

PART 1
THE SCHEDULE

SECTION A
SOLICITATION, OFFER AND AWARD (PAGE 1)

SECTION A

A.1 BACKGROUND

The Captive Insurance Agency (“Agency”) was established in 2008 with the purpose of providing medical malpractice liability insurance policies to health centers. *See* District of Columbia Medical Liability Captive Insurance Agency Establishment Act of 2008, effective July 18, 2008 (D.C. Law 17-196; D.C. Official Code § 1-307.81 *et seq.*). Since 2008, the Agency has issued medical malpractice insurance policies to qualified clinics in the District. However, the Agency does not function only as a traditional “captive” insurance program. Since 2015, the Agency’s authority to procure insurance to protect the District against risk of loss has been expanded by the Council of the District of Columbia to include : (a) property insurance, including terrorism, nuclear, chemical, biological and radiological; boiler and machinery; and business interruption; (b) builder’s risk insurance; (c) bond and fidelity insurance; (d) casualty insurance, including general liability, auto liability and physical damage, special events, cyber liability, medical malpractice liability, umbrella and environmental liability. The Agency is administered by the Chief Risk Officer, who is authorized to enter into contracts on behalf of the Agency.

The Agency is issuing this Request for Proposals to solicit responses from qualified Commercial Lines Insurance Brokers with Captive insurance management experience. The Agency is seeking applicants that have high level relationships with commercial lines insurance carriers interested in insuring its business and operational risks, has significant leverage with these markets (premium volume / clients) to be competitive with the coverage and pricing in the Agency’s current program, and has the necessary internal resources and experience in servicing clients similar in size and needs to the Agency.

The applicants’ Captive management and consulting responsibilities will include assistance with underwriting the Agency’s medical malpractice

insurance for qualified health clinics, maintaining an accurate schedule of insurance for the health clinics, assist the Agency with regulatory filings and other management and consulting services, as needed.

SECTION B

SERVICES AND PRICES

B.1 OVERVIEW OF SERVICES

The District of Columbia, a municipal corporation (“District”), by and through Agency is seeking insurance brokerage firms to assist the Agency in connection with:

- A. Brokerage services, including, but not limited to: procurement, placement, and servicing of Commercial Insurance coverages: (a) property insurance, including terrorism (b) builders risk insurance; (c) casualty insurance; (d) cyber liability, (e) medical malpractice liability, (f) umbrella, and (g) environmental liability.

- B. Captive management and consulting services (not related to a specific procurement or placement of an insurance policy) to assist the Agency on behalf of the District in procurement and placement of one or more of the lines of insurance enumerated in Section C.1, including, but not limited to:
 - (a) underwriting assistance with medical malpractice coverage for qualified health clinics;
 - (b) preparation and filing of annual required documentation by DC Department of Insurance, Securities and Banking (DISB);
 - (c) development and execution of a risk management strategy for the District;
 - (d) design and assist in implementation, as appropriate, alternative risk management options;
 - (e) loss control support;
 - (f) claims support;

- (g) general exposure/underwriting analysis; and
- (h) such other consulting services customarily provided by insurance brokers.

The Agency contemplates award of multiple Indefinite Delivery, Indefinite Quantity (IDIQ) contracts. Award of these contracts will not preclude the Agency from awarding additional contracts for similar services in the future in the event the Agency determines additional contracts are in the District's interest.

B.1.1

The process of obtaining insurance brokerage services contracts through this solicitation and request for proposals ("Solicitation"), and the task orders issued pursuant to a contract hereunder are exempt from: (a) the District of Columbia Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*) and the regulations promulgated thereunder, including DCMR Title 27; and (b) the Small and Certified Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*). This solicitation is to establish a consistent and fair process for the Agency to obtain the best combination of quality and value for insurance brokerage services based on considerations and evaluations, including, without limitations, the Offeror's demonstrated expertise, knowledge, and experience associated with insurance brokerage services; existing relationships with insurance carriers; creativity and flexibility in designing coverage and pricing programs; market access; risk management orientation; education and experience of staff servicing the Agency; risk management capabilities; allowing and supporting the Agency's direct access to insurance carriers; proactive approach; service capabilities offered; and the District's need ("Best Value Consideration"). Upon evaluation of the responses to this Solicitation in accordance with Section M, and Best Value Consideration, the Agency may award up to three (3) indefinite delivery, indefinite quantity ("IDIQ") contracts with payments based on fixed unit prices. The Agency will issue task orders in accordance with Section G.9.

B.2 INDEFINITE DELIVERY INDEFINITE QUANTITY (IDIQ) CONTRACT

This is an IDIQ contract for the services specified and effective for the period stated.

- A. This contract is a one-year contract with four options to renew at the option of the Agency. The base year or each renewal period is individually a contract period (“Contract Period”). The minimum amount of the contract for each contract period is \$1,000 and the maximum is \$950,000. In the event the Agency awards multiple contracts, the minimum and maximum contract amounts shall be the same as stated above for each contract and for each contract period. The Agency may exercise its option to renew a contract in accordance with Section F.
- B. Delivery or performance shall be made only as authorized by task orders issued in accordance with the Ordering Clause, Section G.9. The Contractor shall furnish to the Agency, when and if ordered, the services specified in accordance with Schedule B.3 and Section C unless otherwise specified in the applicable task order. The Agency will order services or pay at least the minimum dollar value of \$1,000.00 per contract period. In the event the Agency awards multiple contracts, the maximum and minimum dollar value will be the same as stated above for each contract and for each Contract Period.
- C. There is no limit on the number of task orders that may be issued to a contractor during any Contract Period, and there is no assurance that a Contractor will receive any task orders.
- D. Any task order issued during a Contract Period and not completed within that period shall be completed by the Contractor within the

time specified in the task order. As specified below, the Contractor shall notify the District, in advance, if the task order price may be exceeded or the time of performance will exceed the expiration of the task order. **ANY CHARGES INCURRED IN EXCESS OF THE AMOUNT IN A TASK ORDER OR PERFORMED BEYOND THE EXPIRATION DATE OF THE TASK ORDER IS NOT ELIBIGLE FOR PAYMENT UNLESS APPROVED IN ADVANCE BY THE CONTRACTING OFFICER IN ACCORDANCE WITH SECTION G.9.6.** The contract shall govern the Contractor's and Agency's rights and obligations with respect to that task order to the same extent as if the task order were completed during the Contract Period.

B.3 PRICE AND COST SCHEDULE OF SERVICES

The Contractor shall provide insurance brokerage services pursuant to the scope of work described in Section C.1 with the rates as outlined in the price schedules below. The rate as to Contract Line Item 001(brokerage services) is a not to exceed price pursuant to Section G.9. The rate as to line item 002 (consulting services) is an hourly rate with a not to exceed price. The District shall not be obligated to pay for any brokerage services until after all of the following occurs: (1) Contractor obtains a binder commitment for the issuance of lines of insurance in coverage amounts and on terms acceptable to the Contracting Officer in his or her sole discretion; (2) the Agency issues a purchase order in the amount of the commission or fee for the brokerage of the insurance set forth in the binder; (3) the Agency obtains all necessary approval to procure the insurance; and (4) the Agency procures an insurance policy consistent with the binder commitment. At all times the acceptance or rejection of a binder commitment for an insurance policy is in the sole discretion of the Contracting Officer.

The following rates shall remain in effect throughout the duration of the contract.

B.3.1 BASE YEAR

CLIN	Item Description	Price Per Unit
001	Brokerage services	Purchase order price Section G.9.4
002	Management & Consulting services	\$-----/hour not to exceed \$950,000

B.3.2 OPTION YEAR ONE

CLIN	Item Description	Price Per Unit
011	Broker services	Purchase order price Section G.9.4
012	Management & Consulting services	\$_____/hour not to exceed \$950,000

B.3.3 OPTION YEAR TWO

CLIN	Item Description	Price Per Unit
021	Brokerage services	Purchase order price Section G.9.4
022	Management & Consulting services	\$_____/hour not to exceed \$950,000

B.3.4 OPTION YEAR THREE

CLIN	Item Description	Price Per Unit
031	Brokerage services	Purchase order price Section G.9.4
032	Management & Consulting services	\$_____/hour not to exceed \$950,000

B.3.5 OPTION YEAR FOUR

CLIN	Item Description	Price Per Unit
041	Brokerage services	Purchase order price Section G.9.4
042	Management & Consulting services	\$_____/hour not to exceed \$950,000

SECTION C
DESCRIPTION/SPECIFICATIONS/WORK STATEMENT

C.1 SCOPE OF WORK

The Contractor, under the direction and supervision of the Agency, shall be responsible for the following duties:

- A. Conduct and coordinate all marketing in order to obtain quotes for insurance or reinsurance;
- B. Develop underwriting information and assist in gathering and organizing exposure and loss data;
- C. Complete applications for insurance coverages for review by the District;
- D. Assist in the procurement of commercial property/casualty insurance coverages;
- E. Manage the existing renewals – athletic participation, builders’ risk, cyber liability, fine arts, property – including terrorism and NCBR, and special events coverages;

- F. Evaluate the District's existing insurance programs and, as necessary, recommend changes to terms, conditions, or coverage limits to ensure the program is affordable and adequately protects the District;
- G. Respond to all insurance related questions and requests for advice from ORM in a timely manner;
- H. Proactively identify emerging risks, market / exposure trends;
- I. Work with carriers to design policies, forms, coverages and programs most advantageous to the District from a coverage, policy design and premium perspective;
- J. Provide direct access to carriers;
- K. Act as payment agent for the District in procuring policies of insurance;
- L. Assist with claims submissions and handling procedures;
- M. Provide business, technical, actuarial, tax and regulatory services; necessary for the on-going management of the Agency's services;
- N. Act as an independent insurance advisor to the Agency and proactively provide ongoing unbiased professional advice and recommendations that benefit the District;
- O. Proactively provide ongoing review and analysis of the District's insurance programs and identification of risk transfer and risk financing options;
- P. Review contracts and leases, as requested, and advise the Agency whether insurance programs of the District are in compliance with insurance requirements of contracts/ agreements or leases;
- Q. Assist the Agency in policy interpretation and other negotiations with insurance carriers;
- R. Provide management and service for the insurance policies placed for the District, including processing all changes and endorsements;
- S. Assist with Management of the District's Captive;
- T. Assist the Agency with annual renewal and underwriting of the agency's medical malpractice insurance for participating health clinics;
- U. Maintain an accurate schedule of insureds under the medical malpractice insurance program;

- V. Issue certificates of insurance to participating health clinics on behalf of the Agency, as requested;
- W. Meet with the Agency's representatives as reasonably requested;
- X. Designate a principal to be assigned to the Agency's account to act as the primary contact for the Agency;
- Y. Provide early warning of rate and coverage changes or renewal problems through a process to be mutually agreed upon with the Agency;
- Z. Manage and participate in insurance carrier visits;
- AA. Participate in property site surveys on existing and proposed construction;
- BB. Provide quarterly updates and reviews and participate in quarterly meetings with representatives of the Agency pursuant to a format mutually agreed upon by the parties; and
- CC. Any assist with any other special projects/requests.

C.2 MINIMUM PROPOSAL REQUIREMENTS

A proposal to this Solicitation, at a minimum, must:

- A. Broker Profile:
 - a. Provide an overview of your company, including a brief description of your company's history, ownership structure, financial stability, philosophy/culture, and approximate number of employees.
 - b. Describe your governmental entity/municipality expertise including but not limited to the number of commercial lines insurance carriers, volume, and number of customers.
- B. Services Description:
 - a. What is included in your core Brokerage services (underwriting and placement)?
 - b. Describe the full range of administrative services, claims management services, and safety and loss control services that would be provided. Are other services available? If so, please provide an overview.

- c. Address the services described in Section C.1 and identify those specific to applicable lines of business.
 - d. Demonstrate that the Contractor has the technical capacity to provide the services described in Section C.1 as they relate to the lines of insurance that the Contractor proposes to service.
 - e. Based upon the information provided in this RFP, and information contained on our website, provide a brief narrative which indicates your understanding of the greatest risk(s) or exposure(s) that the District faces and the recommended insurance policy, coverage, and/or insurers. Include any market trends or emerging insurance issues in your discussion.
- C. References: The Contractor must provide at least three (3) references for clients with similar size, complexity, and characteristics of The District. Include the name of the organization, contact person, and phone number and/or email address.

C.3 TECHNICAL CAPACITY – ACCOUNT TEAM

C.3.1 The Team should include at a minimum the following:

- A. A senior principal broker who is qualified to provide the services pursuant to Section C.1 and who will supervise all work and the duties performed by staff as necessary;
- B. Staff with the capacity and professional and technical expertise to deliver the services pursuant to Section C.1 related to the line or lines of insurance the Contractor proposes to service. The staff assigned to the Agency shall have a minimum of ten (10) years full time experience in the commercial insurance industry, either on the agency side or commercial carrier side and a minimum of five (5) years' experience providing insurance brokerage services or underwriting governmental entities;
- C. Have significant relationships in place with all major carriers and the London market;
- D. Possess Captive Management expertise;

- E. Have the capacity to set up meetings between ORM's Insurance Team and major markets as needed;
- F. Offer regular training platforms for the Insurance Team;
- G. Regularly offer immediate turn around on significant requests;
- H. Organizational structure that establishes reporting lines and lines of accountability among the Contractor's staff and facilitates an efficient and effective approach to the completion of the required services; and
- I. The proper licenses to broker and market for insurance and reinsurance and to provide consulting services related to procurement and placement of insurance policies.

C.3.2 The Contractor shall provide the Agency with a resume for each of the Contractor's staff that demonstrates the staff member's experience and professional qualifications to provide the services described in Section C.1 as such services relate to the lines of insurance the Contractor proposes to service.

In addition, the Contractor shall provide a description on how the account team is structured. Please delineate who will be the primary Broker representative and the day-to-day contact(s) for the account.

SECTION D

[reserved]

SECTION E
INSPECTION AND ACCEPTANCE

E.1 INSPECTION OF WORK PERFORMED

- A. Definition. "Services" as used in this section includes services performed pursuant to Section C, and applicable task orders (which may be properly modified if circumstances permit).
- B. The Contractor shall provide and maintain an inspection system acceptable to the District covering the services under this contract and applicable task orders. Complete records of all work performed by the Contractor shall be maintained and made available to the District during any Contract Period and for as long afterwards as the contract requires.
- C. The District has the right to inspect all records for all services called for by the contract and applicable task orders, to the extent practicable at all times and places during the term of the contract. The District will perform inspections in a manner that will not unduly delay the work.
- D. If the District performs inspections on the premises of the Contractor or subcontractor, the Contractor shall furnish, without additional charge, all reasonable facilities and assistance for the safety and convenient performance of these duties.
- E. If any of the services do not conform to the contract and applicable task order requirements, the District may require the Contractor to correct its performance in conformity with the requirements, at no increase in contract and applicable task order amount. When the defects in services cannot be corrected by performance, the District may require the Contractor to take necessary action to ensure that future performance conforms to the requirements and reduce the price to reflect value of services performed.
- F. If the Contractor fails to promptly perform the services again or

take the necessary action to ensure future performance in conformity to the requirements, the District may (1) by contract or otherwise, perform the services and charge the Contractor any cost incurred by the District that is directly related to the performance of such services, or (2) terminate the contract or applicable task order for default.

SECTION F
DELIVERY OR PERFORMANCE

F.1 TERM OF CONTRACT

F.1.1 The term of the contract shall be for a period of one (1) year from the effective date of award as specified on page one of the Contract.

F.2 OPTION TO EXTEND THE TERM OF THE CONTRACT

F.2.1 The District may, at its sole discretion, extend the term of the contract for a period of four (4), one-year option periods, or successive fractions thereof, by written notice to the Contractor before the expiration of the base year or any option period of the contract; provided that the District will give the Contractor a preliminary written notice of its intent to extend at least thirty (30) days before the contract expires. The preliminary notice does not commit the District to an extension. The exercise of this option is subject to the availability of funds at the time of the exercise of this option. The Contractor may waive the thirty (30) day preliminary notice requirement by providing a written waiver to the Contracting Officer prior to expiration of the base year or any option period of the contract.

F.2.2 If the District exercises an option, the extended contract shall be considered to include this option provision.

F.2.3 The price for the option period shall be as specified in Section B for that specific option period.

F.2.4 The total duration of the Contract, including all options under this clause, shall not exceed five (5) years from the effective date of the base year Contract Period.

F.3 DELIVERABLES

F.3.1 The Contractor shall perform its tasks and provide the COTR each required Deliverable by the due dates presented in the tables below in accordance with the following, whereas the method of delivery for soft copies is via email and for hard copies may be U.S. Postal Service, courier, or hand delivery:

Deliverable No.	Deliverable Name	Quantity/ Format and Method of Delivery	Due Date
1	Comprehensive Work Plan	1 soft copy 3 hard copies	no later than 14 days after contract award
2	Quality Management Plan, including, compliance with Agency’s legal requirements, Agency insurance strategy, broker services plan, insurance applications, binders, policies, reports, and other best practice communications	1 soft copy 3 hard copies and electronic	contract award
3	Quarterly meetings	To be mutually agreed upon by the parties	As Applicable
4	Summary report	1 soft copy 2 hard copies	As agreed upon pursuant to the work plan
5	All reports pursuant to Section H.5.3 Final payment to the Contractor may not be paid	1 soft copy 1 hard copy	As applicable

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& Captive Management & Consultation
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Deliverable No.	Deliverable Name	Quantity/ Format and Method of Delivery	Due Date
	until all required reports are completed.		

SECTION G

CONTRACT ADMINISTRATION DATA

G.1 INVOICES

- A. An invoice is a written request for payment under the contract for services rendered pursuant to an applicable task order. All invoices must include, as applicable, the following to be considered a proper invoice for this contract:
- (1) Name and address of the Contractor;
 - (2) Invoice date;
 - (3) Contract number or other authorization for services performed (*including order number and contract line item number*);
 - (4) Description, quantity, price, and services performed with supporting documentation;
 - (5) Detailed billing statements of all professionals who provided services pursuant to the applicable task order. Billing statements should include documentation that describes the services performed, by whom performed, when performed, and the hourly rate of the person performing services;
 - (6) Name and address of Contractor official to whom the payment is to be sent (*must be the same as that on the contract or accompanied by a proper notice of assignment*);
 - (7) Name (*where practicable*), title, phone number, mailing address, and email address of the person to be notified in event of defective invoice; and
 - (9) Any other information or documentation required by the Contract, the Task Order or the COTR.
- B. For purpose of determining if interest begins to accrue under the Quick Payment Act (D.C. Official Code § 2-221.01 *et seq.*):
- (1) A proper invoice will be deemed to have been received when it is received by the office designated in the contract for receipt of

- invoices and acceptance of the services rendered has occurred;
- (2) Payment must be considered made on the date on which check for such payment is dated;
 - (3) Payment terms (*e.g.*, “*net 20*”) offered by the Contractor will not be deemed as the “required payment date;” and
 - (4) The following periods of time will not be included:
 - (i) after receipt of an improper invoice and prior to notice of any defect or impropriety, but not to exceed 7 days; and
 - (ii) between the date of a notice and any defect or impropriety and the date a proper invoice is received. When the notice is in writing, it must be considered made on the date shown in the notice.
- C. Payment for Contractor’s services must be made within thirty (30) days of the COTR’s authorization of the invoice for payment. Concurrent with the forwarding of invoices to the COTR, the Contractor must submit copies in triplicate of the invoices to:

Office of Finance and Resource Management
Attention: Accounts Payable
441 4th Street, NW, Suite 890N
Washington, DC 20001
Telephone: 202-727-0333

G.1.2 Invoices must not contain (1) charges for services beyond the scope of work stated in the applicable task order; or (2) services performed beyond the scope of the contract or the applicable task order for which there was no prior modification.

G.2 [RESERVED]

G.3 **PAYMENT**

G.3.1 The District will pay the Contractor under this contract on or before the 30th day after both:

- a. Completion and acceptance of all work and deliverables;
- b. Presentation of a properly executed invoice in accordance with Section G.1.A; and
- c. Upon the COTR's authorization for payment.

G.3.2 The District's obligation under the contract will be contingent upon the lawful availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the District for any payment may arise, and no contract may be awarded or task orders may be issued thereunder, until the Contracting Officer receives written certification confirming the availability of appropriated funds for such purposes.

G.3.3 **The Contractor may be held fully responsible for any change not authorized by the Contracting Officer in consultation with the COTR and issued by the Contracting Officer in writing, and may be denied compensation or other relief for any additional work performed that is not so authorized, and may also be required, at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.**

G.4 ASSIGNMENT OF CONTRACT PAYMENTS

G.4.1 The Contractor may assign funds due or to become due as a result of the performance of the contract to a bank, trust company, or other financing institution.

G.4.2 Any assignment shall cover all unpaid amounts payable under the contract and shall not be made to more than one party.

G.4.3 Notwithstanding any assignment of money claims pursuant to authority contained in the contract, the Contractor, not the assignee, is required to prepare invoices. Where such an assignment has been made, the original copy of each invoice shall refer to the assignment and shall show that payment of the invoice is to be made directly to the assignee as follows:

Pursuant to the instrument of assignment date _____, make payment of this invoice to _____ (name and address of assignee).

G.5 THE QUICK PAYMENT PROVISIONS

G.5.1 INTEREST AND PENALTIES TO CONTRACTORS

G.5.1.1 The District will pay interest penalties on amounts due to the Contractor under the Quick Payment Act (D.C. Official Code §2-221.01 *et seq.*), for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before the 15th day after the required payment date for any other item.

G.5.1.2 Any amount of an interest penalty which remains unpaid at the end of any 30-day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

G.5.2 PAYMENTS TO SUBCONTRACTORS

G.5.2.1 The Contractor shall take one of the following actions within 7 days of receipt of any amount paid to the Contractor by the District for work performed by any subcontractor under a contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the District that is attributable to the subcontractor for work performed under the contract; or
- b. Notify the District and the subcontractor, in writing, of the Contractor's intention to withhold all or part of the subcontractor's payment and state the reason for the nonpayment.

G.5.2.2 The Contractor shall pay any lower-tier subcontractor or supplier interest penalties on amounts due to the subcontractor or supplier beginning on the day after the payment is due and ending on the date on which the payment is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid on the following if payment for the completed delivery of the item of property or service is made on or before the 15th day after the required payment date for any other item.

G.5.2.3 Any amount of an interest penalty which remains unpaid by the Contractor at the end of any 30-day period shall be added to the principal amount of the debt to the subcontractor and thereafter interest penalties shall accrue on the added amount.

G.5.2.4 A dispute between the Contractor and subcontractor relating to the amounts or entitlement of a subcontractor to a payment or a late payment interest penalty under the Quick Payment Act does not constitute a dispute to which the District is a party. The District may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

G.6 AUTHORITY OF CONTRACTING OFFICER

G.6.1 Contracts may be entered into and signed on behalf of the District only by contracting officers, subject to the specific terms and conditions set forth in this Solicitation. The Contracting Officer ("Contracting Officer") for this contract shall have the following authority:

- G.6.2** Timely executing any contract, task order, modification or termination of a contract as requested, in consultation with the COTR; and
- G.6.3** Timely fulfill ordering provision in Section G.9.
- G.6.4** **RESERVED**
- G.6.5** The address and telephone number of the Contracting Officer for this contract is:
- Jed Ross
Chief Risk Officer
Captive Insurance Agency
441 4th Street N.W., Suite 800 S
Washington, DC 20001
Tel: (202) 727-3475
e-mail: jed.ross@dc.gov
- G.7** **AUTHORIZED CHANGES ONLY BY THE CONTRACTING OFFICER**
- G.7.1** The Contracting Officer is the only person authorized to issue changes in any of the requirements of the contract or task orders.
- G.7.2** The Contractor shall not comply with any order, task order, directive or request that changes or modifies the requirements of the contract, unless issued in writing and signed by the Contracting Officer, or pursuant to specific authority otherwise included as part of the contract.
- G.7.3** In the event the Contractor effects any change at the direction of any person other than the Contracting Officer, 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.

- G.8 CONTRACTING OFFICER’S TECHNICAL REPRESENTATIVE (COTR)**
- G.8.1** The Contracting Officer’s Technical Representative (“COTR”), will have the responsibility of supervising and managing all aspects of the work of the Contractor in accordance with the requirements of the contract, the task order and such other responsibilities and authorities as may be specified in the contract. These include but are not limited to:
- G.8.1.1** Determining: (i) when it is appropriate to terminate a contract for cause or for convenience, (ii) when and if a modification of a contract with the Contractor is necessary and appropriate, and (iii) whether and under what conditions to allow a Contractor under contract with the OCFO to sub-contract its assigned work to another private law firm for legal services;
- G.8.1.2** Requesting the Contracting Officer to issue contract modifications or extensions, as well as partial or full contract terminations, and keeping the Contracting Officer informed of any technical or contractual difficulties encountered during the Contract Period or any potential problem areas under the contract;
- G.8.1.3** Reviewing and approving invoices for completed work in accordance with Section C including determining if the Contractor’s costs are consistent with the agreed amounts, the work performed, and progress are satisfactory and commensurate with the rate of expenditure;
- G.8.1.4** Reviewing and approving invoices for deliverables to ensure receipt of services. This includes the timely processing of invoices in accordance with the District’s payment provisions;
- G.8.1.5** Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoices/vouchers; and
- G.8.1.6** Ensuring that all legal issues arising out of the contract be considered and decided by OGC.
- G.8.2 RESERVED.**

G.8.3 The address and telephone number of the COTR for the contract is:

Jane Waters
Insurance Program Administrator
Captive Insurance Agency
441 4th Street, NW, Suite 800S
Washington, DC 20001
Tel: (202) 724-2265
Email: jane.waters@dc.gov

G.8.4 **RESERVED**

G.8.5 The COTR shall NOT have the authority to:

G.8.5.1 Award, agree to, or sign any contract, issue any task order. Only the Contracting Officer shall make contractual agreements, commitments, or modifications;

G.8.5.2 Grant deviations from or waive any of the terms and conditions of the contract;

G.8.5.3 Increase the dollar limit of the contract or authorize work beyond the dollar limit of the contract, or a task order, or authorize the expenditure of funds by the Contractor;

G.8.5.4 Change the period of performance; or

G.8.5.5 Authorize the furnishing of District property, except as specified under the contract.

G.9 **ORDERING CLAUSE**

G.9.1 Any consulting services to be performed under the contract shall be ordered by issuance of task orders by the Contracting Officer. Such task orders may be issued during any Contracting Period.

- G.9.1.1** If the Contracting Office awards multiple contracts for the services required herein, the Contracting Officer may choose between the contractors in awarding subsequent task orders to obtain the best combination of quality and value based on considerations and evaluations, including, without limitation, the contractor’s knowledge, experience, business practice, other practice areas associated with insurance brokerage services, accessibility, available staff, cost, past working experiences with the District, knowledge of applicable District law and regulations, and the District’s need (“Best Value Consideration”).
- G.9.1.2** Generally, one (1) of the following two (2) award procedures shall be used to award task orders for consulting services:
- (a) Non-competitive award procedure based on the Best Value (for purposes of these rules, “Best Value” is the expected outcome of a procurement that provides the best overall benefit for the government in response to the requirement); or
 - (b) The preferred, competitive award procedure, where the COTR or Contracting Officer requests task order proposals from two (2) or more contractors.
- G.9.1.3** If the competitive award procedure is used, each task order request shall specify:
- (a) The specific services required;
 - (b) A delivery date; and
 - (c) Such other information as the COTR may reasonably request.
- G.9.1.4** Each task order shall state the not-to-exceed price or the firm fixed price and the duration for the period of service performance.

- G.9.1.5** If a task order is issued with a not-to-exceed amount, the District will pay the selected Contractor the lesser of the not-to-exceed amount or the total amount stated on the invoice based on the applicable rates stated in Section B.
- G.9.2** All task orders will be subject to the terms and conditions of the contract. In the event of a conflict between a task order and the contract, the contract shall control. A task order, when combined with all prior task orders issued for that Contract Period, cannot exceed the total amount of the contract for that Contract Period.
- G.9.3** A task order becomes effective on the date indicated by the Contracting Officer on the task order and may be issued by mail, by facsimile or by electronic commerce methods.
- G.9.4** Any brokerage services to be ordered during the term of the contract shall be ordered by issuance of a task order by the Contracting Officer. Such task orders may be issued during any Contract Period. Such task orders shall request the Contractor to obtain a quote for insurance. The quote shall set forth the premium for the policy of insurance, both inclusive and net of any Contractor's commission or fee. If the quote is acceptable to the Agency in its sole and uncontrolled discretion, the Agency shall issue a purchase order to the Contractor in the amount of the Contractor's commission or fee contained in the quote and direct the Contractor to obtain a binder committing the insurance company that provided the quote to the Contractor to issue an insurance policy to the District consistent with the quote. The binder may provide that the Contractor will serve as paying agent for the District.
- G.9.5** **RESERVED**
- G.9.6** If a Contractor is awarded a task order, the Contractor must keep the COTR informed of the status of each project and request a modification to the task order as the Contractor determines a modification is required.

The Contracting Officer, in consultation with the COTR, will review the Contractor's request, and, at the Contracting Officer's discretion, may modify the existing task order or issue a new task order to address the additional work, cost or time necessary to complete a project.

SECTION H **SPECIAL CONTRACT REQUIREMENTS**

H.1 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES

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

H.1.2 At least fifty-one (51%) percent of apprentices and trainees employed shall be residents of the District of Columbia registered in programs approved by the District of Columbia Apprenticeship Council.

H.1.3 The Contractor shall negotiate an Employment Agreement with the District's Department of Employment Services ("DOES") for jobs created as a result of the contract. The DOES shall be the Contractor's first source of referral for qualified applicants, trainees, and other workers in the implementation of employment goals contained in this clause.

H.2 LIVING WAGE ACT OF 2006 REQUIREMENTS

Contractor shall comply with the provisions of Title I of the Way to Work Amendment Act of 2006, effective June 8, 2006 (D.C. Law 16-118, D.C. Official Code §2-220.01 *et seq.*), as amended, ("Living Wage Act of

2006”) which applies to all contracts for services in the amount \$100,000 or more in a 12-month period.

The Living Wage Act of 2006 requires a contractor to:

1. Pay its employees and subcontractors who perform services under the contract no less than the current living wage published on the OCP website at www.ocp.dc.gov;
2. Include in any subcontract for \$15,000.00 or more a provision requiring the subcontractor to pay its employees who perform services under the contract no less than the current living wage rate;
3. Provide a copy of the Living Wage Act Fact Sheet to each employee and Subcontractor who performs services under the contract;
4. Post the Living Wage Act Notice in a conspicuous place in its place of business;
5. Include in any subcontract for \$15,000.00 or more a provision requiring the subcontractor to post the Living Wage Act Notice in a conspicuous place in its place of business;
6. Maintain its payroll records under the contract in the regular course of business for a period of at least three (3) years from the payroll date; and
7. Require its subcontractors with subcontracts for \$15,000.00 or more under the contract to maintain its payroll records under the contract in the regular course of business for a period of at least three (3) years from the payroll date.

The Living Wage Act Fact Sheet may be found at <https://sites.google.com/a/dc.gov/ocfo-procurements/> under the title: Living Wage Act Fact Sheet and is provided in accordance with the provisions of the above referenced DC statutes.

H.3 PUBLICITY

The Contractor shall at all times obtain the prior written approval from the Contracting Officer before it, any of its officers, agents, employees or subcontractors, either during or after expiration or termination of the contract, make any statement, or issue any material, for publication through any medium of communication, bearing on the work performed or data collected under this contract.

H.4 FREEDOM OF INFORMATION ACT

The District of Columbia Freedom of Information Act, at D.C. Official Code § 2-532 (a-3), as amended, requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If the Contractor receives a request for such information, the Contractor shall immediately send the request to the COTR designated in Section G.8.3 who will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the District of Columbia Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by the Contractor pursuant to the contract, the COTR will forward a copy to the Contractor. In either event, the Contractor is required by law to provide all responsive records to the COTR within the timeframe designated by the COTR. The FOIA Officer for the agency with programmatic responsibility will determine which records are not subject to release. The District will reimburse the Contractor for the costs of searching and copying the records in accordance with D.C. Official Code § 2-532 and Chapter 4 of Title 1 of the *D.C. Municipal Regulations*.

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

- H.5.1** The Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code § 2-219.01 *et seq.* (“First Source Act”).
- H.5.2** The Contractor shall enter into and maintain, during the term of the contract, a First Source Employment Agreement (Attachment J.4) in which the Contractor shall agree that:
- a. The first source for finding employees to fill all jobs created in order to perform this contract shall be DOES; and
 - b. The first source for finding employees to fill any vacancy occurring in all jobs covered by the First Source Employment Agreement shall be the First Source Register maintained by DOES.
- H.5.3** The Contractor shall submit to DOES, no later than the 10th day of each month following execution of the contract, a First Source Agreement Contract Compliance Report (“contract compliance report”) verifying its compliance with the First Source Agreement for the preceding month. The contract compliance report for the contract shall include the:
- a. Number of employees needed;
 - b. Number of current employees transferred;
 - c. Number of new job openings created;
 - d. Number of job openings listed with DOES;
 - e. Total number of all District residents hired for the reporting period and the cumulative total number of District residents hired; and

- f. Total number of all employees hired for the reporting period and the cumulative total number of employees hired, including:
 - 1. Name;
 - 2. Social Security number;
 - 3. Job title;
 - 4. Hire date;
 - 5. Residence; and
 - 6. Referral source for all new hires.

H.5.4 If the contract amount is equal to or greater than \$100,000, the Contractor agrees that 51% of the new employees hired for the contract shall be District residents.

H.5.5 With the submission of the Contractor's final request for payment from the District, the Contractor shall:

- a. Document in a report to the Contracting Officer, its compliance with the Section H.5.4 of this clause; or
- b. Submit a request to the Contracting Officer for a waiver of compliance with Section H.5.4 and include the following documentation:
 - 1. Material supporting a good faith effort to comply;
 - 2. Referrals provided by DOES and other referral sources;
 - 3. Advertisement of job openings listed with DOES and other referral sources; and
 - 4. Any documentation supporting the waiver request pursuant to section H.5.6.

H.5.6 The Contracting Officer may determine whether to waive the provisions of section H.5.4 if the Contracting Officer finds that:

- a. A good faith effort to comply is demonstrated by the Contractor; the Contractor is located outside the Washington Standard

Metropolitan Statistical Area and none of the contract work is performed inside the Washington Standard Metropolitan Statistical Area, which includes the District of Columbia, the Virginia Cities of Alexandria, Falls Church, Manassas, Manassas Park, Fairfax, and Fredericksburg, the Virginia Counties of Fairfax, Arlington, Prince William, Loudoun, Stafford, Clarke, Warren, Fauquier, Culpepper, Spotsylvania, and King George, the Maryland Counties of Montgomery, Prince Georges, Charles, Frederick, and Calvert, and the West Virginia Counties of Berkeley and Jefferson.

- b. The Contractor enters into a special workforce development training or placement arrangement with DOES; or
- c. DOES certifies that there are insufficient numbers of District residents in the labor market possessing the skills required by the positions created as a result of the contract.

H.5.7 Upon receipt of the contractor's final payment request and related documentation pursuant to sections H.5.5 and H.5.6, the Contracting Officer, shall determine whether the Contractor is in compliance with section H.5.4 or whether a waiver of compliance pursuant to section H.5.6 is justified. If the Contracting Officer determines that the Contractor is in compliance, or that a waiver of compliance is justified, the Contracting Officer shall, within two business days of making the determination forward a copy of the determination to the CFO.

H.5.8 Willful breach of the First Source Employment Agreement, or failure to submit the report pursuant to section H.5.5, or deliberate submission of falsified data, may be enforced by the District through imposition of penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract. The Contractor shall make payment to DOES. As set forth in the contract, the Contractor may appeal to the D.C. Contract Appeals Board any decision of the Contracting Officer pursuant to this section H.5.8.

H.5.9 The provisions of sections H.5.4 through H.5.8 do not apply to nonprofit organizations.

H.6 AMERICANS WITH DISABILITIES ACT OF 1990 (“ADA”)

During the performance of the contract, the Contractor and any of its subcontractors shall comply with the ADA. The ADA makes it unlawful to discriminate in employment against a qualified individual with a disability.

See 42 U.S.C. § 12101 et seq.

H.7 ANTI-DISCRIMINATION LAWS

During the performance of the contract, the Contractor shall comply with the provisions of Title 2, Chapter 14 of the District of Columbia Code (D.C. Official Code §§ 2-1401.01 et seq., as amended) and shall not discriminate any person based upon the race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, political affiliation, source of income or physical handicap of any individual.

H.7.1 SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED

During the performance of the contract, the Contractor and any of its subcontractors shall comply with Section 504 of the Rehabilitation Act of 1973, as amended. This Act prohibits discrimination against disabled people in federally funded program and activities. *See 29 U.S.C. § 794 et seq.*

H.8 AUDITS AND RECORDS

H.8.1 As used in this clause, “records” includes books, documents, accounting procedures and practices, and other data, regardless of type and

regardless of whether such items are in written form, in the form of computer data, or in any other form.

H.8.2 Examination of Costs. If the award is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer and the COTR, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants or offices, or parts of them, engaged in performing the contract.

H.8.3 Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to the contract or task orders issued thereunder, the Contracting Officer and the COTR, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to:

- a. The bid for the contract, subcontract, modification, or task order;
- b. The discussions conducted on the bid(s), including those related to negotiating;
- c. Pricing of the contract, subcontract, modification, or task order; or
- d. Performance of the contract, subcontract, modification, or task order.

H.8.4 Comptroller General

H.8.4.1 The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract thereunder.

- H.8.4.2** This paragraph may not be construed to require the Contractor or any subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- H.8.5** **Reports.** If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer and the COTR shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating:
- a. The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and
 - b. The data reported.
- H.8.6** **Availability.** The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in clauses H.8.1 through H.8.5, for examination, audit, or reproduction, until three (3) years after final payment under the contract or for any shorter period specified in this Solicitation, or for any longer period required by statute or by other clauses of the contract. In addition:
- a. If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until three (3) years after any resulting final termination settlement; and
 - b. The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.
- H.8.7** The Contractor shall insert a clause containing all the terms of this clause, including this section H.8.7, in all subcontracts under this contract that exceed the small purchase threshold of \$100,000, and:

- a. That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
- b. For which cost or pricing data are required; or
- c. That requires the subcontractor to furnish reports described in H.8.5 of this clause.

H.9 ADVISORY AND ASSISTANCE SERVICES

The contract is a contract for insurance brokerage services. It is therefore, understood and agreed that the Contractor and the Contractor's employees: (1) shall perform the services specified herein as independent contractors, not as employees of the District; (2) shall be responsible for their own management and administration of the work required and bear sole responsibility for complying with any and all legal, technical, schedule, financial requirements or constraints attendant to the performance of this contract; and (3) shall, pursuant to the District's rights and obligations to inspect, accept or reject work, comply with such general direction of the COTR, or the duly authorized representative of the COTR as is necessary to ensure accomplishment of the contract objectives.

H.12 DIVERSION, REASSIGNMENT AND REPLACEMENT OF KEY PERSONNEL

The Contractor's key personnel assigned at the time of contract award to provide the technical capacity specified in Section C.3.2 of the contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the key personnel assigned at the time of award for any reason, the Contractor shall notify the COTR at least thirty calendar days in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact upon the contract. The Contractor shall obtain written approval of the COTR for any proposed substitution of key personnel.

SECTION I

CONTRACT CLAUSES

I.1 INDEMNIFICATION

The Contractor agrees to defend, indemnify and hold harmless the District, its officers, agencies, departments, agents, and employees (collectively the "District") from and against any and all claims, losses, liabilities, penalties, fines, forfeitures, demands, causes of action, suits, costs and expenses incidental thereto (including cost of defense and attorneys' fees), resulting from, arising out of, or in any way connected to activities or work performed by the Contractor, Contractor's officers, employees, agents, servants, subcontractors, or any other person acting for or by permission of the Contractor in performance of this Contract. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed in performance of this Contract. The Contractor shall also repair or replace any District property that is damaged by the Contractor, Contractor's officers, employees, agents, servants, subcontractors, or any other person acting for or by permission of the Contractor while performing work hereunder. The duty to indemnify covers any claim against the District for its alleged failure to monitor or supervise the Contractor where the underlying claim arises from the conduct, action, or omission of the Contractor, the Contractor's officers, employees, agents, servants, subcontractors, or any other person acting for or by permission of the Contractor in performance of the contract. The indemnification obligation under this section shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor, and shall survive the termination of this Contract. The District agrees to give Contractor written notice of any claim of indemnity under this section. Additionally, Contractor shall have the right and sole authority to control the defense or settlement of such claim,

provided that no contribution or action by the District is required in connection with the settlement. Monies due or to become due the Contractor under the contract may be retained by the District as necessary to satisfy any outstanding claim which the District may have against the Contractor.

I.2 RESERVED

I.3 CONFIDENTIALITY OF INFORMATION

I.3.1 All information obtained by the Contractor relating to any employee or customer of the District shall be kept in absolute confidence and shall not be used by the Contractor in connection with any other matters, nor shall any such information be disclosed to any other person, firm, or corporation, in accordance with the District and Federal laws governing the confidentiality of records.

I.4 TIME

I.4.1 Time, if stated in a number of days, will include Saturdays, Sundays, and holidays, unless otherwise stated in the contract.

I.5 RIGHTS IN DATA

I.5.1 “Data,” as used herein, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

I.5.2 The term “Technical Data”, as used herein, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work, or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data

may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.

I.5.3 The term “Computer Software”, as used herein means computer programs and computer databases. “Computer Programs”, as used herein means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. "Computer Programs" include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort merge programs, and automated data processing equipment maintenance diagnostic programs, as well as applications programs such as payroll, inventory control and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent and may be general purpose in nature or designed to satisfy the requirements of a particular user.

I.5.4 The term "computer databases", as used herein, means a collection of data in a form capable of being processed and operated on by a computer.

I.5.5 All data first produced in the performance of the Contract shall be the sole property of the District. The Contractor hereby acknowledges that all data, including, without limitation, computer program codes, produced by Contractor for the District under the Contract, are works made for hire and are the sole property of the District; but, to the extent any such data may not, by operation of law, be works made for hire, Contractor hereby transfers and assigns to the District the ownership of copyright in such works, whether published or unpublished. The

Contractor agrees to give the District all assistance reasonably necessary to perfect such rights including, but not limited to, the works and supporting documentation and the execution of any instrument required to register copyrights. The Contractor agrees not to assert any rights in common law or in equity in such data. The Contractor shall not publish or reproduce such data in whole or in part or in any manner or form, or authorize others to do so, without written consent of the District until such time as the District may have released such data to the public.

- I.5.6** The District shall have restricted rights in data, including computer software and all accompanying documentation, manuals and instructional materials, listed or described in a license or agreement made a part of the Contract, which the parties have agreed will be furnished with restricted rights, provided however, notwithstanding any contrary provision in any such license or agreement, such restricted rights shall include, as a minimum the right to:
- I.5.6.1** Use the computer software and all accompanying documentation and manuals or instructional materials with the computer for which or with which it was acquired, including use at any District installation to which the computer may be transferred by the District;
 - I.5.6.2** Use the computer software and all accompanying documentation and manuals or instructional materials with a backup computer if the computer for which or with which it was acquired is inoperative;
 - I.5.6.3** Copy computer programs for safekeeping (archives) or backup purposes; and
 - I.5.6.4** Modify the computer software and all accompanying documentation and manuals or instructional materials, or combine it with other software, subject to the provision that the modified portions shall remain subject to these restrictions.
- I.5.7** The restricted rights set forth in Section I.5.6 are of no effect unless:

I.5.7.1 The data is marked by the Contractor with the following legend:

RESTRICTED RIGHTS LEGEND

Use, duplication, or disclosure is subject to restrictions stated in Contract No. _____ With _____ (Contractor's Name)

I.5.7.2 If the data is computer software, the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The Contractor may not place any legend on the computer software indicating restrictions on the District's rights in such software unless the restrictions are set forth in a license or agreement made a part of the contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the District of liability with respect to such unmarked software.

I.5.8 In addition to the rights granted in section I.5.6 above, the Contractor hereby grants to the District a nonexclusive, paid-up license throughout the world, of the same scope as restricted rights set forth in Section I.5.6 above, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the District under the Contract. Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the District under the contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the District any rights necessary to perfect a copyright license of the scope specified in the first sentence of this paragraph.

I.5.9 Whenever any data, including computer software, are to be obtained from a subcontractor under the Contract, the Contractor shall use Section I.5 in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the District's or the Contractor's rights in

that subcontractor data or computer software which is required for the District.

- I.5.10** For all computer software furnished to the District with the rights specified in Section I.5.5, the Contractor shall furnish to the District, a copy of the source code with such rights of the scope specified in Section I.5.5. For all computer software furnished to the District with the restricted rights specified in Section I.5.6, the District, if the Contractor, either directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided the District under the contract or any paid-up maintenance agreement, or if Contractor should be declared bankrupt or insolvent by the court if competent jurisdiction, shall have the right to obtain, for its own and sole use only, a single copy of the then current version of the source code supplied under the contract, and a single copy of the documentation associated therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.
- I.5.11** The Contractor shall indemnify and save and hold harmless the District, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under the contract, or (ii) based upon any data furnished under the contract, or based upon libelous or other unlawful matter contained in such data.
- I.5.12** Nothing contained in this clause shall imply a license to the District under any patent or be construed as affecting the scope of any license or other right otherwise granted to the District under any patent.
- I.5.13** Paragraphs I.5.6, I.5.7, I.5.8, and I.5.11 above are not applicable to material furnished to the Contractor by the District and incorporated in the work furnished under contract, provided that such incorporated

material is identified by the Contractor at the time of delivery of such work

I.6 OTHER CONTRACTORS

The Contractor shall not commit or permit any act that will interfere with the performance of work by another District contractor or by any District employee.

I.7 SUBCONTRACTS

I.7.1 The Contractor hereunder shall not subcontract any of the Contractor's work or services to any subcontractor without the prior, written consent of the Contracting Officer. Any such subcontract shall specify that the Contractor and the subcontractor shall be subject to every provision of the Contract. Notwithstanding any such subcontract approved by the District, the Contractor shall remain liable to the District for all Contractor's work and services required hereunder, including any work conducted by a subcontractor.

I.8 INSURANCE

I.8.1 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. Should the Contractor decide to engage a subcontractor for segments of the work

under this contract and wish to propose different insurance requirements than outlined below, then, prior to commencement of work by the subcontractor, the Contractor shall submit in writing the name and brief description of work to be performed by the subcontractor on the Subcontractors Insurance Requirement Template provided by the CA, to the Office of Risk Management (ORM). ORM will determine the insurance requirements applicable to the subcontractor and promptly deliver such requirements in writing to the Contractor and the CA. The Contractor must provide proof of the subcontractor's required insurance prior to commencement of work by the subcontractor. If the Contractor decides to engage a subcontractor without requesting from ORM specific insurance requirements for the subcontractor, such subcontractor shall have the same insurance requirements as the Contractor. All required policies shall contain a waiver of subrogation provision in favor of the Government of the District of Columbia.

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

self-insurance, including any deductible or retention, maintained by an Additional Insured) for all claims against the additional insured arising out of the performance of this Statement of Work by the Contractor or its subcontractors, or anyone for whom the Contractor or its subcontractors may be liable. These policies shall include a separation of insureds clause applicable to the additional insured.

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

I.8.1.1 Commercial General Liability Insurance (“CGL”). The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries a CGL policy, written on an occurrence (not claims-made) basis, on Insurance Services Office, Inc. (“ISO”) form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by the CO in writing), covering liability for all ongoing and completed operations of the Contractor, including ongoing and completed operations under all subcontracts, and covering claims for bodily injury, including without limitation sickness, disease or death of any persons, injury to or destruction of property, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising out of an Insured Contract (including the tort liability of another assumed in a contract) and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than \$1,000,000 each occurrence, a \$2,000,000 general aggregate (including a per location or per project aggregate limit endorsement, if applicable) limit, a \$1,000,000 personal and advertising injury limit, and a \$2,000,000 products-completed operations aggregate limit.

I.8.1.2 Automobile Liability Insurance. The Contractor shall provide evidence satisfactory to the CO of commercial (business) automobile liability insurance written on ISO form CA 00 01 10 13 (or another form with

coverage at least as broad and approved by the CO in writing) including coverage for all owned, hired, borrowed and non-owned vehicles and equipment used by the Contractor, with minimum per accident limits equal to the greater of (i) the limits set forth in the Contractor's commercial automobile liability policy or (ii) \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

I.8.1.3 Workers' Compensation Insurance. The Contractor shall provide evidence satisfactory to the CO of Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

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.

I.8.1.4 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 \$1,000,000 per claim or per occurrence for each wrongful act and \$5,000,000 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. Limits may not be shared with other lines of coverage.

I.8.1.5 Cyber Liability Insurance. The Contractor shall provide evidence satisfactory to the Contracting Officer of Cyber Liability Insurance, with limits not less than \$5,000,000 per occurrence or claim, \$5,000,000 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. Limits may not be shared with other lines of coverage. A copy of the cyber liability policy must be submitted to the Office of Risk Management (ORM) for compliance review.

1.8.1.6 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.

1.8.1.7 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.

1.8.1.8 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.

- I.8.1.9** 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.
- I.8.1.10** 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.
- I.8.1.11** 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.
- I.8.1.12** 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.
- I.8.1.13** 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:

Jane Waters, Insurance Program Officer
Office of Risk Management
441 4th Street, NW, Suite 800S
Washington, DC 20001

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).

I.8.1.14 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.

I.8.1.15 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 District.

I.9 EQUAL EMPLOYMENT OPPORTUNITY

I.9.1 In accordance with the District of Columbia Administrative Issuance System, Mayor's Order 85-85 dated June 10, 1985; the forms for completion of the Equal Employment Opportunity Information Report are incorporated herein as Attachment J.4. An award cannot be made to

any Offeror who has not satisfied the equal employment requirements as set forth by the Departments of Human Rights and Small and Local Business Development.

I.9.2 In accordance with 45 CFR 74 Appendix A (1), the Contractor shall comply with E.O. 11246 “Equal Employment Opportunity” as amended by 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented at 41 CFR 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

I.10 ORDER OF PRECEDENCE

Any inconsistency in the Contract shall be resolved by giving precedence in the following order: Services and Prices (Section B), Description/Specifications/Work Statement (Section C), Special Contract Requirements (Section H), Contract Clauses (Section I), Delivery or Performance (Section F), Contract Administration Data (Section G); Representations, Certifications and Other Statements of Offerors (Section K); List of Attachments (Section J); Proposal, and BAFO.

I.11 CONTRACTS IN EXCESS OF \$1 MILLION DOLLARS

Any contract in excess of one million dollars (\$1,000,000) within a 12-month period shall not be binding or give rise to any claim or demand against the District unless first approved by the Council of the District of Columbia and signed by the Contracting Officer.

I.12 PRE-AWARD APPROVAL

In accordance with the Council Contract Review Criteria Amendment Act of 1999, D.C. Official Code §2-301.05a, the Mayor must submit to the Council for approval any contract action for an amount exceeding one million dollars (\$1,000,000) within a 12-month period.

I.13 CONTINUITY OF SERVICES

- I.13.1** The Contractor recognizes that the services provided under the contract are vital to the District and must be continued without interruption and that, upon contract expiration or termination, a successor, either the District or another contractor, at the District's option, may continue to provide these services. To that end, the Contractor agrees to:
- I.13.1.1** Furnish phase-out, phase-in (transition) training; and
 - I.13.1.2** Exercise its best efforts and cooperation to affect an orderly and efficient transition to a successor.
- I.13.2** The Contractor shall, upon issuance of a no cost transition service task order by the Contracting Officer:
- I.13.2.1** Furnish phase- in, phase-out services for up to 90 days after the contract expires and
 - I.13.2.2** Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the CO's, and the COTR approval.
- I.13.3** The Contractor shall provide sufficient experienced personnel during the phase- in, phase-out period to ensure that the services called for by the contract are maintained at the required level of proficiency.
- I.13.4** The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are

agreeable to the change, the Contractor shall release them at a date mutually agreed upon with the successor and negotiate with the successor a transfer of their earned fringe benefits to the successor.

I.13.5 Only in accordance with a modification to the transition service task order issued by the Contracting Officer, shall the Contractor be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under the contract up to a ceiling amount of fifteen thousand dollars (\$15,000). The reimbursement of the Contractor's costs shall be in accordance with Section G.10.

I.13.6 If the Contractor is a law firm providing legal services to the District, upon request, the Contractor shall return to the District all contract files at no cost to the District (unless the District requests the Contractor to provide actual physical delivery, in which case the Contractor may charge the delivery costs). The Contractor cannot charge the District for the costs of reviewing the files for determination of what will not be returned, for copying the files for the Contractor's records, or for any internal costs of preparing the files for storage by the Contractor or for such storage.

I.14. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person 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 District will 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 commission, percentage, brokerage, or contingent fee.

I.15. PATENTS

The Contractor shall hold and save the District, its officers, agents, servants, and employees harmless from liability of any nature or kind, including costs, expenses, for or on account of any patented or unpatented invention, article, process, or appliance, manufactured or used in the performance of this contract, including their use by the District, unless otherwise specifically stipulated in the contract.

I.16. WAIVER

The waiver of any breach of the contract will not constitute a waiver of any subsequent breach thereof, or a waiver of the contract.

I.17. TERMINATION FOR DEFAULT

- (a) The Contracting Officer may, subject to the provisions of paragraph (c) below, and by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:
 - (1) If the Contractor fails to perform the services within the time specified herein or any extension thereof; or
 - (2) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.
- (b) In the event the CO terminates this contract in whole or in part as provided in paragraph (a) of this section, the District may procure, upon such terms and in such manner as the

Contracting Officer may deem appropriate, service similar to those so terminated, and the Contractor shall be liable to the District for any excess costs for similar services; provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this section.

- (c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the District or Federal Government in either their sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without fault or negligence of the Contractor. If the failure to perform is caused by the default of the subcontractor, and if such default arises out of causes beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess cost for failure to perform, unless the services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.
- (d) If this contract is terminated as provided in paragraph (a) of this section, the District, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the District, in the manner and to the extent directed by the Contracting Officer, (i) completed and draft documents in connection with the applicable task order, and (ii) such partially completed materials, parts, tools, dies, jigs, fixtures plans, drawing information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part

of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the District has an interest. Payment for completed services delivered to and accepted by the District will be at the contract price. Payment for manufacturing materials delivered to and accepted by the District will be at the contract price. Payment for manufacturing materials delivered to and accepted by the District and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and the Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of Section I.22 entitled "Disputes". The District may withhold from amounts otherwise due the Contractor for such completed services or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the District against loss because of outstanding liens or claims of former lien holders.

- (e) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this section, the rights and obligations of the parties shall, if the contract contains a clause providing for termination of convenience of the District, be the same as if the notice of termination had been issued pursuant to such section. See Section I.24 for Termination for Convenience of the District.
- (f) The rights and remedies of the District provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.
- (g) As used in paragraph (c) of this clause, the terms "subcontractor(s) means subcontractor(s) at any tier.

I.18 TRANSFER

No contract or any interest therein shall be transferred by the parties to whom the award is made; such transfer will be null and void and will be cause to annul the contract.

I.19. TAXES

The Government of the District of Columbia is exempt from and will not pay Federal Excise Tax, Transportation Tax, and the District of Columbia Sales and Use Taxes.

Tax exemption certificates are no longer issued by the District for Federal Excise Tax. The following statement may be used by the supplier when claiming tax deductions for Federal Excise Tax exempt items sold to the District.

Brokers or agents engaged by the District to procure policies of insurance are exempt from the tax assessed under D.C. Code § 31-2502.40, provided such brokers or agents claim an exemption as provided by said section.

Additional exemptions include:

The District of Columbia Government is Exempt from Federal Excise Tax - Registration No. 52-73-0206-K, Internal Revenue Service, Baltimore, Maryland.

Exempt From Maryland Sales Tax, Registered With The Comptroller Of The Treasury As Follows:

- a) Deliveries to Glenn Dale Hospital - Exemption No. 4647
- b) Deliveries to Children' s Center - Exemption No. 4648
- c) Deliveries to other District Departments or Agencies - Exemption No. 09339

The District of Columbia Government is Exempt from Sales and Use Tax - Registration No. 53-600, The District of Columbia Office of Tax and Revenue.

I.20 APPOINTMENT OF ATTORNEY

I.20.1 The Contractor hereby irrevocably designate and appoint the Clerk of the District of Columbia Superior Court and his successor in office as the true and lawful attorney of the Contractor for the purpose of receiving service of all notices and processes issued by any court in the District of Columbia, as well as service of all pleadings and other papers, in relation to any action or legal proceeding arising out of or pertaining to this contract or the work required or performed hereunder.

I.20.2 The Contractor expressly agrees that the validity of any service upon the said Clerk as herein authorized shall not be affected either by the fact that the contractor was personally within the District of Columbia and otherwise subject to personal service at the time of such service upon the said Clerk or by the fact that the contractor failed to receive a copy of such process, notice or other paper so served upon the said Clerk provided the said Clerk shall have deposited in the United States mail, registered and postage prepaid, a copy of such process, notice, pleading or other paper addressed to the bidder/offeror or contractor at the address stated in this contract.

I.21 DISTRICT EMPLOYEES NOT TO BENEFIT

I.21.1 Unless a determination is made as provided herein, no officer or employee of the District will be admitted to any share or part of this contract or to any benefit that may arise therefrom, and any contract made by the Contracting Officer or any District employee authorized to execute contracts in which they or an employee of the District will be personally interested shall be void, and no payment shall be made thereon by the District or any officer

thereof, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit. A District employee shall not be a party to a contract with the District and will not knowingly cause or allow a business concern or other organization owned or substantially owned or controlled by the employee to be a party to such a contract, unless a written determination has been made by the Contracting Officer that there is a compelling reason for contracting with the employee, such as when the District's needs cannot reasonably otherwise be met.

- I.21.2 The Contractor represents and covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants not to employ any person having such known interests in the performance of the contract.

I.22 DISPUTES

- A. All disputes arising under or relating to this contract shall be resolved as provided herein. To the extent any provision set forth in in this section I.22 conflicts with a regulation adopted by the Agency governing procedure for the resolution of disputes, the then-effective regulation shall control.
- B. **Claims by a Contractor against the District.**
Claim, as used in Section B of I.22, means a written assertion by the Contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

- (a) All claims by a Contractor against the District arising under or relating to a contract shall be in writing and shall be submitted to the Contracting Officer for a decision. The contractor's claim shall contain at least the following:
- (1) A description of the claim and the amount in dispute;
 - (2) Any data or other information in support of the claim;
 - (3) A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and
 - (4) The Contractor's request for relief or other action by the Contracting Officer.
- (b) The Contracting Officer may meet with the Contractor in a further attempt to resolve the claim by agreement.
- (c) For any claim of \$50,000 or less, the Contracting Officer shall issue a decision within sixty (60) days from receipt of a written request from a Contractor that a decision be rendered within that period.
- (d) For any claim over \$50,000, the Contracting Officer shall issue a decision within ninety (90) days of receipt of the claim. Whenever possible, the Contracting Officer shall take into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.
- (e) The Contracting Officer's written decision shall do the following:
- (1) Provide a description of the claim or dispute;
 - (2) Refer to the pertinent contract terms;
 - (3) State the factual areas of agreement and disagreement;

- (4) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
 - (5) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
 - (6) Indicate that the written document is the contracting officer's final decision; and
 - (7) Inform the Contractor of the right to seek further redress by appealing the decision to the Superior Court of the District of Columbia.
- (f) Any failure by the Contracting Officer to issue a decision on a contract claim within the required time period will be deemed to be a denial of the claim, and will authorize the commencement of an appeal to the Superior Court of the District of Columbia.
- (g) (1) If a Contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim.
- (2) Liability under paragraph (g) (1) shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.
- (h) The decision of the Contracting Officer shall be final and not subject to review unless action for judicial review is timely commenced by

the Contractor filing a complaint with the District of Columbia Superior Court.

- (i) Pending final decision of an appeal, action, or final settlement, a Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

C. Claims by the District against a Contractor

- (a) Claim as used in Section C of I.22, means a written demand or written assertion by the District seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.
- (b) (1) All claims by the District against a Contractor arising under or relating to a contract shall be decided by the Contracting Officer.
- (2) The Contracting Officer shall send written notice of the claim to the Contractor. The Contracting Officer's written decision shall do the following:
 - (a) Provide a description of the claim or dispute;
 - (b) Refer to the pertinent contract terms;
 - (c) State the factual areas of agreement and disagreement;
 - (d) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
 - (e) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;

- (f) Indicate that the written document is the Contracting Officer's final decision; and
 - (g) Inform the Contractor of the right to seek further redress by appealing the decision to the Superior Court of the District of Columbia.
- (3) The decision shall be supported by reasons and shall inform the Contractor of its rights provided herein.
- (4) The authority contained in this clause shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle, or determine.
- (5) This clause shall not authorize the Contracting Officer to settle, compromise, pay, or otherwise adjust any claim involving fraud.
- (6) The decision of the Contracting Officer shall be final and not subject to review unless a complaint is timely filed by the Contractor in the District of Columbia Superior Court
- (7) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

I.23 CHANGES

The Contracting Officer may at any time by written order, and without notice to the surety, make changes in the contract within the general scope hereof. If such change causes an increase or decrease in the cost of performance of this contract, or in the time required for performance, an equitable adjustment shall be Any claim for adjustment under this paragraph must be asserted within ten (10) days from the date the change is offered; provided, however, that the Contracting Officer if he or she determines that the facts justify such

action, may receive, consider and may adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in Section I.22 entitled: “Disputes”. Nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

I.24 TERMINATION FOR CONVENIENCE OF THE DISTRICT

- A. The Contracting Officer may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the District’s interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and effective date.
- B. After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
 - (1) Stop work as specified in the notice.
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
 - (3) Terminate all contracts to the extent they relate to the work terminated.
 - (4) Assign to the District, as directed by the Contracting Officer, all rights, title and interest of the Contractor under the subcontracts terminated, in which case the District will have the right to settle or pay any termination settlement proposal arising out of those terminations.

- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts. The approval or ratification will be final for purposes of this section.
- (6) As directed by the Contracting Officer, transfer title and deliver to the District (i) the fabricated or unfabricated parts, work in process, completed work, and other materials produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract has been completed, would be required to be furnished to the District.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the District has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (6) above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the District under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

- C. After the expiration of ninety (90) days (or such longer period as may be agreed to) after receipt by the Contracting Officer of acceptable inventory schedules, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality of termination inventory not previously disposed of excluding items authorized for disposition by the Contracting Officer. The Contractor may request the District to remove those items or enter into an agreement for their storage. Within fifteen (15) days, the District will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within forty-five (45) days from submission of the list, and shall correct the list, as necessary, before final settlement.
- D. After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this one-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after one year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due to the Contractor because of the termination and shall pay the amount determined.
- E. Subject to paragraph (d) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) below,

exclusive of costs shown in subparagraph (f)(3) below, may not exceed the total contract price as reduced by (1) the amount of payment previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Contractor paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

F. If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (e) above:

- (1) District (or sold or acquired under subparagraph (b)(9) above) not the contract price for completed services accepted by the previously paid for, adjusted for any saving of freight and other charges.
- (2) The total of:
 - (i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to services paid or to be paid under subparagraph (0(1) above;
 - (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the ten Hinted portions of the contract if not included in subparagraph (f)(1) above; and
 - (iii) A sum, as profit on subparagraph f(1) above, determined by the Contracting Officer to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit

under this subparagraph (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable cost of settlement of the work terminated, including-

- (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
- (ii) The termination and settlement of subcontractors (excluding the amounts of such settlements); and
- (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

- G. Except for normal spoilage, and except to the extent that the District expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (f) above, the fair value as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the District or to a buyer.
- H. The Contractor shall have the right of appeal, under Section I. 22 entitled: "Disputes", from any determination made by the Contracting Officer under paragraphs (d), (f) or (j), except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) or (j), and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (d), (f) or (j), the District will pay the Contractor (1) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.
- I. In arriving at the amount due the Contractor under this

clause, there shall be deducted:

- J. All unliquidated advances or other payments to the Contractor under the termination portion of the contract;
- K. Any claim which the District has against the Contractor under this contract; and
- L. The agreed price for, all services under the provisions of this clause and not recovered by or credited to the District.
- M. If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within ninety (90) days from the effective date of termination unless extended in writing by the Contracting Officer.
 - (1) The District may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor shall be entitled.
 - (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the District upon demand together with interest computed at the rate of 10 percent (10%) per year. Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess payment is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date

determined by the Contracting Officer because of the circumstances.

- N. Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the District, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, micrographs, or other authentic reproductions may be maintained instead of original records and documents.

I.25 RECOVERY OF DEBTS OWED THE DISTRICT

The Contractor hereby agrees that the District may use all or any portion of any consideration or refund due the Contractor under the present contract to satisfy, in whole or part, any debt due the District.

I.26 RETENTION AND EXAMINATION OF RECORDS

- I.26.1 The Contractor shall establish and maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting principles and practices which sufficiently and properly reflect all revenues and expenditures of funds provided by the District under the contract that results from this Solicitation.
- I.26.2 The Contractor shall retain all records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to the contract for a period of three (3) years after termination of the contract, or if an audit has been initiated and audit findings have not been resolved at the end of three (3) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of the contract.

- I.26.3 The Contractor shall assure that these records shall be subject at all reasonable times to inspection, review, or audit by Federal, District, the Contracting Officer, the COTR, or other personnel duly authorized by the Contracting Officer.
- I.26.4 The Contracting Officer, the Inspector General and the District of Columbia Auditor, or any of their duly authorized representatives shall, until three years after final payment, have the right to examine any directly pertinent books, documents, papers and records of the Contractor involving transactions related to the contract.

I.27 NON-DISCRIMINATION CLAUSE

- (a) The Contractor shall not discriminate in any manner against any employee or applicant for employment that would constitute a violation of the District of Columbia Human Rights Act, approved December 13, 1977, as amended M. C. Law 2-38; D. C. Official Code §2-1402.11 (2001 Ed.)("Act" as used in this Section). The Contractor shall include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials. In addition, Contractor agrees, and any subcontractor shall agree to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause as provided in Section 251 of the Act.
- (b) Pursuant to rules of the Office of Human Rights, published on August 15, 1986 in the D. C. Register, Mayor's Order 2002-175 (10/23/02), 49 DCR 9883 and Mayor' s Order 2006-151 (11/17/06), 52 DCR 9351, the following clauses apply to this contract:
- (1) The Contractor shall not discriminate against any employee or applicant for employment because of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, genetic

information, source of income, or place of residence or business.

Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act.

- (2) The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, genetic information, source of income, or place of residence or business.

The affirmative action shall include, but not be limited to the following:

- (a) employment, upgrading or transfer;
 - (b) recruitment, or recruitment advertising;
 - (c) demotion, layoff, or termination;
 - (d) rates of pay, or other forms of compensation; and
 - (e) selection for training and apprenticeship.
- (3) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Agency, setting forth the provisions in subsections (b)(1) and (b)(2) concerning nondiscrimination and affirmative action.
- (4) 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 subsection (b)(2).
- (5) The Contractor agrees to send to each labor union or representative of

workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the contracting agency, advising the said labor on or workers' representative of that contractor's commitments under this nondiscrimination clause and the Act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (6) The Contractor agrees to permit access to his books, records and accounts pertaining to its employment practices, by the Contracting Officer or designee, or the Director of Human Rights or designee, for purposes of investigation to ascertain compliance with this chapter, and to require under terms of any subcontractor agreement each subcontractor to permit access of such subcontractors' books, records, and accounts for such purposes.
- (7) The Contractor agrees to comply with the provisions of this chapter and with all guidelines for equal employment opportunity applicable in the District of Columbia adopted by the Director of the Office of Human Rights, or any authorized official.
- (8) The Contractor shall include in every subcontract the equal opportunity clauses, subsections (b)(1) through (b)(9) of this section, so that such provisions shall be binding upon each subcontractor or vendor.
- (9) The Contractor shall take such action with respect to any subcontract as the Contracting Officer may direct as a means of enforcing these provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the District to enter into such litigation to protect the interest of the District.

I.28 DEFINITIONS

The terms Mayor, Contracting Officer, COTR, and District will mean the Mayor of the District of Columbia, the Contracting Officer of the Captive

Insurance Agency or his/her alternate, the Contracting Officer's Technical Representative selected by the Captive Insurance Agency, and the Government of the District of Columbia respectively. If the Contractor is an individual, the term Contractor shall mean the Contractor, his heirs, his executor, and his administrator. If the Contractor is a corporation, the term Contractor shall mean the Contractor and its successor.

I.29 HEALTH AND SAFETY STANDARDS

Items delivered under this contract shall conform to all requirements of the Occupational Safety and Health Act of 1970, as amended ("OSHA"), and Department of Labor Regulations under OSHA, and all Federal requirements in effect at time of bid opening/proposal submission.

I.30 APPROPRIATION OF FUNDS

The District's liability under this contract is contingent upon the future availability of appropriated monies with which to make payment for the contract purposes. The legal liability on the part of the District for the payment of any money shall not arise unless and until such appropriation shall have been provided.

The District's obligation to pay under this contract is subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1351; (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08 (2001); (iii) D.C. Official Code § 47-105 (2001); and (iv) D.C. Official Code § 1-204.46 (2001), as the foregoing statutes may be amended from time to time. Any expenditures under the contract in excess of the encumbered budget authority are subject to appropriation or additional budget authority.

I.31 BUY AMERICAN ACT

- (a) The Buy American Act (41 U.S.C. § 10a) provides that the District give preference to domestic end products.

"Components," as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

"Domestic end product," as used in this clause, means, (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States, exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in paragraphs (b)(2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"End products," as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

- (b) The Contractor shall deliver only domestic end products, except those-
 - (1) For use outside the United States;
 - (2) That the District determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;
 - (3) For which the District determines that domestic preference would be inconsistent with the public interest; or
 - (4) For which the District determines the cost to be unreasonable.

I.32 SERVICE CONTRACT ACT OF 1965

- (a) Definitions. "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. §351, *et seq.*)
 - (1) "Contractor," as used in this clause, means the prime Contractor or any subcontractor at any tier.
 - (2) "Service employee," as used in this clause, means any person (other than a person employed in a bona fide executive, administrative, or

professional capacity as defined in 29 CFR 541) engaged in performing a District contract not exempted under 41 U.S.C. §356, the principal purpose of which is to furnish services in the United States, as defined in section 22.1001 of the Federal Acquisition Regulation. It includes all such persons regardless of the actual or alleged contractual relationship between them and a contractor.

(b) Applicability. To the extent that the Act applies, this contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (20 CFR part 4). All interpretations of the Act in Subpart C of 29 CFR 4 are incorporated in this contract by reference. This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. §356, as interpreted in Subpart C of 29 CFR 4.

(c) Compensation

- (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or the Secretary's authorized representative, as specified in any wage determination attached to this contract.
- (2) If a wage determination is attached to this contract, the Contractor shall classify any class of service employees not listed in it, but to be employed under this contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph. This conforming procedure shall be initiated by the Contractor prior to

the performance of contract work by the unlisted class of employee.

- (a) The Contractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration (ESA), Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary;
- (b) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contracting Officer with a written copy of such determination or it shall be posted as a part of the wage determination;
- (c) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under

Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed;

- (d) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds to a contract under which the classification in question was previously conformed pursuant to this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (*i.e.*, adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in this clause need not be followed;
- (e) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended;
- (f) The wage rate and fringe benefits finally determined under this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the

interested parties or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract;

- (g) Upon discovery of failure to comply with this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.
- (3) If the term of this contract is more than 1 year, the minimum wages and fringe benefits required for service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by ESA.
- (4) The Contractor can discharge the obligation to furnish fringe benefits specified in the attachment or determined under paragraph (2) of this clause by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, in accordance with Subpart B and C of 29 CFR 4.
- (d) Minimum wage: In the absence of a minimum wage attachment for this contract, the Contractor shall not pay any service or other employees performing this contract less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §206). Nothing in this clause shall relieve the Contractor of any other legal or contractual obligation to pay a higher wage to any employee.
- (e) Successor contracts: If this contract succeeds a contract subject to the Act under which substantially the same services were furnished and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, then, in the absence of a minimum wage attachment to this contract, the Contractor may not pay any service employee performing this contract less than the wages and benefits, including those accrued and any prospective increases, provided for under that agreement. No Contractor may be relieved of this obligation unless the limitations of

29 CFR 4.1c(b) apply or unless the Secretary of Labor or the Secretary's authorized representative:

- (1) Determines that the agreement under the predecessor was not the result of arms-length negotiations; or
 - (2) Finds, after a hearing under 29 CFR 4.10, that the wages and benefits provided for by that agreement vary substantially from those prevailing for similar services in the locality or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and 4.11 and parts 6 and 8 that some or all of the wages and fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.
- (f) Notification to employees: The Contractor shall notify each service employee commencing work on this contract of a minimum wage and any fringe benefits required to be paid, or shall post a notice of these wages and benefits in a prominent and accessible place at the worksite, using such poster as may be provided by the Department of Labor.

- (g) Safe and sanitary working conditions: The Contractor shall not permit services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor that are unsanitary, hazardous, or dangerous to the health or safety of service employees. The Contractor shall comply with the health standards applied under 29 CFR Part 1925.
- (h) Records: The Contractor shall maintain for 3 years from the completion of work, and make available for inspection and transcription by authorized ESA representatives, a record of the following:
- (1) For each employee subject to the Act:
 - (a) Name and address;
 - (b) Work classification or classifications, rate or rates of wages and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;
 - (c) Daily and weekly hours worked; and
 - (d) Any deductions, rebates, or refunds from total daily or weekly compensation.
 - (2) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by ESA under the terms of paragraph (c)(3) of this clause. A copy of the report required by paragraph (e) of this clause will fulfill this requirement.
 - (3) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by this clause. The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division. Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon

direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases. The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

- (i) Pay periods : The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CER part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.
- (j) Withholding of payments and termination of contract: The Contracting Officer, in consultation with COTR, shall withhold from the prime Contractor under this or any other District contract with the prime contractor any sums the Contracting Officer, or an appropriate officer of the Labor Department, decides may be necessary to pay underpaid employees. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination for default. In such event, the District may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.
- (k) Subcontracts: The Contractor agrees to insert this clause in all subcontracts.
- (l) Contractor's report:
 - (1) If there is a wage determination attachment to this contract

and any classes of service employees not listed on it are to be employed under the contract, the Contractor shall report promptly to the Contracting Officer the wages to be paid and the fringe benefits to be provided each of these classes, when determined under paragraph (c) of this clause.

- (2) If wages to be paid or fringe benefits to be furnished any service employees under the contract are covered in a collective bargaining agreement effective at any time when the contract is being performed, the Contractor shall provide to the Contracting Officer a copy of the agreement and full information on the application and accrual of wages and benefits (including any prospective increases) to service employees working on the contract. The Contractor shall report when contract performance begins, in the case of agreements then in effect, and shall report subsequently effective agreements, provisions, or amendments promptly after they are negotiated.
- (m) Contractor's Certification: By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded District contracts by virtue of the sanctions imposed under section 5 of the Act. No part of this contract shall be subcontracted to any person or firm ineligible for award of a District contract under section 5 of the Act. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.
- (n) Variations, tolerances, and exemptions involving employment: Notwithstanding any of the provisions in paragraphs (c) through (1) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions authorized by the Secretary of Labor.
- (o)(i) In accordance with regulations issued under Section 14 of the Fair Labor Standards Act of 1938 by the Administrator of the Wage and Hour Division,

ESA (29 CFR 520, 521, 524, and 525), apprentices, student learners, and workers whose earning capacity is impaired by age or by physical or mental deficiency or injury, may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act, without diminishing any fringe benefits or payments in lieu of these benefits required under section 2(a)(2) of the Act.

(ii) The Administrator will issue certificates under the Act for employing apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages, but without changing requirements concerning fringe benefits or supplementary cash payments in lieu of these benefits.

(iii) The Administrator may also withdraw, annul, or cancel such certificates under 29 CFR 525 and 528.

(2) An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips shall be credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with regulations in 29 CFR 531. However, the amount of credit shall not exceed 40 percent of the minimum rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 as amended.

SECTION J

LIST OF ATTACHMENTS

The Attachment J.1 listed below will be incorporated into the contract by this reference.

Attachm ent	Title
J.1	Medical Liability Captive Insurance Agency Establishment Act of 2008, as amended

J.2	Government of the District of Columbia Department of Employment Services First Source Employment Agreement
J.3	Government of the District of Columbia Office of Tax and Revenue Tax Certification Affidavit
J.4	Government of the District of Columbia Office of Local Business Development Equal Opportunity Information Report and Mayor’s Order 85-85

In order to do business with the District, a potential contractor must be registered to do business with the Office of Tax and Revenue (OTR) and Department of Employment Services (DOES). In order to register with the Office of Tax and Revenue, contact Customer Service Office at 202-727-4829 to request a form FR-500 (Combined Registration Application) which must be fully completed and submitted to the address indicated on the form, Office of Tax and Revenue, PO Box 470, Washington, DC 20044-0470 or register online at: https://www.taxpayerservicecenter.com/FR500_Instructions.jsp. In order to register with the Department of Employment Services, complete, Part VI of the FR-500 - (Combined Registration Application) and return it to the Unemployment Tax Division. Please contact the Registration section at 202-698-5124 or 202-698-5127 for more information. Any and all selected firms must be registered and in compliance with DOES & OTR prior to consideration for contract award.

SECTION K
REPRESENTATIONS, CERTIFICATIONS AND
OTHER STATEMENTS OF OFFERORS

(This section must be completed and returned with all required documentation in order for a proposal to be considered responsive to the Solicitation).

K.1 CERTIFICATION REGARDING A DRUG-FREE WORKPLACE.

(a) Definitions. As used in this provision:

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific Contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government Contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in Contract performance.

"Individual" means an Offeror/Contractor that has no more than one employee including the Offeror/Contractor.

(b) By submission of its offer, the Offeror, if other than an individual, who is making an offer that equals or exceeds \$25,000, certifies and

agrees, that with respect to all employees of the Offeror to be employed under a Contract resulting from this Solicitation, it will - no later than 30 calendar days after Contract award for Contracts of 30 calendar days or more performance duration: or as soon as possible for Contracts of less than 30 calendar days performance duration, but in any case, by a date prior to when performance is expected to be completed:

- (1) Publish a statement notifying such employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- (2) establish an ongoing drug-free awareness program to inform such employees about -
 - (i) The dangers of drug abuse in the workplace;
 - (ii) The Contractor's policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- (3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this provision;
- (4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this provision that, as a condition of continued employment on the Contract resulting from this Solicitation, the employee will:

- (i) Abide by the terms of the statement; and
 - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 calendar days after such conviction.
- (5) Notify the Contracting Officer in writing within 10 calendar days after receiving notice under subdivision (b)(4) of this section, from an employee or otherwise receiving actual notice of such conviction. The notice must include the position title of the employee;
- (6) Within 30 calendar days after receiving notice under subdivision (b)(4) of this provision of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
- (i) Take appropriate personnel action against such employee, up to and including termination; or
 - (ii) Require such employee to satisfactorily participate in drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.
- (7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs B.(1) through B.(6) of this provision.
- (c) By submission of its offer, the Offeror, if an individual who is making an offer of any dollar value, certifies and agrees that the Offeror will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of the Contract resulting from this Solicitation.
- (d) Failure of the Offeror to provide the certification required by

paragraphs (b) or (c) of this provision renders the Offeror unqualified and ineligible for award. In addition to other remedies available to the District, the making of a false, fictitious, or fraudulent certification under paragraph (b) or (c) of this provision may render the maker subject to criminal prosecution.

K.2 AUTHORIZED NEGOTIATORS

The Offeror represents that the following persons are authorized to negotiate on its behalf with the District in connection with this request for proposals: (list names, titles, e-mails, and telephone numbers of the authorized negotiators).

K.3 TYPE OF BUSINESS ORGANIZATION

The Offeror, by checking the applicable box, represents that

- a. It operates as:
 - _____ a corporation incorporated under the laws of _____,
 - _____ an individual,

- _____ a partnership,
- _____ a nonprofit organization,
- _____ a joint venture, or
- _____ other (specify).

b. If the Offeror is a foreign entity, it operates as:

- _____ an individual,
- _____ a partnership,
- _____ a nonprofit organization, or
- _____ a joint venture.

K.4 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

a. Each signature of the Offeror is considered to be a certification by the signatory that:

- i. The prices in the proposal have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any Offeror or competitor relating to:
 - 1. those prices
 - 2. the intention to submit a contract, or
 - 3. the methods or factors used to calculate the prices in the contract.
- ii. The prices in this contract have not been and will not be knowingly disclosed by the Offeror, directly or indirectly, to any other Offeror or competitor before contract award unless otherwise required by law; and

- iii. No attempt has been made or will be made by the Offeror to induce any other concern to submit or not to submit a proposal for the purpose of restricting competition.
- b. Each signature on the offer is considered to be a certification by the signatory that the signatory:
- i. Is the person in the Offeror's organization responsible for determining the prices being offered in the proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(i) through (a)(iii) above; or
 - ii. Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(i) through (a)(iii) above:

(insert full name of person(s) in the organization responsible for determining the prices offered in this Contract and the title of his or her position in the Offeror's organization);

- a. As an authorized agent, does certify that the principals named in subdivision (b)(ii) have not participated, and will not participate, in any action contrary to subparagraphs (a)(i) through (a)(iii) above; and
- b. As an agent, has not participated, and will not participate, in any action contrary to subparagraphs (a) (i) through (a) (iii) above.

- c. If the Offeror deletes or modifies subparagraph (a) (ii) above, the Offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

K.5 CERTIFICATION AS TO COMPLIANCE WITH EQUAL OPPORTUNITY OBLIGATIONS

Mayor's Order 85-85, effective June 10, 1985, and the rules implementing Mayor's Order 85-85, 4 DCR 1100 "Equal Opportunity Requirements in District Government Contracts," are incorporated into District of Columbia contracts by reference. Therefore, all bidders/offerors must indicate below their written commitment to assure compliance with Mayor's Order 85-85 and the Implementing Regulation. Failure to comply with the subject Mayor's Order and the Implementing Regulation will result in rejection of the prospective bid/proposal.

I, _____, the authorized representative of _____, hereinafter referred to as "the Contractor," certify that the Contractor is fully aware of all of the provisions of Mayor's Order 85-85, effective June 10, 1985, and of the Rules Implementing Mayor's Order 85-85, and 4 DCR 1100. I further certify and assure that the Contractor will fully comply with all applicable provisions of the Mayor's Order and Implementing Regulation if awarded a contract as a result of the present Solicitation. Further, the Contractor acknowledges and understands that the award of said contract and its continuation are specifically conditioned upon the Contractor's continued compliance with the Order and Regulations cited above.

Further, the Contractor agrees to include in each subcontract it issues for goods and services, the language contained in Title 4, District of Columbia Regulation at Paragraphs 1103.2 through 1103.10, which is as follows:

1103.2 The Contractor must not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap.

1103.3 The Contractor agrees to take affirmative action to ensure applicants are employed, and that employees are treated during employment without regard to their race, color, religion, national origin, sex, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation or physical handicap. The affirmative action must include, but not be limited to, the following:

- (a) Employment, upgrading or transfer;
- (b) Recruitment or recruitment advertising;
- (c) Demotion, layoff or termination;
- (d) Rates of pay, or other forms of compensation; and
- (e) Selection for training and apprenticeship.

1103.4 The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Agency, setting forth the provisions in Paragraphs. 1103.2 and 1103.3 concerning non-discrimination.

1103.5 The Contractor must, 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 paragraph 1103.2.

1103.6 The Contractor agrees to send to each labor union or representative of workers with which it has a collective bargaining contract, or other contract or understanding, a notice to be provided by the Contracting Agency, advising each labor union or worker's representative of the Contractor's commitments under this chapter, and

must post copies of the notice in conspicuous places available to the employees and applicants for employment.

1103.7 The Contractor agrees to permit access to all books, records, and accounts pertaining to its employment practices, by the Director and the Contracting Agency for purposes of investigation to ascertain compliance with this chapter, and to require under terms of any subcontractor contract with each subcontractor to permit access of those subcontractor's books, records and accounts for such purposes.

1103.8 The Contractor agrees to comply with the provisions of this chapter and with all guidelines for equal employment opportunity applicable in the District of Columbia adopted by the Director, or any authorized official.

1103.9 The prime Contractor must include in every subcontract the equal opportunity clauses, Paragraphs 1103.2 through 1103.10 of this section, so that these provisions must be binding upon each subcontractor or vendor.

1103.10 The prime Contractor must take action of enforcing these provisions, including sanctions for non-compliance; provided, that in the event the prime Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Contracting Agency, the prime Contractor may request the District to enter into such litigation to protect the interest of the District.

Contractor/Offeror/Bidder

Name

Signature

Title

Contract Number

Date

K.6 BUY AMERICAN CERTIFICATION

The Offeror hereby certifies that each end product, except the end products listed below, is a domestic end product (See Clause 23 of the SCP, “Buy American Act”), and that components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.

_____ EXCLUDED END
PRODUCTS

_____ COUNTRY OF
ORIGIN

K.7 RESERVED

K.8 FIRST SOURCE EMPLOYMENT CONTRACT/CERTIFICATION

For all proposals over \$100,000.00, except for those in which the Offeror is located outside the Washington D.C. metropolitan area and will perform no work in the Washington D.C. Metropolitan area, the following certification is required:

The Offeror recognizes that one of the primary goals of the District government is the creation of job opportunities for bona fide District residents. Accordingly, the Offeror agrees to pursue the District's following goals for utilization of bona fide residents of the District of Columbia with respect to this Contract and in compliance with the Mayor's Order 83-265; whereby (1) at least 51% of all jobs **created as a result of this Contract** are to be performed by employees who are residents of the District of Columbia; and at least 51% of apprentices and trainees employed must be residents of the District of Columbia registered in programs approved by the D.C. apprenticeship Council. The Offeror also agrees to notify all prospective subcontractors, prior to execution of any Contractual contracts, that the subcontractors are expected to implement Mayor's Order 83-265 in their own employment practices. The Offeror understands and will comply with the requirements of The Volunteer Apprenticeship Act of 1978, D.C. Code §36-401 *et seq.*, and the First Source Employment Contract Act of 1984,

D.C. Code §1-1161 et sec.

The Offeror certifies that it intends to enter into a First Source Employment Contract with the District of Columbia Department of Employment Services (DOES). Under this First Source Employment Contract, the Offeror will use DOES as the first source for recruitment and referral of any new employees. The Offeror must negotiate the First Source Employment Contract directly with DOES. Nothing in this certification or the First Source Employment Contract must be construed as requiring the Offeror to hire or train persons it does not consider qualified based on standards the Offeror applies to all job applicants.

Signature Date _____

Printed Name Title _____

The penalty for making false statements in offers is prescribed in 18 USC 1001.

K.9 OFFEROR REGISTRATION/PAYMENT IDENTIFICATION NUMBERS

The District of Columbia has an automated vendor database used to process payments. Firms are indexed in the database by DUNS numbers issued by the Dun and Bradstreet Corporation. Individuals doing business with the District are indexed by their social security numbers. DUNS numbers may be obtained free of charge by telephoning the toll-free number at 1-800-333-0505.

*Application forms are available on the Internet at
<http://www.dnb.com/dbis/aboutdb/dunsform.htm>.*

No payments can be processed under any contract resulting from this Solicitation without the following information:

DUNS or Social Security Number

Legal Name of Entity (or name of individual) under which the above number was obtained

Mailing Address associated with the above given number

Type of Business

K.10 TAX COMPLIANCE CERTIFICATION

Each Offeror must submit with its offer, a sworn Tax Certification Affidavit, incorporated herein as Attachment J.3. Please note the instructions regarding being Registered to do Business with the District found in Section J.

**K.11 UNdertaking BY THE OFFORER NOT TO PERFORM
UNAUTHORIZED WORK**

I, _____(Type or Print Full Name), an
officer

with the authority to bind

_____(Type or Print Firm/Co. Name)

(hereafter the “Contractor”), for the purpose and duration of contract/Solicitation number _____ with the District of Columbia Captive Insurance Agency (hereafter “District”), hereby subscribe my name above and append my signature below to bind the Contractor and undertake that the Contractor must not, for the duration of the above contract, perform any cost-incurring effort at the direction, command, order instance or behest of any official of the Captive Insurance Agency unless such direction, command, order, instance or behest comes in writing from the Contracting Officer. The Contractor understands that if it must at any time default in this undertaking and thereby perform any cost-incurring activity at the direction, command, order, instance or behest of any other person other than the Contracting Officer, the Contractor must have no claim or recourse against the Captive Insurance Agency or the District for the expenses incurred from this unauthorized activity.

Undertaking of Contractor by:_____

(Signature of Undertaker) (Position in Firm/Company) (Date)

Subscribed and sworn (or affirmed) before me this _____day of

_____, _____.
(Month) (Year)

at _____

My commission expires on _____

(Signature of Notary Public or Officer Adminstrating Oath) (Title)

SECTION L
INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS

L.1 TERMS AND CONDITIONS

- (a) Unless all proposals are rejected, the District may award a contract resulting from this Solicitation to the responsible Offeror(s) whose offer, conforming to the needs and requirements of this Solicitation will be most advantageous to the District in terms of price, legal and technical abilities, and other factors, as specified in this Solicitation.
- (b) The District may award a contract on the basis of initial written proposals received, without discussion. Therefore, each proposal must contain the Offeror's best terms from the standpoint of price, legal and technical abilities, and other factors.
- (c) The District may select from the offers received a set of proposals which it deems to be within a competitive range and conduct discussions with these Offerors who must subsequently be requested to submit proposal revisions from which a final selection may be made.
- (d) All proposal documents will be retained by the District, and therefore will not be returned to the Offeror.
- (e) The Offeror is expected to examine the Solicitation in its entirety, including the Scope of Work and all instructions and attachments in this Solicitation. Failure to do so must be at the sole risk of the Offeror.
- (f) The District shall not be liable for any costs incurred by the Offeror associated with the preparation of a proposal submitted in response to this Solicitation.

L.2 PROPOSAL IDENTIFICATION/SUBMISSION

The Offeror must submit one original and five (5) copies of each proposal in a sealed envelope separately sealing Price and Technical proposals. The Offeror must not include pricing information in its technical proposal, nor must technical information be in the pricing proposal. Each separate envelope containing the price and technical proposals must be:

(a) Conspicuously marked with the Solicitation number and name of this Solicitation:

“PROPOSAL IN RESPONSE TO POLICY PROCUREMENT SOLICITATION NO. 01-2017 INSURANCE BROKERAGE SERVICES. THE MARK MUST INCLUDE ONE PACKAGE MARKED “TECHNICAL” AND ONE PACKAGE MARKED “PRICE”.

(b) Hand delivered or mailed to:

Captive Insurance Agency
Attention: Jane Waters
Insurance Program Officer
441 4th Street, N.W., Suite 800S
Washington, D.C. 20001
Tel: (202) 724-6625

Proposals may also be delivered electronically addressed to:

jane.waters@dc.gov

L.3 QUESTIONS AND EXPLANATION TO PROSPECTIVE OFFERORS

- (a) Any prospective Offeror desiring an explanation, interpretation or clarification regarding any aspect of this Solicitation must submit an inquiry to Robert Preston, Contracting Officer’s representative, **no later than 4:00PM Eastern Daylight Savings Time, June 22, 2021.**
- (b) Offerors must submit all inquiries via e-mail to robert.preston@dc.gov with the subject line reading Captive Policy Procurement Solicitation.
- (c) Any additional questions or clarification regarding the responses from the District to the first round of questions must be requested through

Robert Preston, as indicated in (b) above, by **no later than 4:00PM Eastern Daylight Savings Time, July 6, 2021.**

- (d) Any substantive information given to a prospective Offeror concerning this Solicitation will be furnished promptly to all other prospective Offerors as an amendment to the Solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective Offerors.
- (e) Oral explanations or instructions given before the award of the contract will not be binding.
- (f) Upon the release of this Solicitation and during the selection process, there must be no communication concerning this Solicitation between any prospective Offeror and/or its representatives, and employees of the Government of the District of Columbia, including the DC Lottery; consultants or advisors to the Government of the District of Columbia; and elected or appointed officials of the Government of the District of Columbia or their staff, except as provided for in this Solicitation. Any violation of this provision by any prospective Offeror and/or its representatives must be grounds for immediate disqualification.

L.4 PROPOSAL SUBMISSION DATE AND TIME, LATE SUBMISSION, MODIFICATIONS AND WITHDRAWALS

- (a) Proposals must be submitted to:
Captive Insurance Agency,
Attention Jane Waters
441 4th Street, N.W., Suite 800S
Washington, D.C. 20001
no later than 4:00 PM Eastern Daylight Savings Time, July 12, 2021.
Proposals received after this date and time shall not be considered.
- (b) A proposal shall be considered received *ONLY, and ONLY if*, the proposal has been hand delivered or physically delivered to the

reception area of the above location and a receipt to this effect has been issued by the Captive Insurance Agency. The Captive Insurance agency must not determine as received any or all proposals that are mis-delivered to any other location or office other than the above reception on the at 401 4th Street, N.W., Suite 800S, Washington, D.C. 20001 and a receipt is issued for it.

- (c) Proposals, modifications to proposals, or requests for withdrawal that are received in the designated location after the exact local time specified, are "late" and must be considered only if they are received before the award is made and one (1) or more of the following circumstances apply:
- (1) The proposal or modification was sent through postal channels by insured, registered, certified or accountable Express mail no later than the fifth (5th) calendar day before the date specified for receipt of offers;
 - (2) The proposal or modification was sent by mail and it is determined by the Contracting Officer that the late receipt at the location specified in the Solicitation was caused by mishandling by the District after receipt; or
 - (3) The proposal is the only proposal received.
- (d) The only acceptable evidence to establish the date of a late proposal, late modification or late withdrawal sent either by registered or certified mail must be a U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the proposal, modification, or withdrawal must be deemed to have been mailed late. When the postmark shows the date but not the hour, the time is presumed to be the last minute of the date shown. If no date is shown in the postmark, the proposal must be considered late unless the Contractor can furnish evidence from the postal authorities of timely mailing.

- (e) A late proposal, late request for modification or late request for withdrawal must not be considered, except as provided in this section.
- (f) A late modification of a successful proposal, which makes its terms more favorable to the District, must be considered at any time it is received and may be accepted.
- (g) A late proposal, late modification or late withdrawal of offer that is not considered must be held unopened, unless opened for identification, until after award and then retained with unsuccessful offers resulting from this Solicitation.

L.5 CONTRACT AWARD

Notwithstanding Statements of Intent to make a single award that may be contained in the Solicitation, the Contracting Officer may, in the District's best interests award more than one contract as a result of this Solicitation. In order to receive a contract award, a firm must meet the general responsibility criteria specified in the paragraph entitled "Standards of Responsibility, at Section L.10.

L.6 PROPOSAL SUBMISSION FORMAT

L.6.1 One (1) original and five (5) copies of the written proposals must be submitted in two parts, titled "Part 1 - Technical Proposal", "Part 2 - Price Proposal" and "Part 3 – Conflict of Interest". Proposals must be typewritten in 12- point font size on 8.5" by 11" bond paper. Telephonic and telegraphic proposals will not be accepted. Each proposal must be submitted in separate sealed envelopes conspicuously marked: "**Proposal in Response to Policy Procurement Solicitation No. 01-2017 Insurance Brokerage Services**".

L.6.2 Responses must be prepared simply and economically, providing a straightforward, concise delineation of the Offeror's capabilities to satisfy the

requirements of this Solicitation. Elaborate bindings and colored displays or promotional material are not desired.

L.6.3 All applicable blanks in the OFFER section of the form at page 1 and at Section K, and blanks in any forms that are provided in the Attachments must also be completed.

L.6.4 The offeror's proposal must consist of this Solicitation document with the completed forms, plus the applicable supplemental documentation required in Section K, as well as a narrative addressing the subject matter at paragraphs L.7 below, as applicable.

L.7 PRICE PROPOSAL

The price proposal must include a price/cost scenario that best fits your technical proposal and outlines the pricing according to the schedule found in Section B.3. The offeror shall submit one original copy of the price proposal.

L.8 ACKNOWLEDGMENT OF AMENDMENTS

Contractors must acknowledge receipt of any amendment to this Solicitation by (a) annotating block 10 on Page One (1) and returning a copy of it; or (b) by identifying the amendment number and date in the proposal; or (c) by letter to the Contracting Officer. The District must receive the acknowledgment by the date and time specified for receipt of offers. Contractor's failure to acknowledge an amendment may result in rejection of the offer.

L.9 RIGHT TO REJECT PROPOSALS

The Contracting Officer reserves the right to reject, in whole or in part, any and all proposals received as the result of this Solicitation.

Each Offeror must bear all costs it incurs in providing responses to this Solicitation and for providing any additional information required by the

District to facilitate the evaluation process. The successful Contractor must also bear all costs incurred in conjunction with contract development and negotiation.

L.10 STANDARDS OF RESPONSIBILITY

L.10.1 The Offeror must demonstrate to the satisfaction of the District the capability in all respects to perform fully the contract requirements, therefore, the Offeror must:

- (a) Have or provide evidence that it can obtain the financial, technical, and organizational skills and resources, and the facilities and equipment, necessary to perform the contract in accordance with its terms;
- (b) Have a satisfactory performance record;
- (c) Not be suspended, debarred, or otherwise ineligible to receive contracts from the District Government or the Federal Government; and
- (d) Provide adequate evidence that it has paid all applicable District of Columbia and Federal taxes and filed District and Federal tax returns.

L.10.2 The Contracting Officer shall make a written determination if the contractor is found to be non-responsible. Award of a contract shall be considered the Contracting Officer's determination that the contractor is responsible.

L.10.3 In evaluating a prospective contractor's responsibility, the Contracting Officer may request information from the contractor and may also consider valid information available from other sources. The Contracting Officer, at its discretion, may also perform a pre-award survey involving interviews with contractor personnel or visits to the contractor's facilities. Information on the capabilities and suitability of proposed subcontractors also may be considered in evaluating responsibility.

L.11 INITIAL OFFERS

L.11.1 Most Advantageous to the District

The District intends to award a contract resulting from this Solicitation to the responsible Offeror or Offerors whose responsive offer(s) to the Solicitation will be the most advantageous to the District pursuant to the Best Value Considerations stated in Section B.1.1 in this Solicitation.

L.11.2 Initial Offers

The Contracting Officer reserves the right to reject any or all proposals determined to be inadequate or unacceptable. The District may award contracts on the basis of initial offers received, without discussion. Therefore, each initial offer should contain the Offeror's best terms from a standpoint of cost or price, technical and other factors.

L.12 RESTRICTION ON DISCLOSURE AND USE OF DATA

L.12.1 Offerors who include in their proposal data that they do not want disclosed to the public or used by the District except for use in the procurement process shall:

1.12.1.1. Mark the title page with the following legend:

"This proposal includes information and data that shall not be disclosed outside the District and shall not be duplicated, used, or disclosed in whole or in part for any purpose except for use in the procurement process."

L.12.2 If however, a contract is awarded to this Offeror as a result of or in connection with the submission of the information and data, the District shall have the right to duplicate, use, or disclose the information and data to the extent consistent with the District's needs in the procurement process. This restriction does not limit the District's rights to use,

without restriction, the information, and data if it is obtained from another source. The restriction is contained in sheets (insert numbers or other identification of sheets).

L.12.3 Mark each sheet containing the information or data it wishes to restrict with the following legend:

“Use or disclosure of information and data contained on this sheet is subject to the restriction on the title page of this proposal.”

L.13 **PROPOSALS WITH OPTION YEARS**

The Offeror shall include option year prices in its price/cost proposal. An offer may be determined to be unacceptable if it fails to include option year pricing.

L.14 **PROPOSAL PROTEST**

L.14.1 All protests to the solicitation or award of a contract shall be resolved in accordance with this section.

(a) A protest shall be submitted to the Contracting Officer in writing.

(b) A protest shall include:

i. The name of the protestor;

ii. The name of the protestor’s counsel or other representative;

iii. A detailed description along with detailed justification of the basis for the protest; and

iv. A description of the relief requested.

L.14.2 The Contracting Officer shall issue a decision with regard to a protest

within 60 days from receipt of a properly prepared and documented protest request. Failure of the Contracting Officer to adjudicate a protest within the time limit allotted shall not be grounds for a favorable decision on the protestor's part.

- L.14.3 The decision of the Contracting Officer shall be the Captive Insurance Agency's final decision with regard to the protest.
- L.14.4 A protest must be filed within the timeframes established in this subsection to be considered by the Captive Insurance Agency.
- L.14.5 A protest that is not filed within these timelines will not be considered by the Captive Insurance Agency, and the protestor shall be deemed to have waived the right to protest.
- L.14.6 A protest that is based on the language or requirements of a solicitation or is otherwise based on facts that are apparent on the face of the solicitation shall be filed with the Contracting Officer no later than five (5) business days before the date responses to the solicitation are due.
- L.14.7 A protest that is not based on the language or requirements of a solicitation or otherwise based on facts which are apparent on the face of the solicitation must be submitted within five (5) business days after the protestor knows or should have known of the facts that sever as the basis for the protest.

L.15 RETENTION OF PROPOSALS

All proposal documents shall be the property of the District and retained by the District, and therefore, will not be returned to the Offeror.

L.16 PROPOSAL COSTS

The District is not liable for any costs incurred by the Offerors' submitting proposals in response to this Solicitation.

L.17 **ELECTRONIC COPY OF PROPOSALS FOR FREEDOM OF INFORMATION ACT REQUESTS**

In addition to other proposal submission requirements, the Offeror must submit an electronic copy of its proposal, redacted in accordance with any applicable exemptions from disclosure in D.C. Official Code Section 2-534, as amended, in order for the District to comply with D.C. Official Code Section 2-536(b) that requires the District to make available electronically copies of records that must be made public. The District's policy is to release documents relating to District proposals, subject to applicable FOIA exemptions under D.C. Official Code Section 2-534(a), as amended.

L.18 **CERTIFICATES OF INSURANCE**

The Contractor shall submit certificates of insurance giving evidence of the required coverages as specified in Section I.8 prior to commencing work. Evidence of insurance shall be submitted within ten (10) calendar days of contract award to the Contracting Officer at the address in Section G.6 with a copy to the COTR at the address in Section G.7.

L.19 **LEGAL STATUS OF OFFEROR**

L.19.1 The Offeror shall include the following information in the proposal as applicable:

- a. Name, Address, Telephone Number, Federal Tax identification number, and DUNs number of Offeror;
- b. Copy of any current license, registration, or certification to transact business in the District of Columbia if required by law to obtain such license, registration, or certification;
- c. If the Offeror is a corporation or limited partnership and does not

provide a copy of its license, registration, or certification to transact business in the District of Columbia, the Offeror shall certify its intent to obtain the necessary license, registration, or certification prior to contract award or its exemption from such requirements;

- d. If the Offeror is a corporation, jurisdiction of incorporation and type of incorporation as profit or nonprofit; and
- e. If the Offeror is a partnership or joint venture, names of general partners or joint ventures, and copies of any joint venture or teaming agreement.

L.19.2 The District reserves the right to request additional information regarding the Offeror's organizational status.

L.20 **FAMILIARIZATION WITH CONDITIONS**

Offerors shall thoroughly familiarize themselves with the terms and conditions of this Solicitation, acquainting themselves with all available information regarding difficulties that may be encountered and the conditions under which the work is to be accomplished. Offerors will not be relieved from assuming all responsibility for properly estimating the difficulties and the cost of performing the services required herein due to their failure to investigate the conditions or to become acquainted with all information, schedules and liability concerning the services to be performed.

L.21 **PROPOSAL FORM AND ORGANIZATION**

All proposals must be submitted on 8.5" by 11" bond paper and typewritten. Telephonic, electronic, and telegraphic proposals will not be accepted. The Offeror's proposals shall be organized with the following parts in the following order:

Part 1: Technical Proposal

Section 1: Official Offer

Section 2: Technical Merit and Approach

Section 3: Organization, Experience and Qualifications of the Offeror's Staff and Subcontractor Information

Section 4: Certifications and Affidavits

Part 2: Price Proposal – **Provide in Separate Package**

Detailed information about the requirements of each Part is provided below.

L.21.1 Part 1 – Technical Proposal

L.21.1.1 Section 1 -- Official Offer

The Offeror shall sign the proposal and print or type its name on the form entitled: “AWARD/CONTRACT”. The person signing the proposal shall initial erasures or other changes. Proposals signed by an agent shall be accompanied by evidence of that agent's authority unless that evidence has been previously furnished to the Contracting Officer.

Each proposal shall set forth, in this section, the name, title, telephone number, and address of the person authorized to negotiate in behalf of the Offeror and contractually bind the Offeror, if other than the person signing the proposal.

L.21.1.2 Section 2 – Technical Merit and Approach

Narrative: The Offeror shall respond completely and comprehensively to Section C Description/Specifications/Work Statement. The Offeror shall agree to provide the services and abide by the requirements set forth in that section. Offerors may request confidential treatment of information and data in their proposals.

L.21.1.3 Section 3 - Organization, Experience and Qualifications of the Offeror's Staff, Subcontractors and Consultants

Narratives: The Offeror shall provide at a minimum a discussion of the areas in the Best Value Consideration in Section B.1.1 to facilitate the evaluation of the Offeror's organization, experience, and qualifications to perform the required services as described in Section C that include:

- a. Demonstrated knowledge of and experiences in the marketing and procurement of the line or lines of insurance the Contractor proposes to service, including preparing the solicitations, market section, negotiation of competitive terms in the insurance market, providing detailed analysis of terms, cost and premium options, and claims.
- b. Demonstrated knowledge of and experiences in providing a comprehensive program of insurance brokerage services to public agencies.
- c. Demonstrated knowledge of and experience in risk management services for the line or lines of insurance to Contractor proposes to service.

- d. Demonstrated knowledge of and experience in insurance program design, including overall review of exposures to loss and assets to assist in risk financing decisions, improve insurance bargaining position, ensure permanent records of insurance placement, and identification of gaps in coverage.
- f. Demonstrated knowledge of or experiences with computerized document management.
- g. Management, organization, and availability of the staff to accomplish the most effective results.

Attachments: The Offeror shall provide at a minimum the following attachments to facilitate the evaluation of the Offeror's organization, experience, and qualifications to perform the services as described in Section C:

- a. Name, Address, Telephone Number, and DUNS Number of the Offeror.
- b. Whether the Offeror is a corporation, joint venture, partnership (including type of partnership), or individual.
- c. Copy of any current license, registration, or certification to transact business in the District of Columbia, if required by law to obtain such license, registration, or certification. If the Offeror is a corporation or limited partnership and does not provide a copy of its license, registration or certification to transact business in the District of Columbia, the Offeror shall certify its intent to obtain the necessary license, registration or certification prior to contract award or its exemption from such requirements.

- d. If Offeror is a partnership or joint venture, names of general partners or joint ventures, and copies of any joint venture or teaming agreements.
- e. Name, address, and current telephone number of Offeror's contact person.
- f. A list of contracts the Offeror has previously performed for the District, a city, county, municipality, the Federal government or any instrumentality or agency of any of the foregoing for insurance brokerage services similar in size and scope as the insurance brokerage services described in this Solicitation. The Offeror shall provide the following for each contract:
 - 1. Contract number and inclusive dates;
 - 2. Contract amount;
 - 3. Name of the contract administrator or program manager with verified phone number and e-mail address; and
 - 4. Specific description of services provided.
- g. Provide the following information on the Offeror's specific previous three transactions. Offerors shall provide references for such previous, including the following information for each case cited:
 - 1. Contract number and inclusive dates;
 - 2. Contract amount;
 - 3. Name of the contract administrator or program manager with verified phone number and e-mail address; and
 - 4. Specific description of services provided.
- h. An organizational Chart that indicates the Offeror's staff, subcontractors, and consultants to provide

services under the contract. The Offeror's organizational chart shall provide the Offeror's structure and reporting lines and lines of accountability for those to perform services under this contract. The Offeror shall provide the following additional information consistent with the names, individuals, or organizations that appear on the Offeror's organizational chart:

1. Resume for each professional who is expected to perform insurance brokerage services under the contract awarded pursuant to the Solicitation, including the full name, title and position within the firm, areas of expertise, time with firm and years in providing insurance brokerage services;
2. Education and professional affiliation of each professional, including license or certification as applicable;
3. Office locations of the professionals in subsections 1 and 2 and the address of the Offeror's office in the District of Columbia;
4. Details about any current or past work that the Contractor has performed for the District.
 - a. Experience directly related to the proposed project. If the individual worked on any of the contracts cited in Part 3 of the proposal, such contracts should be referenced.
 - b. Education/training
 - c. Percentage of time that each professional will devote to a task order issued pursuant to the contract awarded in comparison to his/her overall work in the office.

KEY PERSONNEL:

- a. The District considers the positions identified in C.2.2 to be key personnel for this contract.
- b. The Offeror shall set forth in its offer the names and reporting relationships of the key personnel the Offeror will use to perform the work under the proposed contract. Their resumes shall be included. The Offeror shall also provide the name, title, address, telephone number and email of the Offeror's representative who is responsible for executing the task orders for the Offeror and providing the supporting documentation for the billing information.

L.21.1.4 Section 4 – Certifications and Affidavits

The Offeror shall complete and return the following:

- a. Attachment J.2 – First Source Employment Agreement
- b. Attachment J.3 – Tax Certification Affidavit
- c. Attachment J.4 – Equal Opportunity Information Report
- d. Representations contained in Section K including:

K.2 AUTHORIZED NEGOTIATORS

K.3 TYPE OF BUSINESS ORGANIZATION

- K.4 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION
- K.5 CERTIFICATION AS TO COMPLIANCE WITH EQUAL OPPORTUNITY OBLIGATIONS
- K.6 BUY AMERICAN CERTIFICATION
- K.7 DISTRICT EMPLOYEES NOT TO BENEFIT CERTIFICATION
- K.8 FIRST SOURCE EMPLOYMENT CONTRACT/CERTIFICATION
- K.9 OFFEROR REGISTRATION/PAYMENT IDENTIFICATION NO.
- K.10 UNTERTAKING BY THE CONTRACTOR NOT TO PERFORM UNAUTHORIZED WORK

L.21.2 Part 2 – Price Proposal

The Offeror shall provide a completed Section B.3 for the base year and each of the option years.

SECTION M

EVALUATION FACTORS FOR AWARD

M.1 EVALUATION FOR AWARD

The contract may be awarded to as many as five (5) responsible Offerors whose offers are most advantageous to the District and represent the best value. Award determinations will be based upon the evaluation criteria specified below, applied to the initial contract period and each option year period. Thus, while the points in the evaluation criteria indicate their relative importance, the total scores will not necessarily be determinative of an award. Rather, the total scores will guide the District in making an informed decision in consideration of the most advantageous, range of expertise and best value to the District based upon the evaluation criteria.

M.2 PROPOSAL EVALUATION

M.2.1 The Contracting Officer in consultation with the COTR reserves the right to reject any or all proposals determined to be inadequate or unacceptable. The District may award contracts on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the Offeror's best terms from a price and technical standpoint.

M.2.2 The Contracting Officer may communicate with Offerors in order to clarify, verify or obtain additional information about its past performance and experience. Such communication will not constitute discussions and will not obligate the District to make a competitive range determination, conduct discussions, or solicit or entertain revised proposals or best and final offers.

M.2.3 The technical evaluation criteria set forth below have been developed by agency technical personnel and have been tailored to the requirements of this particular Solicitation. The Contractor is informed that these criteria will serve as the standard against which all proposals will be evaluated

and serve to establish the evaluation criteria including the evaluation factors and significant sub-factors which the Contractor should specifically address in complying with the requirements of Sections C and L.

- M.2.4** An evaluation team of professionals will conduct the proposal evaluation. The evaluation of proposals is an assessment of the proposal and the Contractor's ability to perform the prospective contract requirements successfully. The evaluation will utilize a numerical scoring process for the evaluation factors as described in Section M.3. The Contractor's strengths, deficiencies, significant weaknesses and risks associated with performing the requirements of the contract will be examined within each evaluation factor.
- M.2.5** The Contractor's technical proposal and price proposal shall be evaluated separately in accordance with the criteria described in Section M.3.
- M.2.6** Proposals will be rated and ranked on the evaluation factors listed in Section M.3. Although technical factors are significantly more important than price, price is an important factor and should be considered when preparing acceptable proposals. The importance of price as an evaluation factor will increase with the degree of equality of the proposals in relation to the remaining evaluation factors.
- M.2.7** When the Offerors within the competitive range are considered essentially equal in terms of technical capability, or when the price is so significantly high as to diminish the value of technical superiority to the District, price may become the determining factor for award.
- M.2.8** Evaluation of an Offeror's proposal shall be based on the information presented in the proposal and information available to the Contracting Officer and COTR from sources deemed appropriate by the Contracting Officer and COTR. Proposals which are not in compliance with the Solicitation in terms of technical or schedule commitments may be

deemed to be reflective of an inherent lack of technical competence or indicative of a failure to comprehend the complexity of the proposed work and may result in rejection of the proposal. Since the proposed contract requires the delivery of data, the quality of organization and writing reflected in the proposal will be considered to be an indication of the quality of organization and writing that would be prevalent in the proposed deliverable data.

M.3 EVALUATION CRITERIA

M.3.1 TECHNICAL RATING SCALE

M.3.1.1 The Offeror’s proposal response for each factor will be evaluated by the District and assigned a technical rating based on the quality of the Offeror’s response. The Technical Rating Scale is provided below:

Numeric Rating	Adjective	Description
0	Unacceptable	Fails to meet minimum requirements, <i>e.g.</i> , no demonstrated capacity, major deficiencies which are not correctable; Offeror did not address the factor.
1	Poor	Marginally meets minimum requirements; major deficiencies which may be correctable.
2	Minimally Acceptable	Marginally meets minimum requirements; minor deficiencies which may be correctable.
3	Acceptable	Meets requirements; no deficiencies
4	Good	Meets requirements and exceeds some requirements; no deficiencies
5	Excellent	Exceeds most, if not all requirements; no deficiencies.

M.3.1.2 The technical rating is a weighting mechanism that will be applied to the point value for each evaluation factor and significant subfactor to determine the Offeror's score for each factor. The Offeror's total technical score will be determined by adding the Offeror's score in each evaluation factor. For example, if an evaluation factor has a point value of 0 to 25 points, utilizing the Technical Rating Scale above the District evaluates the Offeror's response as "Good," the score for that evaluation factor is 4/5 of 25 or 20.

M.3.2 EVALUATION FACTORS

The objective of the source selection process is to identify and select the Offeror at has successfully demonstrated the ability to successfully meet the District's needs in the manner most advantageous to the Government, all factors considered. The relative probabilities of the Offeror to accomplish this will be evaluated based on the specific information requested in Section L.21 in accordance with the evaluation factors described below. The Contractor should respond to each factor and significant sub-factors in a way that will allow the District to evaluate the Contractor's response. The scoring for each evaluation factor will be based on the District's determination of the degree to which the Contractor satisfies the requirements within the evaluation factor and significant sub-factors. Deficiencies, weaknesses identified in the proposal as well as the District's risk will also be considered. The evaluation factors and significant sub-factors point value and relative importance follow.

Technical Evaluation 0 – 90 Points		
Evaluation Factor /Sub-factor	Point Value	Relative Importance

Organization, Experience and Qualifications of the Offeror’s Staff, Subcontractors and Consultants	0 – 65 Points	
Technical Merit and Approach	0 – 25 Points	
Price Evaluation 0 – 10 Points		
Price	0 – 10 Points	

M.3.2.1 TECHNICAL EVALUATION

M.3.2.1.1 TECHNICAL MERIT AND APPROACH (0-25 Points)

Each proposal will be evaluated in terms of its ability to meet the needs and requirements of this Solicitation. Points shall be awarded in this section based on a review of the information presented in response to this Solicitation. The proposals will be reviewed to determine the degree to which the Offeror demonstrates the completeness of Offeror's proposal in responding to all technical requirements of the Solicitation.

M.3.2.1.2 ORGANIZATION, EXPERIENCE AND QUALIFICATIONS OF THE OFFEROR'S STAFF, SUBCONTRACTORS AND CONSULTANTS (0 – 65 Points)

This factor considers the expertise and experience to be accessed and provided by the Offeror to perform the District's requirements as described in Section C of this Solicitation.

This factor encompasses all components of the Offeror's staff including the Offeror's organizational structure, the qualifications and expertise of the Offeror's proposed staff, subcontractors, and consultants, the prior experience and performance of the Offeror, the Offeror's staff, subcontractors and consultants to represent the District in the subject matter, and to meet the requirements of the contract as described in Section C.

Each proposal will be evaluated in terms of its ability to meet the needs and requirements of this Solicitation. Points shall be awarded in this section based on a review of the information presented in response to this Solicitation.

Points in this section will be awarded based on the Offeror's experience and qualifications, as demonstrated in the proposal submitted in response to this Solicitation and through references for projects or transactions of similar requirements, size and scope, as well as based on the experience and qualifications of the staff proposed for assignment by the Offeror.

Prior experience and relevant qualifications of the Offeror and Offeror's staff will be evaluated as they relate to the needs and requirements of the project and this Solicitation. The proposals will be reviewed to determine the degree to which the Offeror demonstrates the following criteria, listed in descending order of importance:

- A. The staff proposed, singularly and collectively, has the education, knowledge, technical abilities, and experience necessary.
- B. Experience, knowledge, accessibility, business practice, efficiency, and success of the Offeror as a firm in similar projects involving the same level of complexity, and the use of data and document management in those similar projects.

M.3.2.2 Price (0 – 10 Points)

The total number of possible price-cost points is 10 points.