invoice for payment of any defect in the invoice or the work which may result in the Department's declining to pay all or a part of the invoiced amount. The Department may withhold payment from the Contractor, in whole or part, as appropriate, if

- .1 the work is defective and such defects have not been remedied; or
- .2 the Department has determined that the Contractor's progress has fallen behind the Project Schedule, and the Contractor fails, within ten calendar days of the Department's written demand, to provide the Department with a realistic and acceptable plan to recover the delays; or
- .3 the Contractor has failed to pay subcontractors promptly or has made false or inaccurate certifications that payments to Subcontractors or Suppliers are due or have been made; or
- .4 the Contractor is otherwise in substantial breach of the Contract (including, without limitation, failures to comply with the Economic Inclusion Requirements in Section 9 of these Special Provisions).

Section 6 Subcontracts. The Contractor shall perform the work with its own forces. In the event that the Contractor desires to engage one or more subcontractors to assist with the work, it shall advise the Department and obtain the Department's written approval of any such subcontractor. All subcontractors shall be required to comply with the insurance requirements set forth herein. In addition, the Contractor shall be responsible for all work performed by the subcontractors and shall assume the risk of the subcontractors' non-performance.

Section 7 Economic Inclusion.

Section 7.1 CBE Utilization.

Section 7.1.1 The Contractor shall ensure that Local, Small and Disadvantaged Business Enterprises will participate in at least fifty percent (50%) of the Contract. Thirty-five percent (35%) must be awarded to entities that are certified as either Small or Disadvantaged Business Enterprises by the District of Columbia Local Business Opportunity Owner and twenty percent (20%) to entities that are certified as Disadvantaged Business Enterprises. The LSDBE certification shall be, in each case, as of the effective date of the subcontract. Supply agreements with material suppliers shall be counted toward meeting this goal.

Section 7.1.2 The Contractor has developed a CBE Utilization Plan that is attached hereto as **Exhibit C**. The Contractor shall comply with the terms of the CBE Utilization Plan in making purchases and administering its Subcontractors and Supply Agreements.

Section 7.1.3 Neither the Contractor or a Subcontractor may remove a Subcontractor or tier-Subcontractor if such Subcontractor or tier-Subcontractor is certified as an LSDBE company unless the Department approves of such removal. The Department may condition its approval upon the Contractor developing a plan that is, in the Department's sole and absolute judgment, adequate to maintain the level of LSDBE participation on the Project.

Section 7.2 First Source Agreement.

Section 7.2.1 Upon execution of the Contract, the Contractor and all its member firms, if any, and each of its Subcontractors shall submit to the Department a list of current employees and apprentices that will be assigned to the Contract, the date they were hired and whether or not they live in the District of Columbia.

Section 7.2.2 The Contractor and all member firms and Subcontractors shall execute a First Source Agreement with the District of Columbia Department of Employment Services ("DOES") prior to beginning Work at the Project site. The Contractor shall ensure that at least fifty-one percent (51%) of the Contractor's Team and every subconsultant's and subcontractor's employees hired after the effective date of the Contract, or after such subconsultant or subcontractor enters into a contract with the Contractor, to work on the Project shall be residents of the District of Columbia. This percentage shall be applied in the aggregate, and not trade by trade. In addition, the Contractor shall be required to comply with the workforce percentage goals established by the recently adopted amendments to the First Source Employment Agreement Act of 1984 (D.C. Code §§ 2-219.01 *et seq.*) and any implementing regulations if applicable, including, but not limited to the following requirements:

- (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 the skilled laborer hours by trade shall be performed by District residents; and
- (iv) At least 70% of common laborer hours shall be performed by District residents.

Section 7.2.3 The Contractor shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

Section 7.2.4 The Contractor shall be responsible for: (i) including the provisions of this Section 7.2 in all subcontracts; (ii) collecting the information required in this Section 9.2 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in any reports required to be submitted by the Contractor pursuant to this Section 9.2.

Section 7.3 Workforce Utilization. The Builder shall comply with the requirements of the approved Workforce Utilization Plan attached as **Exhibit D** At least thirty five percent (35%) of the percentage labor hours for the Project must be performed by District of Columbia residents (such requirement, the Workforce Utilization Requirement).

Section 7.5 Economic Inclusion Reporting Requirements.

Section 7.5.1 Upon execution of the Contract, the Design-Builder and all its member firms, if any, and each of its Subcontractors shall submit to the Department a list of current employees and apprentices that will be assigned to the Contract, the date they were hired and whether or not they live in the District of Columbia.

Section 7.5.2 The Design-Builder and its constituent entities shall comply with subchapter III of Chapter 11 Title 1, and subchapter II of Chapter 11 of Title 1 of the D.C. Code, and all successor acts thereto and the rules and regulations promulgated thereunder. The Design-Builder and all member firms and Subcontractors shall execute a First Source Agreement with the District of Columbia Department of Employment Services (“DOES”) prior to beginning Work at the Project site.

Section 7.5.3 The Design-Builder shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

Section 7.5.4 The Design-Builder shall be responsible for: (i) including the provisions of this Section 11.3 in all subcontracts; (ii) collecting the information required in this Section 11.3 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in the reports required to be submitted by the Design-Builder pursuant to Section 11.3.

Section 7.6 Compliance with the Apprenticeship Act. The Design-Builder agrees to comply with the requirements of the Apprenticeship Act of 1946, D.C. Code §§ 36-401, *et seq.*

Section 8 Termination for Convenience.

The Department may at any time terminate this Agreement, in whole or specified part, for convenience. In such an event, the Contractor shall be entitled to receive compensation for services performed through the effective date of termination in accordance with the terms of this Agreement. In no event, however, shall the Contractor be entitled to recover lost profits or opportunity costs on the unperformed portion of work.

Section 9 Alternate Dispute Resolution.

Section 9.1 Notice of Claim. If the Contractor has complied with all provisions in Section 4.3 regarding changes, and the Department has denied the changes requested in a written Change Proposal, or has failed to respond to a written Change Proposal within thirty (30) days, and the Contractor wishes to pursue a claim over the disputed item, or if the Builder wishes to assert a claim over a contract dispute not arising from matters related to a Change Event, Change Order or Change Directive, then the written notice of claim must be submitted to the Department pursuant to procedures set forth in section 4732 of the Department's procurement rules and section 1004 of the District's Procurement Practices Reform Act of 2010 (PPRA).

Section 9.2 Contents of Notice of Claim. The notice of claim shall state the nature of the claim, the events or circumstances giving rise to the claim, the type of relief requested, and

the amount of time or additional compensation, or other damages sought. If the amount of time, compensation, or other damages sought is not reasonably ascertainable at the time, the Builder shall so state, explain why, and provide whatever estimates it can reasonably provide. The notice shall state clearly that the Builder intends to assert a claim against the Department.

Section 9.3 Appeal Procedures. All claims arising under or in connection with the Agreement or its breach, or relating to the Project, whether framed in contract, tort or otherwise, and which are not resolved via the claims process may be resolved by filing an appeal with the District of Columbia Board of Contract Appeals in accordance with Title X of the *Procurement Practices Reform Act of 2010* (PPRA). However, if a third party brings any claim against the Department, including, without limitation, claims of infringement of patents, copyrights or other intellectual property rights, the Department may bring an action for defense or indemnification against the Contractor in the court in which such claim is being litigated.

Section 10 Insurance.

Section 10.1 Required Insurance. The Contractor will be required to maintain the following types of insurance throughout the life of the contract.

- .1 Commercial general public liability insurance (“Liability Insurance”) against liability for bodily injury and death and property damage, such Liability Insurance written on an occurrence basis to be in an amount not less than One Million Dollars (\$1,000,000.00) for liability for bodily injury, death and property damage arising from any one occurrence and One Million Dollars (\$1,000,000.00) from the aggregate of all occurrences within each policy year. The policies shall contain blanket contractual coverage (including coverage for the indemnity clauses to be provided under the Agreement) and completed operations coverage (for three (3) years beyond completion of the Project).
- .2 Workers' compensation providing statutory benefits for all persons employed by the Contractor, or its contractors and subcontractors at or in connection with the Work.
- .3 Automobile Liability, including Hired and Non-Owned Auto Liability in the amount of at least One Million Dollars (\$1,000,000.00) for each occurrence for bodily injury and property damage.

Section 10.2 Additional Insureds. Each insurance policy shall be issued in the name of the Contractor and shall name as additional insured the Department, the District of Columbia Public Schools, and the District of Columbia and shall not be cancelable or reduced without thirty (30) calendar days’ prior written notice to the Department.

Section 10.3 Waiver of Subrogation. All such insurance shall contain a waiver of subrogation against the Department, the District of Columbia Public Schools, and their respective agents.

Section 10.4 Strength of Insurer. All insurance shall be placed with insurers that are reasonably acceptable to the Department and with an A.M. Best's rating of not less than a then-current rating of "A-" or better and a financial size category of Class XV or higher. All such insurers shall be licensed/approved to do business in the District of Columbia.

Section 11 Miscellaneous Provisions.

Section 11.1 Service Contract Act Provision. The Contractor agrees that the work performed under this Contract shall be subject to the Service Contract Act. The wage rates applicable to this Project are attached as **Exhibit E.**

Section 11.2 False Claims Act. The 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 D.C. Code § 2-308.14.

Section 11.3 Retention of Records: Inspections and Audits.

Section 11.3.1 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.

Section 11.3.2 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.

Section 11.3.3 The Department, the District of Columbia government, 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.

Section 11.3.4 The Contractor agrees to include the wording of this Section 11 in all its subcontracts in excess of Five Thousand Dollars (\$5,000.00) that directly relate to Project performance.

Section 11.3.5 Audits conducted pursuant to this Section will be in accordance with generally accepted auditing standards with the results prepared in accordance with generally accepted accounting principles and established procedures and guidelines of the applicable reviewing or audit agency.

Section 11.3.6 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.

Section 11.3.7 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.

Section 11.4 Gratuities and Officers Not to Benefit Provisions.

Section 11.4.1 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.

Section 11.4.2 In the event the Contract is terminated as provided in Section 11.4.1, the Department shall be entitled:

- .1 to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor; and
- .2 as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Department) which shall be not less than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

Section 11.4.3 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 Contracting Officer 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 minimis.

Section 11.5 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.

Section 11.6 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.**

IN WITNESS WHEREOF, each of the parties to this Agreement has caused this Agreement to be signed by its duly authorized representative.

DEPARTMENT OF GENERAL SERVICES, an agency within the executive branch of the Government of the District of Columbia

By: _____
Name: Brian J. Hanlon
Title: Director &
Chief Contracting Officer
Date: _____

[COMPANY NAME]

By: _____
Name: _____
Its: _____
Date: _____

Exhibit A

The contractor and all personnel utilized in the performance of the work shall have experience with the following type of roof systems and materials:

- 1.** Asphalt built-up
- 2.** Coal tar built-up
- 3.** Modified bitumen
- 4.** EPDM
- 5.** TPO
- 6.** PVC
- 7.** Metal
- 8.** Slate
- 9.** Skylights
- 10.** Coatings
- 11.** Bitumen
- 12.** Mastics
- 13.** Asphalt
- 14.** Pitch
- 15.** Tar
- 16.** Felt
- 17.** Glass fabric
- 18.** Urethane
- 19.** Shake
- 20.** Shingles
- 21.** Roof tile
- 22.** Waterproofing
- 23.** Weatherproofing
- 24.** Membranes
- 25.** Vulcanized rubber
- 26.** Standing seam
- 27.** Elastomeric system