



**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**CAPTIVE INSURANCE AGENCY**



**Jed Ross**  
**Chief Risk Officer**

September 1, 2023

To Whom It May Concern:

The Captive Insurance Agency (“Agency”) seeks a qualified Commercial Real Property Appraisers to provide building valuation services through physical inspections and collection of data points to establish replacement cost building values using insurance valuation methodology and to provide information Agency will use to obtain property insurance for District property and for its own internal purposes and rating. Real property appraisers' experience shall include the appraisal of commercial real estate, including historical buildings, high-tech facilities and other types of buildings.

## **THE CLIENT**

The Captive Insurance Agency (“Agency”), an agency of the District of Columbia Government (“District”), 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 of Columbia. 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 contracts on behalf of the Agency.

## **A. BACKGROUND**

The Agency procures insurance for approximately 500 District structures throughout the District of Columbia and the State of Maryland, with current policy insured values ranging from \$870,000 to \$440,000,000 per structure. The Agency has identified 20 priority structures that require current insurance replacement cost valuation (see Attachment A). The successful vendor will provide the qualified personnel to conduct building appraisals. The Contractor shall furnish all management, labor, supervision, transportation, equipment and materials necessary for the inclusive operation of the appraisal and valuation process.

## **B. SCOPE OF SERVICES, PRICES, AND QUALIFICATIONS**

### **B.1 OVERVIEW OF SERVICES**

The District, by and through Agency, is seeking building valuation services to establish insurance valuation replacement costs on up to 20 insured structures in the District of Columbia and in suburban Maryland.

The Agency contemplates award of up to three (3) Indefinite Delivery, Indefinite Quantity (IDIQ) contracts (“Contract”). Award of the Contract 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.

The process of obtaining building replacement cost valuation services contracts through this request for quotations (“Solicitation”), and the task orders issued pursuant to the 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 building valuation services based on considerations and evaluations, including, without limitations, the Offeror’s demonstrated expertise, knowledge, and experience associated with building valuations; and capability to provide a maximum amount of relevant data points supporting replacement cost conclusions, consistent with accepted appraisal methodology. Upon evaluation of the responses to this Solicitation and Best Value Consideration, the Agency will 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. The District will issue task orders according to lowest price for each valuation.

### **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 twelve-month contract (“Contract Period”) with no option to renew. The minimum amount of the Contract is \$10.00.
- 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 \$10.00 for the Contract.

- C. There may be issued up to 500 task orders, reflecting the total number of buildings to be valued, or fewer, with task orders directing multiple building valuations where the Contractor is able to undertake multiple valuations simultaneously, or none at all. There is no assurance that a Contractor will receive any task orders.
  
- D. Any task order issued during the Contract must be completed before the end of the Contract. 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 ELIGIBLE 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 any task order that may be extended beyond the Contract to the same extent as if the task order were completed during the Contract.

### B.3 PRICE AND COST SCHEDULE OF SERVICES

The Contractor shall provide building valuation services pursuant to the scope of work described in Section C with the rates as outlined in the price schedules below. The rate as to Contract Line Item 001 is a not to exceed price pursuant to Section G.9. The District shall not be obligated to pay for any building valuation services until after all of the following occurs: (1) Contractor obtains a contract award; (2) the Agency issues a task order in the amount of building valuation services requested; (3) the Agency obtains all necessary approval to obtain building valuation services, including funding certification; and (4) the Agency receives the final product as outlined in Section C. At all times the acceptance or rejection of a building valuation service is in the sole discretion of the Contracting Officer. Delivery of any final building valuation pursuant to task order issued must be completed by the specified date in the task order.

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

PRICE SCHEDULE

Contract Line-Item No. (CLIN)	Range of Square Footage per Building	Occupancy* (unit of measure = Building; quantity = 1 building)					
		Office (Non-Historical)  (CLINs 1, 7,13)	Office (Historical)  (CLINs 2, 8, 14)	School/Fire House (Non-Historical)  (CLINs 3, 9, 15)	School/Fire House (Historical)  (CLINs 4, 10, 16)	Municipal (Non-Historical)  (CLINs 5, 11, 17)	Municipal (Historical)  (CLINs 6, 12, 18)
1-6	0-50,000						
7-12	50,001 – 200,000						
13-18	200,001 – 1,000,000						

\*Enter unit price under the respective occupancy type; each box represents one (1) building.

B.4 MINIMUM REQUIREMENTS

At a minimum, respondents’ submission must meet the following requirements:

- A. Licensed to provide appraisal services in the District of Columbia;
- B. Member of the Appraisal Institute or other national accreditation; and
- C. Demonstrated specialized experience and technical competence in the type of work required in B.1, evidence of the capacity to accomplish the work in the required time, evidence of past performance on contracts with the District, other governmental entities, and private industry in terms of cost, quality of work, and compliance with performance schedules. The experience shall be demonstrated via a brief narrative indicating the identity of staff and their training and expertise that will provide appraisal services, inclusive of all services offered, resumes of all staff, employees or sub-consultants that will assist in this contract, three (3) reference letters of previous public entity experience, and one (1) sample appraisal report to be utilized in the performance of this contract.

**C. DESCRIPTION/SPECIFICATIONS/SCOPE OF WORK STATEMENT**

C.1 INTRODUCTION



The Agency is seeking building valuation services to establish insurance replacement costs on District government-owned real property located both in the District of Columbia and within a 30-mile radius outside the District of Columbia.

The physical building valuation inspection and other required data collected must include, but not be limited to:

- A. physical onsite building valuation inspection and valuation calculation to include fixtures, furniture and equipment (FFE) contents value for each building;
- B. Construction, Occupancy, Protection and Exposure (COPE) data and all secondary characteristics using current Insurance Services Office, Inc. (ISO) and Risk Management Solutions (RMS) classifications;
- C. determination of current ISO fire code (independently verified with ISO by Contractor);
- D. longitude and latitude (Global Positioning System (GPS) Coordinates) at each structure;
- E. minimum of two photos of each structure that are representative of the risk exposure (quantity and quality of photos must be sufficient to enable thorough risk review);
- F. data must include any/all drawings, sketches, plans, documents and/or other work papers of the individual appraisers and must be accessible by the Agency staff within the application provided by the Contractor;
- G. any other data relied upon by the (re)insurance markets; and
- H. any other data to comply with appraisal standards applicable in estimating replacement costs.

All data gathered by the Contractor and all subsequent valuations are to be verified for accuracy and data quality as part of an independent quality control program provided by the Contractor. This information shall be compiled and transmitted to the Agency in a format that may be uploaded into the Agency's database, as specified in this Contract (see F.2.1). This data is to be used by the Agency for its internal purposes and to obtain insurance. This data is to include any/all drawings, sketches, plans, documents, and/or other work papers of the individual appraisers. Historic structures will require a reproduction cost valuation in addition to a replacement cost valuation.

## C.2 APPRAISAL REQUIREMENTS

The awarded Contractor, at a minimum, must:

- A. The Contractor must complete a physical inspection and replacement cost estimate of all tasked insured structures (not to exceed the amount in B.2.A) within the time allotted via task order.
- B. The current insured amounts of the structures to be valued range from \$870,000 to \$440,000,000 per structure. Types of structures insured include, but are not limited to office buildings, schools, fire houses, and correctional facilities. The Agency requests both replacement cost and reproduction cost valuation for properties found on the National and District Historic Registers.
- C. The Contractor must provide a dedicated team for this contract. At a minimum, this will include a project manager who is responsible for oversight of the Agency contract, who is a Member of the Appraisal Institute (MAI) and will certify that the methodology applied is in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) and other applicable standards. The Contractor must provide a contact person for contract administration purposes throughout the life of this resulting contract. The Contractor must provide a quality review/supervisory staff adequate to allow valuations to be processed accurately and on time. The Contractor must provide an adequate number of qualified appraisers to complete the appraisal tasked.
- D. The completed replacement cost estimates and related addenda must be delivered to the Agency as specified in this Contract (see F.2.1).
- E. All data collected, or uploaded, to the Contractor as a result of this contract is the sole property of the Agency.
- F. The Contractor and its representatives are responsible for complying with USPAP.
- G. The Agency reserves the right to review the Contractor's work both with regard to the quantity of physical replacement cost estimates performed and the quality of the work product. The Agency will make the sole determination whether the Contractor has satisfied the required deliverables and whether the Contractor has satisfied the requirement that all work is in compliance with USPAP.
- H. Establish a mutually agreeable work schedule, including periodic consultation with agency, and that will not interrupt government operations.
- I. Develop procedures for admission to the facilities and discussion of any restrictions.

### C.3 REPORTING REQUIREMENTS

The Contractor is expected to immediately communicate with the Agency if, at time of inspection, the appraiser finds a building is vacant, in poor condition, or in process of renovation.

If any of these conditions exist, it will be the prerogative of the Agency to instruct the appraiser to not complete a valuation at that time.

The appraisal shall be prepared in conformance with the Uniform Standards of Professional Appraisal Practice (“USPAP”) and Uniform Appraisal Standards for Federal Land Acquisitions (“UASFLA”). The Contractor shall provide a detailed analysis of the methodology used for each appraisal.

The Contractor shall perform an exterior and interior inspection of the Properties. Each inspection should be appropriate to properly appraise the Properties.

Commercial Real Estate Appraisal Report: One appraisal/report for each building appraised. The report must at a minimum respond to all the required information listed under Attachment B.

**C.4 INFORMATION TECHNOLOGY REQUIREMENTS**

The Contractor shall provide the Agency an electronic file containing replacement cost information, COPE data and secondary characteristics for properties inspected, including any updated information obtained following completion of a task order through the term of the Contract. The data must be delivered in a CSV format (See Attachment B for minimum required data elements) or in a data format to be determined by the Agency.

**C.5 APPLICABLE DOCUMENTS**

<b>Item No.</b>	<b>Document Type</b>	<b>Description</b>	<b>Date</b>
<b>0001</b>		<b>Reorganization Plan No. 1 of 2003 for the Office of Risk Management</b>	<b>Effective July 11, 2003</b>
<b>0002</b>		<b>Procurement Practices Act (PPA) 1915-1922</b>	
<b>0003</b>		<b>Subtitle D of Bill 20-0199, the fiscal year 2014 Budget Support Act of 2013</b>	<b>2013</b>
<b>0004</b>		<b>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.)</b>	<b>2008</b>
<b>0005</b>		<b>Captive Insurance Company Act of 2000, effective October 21, 2000 (D.C. Law 13-192; 47 DCR 7320).</b>	<b>2000</b>
<b>0006</b>		<b>District of Columbia Municipal Regulations (DCMR), specifically 27 DCMR 1915-1922</b>	



## SECTION D

[reserved]

## **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 the Contract 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.

## **F. DELIVERY OR PERFORMANCE**

### **F.1 TERM OF CONTRACT**

The term of the contract shall terminate 12 months after execution by the Agency.

### **F.2 DELIVERABLES**

**F.2.1** The Contractor shall perform its tasks and provide the Contracting Officer 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	All Reports and Building Appraisals Pursuant to Section C	1 soft copy 3 hard copies	No later than September 28, 2023
2	Key personnel (Project Manager, Appraiser) Resumes	Electronically	Submit along with bid

**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.

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 Contracting Officer’s authorization of the invoice for payment. Concurrent with the forwarding of invoices to the Contracting Officer, the Contractor must submit copies in triplicate of the invoices to:

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

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

The District will pay the Contractor under this contract on or before the 30<sup>th</sup> 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 Contracting Officer’s authorization for payment.

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.

**The Contractor may be held fully responsible for any change not authorized 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

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.

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

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

##### A. INTEREST AND PENALTIES TO CONTRACTORS

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.

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.

##### B. PAYMENTS TO SUBCONTRACTORS

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:

- (1) 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
- (2) 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.

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.

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.

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

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:

Timely executing any contract, task order, modification or termination of a contract as requested; and timely fulfill ordering provision in Section G.9.

The address and telephone number of the Contracting Officer for this contract is:

Robert Preston  
Insurance Program Administrator  
Captive Insurance Agency  
441 4<sup>th</sup> Street, NW, Suite 800S  
Washington, DC 20001  
Tel: (202) 727-4215



Email: [robert.preston@dc.gov](mailto:robert.preston@dc.gov)

#### G.7 AUTHORIZED CHANGES ONLY BY THE CONTRACTING OFFICER

The Contracting Officer is the only person authorized to issue changes in any of the requirements of the contract or task orders.

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.

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 ORDERING CLAUSE

Any building valuation services to be performed under the contract shall be ordered by issuance of task orders. Such task orders may be issued during the term of the Contract.

The following award procedures shall be used to award task orders for building valuation services:

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 District in response to the requirement).

Each task order shall state the not-to-exceed price or the firm fixed price and the duration for the period of service performance.

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.

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 under the Contract, cannot exceed the total amount of the Contract.

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.

Any building valuation services to be ordered during the term of the contract shall be ordered by issuance of a task order.

If a Contactor is awarded a task order, the Contractor must keep the Contracting Officer 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 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.

## **H. SPECIAL CONTRACT REQUIREMENTS**

### **H.1 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES**

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:

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.

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:

- A. 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](http://www.ocp.dc.gov);
- B. 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;

- C. Provide a copy of the Living Wage Act Fact Sheet to each employee and Subcontractor who performs services under the contract;
- D. Post the Living Wage Act Notice in a conspicuous place in its place of business;
- E. 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;
- F. 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
- G. 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 [Solicitation Documents | ocp \(dc.gov\)](#) 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 Contracting Officer 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 Contracting Officer will forward a copy to the Contractor. In either event, the Contractor is required by law to provide all responsive records to the Contracting Officer within the timeframe designated by the Contracting Officer. 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 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.6 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 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

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.

**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 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.

**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, 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.

**Comptroller General.** 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.

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.

**Reports.** If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer 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.

**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.

The Contractor shall insert a clause containing all the terms of this clause, including this section in all subcontracts under this contract that exceed the small purchase threshold of \$100,000, and:

- C. That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
- D. For which cost or pricing data are required; or
- E. 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 Contracting Officer, or the duly authorized representative of the Contracting Officer as is necessary to ensure accomplishment of the contract objectives.

## H.10 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 Contracting Officer 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 Contracting Officer for any proposed substitution of key personnel.

## 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

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

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

"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.

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.

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.

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.

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.

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:

- A. 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;

- B. 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;
- C. Copy computer programs for safekeeping (archives) or backup purposes; and
- D. 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.

The restricted rights set forth in Section I.5.6 are of no effect unless 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)

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.

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.

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.

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 of 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.

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.

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.

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

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

**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 submit a Certificate of Insurance to the Contracting Officer (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.

The Government of the District of Columbia shall be included in all policies, where applicable and allowable by law, 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.

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 and under all subcontracts, covering claims for bodily injury, including without limitation sickness, disease or death and mental anguish of any persons, broad form property damage, 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.

The Commercial General Liability shall be further endorsed to:

- A. To the fullest extent permitted by law, provide additional insured coverage using ISO form CG 2015 0413 (or its equivalent) to The Government of the District of Columbia.
- B. Coverage available to the additional insureds shall apply on a primary and non-contributing basis as respects any other insurance, deductibles, or self-insurance available to the additional insureds.
- C. A waiver of subrogation in favor of The Government of the District of Columbia.
- D. Any Annual Aggregate shall apply on a per location or per project basis (where applicable).
- E. Defense costs shall be in addition to and not erode the limits of liability.

**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 in connection with work under this agreement, with a minimum combined single limit of \$1,000,000 for bodily injury or death and property damage, including loss of use thereof. Such policy or policies of automobile liability insurance shall be written on an "occurrence" (as opposed to a "claims made") basis.

**Auto Physical Damage Coverage -** The Contractor shall provide auto physical damage insurance to cover "loss" to a covered "auto" or its equipment:

- A. Comprehensive - Fire, lightning or explosion; theft; windstorm, hail or earthquake; flood; mischief or vandalism; or the sinking, burning, collision or derailment of any conveyance transporting the covered "auto".
- B. Collision Coverage - Caused by: The covered "auto's" collision with another object or the covered "auto's" overturn.

The Commercial Auto Liability policy shall be further endorsed to:

- C. To the fullest extent permitted by law, provide additional insured coverage to The Government of the District of Columbia.
- D. Coverage available to the additional insureds shall apply on a primary and non-contributing basis as respects any other insurance, deductibles, or self-insurance available to the additional insureds.
- E. A waiver of subrogation in favor of The Government of the District of Columbia.

- F. Defense costs shall be in addition to and not erode the limits of liability.
- G. If applicable, include Form CA 99 48 03 06 Pollution Liability - Broadened Coverage for Covered Autos - Business Auto, Motor Carrier and Truckers (or its equivalent).

**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.

The Workers Compensation and Employers Liability shall be further endorsed to:

- A. Include a Waiver of Subrogation in favor of The Government of the District of Columbia.
- B. Where applicable, include United States Longshore and Harbor Workers Compensation Act (USL&H)
- C. Where applicable, include Jones Act Coverage for seamen or crew members on an "if any" basis.

**PROFESSIONAL LIABILITY INSURANCE.** 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 \$2,000,000 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.

**NETWORK SECURITY/PRIVACY (CYBER) LIABILITY INSURANCE.** The Contractor shall provide evidence satisfactory to the Contracting Officer of Cyber Liability Insurance, covering acts, errors, omissions, breach of contract, and violation of any consumer protection laws arising out of Contractor's operations or services with a limit of \$2,000,000 per claim and in the aggregate. Such coverage shall include but not be limited to, third party and first party coverage for loss or disclosure of any data, including personally identifiable information and payment card information, network security failure, violation of any consumer protection laws, unauthorized access and/or use or other intrusions, infringement of any intellectual property rights (except patent), unintentional breach of contract, negligence or breach of duty to use reasonable care,

breach of any duty of confidentiality, invasion of privacy, or violations of any other legal protections for personal information, defamation, libel, slander, commercial disparagement, negligent transmission of computer virus, or use of computer networks in connection with denial of service attacks. Such coverage shall include regulatory defense and fines/penalties in any jurisdiction anywhere in the world. Such coverage shall include contractual privacy coverage for data breach response and crisis management costs that would be incurred by Contractor on behalf of The Government of the District of Columbia in the event of a data breach including legal and forensic expenses, notification costs, credit monitoring costs, and costs to operate a call center. Contractor shall maintain coverage in force during the term of this Agreement and for an extended reporting period of not less than two (2) years after.

**COMMERCIAL UMBRELLA OR EXCESS LIABILITY.** The Contractor shall provide evidence satisfactory to the CO of commercial umbrella or excess liability insurance with minimum limits of 2,000,000 per occurrence and \$2,000,000 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 Government of the District of Columbia and the “other insurance” provision must be amended in accordance with this requirement and principles of vertical exhaustion.

**SEXUAL/PHYSICAL ABUSE & MOLESTATION.** The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries \$1,000,000 per occurrence limits; \$2,000,000 aggregate of affirmative abuse and molestation liability coverage. Coverage should include physical abuse, such as sexual or other bodily harm and non-physical abuse, such as verbal, emotional or mental abuse; any actual, threatened or alleged act; errors, omission or misconduct. This insurance requirement will be considered met if the general liability insurance includes an affirmative sexual abuse and molestation endorsement for the required amounts or through a separate stand-alone sexual abuse and molestation policy with confirmation there are no exclusions for abuse or assault & battery under the General Liability. So called “silent” coverage or “shared” limits under a commercial general liability or professional liability policy will not be acceptable. Limits may not be shared with other lines of coverage. The applicable policy may need to be submitted to the ORM for compliance review. **THIS COVERAGE IS ONLY REQUIRED IF CONTRACTOR IS NOT ACCOMPANIED BY DISTRICT of AGENCY STAFF.**

**SUBCONTRACTOR INSURANCE REQUIREMENTS.** Any and all subcontractors engaged by Contractor for work under this agreement shall be required to have the same insured required of Contractor. Should the Contractor 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 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. In either instance, the

Contractor must provide proof of the subcontractor's required insurance prior to commencement of work by the subcontractor.

**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.

**DURATION.** The Contractor shall carry all required insurance until all contract work is accepted by The Government of 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.

**LIABILITY.** These are the required minimum insurance requirements established by The Government of the District of Columbia. However, it is understood that The Government of the District of Columbia does not in any way represent that the insurance or the limits of insurance specified herein are sufficient or adequate to protect your interests or liabilities and will not in any way limit the contractor's liability under this contract.

**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 Government of the District of Columbia.

**MEASURE OF PAYMENT.** The Government of the District of Columbia 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.

**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 cancellation, non-renewal, or material changes to the extent such cancellation or material changes results in Contractor no long complying with the above requirements. 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. The Government of the District of Columbia may reasonably change the above insurance coverage requirements during the Term by giving Contractor at least 30 days' notice of the change. Contractor must comply, at your expense, and deliver to the CO evidence of compliance before the change becomes effective.

**CERTIFICATES OF INSURANCE.** The Contractor must send to CO, at least 10 days after execution of this Agreement, certificates of insurance evidencing the required insurance coverage and endorsements required herein. Contractor must also provide us with evidence of renewal before the expiration date of each insurance policy. Contractor is responsible for providing us with 30 days advanced written notice if the certificate of insurance by the insurer

has been canceled, reduced in coverage, or otherwise altered 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:  
Office of Risk Management  
Insurance Division  
441 4<sup>th</sup> Street, NW, Suite 800S  
Washington, DC 20001  
Tel: 202-727-8600  
Email: [orm.insurance@dc.gov](mailto:orm.insurance@dc.gov)

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

**DISCLOSURE OF INFORMATION.** The Contractor agrees that The Government of the District of Columbia may disclose the name and contact information of its insurers to any third party which presents a claim against The Government of the District of Columbia 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.

**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 better (or the equivalent by any other rating agency) and licensed in the District of Columbia.

**WARRANTIES.** When applicable, the Contractor should be named as an additional insured on the applicable manufacturer's/distributor's Commercial General Liability policy using Insurance Services Office, Inc. ("ISO") form CG 20 15 04 13 (or another occurrence-based form with coverage at least as broad). CO should collect, review for accuracy, and maintain all warranties for goods and services.

#### **I.9 EQUAL EMPLOYMENT OPPORTUNITY**

In accordance with the District of Columbia Administrative Issuance System, Mayor's Order 85-85 dated June 10, 1985; the forms for completion of the Equal Employment Opportunity Information Report are incorporated herein as Attachment 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.

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); and List of Attachments (Section J).

#### 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

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:

- A. Furnish phase-out, phase-in (transition) training; and
- B. Exercise its best efforts and cooperation to affect an orderly and efficient transition to a successor.

The Contractor shall, upon issuance of a no cost transition service task order by the Contracting Officer:

- C. Furnish phase- in, phase-out services for up to 90 days after the contract expires and

- D. 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 Contracting Officer's approval.

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.

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.

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.

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: Deliveries to Glenn Dale Hospital - Exemption No. 4647; Deliveries to Children's Center - Exemption No. 4648; Deliveries to other District Departments or Agencies - Exemption No. 09339; and 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

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.

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

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.

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

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.

**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. 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.

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.

**Claims by the District against a Contractor.** 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.

All claims by the District against a Contractor arising under or relating to a contract shall be decided by the Contracting Officer.

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.

The decision shall be supported by reasons and shall inform the Contractor of its rights provided herein.

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.

This clause shall not authorize the Contracting Officer to settle, compromise, pay, or otherwise adjust any claim involving fraud.

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

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.

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.

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

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.

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.

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 or other personnel duly authorized by the Contracting Officer.

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

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.

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:

- A. 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.
  
- B. 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:

- C. employment, upgrading or transfer;
- D. recruitment, or recruitment advertising;
- E. demotion, layoff, or termination;
- F. rates of pay, or other forms of compensation; and
- G. selection for training and apprenticeship.

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 concerning nondiscrimination and affirmative action.

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.

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.

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.

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.

The Contractor shall include in every subcontract the equal opportunity clauses, subsections of this section, so that such provisions shall be binding upon each subcontractor or vendor.

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, 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

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.

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

Definitions. "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. §351, *et seq.*)

"Contractor," as used in this clause, means the prime Contractor or any subcontractor at any tier.

"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.

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.

Compensation. 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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:

- A. Determines that the agreement under the predecessor was not the result of arm's-length negotiations; or
- B. 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.

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.

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.

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:

- A. For each employee subject to the Act:
  - (1) Name and address;
  - (2) 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;
  - (3) Daily and weekly hours worked; and
  - (4) Any deductions, rebates, or refunds from total daily or weekly compensation.
  
- B. 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.
  
- C. 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.

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.

Withholding of payments and termination of contract. The Contracting Officer 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.

Subcontracts. The Contractor agrees to insert this clause in all subcontracts.

Contractor's report. 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.

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.

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.

Variations, tolerances, and exemptions involving employment. Notwithstanding any of the provisions above of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions authorized by the Secretary of Labor.

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.

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.

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

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.

**J. LIST OF ATTACHMENTS**

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

Attachment Number	Document
J.1	Government of the District of Columbia Standard Contract Provisions for Use with the Supplies and Services Contracts (July 2010) available at <a href="http://ocp.dc.gov">http://ocp.dc.gov</a> , under Quick Links click on “Required Solicitation Documents”
J.2	U.S. Department of Labor Wage Determination 2015-4281, Revision No.27: Dated June 30, 2023
J.3	Equal Employment Opportunity Employer Information Report and Mayor’s Order 85-85 Available at <a href="http://ocp.dc.gov">http://ocp.dc.gov</a> , under Quick Links click on “Required Solicitation Documents”.
J.4	Bidder/Offeror Certifications available at <a href="http://ocp.dc.gov">http://ocp.dc.gov</a> , under Quick Links click on “Required Solicitation Documents”
J.5	Department of Employment Services First Source Employment Agreement available at <a href="http://ocp.dc.gov">http://ocp.dc.gov</a> , under Quick Links click on “Required Solicitation Documents”.



Attachment Number	Document
J.6	Way to Work Amendment Act of 2006 - Living Wage Notice available at <a href="http://ocp.dc.gov">http://ocp.dc.gov</a> , under Quick Links click on “Required Solicitation Documents”
J.7	Way to Work Amendment Act of 2006 - Living Wage Fact Sheet available at <a href="http://ocp.dc.gov">http://ocp.dc.gov</a> , under Quick Links click on “Required Solicitation Documents”
J.8	Tax Certification Affidavit available at <a href="http://ocp.dc.gov">http://ocp.dc.gov</a> , under Quick Links click on “Required Solicitation Documents”
J.9	Subcontracting Plan (if required by law) available at <a href="http://ocp.dc.gov">http://ocp.dc.gov</a> , under Quick Links click on “Required Solicitation Documents”
J.10	First Source Initial Employment Plan (if contract is \$300,000 or more) available at <a href="http://ocp.dc.gov">http://ocp.dc.gov</a> , under Quick Links click on “Required Solicitation Documents”
J.11	Clean Hands Certification Status Report available at <a href="https://otr.cfo.dc.gov/">https://otr.cfo.dc.gov/</a> , and click on “MyTax.DC.gov”

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](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.



## **K. REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF BIDDERS**

Bidder/Offeror Certification Form  
Available at <http://ocp.dc.gov>,  
Under Quick Links click on “Required Solicitation Documents”

## **L. INSTRUCTIONS, CONDITIONS AND NOTICES TO BIDDERS**

### **L.1 METHOD OF AWARD**

The District reserves the right to accept/reject any/all bids resulting from this solicitation. The CO may reject all bids or waive any minor informality or irregularity in bids received whenever it is determined that such action is in the best interest of the District.

The District intends to award a single contract resulting from this solicitation to the responsive and responsible bidder who has the lowest bid and other technically acceptable factors.

### **L.2 PREPARATION AND SUBMISSION OF BIDS**

This solicitation will be conducted electronically. To be considered, a bidder must submit its bid via email to the CO ([rober.preston@dc.gov](mailto:rober.preston@dc.gov)) before the closing date and time: **September 07, 2023**, on or before **4:00 p.m.** Eastern Standard Time. Paper, telephonic, telegraphic, and facsimile bids may not be accepted.

All attachments shall be submitted as a .pdf file. The District will not be responsible for corruption of any file submitted. If the submitted file cannot be viewed and printed as submitted, it will not be considered.

The District will reject as non-responsive any bid that fails to conform in any material respect to the IFB.

Bidders shall make no changes to the requirements set forth in the solicitation.

The District will reject as non-responsive any bid that fails to include a subcontracting plan that is required by law.

The bidder shall complete, sign and submit all Representations, Certifications and Acknowledgments as appropriate. Failure to do so may result in a bid rejection.

The bidder must bid on all CLINs to be considered for this award. Failure to bid on all CLINs will render the bid non-responsive and disqualify a bid.

### L.3 FAMILIARIZATION WITH CONDITIONS

Bidders shall thoroughly familiarize themselves with the terms and conditions of this solicitation, acquainting themselves with all available information regarding difficulties which may be encountered and the conditions under which the work is to be accomplished. Bidders 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.4 BID SUBMISSION DATE AND TIME

Bids must be submitted to the CO via email ([robert.preston@dc.gov](mailto:robert.preston@dc.gov)) no later than the closing date and time, **September 07, 2023**, on or before **4:00 p.m.** Eastern Standard Time. **The Agency will not allow late bids, modifications to bids, or requests for withdrawals after the exact closing date and time.**

### L.5 WITHDRAWAL OR MODIFICATION OF BIDS

A bidder may modify or withdraw its bid via email to the Contracting Officer ([robert.preston@dc.gov](mailto:robert.preston@dc.gov)) at any time before the closing date and time for receipt of bids.

### L.6 LATE SUBMISSIONS, LATE MODIFICATIONS, AND LATE WITHDRAWALS

**Late Submissions.** The District's E-Sourcing system will not accept late bids or modifications to bids after the closing date and time for receipt of bids.

**Late Modifications.** A late modification of a successful bid which makes its terms more favorable to the District will be considered at any time it is received and may be accepted.

### L.7 ERRORS IN BIDS

Bidders are expected to read and understand fully all information and requirements contained in the solicitation; failure to do so will be at the bidder's risk. In event of a discrepancy between the unit price and the total price, the unit price shall govern.

### L.8 QUESTIONS ABOUT THE SOLICITATION

If a prospective bidder has any questions relative to this solicitation, the prospective bidder shall submit the question electronically to the CO ([robert.preston@dc.gov](mailto:robert.preston@dc.gov)). The prospective bidder should submit questions no later than **September 05, 2023**, on or before **4:00 p.m.** Eastern

Standard Time for this solicitation. The District may not consider any questions received after **September 05, 2023**. The District will furnish responses via email and on the Agency's website. An amendment to the solicitation will be issued if the CO decides that information is necessary in submitting bids, or if the lack of it would be prejudicial to any prospective bidder. Oral explanations or instructions given by District officials before the award of the contract will not be binding.

#### L.9 BID PROTESTS

Any actual or prospective bidder or contractor, who is aggrieved in connection with the solicitation or award of a contract, must file with the D.C. Contract Appeals Board (Board) a protest no later than ten (10) business days after the basis of protest is known or should have been known, whichever is earlier. A protest based on alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial bids shall be filed with the Board prior to bid opening or the time set for receipt of initial bids. In procurements in which bids are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into this solicitation, must be protested no later than the next closing time for receipt of bids following the incorporation. The protest shall be filed in writing, with the Contract Appeals Board, 441 4<sup>th</sup> Street, N.W., Suite 350N, Washington, D.C. 20001. The aggrieved person shall also mail a copy of the protest to the CO for the solicitation.

#### L.10 ACKNOWLEDGMENT OF AMENDMENTS

The bidder shall acknowledge receipt of any amendment to this solicitation electronically via email to the CO ([robert.preston@dc.gov](mailto:robert.preston@dc.gov)). The District must receive the acknowledgment by the date and time specified for receipt of bids. A bidder's failure to acknowledge an amendment may result in rejection of its bid.

#### L.11 SIGNING OF BIDS

The Contractor shall sign the bid and print or type its name on the Solicitation, Offer and Award form of this solicitation. Each bid must show a full business address and telephone number of the bidder and be signed by the person or persons legally authorized to sign contracts. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the CO.

All correspondence concerning the bid or resulting contract will be mailed to the address shown on the bid in the absence of written instructions from the bidder or contractor to the contrary. Any bid submitted by a partnership must be signed with the partnership name by a general partner with authority to bind the partnership. Any bid submitted by a corporation must be signed with the name of the corporation followed by the signature and title of the person having authority to sign for the corporation.

## L.12 LEGAL STATUS OF BIDDER

Each bid must provide the following information:

- A. Name, address, telephone number and federal tax identification number of bidder;
- B. A copy of each District of Columbia license, registration or certification that the bidder is required by law to obtain. If the bidder is a corporation or partnership and does not provide a copy of its license, registration or certification to transact business in the District of Columbia, the bid shall certify its intent to obtain the necessary license, registration or certification prior to contract award or its exemption from such requirements; and
- C. If the bidder is a partnership or joint venture, the names and addresses of the general partners or individual members of the joint venture, and copies of any joint venture or teaming agreements.

## L.13 BID OPENING

The District shall make publicly available the name of each bidder, the bid price, and other information that is deemed appropriate.

## L.14 CERTIFICATES OF INSURANCE

Five (5) days, prior to commencing work, the Contractor shall have its insurance broker or insurance company shall submit certificates of insurance giving evidence of the required coverages to the CO. **Each certificate of insurance must identify the contract or solicitation number.**

## L.15 GENERAL STANDARDS OF RESPONSIBILITY

To be determined responsible, a prospective contractor must demonstrate that it:

- A. Has adequate financial resources, or the ability to obtain such resources, required to perform the contract;
- B. Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and government contract commitments;
- C. Has a satisfactory performance record;
- D. Has a satisfactory record of integrity and business ethics;

- E. Has a satisfactory record of compliance with the applicable District licensing and tax laws and regulations;
- F. Has a satisfactory record of compliance with the law, including labor and civil rights laws and rules, and the First Source Employment Agreement Act of 1984, D.C. Official Code § 2-219.01 *et seq.*, as amended;
- G. Has, or has the ability to obtain, the necessary organization, experience, accounting, and operational control, and technical skills;
- H. Has, or has the ability to obtain, the necessary production, construction, technical equipment, and facilities;
- I. Has not exhibited a pattern of overcharging the District;
- J. Does not have an outstanding debt with the District or the federal government in a delinquent status; and
- K. Is otherwise qualified and is eligible to receive an award under applicable laws and regulations.

If the prospective contractor fails to supply the information requested, the CO shall make the determination of responsibility or non-responsibility based upon available information. If the available information is insufficient to make a determination of responsibility, the CO shall determine the prospective contractor to be non-responsible.

#### L.16 SPECIAL STANDARDS OF RESPONSIBILITY

The Contractor shall provide, along with their bid, a list of at least two (2) contracts and/or subcontracts the Contractor has performed similar in size and scope as the required services described in Section C.3. The bidder must submit with its bid convincing evidence that demonstrates that the bidder meets the Special Standard(s) of Responsibility. The list shall include the following information for each contract or subcontract:

- A. Name of contracting activity;
- B. Contract number;
- C. Contract type;
- D. Contract duration (or Period);
- E. Total contract value;

F. Description of work performed;

G. Contact Person name, phone, and e-mail address

The Contractor shall have a minimum of three (3) years of officiating experience and provide any past performance documents relevant to contract requirements.

**ATTACHMENT A  
(PROPOSED PRIORITY PROPERTIES FOR VALUATION)**

Address	Location Description	Occupancy Description	Year Built	Number of Stories	Number of Buildings
3950 CHESAPEAKE STREET NW	JACKSON-REED HIGH SCHOOL	Schools	1935	4	1
225 VIRGINIA AVE. SE	DC COMMISSION ON THE ARTS AND HUMANITIES	Offices	1950	5	1
539 CLIFTON STREET NW	CARDOZO SENIOR HIGH SCHOOL	Schools	1926	5	1
2720 Martin Luther King Jr Ave SE	UNIFIED COMMUNICATIONS CENTER	Municipalities	9999	1	1
1050 21st St, NW	THADDEUS STEVENS ES	Schools	9999	1	1
4301 13TH STREET NW	THEODORE ROOSEVELT HS	Schools	1932	3	3
620 T St., NW	HOWARD THEATRE	Radio & Television	1910	3	1
441 4TH STREET NW	MARION BARRY BUILDING	Offices	1989	12	1
4058 Minnesota Avenue	DEPARTMENT OF EMPLOYMENT SERVICES	Offices	9999	3	1
6315 5TH STREET NW	COOLIDGE HIGH SCHOOL	Schools	1932	4	1
4300 WISCONSIN AVENUE NW	ENGINE COMPANY 20	Municipalities	1970	2	1
3500 R STREET NW	DUKE ELLINGTON SCHOOL OF THE ARTS	Schools	1897	4	1
1350 PENNSYLVANIA AVENUE NW	JOHN A. WILSON BUILDING	Offices	1908	7	1
5715 BROAD BRANCH RD NW	LAFAYETTE ELEMENTARY SCHOOL	Schools	1931	2	1
3815 FORT DRIVE NW	DEAL JUNIOR HIGH SCHOOL	Schools	1931	4	1
4400 IOWA AVENUE NW	MACFARLAND JUNIOR HIGH SCHOOL	Schools	1923	3	1
1709 3RD STREET NE	LEMMUEL PENN CENTER (Library Foundation Office)	Radio & Television	1910	4	1
4810 36TH STREET NW	MURCH ELEMENTARY SCHOOL	Schools	1929	1	1
1755 NEWTON STREET NW	BANCROFT ELEMENTARY SCHOOL	Schools	1920	4	1
8400 River Road	NEW BEGINNINGS	Municipalities	2009	1	5



**ATTACHMENT B**  
**(MINIMUM REQUIRED DATA POINTS)**

- Date of Valuation/Appraisal
- Location Description
- Address (Street, City, State, Zip code)
- Latitude
- Longitude
- Building Value
- Area in Square Feet
- Cost per Square Foot
- Construction (including Fire Construction Code)
- Occupancy (based on Standard Industrial Classification (SIC) Code and SIC Code)
- Protection
- Exposure
- Year Built
- Number of Stories
- Number of Buildings (if campus setting, but each building appraised separately)
- Percentage of Building with Automatic Sprinklers