

**OFFICE OF THE DEPUTY MAYOR FOR PLANNING AND ECONOMIC PLANNING (DMPED)  
AWARD/CONTRACT OR SUPPLIES OR SERVICES**

**SECTION A**

<b>1. ISSUED BY:</b> Government of the District of Columbia Office of the Deputy Mayor for Planning and Economic Development (DMPED) 1350 Pennsylvania Avenue NW, Suite 317 Washington, DC 20004  Contracts and Procurement 1100 4 <sup>th</sup> Street SW, Suite E500 Washington, DC 20024 (202) 724-8111 * (202) 724-9006 Fax	<b>2. PAGE OF PAGES</b> 1 of 46
	<b>3. CONTRACT NUMBER:</b> DCEB-DMPED-11-C-0021
	<b>4. EFFECTIVE DATE:</b> Date of Award
	<b>5. DELIVERY:</b> <input type="checkbox"/> FOB DESTINATION <input type="checkbox"/> OTHER
	<b>6. DISCOUNT FOR PROMPT PAYMENT:</b>
	<b>7. NAME AND ADDRESS OF CONTRACTOR (No., street, city, county, State and ZIP code)</b> B&K Rental and Sales Company, Inc. 15055 Marlboro Pike Upper Marlboro, MD 20772 TELEPHONE: (301) 627-4950 * (301) 627-4983 Fax FEIN.: 52-0806643

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**9. TOTAL AMOUNT OF CONTRACT \$207,560.00**

**CONTRACTING OFFICER WILL COMPLETE BLOCKS 10 OR 11 AS APPLICABLE**

<b>10. <input type="checkbox"/> AWARD (Contractor is not required to sign this)</b>  Your offer on Solicitation Number _____  Including the additions or changes made by you which additions or changes are set forth in this award/contract, is hereby accepted. This award consummates the Contract, which consists of the following documents: (a) DMPED's Solicitation and your offer, and (b) this award/contract. No further contractual documents are necessary.	<b>11. <input checked="" type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return <u>2</u> copies to the issuing office)</b> The Contractor agrees to furnish and deliver all items or perform all services set forth or otherwise identified on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this Contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provision, representations, certifications, specifications and any other documents as are attached or incorporated by reference in Section J.
12A. NAME AND TITLE OF SIGNER (Type or print) <i>John W. Bunting, President</i>	13A. NAME OF CONTRACTING OFFICER Jacque McDonald, CPPO, CPPB, MBA, MST
12B. B&K Rental and Sales Company, Inc.  BY <i>John W. Bunting</i> (Signature of person authorized to sign)	13B. Government of the District of Columbia, Office of the Deputy Mayor for Planning and Economic Development (DMPED)  BY <i>Jacque McDonald</i> (Signature of Contracting Officer)
12C. DATE SIGNED 5/13/11	13C. DATE SIGNED 5-20-11

**SECTION B: SUPPLIES/SERVICES AND PRICE/COST**

- B.1 The Government of the District of Columbia, Office of the Deputy Mayor for Planning and Economic Development (“DMPED” or the “District”) is contracting with B&K Rental and Sales Co., Inc. (“B&K”) for installation and extended rental of bleachers to be located at the SW Waterfront interim use project site in SW Washington, D.C, as per Scope cited herein.
- B.2 The contractor shall submit a notarized statement detailing any subcontracting plan required by law. For contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted in accordance with section H.36.
- B.3 Certified local, small or disadvantaged business enterprises including SBEs must be certified in the procurement category of Auditorium, Stadium, Team Seating Furniture and Portable Bleachers in order to be eligible for subcontracting set-aside on this contract.
- B.4 The District is awarding a Firm Fixed Price Contract.
- B.5 **This contract shall have a lump sum firm fixed price for the following Contract Line Item Numbers (CLINs) 001-002 as described below in the Price Schedule:**

**B.5.1 PRICE SCHEDULE**

**B.5.2 Base Period: Date of Award through one year.**

<b><u>CLIN</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>LUMP SUM PRICE</u></b>
001	Bleacher Rental	\$169,000.00
002	North End Layout Change	\$ 28,000.00
003	Bonds	\$ 10,560.00
<b>TOTAL AMOUNT</b>		<b>\$207,560.00</b>

**B.5.3 Option Year One: Date of award through one year thereafter.**

<b><u>CLIN</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>LUMP SUM PRICE</u></b>
001	Bleacher Rental	\$155,000.00
<b>TOTAL AMOUNT</b>		<b>\$155,000.00</b>

- B.6 This contract price is inclusive of all contractor costs: labor, materials, equipment, maintenance, taxes, insurance, overhead and profit.

**END OF SECTION B**

## **SECTION C: DESCRIPTION/SPECS/WORK STATEMENT**

### **C.1 INTRODUCTION**

The Government of the District of Columbia, Office of the Deputy Mayor for Planning and Economic Development (“DMPED” or the “District”) is contracting with B&K Rental and Sales Co., Inc. (“B&K”) for installation and extended rental of bleachers to be located at the SW Waterfront interim use project site in SW Washington, D.C, as per Scope cited herein.

### **C.2 SCOPE OF WORK**

The Office of the Deputy Mayor for Planning and Economic Development (DMPED) is in need of a contractor to provide installation and extended rental of bleachers for the SW Waterfront Interim Use Project site location.

The timely construction of an interim use stadium is critical to the District’s ability to deliver a venue which will allow the Kastles to host their 2011 World Team Tennis (WTT) home game.

### **C.3 REQUIREMENTS**

C.3.1 The contractor shall obtain and furnish all labor, material, tools, equipment and maintenance and repairs for all work as indicated to complete the installation and extended rental of bleachers at the SW Waterfront Interim Use Project site location in Washington, DC. The Contractor shall anticipate and comply with all permitting requirements, if applicable.

C.3.1.1 The contractor shall complete the following tasks in accordance with the contract documents and scope described hereunder:

#### **C.3.1.1.2 North End Set-up**

60’ wide x 62’ deep

- 2- 8” row chair riser elevated 4’ (15-4 seat boxes=60 seats)
- 4’ wide transverse walkway
- 1<sup>st</sup> deck 8’6” x 60’ elevated 2’ over the walkway (7- 4 seat tables=28 seats)
- 2<sup>nd</sup> deck 8’6” x 60’ elevated 2’6” over the 1<sup>st</sup> deck (7- 4 seat tables=28 seats)
- 8- row chair riser elevated 2’6” above 2<sup>nd</sup> deck with transverse aisles in between the box sections (box of 6/aisle/2-boxes of 4/aisle/2-boxes of 4/aisle/2-boxes of 4/aisle/2-boxes of 4/aisle/box of 6 which totals 40 boxes=176 seats)
- 6’ wide transverse walkway

#### **C.3.1.1.3 South End Set-up**

72’ wide x 26’6” deep

- 1<sup>st</sup> deck 8’6” x 72’ x 4’ elevation (9- 4 seat tables=36 seats)
- 2<sup>nd</sup> deck 18’ x 72’ elevated 2’ over 1st deck (9- 4 seat tables=36 seats)

#### **C.3.1.1.4 East Side Set-up**

120’ wide x 14’6” deep then 144” wide x 38’6” deep

- 120’, 2-row chair riser with a 2’ elevation (30 courtside boxes of 4=120 seats)
- 8’6” transverse walkway (20 ADA and 20 companion seats=40 seats)
- 144’, 6-row chair riser with a 2’ elevation over walkway (78 seats per row=468 seats)
- 6’ transverse walkway
- 7-row bleacher with a 2’ elevations over walkway (86 seats per row=602 seats)

**C.3.1.1.5 West Side Set-up**

120' wide x 14'6" deep then 144" wide x 32'6" deep

- 120', 2-row chair riser with a 2' elevation (30 courtside boxes of 4=120 seats)
- 8'6" transverse walkway (20 ADA and 20 companion seats=40 seats)
- 144', 6-row chair riser with a 2' elevation over walkway (78 seats per row=468 seats)
- 6' transverse walkway
- 4-row bleacher with a 2' elevations over walkway (86 seats per row=344 seats)

**END OF SECTION C**

**SECTION D: PACKAGING AND MARKING**

**D.1 MATERIAL DELIVERY, HANDLING AND STORAGE:**

- A. The Contractor shall deliver materials and equipment in the original, properly labeled, unbroken packages, containers, cartridges or bundles and in such quantities and such ample time that progress of work will not be delayed.
- B. The Contractor shall protect materials and products against any damage or deterioration during transit to the site, unloading, delivering and storing at site, installation or erection and during period between installation or erection and final acceptance by the District, that shall include, but not limited to:
  - 1. Minimum exposure to weather during delivery.
  - 2. Storage off ground in dry, well-ventilated spaces.
  - 3. Covering, as necessary, for adequate protection from soiling and wetting.
- C. The Contractor shall provide storage methods that will facilitate inspection and testing before and during the use as follows:
  - 1. Space for storage of materials and equipment will be approved by the District's Inspector (see Section H).
  - 2. The Contractor shall not occupy more space at the site than is absolutely necessary for proper execution of the work.

**END OF SECTION D**

**SECTION E: INSPECTION AND ACCEPTANCE**

**E.1 INSPECTION:**

**E.1.1.** The inspection and acceptance requirements for the resultant contract will be governed by Article 11 of the General Provisions of the Standard Contract Provisions for Use with Specifications for District of Columbia Government Construction Projects, Revised January 2007 and incorporated herein as an Attachment Section J.

**E.1.2** In addition, the acceptance criteria for different parts of the work maybe described in separate attachments hereto.

**E.2 PARTIAL ACCEPTANCE:**

**E.2.1** The Contracting Officer's Technical Representative (COTR) may, at his/her option, accept part of the work under the contract as certified by the Owner and Architect prior to the final acceptance of all the work under the contract, when the COTR considers it beneficial to the District of Columbia.

**E.2.2** Partial acceptance shall not preclude liquidated damages for failure to complete the contract within the required time limits established under TIME FOR COMPLETION in Section F.1.

**E.3 FINAL INSPECTION:**

**E.3.1** The Contractor shall give the COTR written notice at least fourteen (14) days in advance of date on which project will be 100% complete and ready for final inspection. Prior to final inspection date, the Contractor shall verify in writing that in the Contractor's best judgment no deficiencies exist.

**END OF SECTION E**

**SECTION F: DELIVERIES OR PERFORMANCE**

**F.1 TIME OF COMPLETION:**

The Contractor shall commence work on the date specified in the written Notice to Proceed (NTP) signed and issued by the Contracting Officer (CO) and shall complete contract performance within one year after date of award. See section F.2 (Milestone Schedule) for bleacher installation completion period.

**F.2 MILESTONE SCHEDULE**

<u>Key Milestone</u>	<u>Calendar Days after Notice to Proceed</u>
Installation start date	1
Completion of Bleacher Installation	20

**F.3 OPTION TO EXTEND THE TERM OF THE CONTRACT**

**F.3.1** The District may extend the term of this contract for a period of one (1) year option period, or successive fractions thereof by written notice to the Contractor before the expiration of the contract; provided that the District will give the Contractor a preliminary written notice of its intent to extend at least thirty (30) days before the contract expires. The preliminary notice does not commit the District to an extension. The exercise of this option is subject to the availability of funds at the time of the exercise of this option. The Contractor may waive the thirty (30) day preliminary notice requirement by providing a written waiver to the Contracting Officer prior to expiration of the contract.

**F.3.2** If the District exercises this option, the extended contract shall be considered to include this option provision.

**F.3.3** The price for the option period shall be as specified in the contract.

**F.3.4** The total duration of this contract, including the exercise of any options under this clause, shall not exceed two (2) years.

**F.4 DELIVERABLES:**

**F.4.1** The Contractor shall submit all the schedules and reports for approval to the COTR.

**F.4.2** The Contractor shall submit to the COTR, as a deliverable, the report described in Section H of this contract that is required by Section 3 Opportunities Plan, the 51% District Residents New Hires Requirement and First Source Employment Agreement. If the Contractor does not submit the report as part of the deliverables, final payment to the Contractor may not be paid.

**F.5 COORDINATION AND MEETINGS**

A. General: Prepare and distribute to each entity performing work at the project site, a written memorandum of instructions on required coordination activities, including required notices, reports and attendance at meetings. Prepare similar memorandum for separate contractors where interfacing of work is required.

- B. Weekly Progress Meetings: In addition to specific pre-installation and coordination meetings for each element of work, hold weekly progress meetings at regularly scheduled times which are convenient for everyone involved. Conduct meetings in a manner which will resolve any project problems, both present and anticipated. Record the meeting minutes and distribute copies to all persons in attendance and to others affected by decisions or actions resulting from each meeting. The meeting minutes shall be distributed in five (5) business days from the conclusion of the meeting and all corrections shall be made and the minutes re-distributed before the next meeting convenes.

**END OF SECTION F**



**SECTION G: CONTRACT ADMINISTRATION DATA**

**G.1 INVOICE PAYMENT:**

- A. The District will make progress payments to the Contractor, upon the submission of proper invoices, based on the approved project schedule as described herein, only for the percentage of work or services actually performed or completed during the subject period and accepted by the District, less any discounts, allowances or adjustments provided for in this contract.
- B. The District will pay the Contractor on or before the 30<sup>th</sup> day after receiving a proper invoice from the Contractor.

**G.2 INVOICE SUBMITTAL**

G.2.1 The Contractor shall submit proper invoices using the AIA Form on a monthly basis or as otherwise specified. Invoices shall be prepared and submitted to the Agency Fiscal Officer (AFO) with concurrent copies to the Contracting Officer's Technical Representative (COTR) specified in Section G.8 below. The address of the AFO is:

Office of the Deputy Mayor for Planning and Economic Development  
Agency Fiscal Officer  
Accounts Payable  
1100 4<sup>th</sup> Street SW, Suite E500  
Washington, DC 20024  
(202) 724-8111

G.2.1.1 The Contractor shall submit proper invoices on a monthly basis or as otherwise specified in this contract. Invoices shall be prepared and submitted to the COTR specified in Section G.9 below.

G.2.1.2 To constitute a proper invoice, the Contractor shall submit an application for payment that includes but is not limited to the following information:

- 1. Contractor's name and invoice date (Contractors are encouraged to date invoices as close to the date of mailing or transmittal as possible);
- 2. Contract number and assignment of an invoice number by the Contractor is also recommended;
- 3. Description, amount of payment requested, quantity, and the dates of the work performed based on the approved project schedule;
- 4. Other supporting documentation or information, as required by the CO;
- 5. Name, title, telephone number and complete mailing address of the responsible official to whom payment is to be sent;
- 6. Name, title, phone number of person preparing the invoice;
- 7. Name, title, phone number and mailing address of person, if different from the person identified above to be notified in the event of a defective invoice, and
- 8. Authorized signature.

**G.3 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT:**

**G.3.1** This contract is subject to Section 3 Employment Compliance, 51% District Residents New Hires Requirement and First Source Employment Agreement, and requires that final request for payment must be accompanied by the report or a waiver of compliance discussed in Section H.

**G.3.2** The AFO shall not make final payment to the Contractor until the AFO has received the CO's final determination or approval of waiver of the Contractor's compliance with 51% District Residents New Hires Requirement and First Source Employment Agreement.

**G.4 ASSIGNMENTS:**

A. In accordance with 27 DCMR 3250, the Contractor may assign funds due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution.

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

A. Notwithstanding an 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 the invoice must refer to the assignment and must show that payment of the invoice is to be made directly to the assignee as follows:

Pursuant to the instrument of assignment dated \_\_\_\_\_,  
make payment of this invoice to \_\_\_\_\_  
(name and address of assignee).

**G.5 THE QUICK PAYMENT CLAUSE**

**G.5.1 Interest Penalties to Contractors**

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

- a) the 3<sup>rd</sup> day after the required payment date for meat or a meat product;
- b) the 5<sup>th</sup> day after the required payment date for an agricultural commodity; or
- c) the 15<sup>th</sup> day after the required payment date for any other item.

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

**G.5.2 Payments to Subcontractors**

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

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

**G.5.2.2** The Contractor must 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:

- a) the 3<sup>rd</sup> day after the required payment date for meat or a meat product;
- b) the 5<sup>th</sup> day after the required payment date for an agricultural commodity; or
- c) the 15<sup>th</sup> day after the required payment date for any other item.

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

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

### **G.5.3 Contractor Obligation to Flow Down Interest Provision**

The Contractor is required to include in any subcontract a provision that requires each subcontractor to include the payment and interest clauses required under paragraphs (1) and (2) of the Quick Payment Act in each subcontractor's contract with any lower-tier subcontractor or supplier.

## **G.6 CONTRACTING OFFICER (CO)**

In accordance with 27 DCMR 1200.1 contracts may be entered into and signed on behalf of the District Government only by COs. The address and telephone number of the CO is:

*Jacque McDonald, Director of Contracts and Procurement  
Office of the Deputy Mayor for Planning & Economic Development  
1100 4<sup>th</sup> Street SW, Suite E500  
Washington, DC 20024  
202.724.8111*

## **G.7 AUTHORIZED CHANGES BY THE CO:**

- A. In accordance with Article 3 of the Standard Contract Provisions For Use With Specifications for District of Columbia Government Construction Projects, Revised

January 2007 the CO is the only person authorized to approve changes to any of the requirements of the contract.

- B. The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the CO.

**G.8 CONTRACT ADMINISTRATOR:**

- A. The Contracting Officer's Technical Representative (COTR) is responsible for the technical administration of the contract and advising the CO as to the Contractor's compliance or noncompliance with the contract. In addition, the COTR is responsible for the day-to-day monitoring and supervision of the contract, of ensuring that the work conforms to the requirements of this contract and such other responsibilities and authorities as specified in writing by the CO. The COTR for this contract is:

Rodney George, Project Manager  
Office of the Deputy Mayor for Planning & Economic Development  
1350 Pennsylvania Avenue NW, Suite 317  
Washington, DC 20005  
202.531-5448  
rodney.george@dc.gov

- B. It is fully understood and agreed by the Contractor that the COTR shall not have any authority to make changes in the specifications/scope of work, price or terms and conditions of the contract.
- C. Contractor shall be held fully responsible for any changes not authorized in advance, in writing, by the CO, and may be denied compensation or other relief for any additional work performed that is not authorized by the CO in writing. In addition, Contractor may also be required at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.

**END OF SECTION G**

**SECTION H: SPECIAL CONTRACT REQUIREMENTS**

**H.1 LIQUIDATED DAMAGES:**

- A. The Contractor shall pay to the District of Columbia the sum of five hundred dollars (\$500.00) as agreed liquidated damages for each calendar day of delay in completion of the work for this project, within the time limits set forth (See Paragraph F.1), subject to provisions of Article 5, DELAYS, of the Standard Contract Provisions for Use With Specifications for District of Columbia Government Construction Projects, Revised January 2007.
- B. If the District terminates for default the Contractor’s right to proceed in accordance with Article 5, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of reprourement.

**H.2 GOVERNMENT’S RESPONSIBILITY:**

District will provide to the Contractor all necessary passes for Contractor’s employees required to enter into the facility.

**H.3 PERMITS, LICENSES AND CERTIFICATES:**

- A. The District will obtain the Building Permit issued by the Department of Consumer and Regulatory Affairs (DCRA), Building and Land Regulation Administration, located at 1100 – 4<sup>th</sup> Street, S.W., Washington, D.C. 20024. The Contractor shall apply for and obtain all other permits required for this project including but not limited to certificates and licenses from the Office of Licenses and Permits, Permit Processing Division, Department of Consumer and Regulatory Affairs.
  - 1. The Contractor shall apply and pay for all required permits well in advance of the time that they are needed.
  - 2. If the Contractor experiences any difficulty in obtaining a permit, the Contractor shall request assistance immediately from the CA.
- B. The Contractor shall ascertain and obtain the required permits, licenses and certificates for this project. Permits, Licenses and Certificates *may* include, but are not limited to:

(Note: All Permits, Licenses and Certificates below may or may not be applicable; however, it is the responsibility of the contractor to be sure that the required Permits, Licenses and Certificates have been obtained):

**Permits and Certificates**

**Licenses**

- 1. Plumbing
- 2. Electrical
- 3. Refrigeration
- 4. Elevator
- 5. Boiler and Pressure Tank
- 6. Public Space - To work in, excavate in or occupy

- 1. Master Plumbers
- 2. Electrical
- 3. Refrigeration
- 4. Boiler
- 5. Pressure Tank
- 6. Elevator

7. Signs and Temporary Fences
8. Work on Sunday and after 6:00 p.m. weekdays.
9. Razing

- B.1 The contractor shall be allowed to work 24 hours per day/seven (7) per week without restriction providing that the contractor has obtained any necessary permits and complies with the noise controls set forth in 20 DCMR, chapters 27 and 28.
- C. The District will not allow work requiring permits and licenses to proceed until the Contractor produces evidence showing that such permits and licenses have been procured from the DCRA. Permits will be issued only to persons duly licensed for work in the District of Columbia, except as follows:
1. Where electrical, plumbing and refrigeration Contractors and their craft persons perform work under contract with the District of Columbia and the work is physically located in areas outside the District of Columbia, it shall be sufficient if any such Contractor and the Contractor's craft persons are licensed either by the District of Columbia or by any governmental agency having jurisdiction over the area adjoining the site on which the work is performed.
- D. The Contractor shall prominently display all permits within the confines of the construction site.

#### **H.4 UTILITY CONNECTIONS AND SERVICES (Where Applicable):**

The Contractor shall locate all existing utilities and perform the required modifications to all utilities for the completion of construction or demolition. All utility costs, costs to modify and connection fees shall be incorporated into the fixed price contract.

##### **PERMANENT CONNECTIONS TO MAINS:**

The Contractor shall make and pay for all the required permanent connections for water, sewer, gas, electrical, telephone and fire alarm systems at its own expense. The Contractor shall pay fees and associated costs and make all arrangements with utility companies and appropriate agencies as may be required for proper and expeditious completion of the project.

#### **H.5 DEBRIS AND CLEANING**

Upon completion of the work, the Contractor shall remove all equipment; salvaged materials provided for the work (except any materials that are to remain the property of the Government of the District of Columbia as provided in the Specifications) and leave the premises in a neat and clean condition satisfactory to the COTR at the site.

#### **H.6 MATERIALS AND WORKMANSHIP:**

- A. Unless otherwise specified, all materials and equipments incorporated in the work under the contract shall be new. All workmanship shall be first class and by persons qualified in the respective areas.
- B. In the absence of specific requirements for installation of a material or product, the Contractor will be held responsible for installation of said material or product in strict accordance with the manufacturer's printed instructions and recommendations.

**H.7 STANDARDS:**

- A. Any material specified by reference to the number, symbol or title of a specific standard such as a Commercial Standard, a Federal Specification, ASTM certification or other similar standard, shall comply with the requirements in the latest revision hereof.
- B. The District will not furnish any copies of the applicable Federal Specifications, Commercial Standards and other standard specifications to the bidders. However, the CO will furnish upon request, information as to how copies of the standards referred to may be obtained, and it will be responsibility of the requestor to obtain the necessary documents from respective sources.
- C. Where a standard is referred to in the various sections of these specifications, it shall include the installation requirements specified therein unless specifically modified in the contract specifications.

**H.8 EQUIPMENT COORDINATION:**

The Contractor shall ascertain that the make and model of all shop or factory fabricated equipment furnished not only meets all requirements of the contract document, but it shall be of the proper physical size and dimension to fit the space or area, ductwork, conduit, panel boxes, disconnect switches and related accessory equipment. Where the physical size of any equipment is dependent upon other equipment, coordination shall be done by the Contractor to assure that they are compatible and will fit within the limitations of the space where they are to be located, including coordinating of utility connections and coordination of space for servicing the equipment, changing filters, cleaning tubes and similar operations.

**H.9 STOPPAGE OF WORK:**

If the Contractor fails to abide by any, or all, of the provisions of the contract, the CO reserves the right to stop all the work, or any portion thereof, affected by the Contractor's failure to comply with the contract requirements. This stoppage will remain in effect until the Contractor has taken action to meet the contract requirements, or any separable part thereof. After written notification and work stoppage, the District may terminate the right of the Contractor to proceed as provided in Article 5 of the General Provisions, TERMINATION-DELAYS, of Standard Contract Provisions for Construction Contracts, Revised January 2007.

**H.10 SUBCONTRACTS:**

- A. Nothing contained in the contract shall be construed as creating any contractual relationship between any subcontractor and the Government of the District of Columbia.
  - 1. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among the subcontractors or to limit the work performed by any trade.
  - 2. The Contractor shall be as fully responsible to the Government of the District of Columbia for the acts and omissions of subcontractor and of persons employed by them as he is for the acts and omissions of persons directly employed by him.
  - 3. The Contractor shall coordinate the trades, subcontractor and material persons engaged upon his work.

4. The Contractor shall, without additional expense to the Government of the District of Columbia, utilize the services of specialty subcontractor for those parts of the work which are specified to be performed by specialty subcontractor.
  5. The Government of the District of Columbia will not undertake to settle any differences between the Contractor and his subcontractors or between subcontractors.
- B. The Contractor shall not subcontract any portion of the contract except with the prior written consent of the CO, or his authorized representatives, and such consent, when given, shall not be construed to relieve the Contractor of any responsibility for the fulfillment of the contract. Request(s) for permission to subcontract any portion of the contract shall be in writing and accompanied by: (a) a showing that the organization which will perform the work is particularly experienced and equipped for such work, and (b) an assurance by the Contractor that the Labor Standards Provisions set forth in this contract shall apply to labor performed on all work encompassed by the request(s). The request(s) also shall provide the following information:
1. Subcontractors name, address, telephone number, and Federal Social Security Number used on the Employers Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  2. Estimated dollar amount of the subcontract.
  3. Estimated starting and completion dates of the subcontract.
  4. The subcontractor approval request form included herein should be used to request approval of subcontractor on this project. The form should be completed for each subcontractor requested for approval and submitted to the CO. Copies of these forms are available upon request from the CA.
- C. Any work or service so subcontracted shall be performed pursuant to a subcontract agreement, which the District will have the right to review and approve prior to its execution by the Contractor. Any such subcontract shall specify that the Contractor and the subcontractor shall be subject to every provision of this 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.

**H.111 USE OF PREMISES:**

- A. If the Contractor considers it necessary to perform any work after the regular working hours on Saturdays, Sundays or legal holidays, the Contractor shall perform this work without any additional expense to the Government of the District of Columbia.
- B. The Contractor shall use only such entrances to the work area as designated by the CA.
- C. Once the installation work is started, the Contractor shall complete the work as rapidly as possible and without unnecessary delay.
- D. The Contractor shall occupy only such portions of the premises as required for proper execution of the contract.
- E. The Contractor shall perform all the work in such a manner as to cause minimum annoyance or noises and disturbances to occupants of adjacent premises and interference with normal traffic.



- F. The Contractor shall keep gates locked to maintain security into work area dictated by the existing job conditions of such nature as to prevent:
  - 1. Entry of work areas by unauthorized persons;
  - 2. Removal of Government property and supplies.
- G. The Contractor shall not load or permit the loading of any part of any structure to such an extent as to endanger its safety.
- H. The Contractor shall comply with the regulations governing the operation of premises that are occupied and shall perform his contract in such a manner as not to interrupt or interfere with the conduct of Government of the District of Columbia and/or Washington Metropolitan Area Transit Authority (WMATA) business.

**H.12 RESERVED**

**H.13 SAFETY PRECAUTIONS:**

- A. The Contractor shall perform all site, plant demolition and construction work in strict accordance with the Safety Standards of the District of Columbia and the U.S. Occupational Safety and Health Act of 1970 and the D.C. Occupational Safety and Health Act of 1988, D.C. Official Code § 32-1101 et seq. and 1-620.01 et seq.
  - 1. The Contractor or his representative shall be thoroughly familiar with these standards and have copies of same available at the project site at all times.
- B. Operators of explosive-actuated tools shall have a training certificate, as required by the Safety Code, in their possession.
- C. Where required, the Contractor shall be responsible for providing and installing adequate temporary shoring or bracing for all walls slabs and like constructions until such items attain their design, strength, and stability.
  - 1. The Government, its officers, agents, servants, and employees shall not be held liable for any property damages or physical harm resulting from inadequate protection caused by the Contractor's acts or omissions.
  - 2. Prior to execution of shoring and/or bracing, the Contractor shall submit details and calculations for shoring and/or bracing designs to the Architect for the CA's review and concurrence.
- D. The Contractor shall exercise special precautions to prevent use of or access to the Contractor's materials, equipment or tools and entry into the Contractor's work areas by non-authorized personnel.
  - 1. A Contractor's attendant shall be present at all times when bituminous kettles are in operation to prevent the public from coming in contact with the kettles.
  - 2. The Contractor shall remove each kettle as soon as its use is complete.

- E. The Contractor shall chute or hoist to the ground any and all the materials being removed from the roof areas or any upper floor.
- F. The Contractor shall not permit any live wires to be left exposed and unguarded, including open panel boards.
- G. The Contractor shall cover all open trenches during hours when work is not being executed, as required for protection of the public.

**H.14 PROGRESS SCHEDULE:**

- A. The Contractor shall complete all work within the time specified under F.1 Time of Completion, which is the maximum time permitted for the accomplishment of this project. If within the period of construction, a time extension or extensions are granted in writing by the CO, the Contractor shall incorporate the extension in the next update.

**H.15 GUARANTEE OF WORK (Occupancy):**

- A. The Contractor guarantees, for a period of one (1) year after date of acceptance for Occupancy as established in the District's written notification, to repair or replace any work in which any defects in material or workmanship appear within said period and to repair or replace any and all work damaged by reasons thereof, to the satisfaction of the COTR and without cost to the District of Columbia.
- B. In any case where in fulfilling the requirements of the contract or any guarantee, embraced in or required thereby, the Contractor disturbs any work guaranteed under another contract; he shall restore such disturbed work to a condition comparable to its original condition and guarantee such restored work to the same extent as it was guaranteed under such other contracts.
- C. Upon the Contractor's failure to proceed promptly to comply with the terms of any guarantee under the contract or still running upon work originally executed by other Contractors, the District of Columbia may (1) either have such work performed as the CO deems necessary to fulfill such guarantee, or (2) allow all such damaged or defective work to remain in such unsatisfactory condition; provided that the Contractor shall promptly pay the District of Columbia the sum estimated by the CO under the provision of paragraph B above to represent the amount which would have been necessary to expend to fulfill such guarantee. Everything done in the fulfillment of any guarantee shall be without additional expense to the Government of the District of Columbia.
- D. Special Guarantee (Where and When Applicable): The Contractor shall provide a written guarantee of the following for the extended periods and to the extent stated below:
  - 1. Guarantee buried tanks for five (5) years against deterioration to the point of failure and against structural failure due to improper installation procedures.
  - 2. Guarantee heating and air conditioning equipment, except expendable components such as filters, for two (2) full operating seasons or the equivalent thereof against all conditions except vandalism or improper maintenance.
  - 3. Secure guarantee of built-up roof and flashing systems for ten (10) years by the manufacturer of the roofing material.

- E. All special guarantees that are stipulated in the specifications or other paper forming a part of the contract shall be subject to the terms of this paragraph insofar as they do not conflict with the provisions containing references to guarantees in the specifications or such other papers. In case of any conflict, the special guarantee shall take precedence.

H.15.1 GUARANTEE OF WORK (Maintenance): The District shall consider the Contractor's maintenance obligation fulfilled at the conclusion of one (1) year after the work completion.

**H.16 PROTECTION:**

- A. The Contractor shall protect existing public and private property including but not limited to sidewalks, pavements, landscaping, from damage using methods approved by COTR such as planking, covering, temporary cement curbs, and shall be responsible for replacement of items that are damaged by work under this contract. The Contractor shall repair or replace damages to sidewalks, curbs, streets, public property and public utilities as directed by the COTR in accordance with standards of the agency having jurisdiction over the damaged property. The COTR will not permit grouting of cracks in sidewalks and driveways. The Contractor shall replace cracked slabs.
- B. The Contractor shall be responsible for personal injury to workmen and the public and shall indemnify and hold the District harmless for any such injuries that are incurred during the performance of this contract that such injuries are caused by the Contractor's acts or omissions..
- C. Nothing contained in the drawings and specifications for installation of fences, barricades or site protection shall be interpreted as making the District a party to, liable for, or relieving the Contractor of:
  - 1. The Contractor's responsibility for materials delivered and work performed until completion and final acceptance;
  - 2. The Contractor's responsibility to sustain all costs, losses or damages arising out of the nature of the work to be done, or due to any unforeseen or usual obstructions or difficulties which may be encountered in the accomplishment of the work, or resulting from the work, or resulting from the action of the elements; and
  - 3. The Contractor's responsibility to protect existing public and private property.

**H.17 UNDERGROUND SERVICES: (Where Applicable)**

- A. ACTIVE: The District has made its best efforts to show all active services on the contract drawings and Specifications. However, the District gives no assurance that there are no other active services in areas in which work is to be performed. If during execution of work, other active services are encountered that necessitate changes in drawings or Specifications, the Contractor shall make the required adjustments.
- B. INACTIVE OR ABANDONED: If, during execution of work, the Contractor encounters inactive or abandoned services not shown or specified, the Contractor shall notify the CO as set forth in Article 4 of the Standard Contract Provisions.

**H.18 EXISTING CONDITIONS: (Where Applicable)**

- A. The Contractor shall verify by actual measurement existing work required to connect with work now in place before the Contractor commences actual work at the site. The Contractor shall ensure that new work in extension of existing work shall correspond in all respects with that to which it connects unless otherwise indicated or specified.
- B. The Contractor shall cut, alter, remove or temporarily remove and replace existing work as necessary for the performance of the work to be done. The Contractor shall restore work remaining in place that is damaged or defaced by reason of work done under this contract to a condition satisfactory to the CA.

**H.19 EROSION AND POLLUTION CONTROL:**

- A. The Contractor shall provide erosion control facilities as approved and as required for fulfilling the requirements of applicable regulations of the District of Columbia.
- B. The Contractor shall take such measures, as determined to be adequate in the opinion of the CO, which will prevent soil erosion from the site in question.
- C. The Contractor shall conduct all operations in such a manner as to prevent when possible and otherwise minimize the contamination of watercourses by sediment bearing materials or other pollutants.
- D. The Contractor shall maintain effective erosion control for the duration of any suspension of all or a portion of the construction operation.

**H.20 GOVERNMENT INSPECTORS:**

- A. The Contractor shall perform work under the general direction of the COTR and is subject to inspection by his appointed Inspectors to ensure strict compliance with the terms of the contract. Neither the COTR nor an Inspector is authorized to change any provision of the contract documents without written authorization of the CO.
- B. The Contractor shall not be relieved from compliance with material and workmanship requirements of the contract in the presence of or absence of an Inspector.

**H.21 DRAWINGS AND SPECIFICATIONS:**

- A. Pursuant to Article 2 of the General Provisions, Standard Contract Provisions, the general character and scope of the work are illustrated by the specifications and drawings (where applicable) listed in Section C, and included herein as Attachments in Section J. Any additional detail drawings and other information deemed necessary by the CO will be furnished to the Contractor when and as required by the work.
- B. In case of differences between small and large-scale drawings, the large-scale drawings shall govern.
- C. Where on any of the drawings, a portion of the work is drawn out and the remainder is indicated in outline, the parts drawn out shall apply also to those portions indicated in the outline.
- D. Where similar work occurs in the drawings, the Contractor shall interpret the same in its general sense and not as meaning identical. The Contractor shall work out all the details in relation to their location and their connection with other parts of the work.

- E. In case of differences between the schedules and small or large scale drawings, the schedules shall govern.
- F. In cases of differences between the specifications and standards, and in cases of differences between drawings and the specifications, the specifications shall govern.

**H.22 REFERENCE TO CODES AND REGULATIONS:**

- A. Where the District of Columbia codes and regulations and other codes and regulations are referred to in these specifications, they are minimum requirements.
- B. Where the requirements of these specifications exceed the referred requirements of the codes and regulations, these specifications shall govern.
- C. Requirements of codes and regulations shall include revisions, amendments and supplements thereto in effect on the closing date of the IFB. The IFB will be amended to conform it to such code and regulation changes that occur after the closing date.

**H.23 SINGULAR OR PLURAL NUMBERS:**

Where any device or part of equipment is herein referred to in the specifications or on the drawings in the singular or plural number, such reference shall be deemed to apply to as many such devices as are required to complete the installation as shown on the drawings.

**H.24 ENGINEERING AND LAYOUT SERVICES:**

- A. The Contractor shall provide competent engineering services to execute the work in accordance with the contract requirements. The Contractor shall verify the figures shown on the drawings before undertaking any construction work and shall be responsible for the accuracy of the finished work.
- B. The District has made its best efforts to establish such general reference points as will enable the Contractor to proceed with the work. It is the Contractor's responsibility to visit the site and familiarize themselves with the site conditions before submitting his bid.
- C. The Contractor shall make no change in locations without the written approval of the CO.

**H.25 INTERFERENCE: (Where and When Applicable)**

(Mechanical Equipment, Piping, Ducts and Electric Conduits)

- A. The Contractor shall coordinate all mechanical and electrical work associated with the separate sections of the specifications with work of all other trades so as to avoid any interference with installation of pipes, ducts and conduits.
  - 1. The sizes and locations of the pipes, ducts, electrical conduits and the method of running them are shown on the drawings, but it is not intended to show every offset and fittings or every architectural or structural obstacle that will be encountered during the installation of the work. The Contractor shall modify alignment of pipes, ducts and conduits from that shown on the contract drawings, where necessary, without any additional costs to the District.

2. The Contractor shall furnish such materials and labor, as necessary, to make the piping, ducts and conduit modifications as required, due to building obstructions and to complete the installation in accordance with best practice of the trades and to the satisfaction of the CA.

**H.26 ADD TO ARTICLE 3, CHANGES, OF THE STANDARD CONTRACT PROVISIONS, GENERAL PROVISIONS SECTION, THE FOLLOWING PARAGRAPH E: EQUITABLE ADJUSTMENT**

- A. The purpose of this section is to define a standard procedure for determining reasonable costs and times for purpose of making equitable adjustments under Article 3, CHANGES, of the Standard Contract Provisions, General Provisions section.
- B. Unless provided in the contract, the following procedure shall be used:
  1. Where the nature of the change is known sufficiently in advance of construction to permit negotiation, the parties shall attempt to agree on a fully justifiable price adjustment or adjustment of time for completion.
  2. If the parties fail to agree upon an equitable adjustment prior to the time the proposed change affects the contract work, or if the CO determines it is not feasible to reach an agreement regarding an equitable adjustment, either due to lack of time or other reasons, the CO will order the change in accordance with Article 3 of the General Provisions and the Contractor shall proceed with the execution of the work so changed.
- C. Equitable adjustments shall be determined in the following manner, unless stated in the contract. (Based on Unit Price in the bid)
  1. Whenever a change is proposed or directed, the Contractor shall submit a proposal or breakdown within fifteen (15) days of its receipt of the change, and the proposal will be acted upon promptly by the CO.
  2. Price Adjustments
    - a. If agreement on costs cannot be reached prior to execution of changed work, payment will be made for the actual costs provided records of such costs are made available and that such costs are reasonable and predicated on construction procedures normally utilized for the work in question. If not, then payment shall be based on standard trade estimating practice.
    - b. Where basis of equitable adjustments is the actual cost incurred in performing changed work, the Contractor shall furnish the District with a complete breakdown of costs, covering the subcontractor work, as well as his own, individually itemizing the following:
      - i. Material quantities and unit prices
      - ii. Labor hours and basic hourly rate for each labor classification
      - iii. Fringe benefits rate for each classification
      - iv. Construction equipment
      - v. Overhead
      - vi. Profit

- vii. Commission
- viii. FICA, FUTA and DUTA (applied in basic hourly wage costs).
- c. The Contractor shall furnish substantiation of fringe benefits, workmen compensation, FICA, DUTA, FUTA and State unemployment taxes at the request of the District.
- d. The percentage for overhead, profit and commission to be allowed shall in no case exceed the following and shall be considered to include, but not limited to, insurance, other than mentioned herein, field and office supervisor and assistants above the level of foreman, incidental job burdens and general office expense, including field and home office. No percentage for overhead and profit will be allowed on FICA (Social Security), FUTA (Federal Unemployment and DUTA (District Unemployment) taxes:

	Overhead	Profit	Commission
1. To Contractor on work performed by other than his/her own forces.	-	-	10% of value of work performed
2. To Contractor and/or Subcontractor for that portion of work performed by their respective forces.	10%	10%	-
3. From Contractor on deleted work to have been performed by other than his/her own forces.	-	-	5% of value of deleted work
4. From Contractor or Subcontractor on deleted work to have been performed by his/her own forces.	-	-	5% of value of deleted work

- e. When a change consists of both added work and deleted work, the applicable percentage shall be applied to the net cost or credit.
  - f. Where more than one tier of subcontractors exists, they shall be treated as one subcontractor for purposes of markups. That is, only one overhead and one profit percentage for the subcontractors and one commission percentage for the prime Contractor shall be applied to actual cost of work performed regardless of the number of tiers of subcontractors.
3. Changes in the period of performance: Where a change affects the time required for the performance of the contract, the Contractor shall describe in detail “cause and effect relationship” and how such change affects the specific contract work activities, current critical path, overall performance or work, concurrency with other delays, and the final net impact on the contract milestone(s), specifically stating the proposed decrease or increase in the period of contract performance in calendar days.
  4. The changes in the contract period of performance, if any, resulting from change order work will be calculated in the following manner:

- a. New durations for work activities affected by the change order will be incorporated into the next computer printout. Time extensions will be directly based on the extent to which the contract completion date is hereby extended.
  - b. Should new work activities be required to supplement existing activities, they will be incorporated into the computer printout to verify total effect, if any, on the contract completion date.
  - c. Every attempt will be made to reach an agreement between the Contractor and the COTR on the number of days by which activity duration will be extended. Should an agreement not be reached within fifteen (15) days after Contractor receives the directive, the COTR will assign a reasonable duration to be used in determination of job progress.
- D. If performance of the work is delayed by any of the causes specified in Article 5 of the General Provisions, TERMINATION-DELAYS, of Standard Contract Provisions For Use With Specifications for District of Columbia Government Construction Projects, Revised January 2007 a contract time extension may be justified.
1. The Contractor, when requesting an extension to the contract period of performance, must submit the same in writing with supporting facts and backup documentation plus a detailed explanation that must include, but be not limited to, the following:
    - Reasons/cause and responsibility of each delay
    - Inclusive dates of each delay
    - Specific trades affected
    - Portion (s) of each work contract activity affected and the duration thereof
    - Status of work activity affected before delay commenced
    - Concurrency of any other delays, including Contractor's own
    - Net effect of each delay under this request, on the overall contract completion

In the case of late delivery of materials and/or equipment, back up date, correspondence and documentation should include but not be limited to the following: establishment that prior to ordering there was a reasonable assurance of timely supply; copies of each purchase order establishing the dates of procurement, invoices, delivery receipts and the like showing shipping or delivery dates; and copy of correspondence showing diligent attempts to follow ups to obtain materials when critically needed from other sources.
  2. All documentation should demonstrate that any delay was unforeseeable and without the fault or negligence of the Contractor, subcontractor or supplier involved. The Contractor will be entitled only to the additional number of days the project is delayed which is not concurrent with another delay for which a time extension has been granted or for which a valid request has been submitted.



3. In case of delays due to strikes, documentation shall include evidence of when and what trades struck, with reasons for the strike, prompt submittal of notice when the strike was ended and the date thereof, analysis of the effect of the strike on the completion of the contract work.
4. In case of delays due to unusually severe weather, documentation shall include daily temperature and precipitation records for each period of delay involved and explanation of delaying effect, including number of days that the construction activities on the current critical path at the time were actually delayed, including any extended impact, beyond the normal anticipated days of delay due to the weather conditions.

E. **COST AND PRICING DATA** (applicable to a Change Order or Modification) :

1. The Contractor shall, before negotiating any price adjustments pursuant to a change order or modification, submit cost or pricing data and certification that, to the best of the Contractor's knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of the date of negotiation of the change order or modification.
2. If any price, including profit or fee, negotiated in connection with any change order or contract modification, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified by the Contractor, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified by the Contractor, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.
3. Cost or pricing data includes all facts as of the time of price agreement that prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective Contractor's judgment about estimated future costs or projections, cost or pricing data do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred.
4. The following specific information should be included as cost or pricing data, as applicable:
  - (a) Vendor quotations;
  - (b) Nonrecurring costs;
  - (c) Information on changes in production methods or purchasing volume;
  - (d) Data supporting projections of business prospects and objectives and related operations costs;
  - (e) Unit cost trends such as those associated with labor efficiency;
  - (f) Make or buy decisions;
  - (g) Estimated resources to attain business goals;
  - (h) Information on management decisions that could have a significant bearing on costs.

5. If the Contractor is required to submit cost or pricing data in connection with pricing any change order or modification of this contract, the CO or representatives of the CO shall have the right to examine all books, records, documents and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the change order or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. Contractor shall make available at its office at all reasonable times the materials described above for examination, audit, or reproduction until three years after the later of:
  - (a) final payment under the contract;
  - (b) final termination settlement; or
  - (c) the final disposition of any appeals under the disputes clause or of litigation or the settlement of claims arising under or relating to the contract.

**H.27 51% DISTRICT RESIDENTS NEW HIRES/FIRST SOURCE EMPLOYMENT AGREEMENT:**

- H.27.1** The Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code, sec. 2-219.01 et seq. (“First Source Act”).
- H.27.2** The Contractor shall enter into and maintain, during the term of the contract, a First Source Employment Agreement, Attachment J.2.3, in which the Contractor shall agree that:
1. The first source for finding employees to fill all jobs created in order to perform this contract shall be the Department of Employment Services (“DOES”); and
  2. The first source for finding employees to fill any vacancy occurring in all jobs covered by the First Source Employment Agreement shall be the First Source Register.
- H.27.3** The Contractor shall submit to DOES (with a copy to the CA), no later than the 10<sup>th</sup> each month following execution of the contract, Section 3 Compliance Report, a First Source Agreement Contract Compliance Report (“contract compliance report”) verifying its compliance with the First Source Agreement for the preceding month. The contract compliance report for the contract shall include the:
1. Number of employees needed;
  2. Number of current employees transferred;
  3. Number of new job openings created;
  4. Number of job openings listed with DOES;
  5. Total number of all District residents hired for the reporting period and the cumulative total number of District residents hired; and

6. Total number of all employees hired for the reporting period and the cumulative total number of employees hired, including;
  - a. Name;
  - b. Social Security number;
  - c. Job title;
  - d. Hire date;
  - e. Residence; and
  - f. Referral source for all new hires.

**H.27.4** If the contract amount is equal to or greater than \$100,000.00, the Contractor agrees that 51% of the new employees hired for the contract shall be District residents.

**H.27.5** With the submission of the Contractor's final request for payment from the District, the Contractor shall:

2. Document in a report to the CO its compliance with the section H.27.4 of this clause; or
3. Submit a request to the CO for a waiver of compliance with section H.27.4 and include the following documentation:
  - a. Material supporting a good faith effort to comply;
  - b. Referrals provided by DOES and other referral sources;
  - c. Advertisement of job openings listed with DOES and other referral sources; and
  - d. Any documentation supporting the waiver request pursuant to section H.27.6.

**H.27.6** The CO may waive the provisions of section H.27.4 if the CO finds that:

- a. A good faith effort to comply is demonstrated by the Contractor;
- b. The Contractor is located outside the Washington Standard Metropolitan Statistical Area and none of the contract work is performed inside the Washington Standard Metropolitan Area which includes the District of Columbia; the Virginia Cities of Alexandria, Falls Church, Manassas, Manassas Park, Fairfax, and Fredericksburg, the Virginia Counties of Fairfax, Arlington, Prince William, Loudoun, Stafford, Clarke, Warren, Fauquier, Culpepper, Spotsylvania, and King George; the Maryland Counties of Montgomery, Prince Georges, Charles, Frederick, and Calvert; and the West Virginia Counties of Berkeley and Jefferson.
- c. The Contractor enters into a special workforce development training or placement arrangement with DOES; or
- d. DOES certifies that there are insufficient numbers of District residents in the labor market possessing the skills required by the positions created as a result of the contract.

- H.27.7** Upon receipt of the Contractor's final payment request and related documentation pursuant to sections H.27.5 and H.27.6, the CO shall determine whether the Contractor is in compliance with section H.27.4 or whether a waiver of compliance pursuant to section H.28.6 is justified. If the CO determines that the Contractor is in compliance, or that a waiver of compliance is justified, the CO shall, within two business days of making the determination forward a copy of the determination to the Agency Chief Financial Officer (CFO) and the CA.
- H.27.8** Willful breach of the First Source Employment Agreement, or failure to submit the report pursuant to section H.28.5, or deliberate submission of falsified data, may be enforced by the CO through imposition of penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract. The Contractor shall make payment to DOES. The Contractor may appeal to the D.C. Contract Appeals Board as provided in the contract any decision of the CO pursuant to this section H.27.8.
- H.27.9** The provisions of sections H.27.4 through H.27.8 do not apply to nonprofit organizations with 50 employees or less.

**H.28 AUDITS, RECORDS, AND RECORD RETENTION:**

- H.28.1** At any time or times before final payment and three (3) years thereafter, the CO may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be reduced by amounts found by the CO not to constitute allowable costs as adjusted for prior overpayment or underpayment. In the event that all payments have been made to the Contractor by the District Government and an overpayment is found, the Contractor shall reimburse the District for said overpayment within thirty (30) days after written notification.
- H.28.2** 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.
- H.28.3** 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 five (5) years after termination of the contract, or if an audit has been initiated and audit findings have not been resolved at the end of five (5) 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.
- H.28.4** The Contractor shall assure that these records shall be subject at all reasonable times to inspection, review, or audit by Federal, District, or other personnel duly authorized by the CO.
- H.28.5** Persons duly authorized by the CO shall have full access to and the right to examine any of the Contractor's contract and related records and documents, regardless of the form in which kept, at all reasonable times for as long as records are retained.
- H.28.6** The Contractor shall include these aforementioned audit and record keeping requirements in all approved subcontracts and assignments.

**H.28.7** In the event of a conflict between Article 28 of the General Provisions, Standard Contracts Provisions for Construction Projects, Revised January 2007, and the provisions of this clause, the former shall prevail.

**H.29 PUBLICITY:**

The Contractor shall at all times obtain the prior written approval from the CO before the Contractor, any of its officers, agents, employees or subcontractor, 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.30 FREEDOM OF INFORMATION ACT:**

The District of Columbia Freedom of Information Act, at D.C. Official Code § 2-532 (a-3), requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private Contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If the Contractor receives a request for such information, the Contractor shall immediately send the request to the COTR designated in subsection G.8 who will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by the Contractor pursuant to the contract, the COTR will forward a copy to the Contractor. In either event, the Contractor is required by law to provide all responsive records to the COTR within the timeframe designated by the CA. The FOIA Officer for the agency with programmatic responsibility will determine the reliability of the records. 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.31 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.32 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 (1983) *et seq.*

**H.33 ENVIRONMENTALLY PREFERABLE SOLVENT PRODUCTS**

**H.33.1 Environmentally Preferable Products Goals**

**H.33.1.1** The contractor shall provide environmentally preferable and effective solvent products that support the District's environmentally preferable purchasing (EPP) contracting initiative.

**H.33.1.2** Environmentally preferable products are products and services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison

considers the life cycle of the product from raw material acquisition, production, manufacturing, packaging, distribution, re-use, operation, maintenance and disposal.

### H.33.2 Environmentally Preferable Solvent Products

**H.33.2.1** Solvents are fluids or a mixture of fluids capable of dissolving substances to produce compositions for industrial value.

**H.33.2.2** Solvent products subject to the requirements of this clause include, but are not limited to, the following classes:

- (a) **Alcohols.** Alcohols are solvents that dissolve substances such as shellacs, vinyls, acrylics, epoxies and silicones.
- (b) **Aliphatic Hydrocarbons.** Aliphatic hydrocarbons are solvents often found in coatings and insecticides. Commonly used as degreasers and solvents for acrylics and epoxies. Common aliphatics include mineral spirits, paint thinner, petroleum distillates, VM&P Naphtha, kerosene, gasoline and heptane (all of which are extremely flammable).
- (c) **Aromatic Hydrocarbons.** Aromatic hydrocarbons are substances used in printing, fiberglass-reinforced products, glues and veneers. Common aromatics include toluene (toluol), xylene (xylol), coal-tar naphtha, styrene and benzene.
- (d) **Chlorinated Hydrocarbons.** Chlorinated hydrocarbons are commonly used degreasers, dry cleaning agents, rubber solvents and paint strippers found in coatings, resins and tars. Common chemicals in this class include perchloroethylene, methylene chloride, carbon tetrachloride, methyl chloroform and trichloroethylene.
- (e) **Glycols.** Glycols, which are water-soluble solvents used as lubricants, are found in cosmetics, coatings, resins and dyes. Glycol ethers include butyl cellusolve (2-butoxyethanol), cellusolve (2-ethoxyethanol), methyl cellusolve (2-methoxyethanol), and cellusolve acetate (2-ethoxyethyl acetate). Most common glycol ethers are combustible.
- (f) **Esters.** Esters have differing chemical properties depending on their use including methyl formate, ethyl acetate, isopropyl acetate, methyl acetate, secamylacetate, and isoamyl acetate (banana oil).
- (g) **Ethers.** Ethers are ingredients in dyes, resins, waxes, cellulose nitrate and fuels, including ethyl ether, tetrahydrofuran, dioxane and isopropyl ether.
- (h) **Ketones.** Ketones are solvents for dyes, resin and waxes that are used to manufacture plastics, synthetic fibers, explosives, cosmetics and medicines. Some examples of ketones include acetone, methyl ethyl ketone, cyclohexanone and isophorone.
- (i) **Other Solvents.** Other types of solvents include freon, turpentine, dimethylformamide and carbon disulfide.

**H.33.3 Solvent Environmental Requirements - The Contractor shall avoid the following hazards when using solvent products during the performance of this contract:**

**H.33.3.1 Health Hazards**

- (a) Bodily Contact - The Contractor shall not use solvent products that irritate or harm the skin, eyes, nose and throat from direct contact with the solvents;
- (b) Inhalation – The Contractor shall not use solvent products that when inhaled causes headaches, nausea, vomiting and dizziness from contact with the solvents; and,
- (c) Ingestion – The Contractor shall not use solvent products that if ingested or exposed to for a period of time cause damage to the brain, liver, kidney, respiratory system and nervous systems.

**H.33.3.2 Physical Hazards**

- (a) Flammable materials are substances that will easily ignite, burn and serve as fuel for a fire. The flash point is the lowest temperature at which a liquid gives off enough vapors which, when mixed with air, can be easily ignited by a spark. The lower the flash point, the greater the risk of fire or explosion.
- (b) The Contractor shall not use solvent products that are a potential fire hazard or have a low flash point. A solvent is flammable and a serious fire hazard if its flash point is below 37.8C (100F).

**H.33.4 Prohibited Solvents**

**H.33.4.1** The following solvent products are recognized by the National Institute for Occupational Safety and Health (NIOSH) as carcinogens, ozone-depleting solvents or as reproductive hazards in the workplace and shall not be used:

Benzene	Carbon tetrachloride
Trichloroethylene	1,1,2,2-tetrachloroethane
2-methoxyethanol	2-ethoxyethanol
Methyl chloride	Trichlorotrifluoroethane
Chlorinated Fluorocarbon Compounds	

**H.33.5 Packaging Reduced/Recyclable**

- H.33.5.1** If possible, the Contractor shall use products that are in reusable, refillable, or recyclable containers or are otherwise made from recycled content products.
- H.33.5.2** No products shall be delivered in aerosol cans.
- H.33.5.3** All products must be available in non-aerosol containers such as ready-to-use pump action sprays, air-charged refillable containers, or spray bottles.

**H.33.6 Product Safety**

- H.33.6.1** The Contractor shall be responsible for:

- (a) Any damage to personnel, buildings, furniture or equipment directly traceable to their use or transportation of prohibited products.
- (b) Any spills or leaks that occur during the use or transportation of their products.
- (c) Evacuating and warning individuals that might be affected by any spills or leaks that occur when their products are being used or transported.
- (d) Paying the cleanup cost for any spills or leaks that occur while they are using or transporting their products.

### **H.34 LIVING WAGE ACT OF 2006:**

The Living Wage Act of 2006 is Title I of the “Way to Work Amendment Act of 2006”, DC Law 16-18, effective June 9, 2006. The Living Wage Act is codified at DC Official Code §§ 2-220.01 through 11.

#### **H.34.1 WAY TO WORK AMENDMENT ACT OF 2006**

- H.34.1.1** Except as described in H.34.1.8 below, the Contractor shall comply with 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.*) (“Living Wage Act of 2006”), for contracts for services in the amount of \$100,000 or more in a 12-month period.
- H.34.1.2** The Contractor shall 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).
- H.34.1.3** The Contractor shall include in any subcontract for \$15,000 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.
- H.34.1.4** The Department of Employment Services may adjust the living wage annually and the OCP will publish the current living wage rate on its website at [www.ocp.dc.gov](http://www.ocp.dc.gov).
- H.34.1.5** The Contractor shall provide a copy of the Fact Sheet attached as J.1.5 to each employee and subcontractor who performs services under the contract. The Contractor shall also post the Notice attached as J.1.5 in a conspicuous place in its place of business. The Contractor shall include in any subcontract for \$15,000 or more a provision requiring the subcontractor to post the Notice in a conspicuous place in its place of business.
- H.34.1.6** The Contractor shall 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 shall include this requirement in its subcontracts for \$15,000 or more under the contract.
- H.34.1.7** The payment of wages required under the Living Wage Act of 2006 shall be consistent with and subject to the provisions of D.C. Official Code §32-1301 *et seq.*
- H.34.1.8** The requirements of the Living Wage Act of 2006 do not apply to:



- (1) Contracts or other agreements that are subject to higher wage level determinations required by federal law;
- (2) Existing and future collective bargaining agreements, provided, that the future collective bargaining agreement results in the employee being paid no less than the established living wage;
- (3) Contracts for electricity, telephone, water, sewer or other services provided by a regulated utility;
- (4) Contracts for services needed immediately to prevent or respond to a disaster or eminent threat to public health or safety declared by the Mayor;
- (5) Contracts or other agreements that provide trainees with additional services including, but not limited to, case management and job readiness services; provided that the trainees do not replace employees subject to the Living Wage Act of 2006;
- (6) An employee under 22 years of age employed during a school vacation period, or enrolled as a full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than 25 hours per week; provided that he or she does not replace employees subject to the Living Wage Act of 2006;
- (7) Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia; provided, that the tenant or retail establishment did not receive direct government assistance from the District;
- (8) Employees of nonprofit organizations that employ not more than 50 individuals and qualify for taxation exemption pursuant to section 501(c)(3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3));
- (9) Medicaid provider agreements for direct care services to Medicaid recipients, provided, that the direct care service is not provided through a home care agency, a community residence facility, or a group home for mentally retarded persons as those terms are defined in section 2 of the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501); and
- (10) Contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.

**H.34.1.9** The Mayor may exempt a contractor from the requirements of the Living Wage Act of 2006, subject to the approval of Council, in accordance with the provisions of Section 109 of the Living Wage Act of 2006.

The Living Wage Act Notice and Fact Sheet are incorporated herein as Attachment J.1.5.

## **H. 35**      **Mandatory Subcontracting Requirements**

**H.35.1** For contracts in excess of \$250,000, at least 35% of the dollar volume shall be subcontracted to certified small business enterprises; provided, however, that the costs of materials, goods and supplies shall not be counted towards the 35% subcontracting requirement unless such materials, goods and supplies are purchased from certified small business enterprises.

- H.35.2** If there are insufficient qualified small business enterprises to completely fulfill the requirement of the preceding paragraph, then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any certified business enterprises; provided, however, that all reasonable efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall subcontracting work.
- H.35.3** A prime contractor which is certified as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of sections H.35.1 and H.35.2.

**H.36** **Subcontracting Plan**

If the prime contractor is required by law to subcontract under this contract, it must subcontract at least 35% of the dollar volume of this contract in accordance with the provisions of section H.46. The prime contractor responding to this solicitation which is required to subcontract shall be required to submit with its bid, a notarized statement detailing its subcontracting plan. Bids responding to this IFB shall be deemed nonresponsive and shall be rejected if the bidder is required to subcontract, but fails to submit a subcontracting plan with its bid. Once the plan is approved by the contracting officer, changes to the plan will only occur with the prior written approval of the contracting officer and the Director of DSLBD. Each subcontracting plan shall include the following:

- H. 36.1** A description of the goods and services to be provided by SBEs or, if insufficient qualified SBEs are available, by any certified business enterprises;
- H. 36.2** A statement of the dollar value of the bid that pertains to the subcontracts to be performed by the SBEs or, if insufficient qualified SBEs are available, by any certified business enterprises;
- H.36.3** The names and addresses of all proposed subcontractors who are SBEs or, if insufficient SBEs are available, who are certified business enterprises;
- H. 36.4** The name of the individual employed by the prime contractor who will administer the subcontracting plan, and a description of the duties of the individual;
- H. 36.5** A description of the efforts the prime contractor will make to ensure that SBEs, or, if insufficient SBEs are available, that certified business enterprises will have an equitable opportunity to compete for subcontracts;
- H. 36.6** In all subcontracts that offer further subcontracting opportunities, assurances that the prime contractor will include a statement, approved by the contracting officer, that the subcontractor will adopt a subcontracting plan similar to the subcontracting plan required by the contract;
- H. 36.7** Assurances that the prime contractor will cooperate in any studies or surveys that may be required by the contracting officer, and submit periodic reports, as requested by the contracting officer, to allow the District to determine the extent of compliance by the prime contractor with the subcontracting plan;
- H.36.8** A list of the type of records the prime contractor will maintain to demonstrate procedures adopted to comply with the requirements set forth in the subcontracting plan, and assurances that the prime contractor will make such records available for review upon the District's request; and
- H.36.9** A description of the prime contractor's recent effort to locate SBEs or, if insufficient SBEs are available, certified business enterprises and to award subcontracts to them.

### **H.37 Compliance Reports**

By the 21<sup>st</sup> of every month following the execution of the contract, the prime contractor shall submit to the contracting officer and the Director of DSLBD a compliance report detailing the contractor's compliance, for the preceding month, with the subcontracting requirements of the contract. The monthly compliance report shall include the following information:

- H. 37.1** The dollar amount of the contract or procurement;
- H. 37.2** A brief description of the goods procured or the services contracted for;
- H. 37.3** The name and address of the business enterprise from which the goods were procured or services contracted;
- H. 37.4** Whether the subcontractors to the contract are currently certified business enterprises;
- H. 37.5** The dollar percentage of the contract or procurement awarded to SBEs, or if insufficient SBEs, to other certified business enterprises;
- H. 37.6** A description of the activities the contractor engaged in, in order to achieve the subcontracting requirements set forth in section H.36; and
- H. 37.7** A description of any changes to the activities the contractor intends to make by the next month to achieve the requirements set forth in section H.36.

### **H. 38 Enforcement and Penalties for Breach of Subcontracting Plan**

- H. 38.1** If during the performance of this contract, the contractor fails to comply with its approved subcontracting plan, and the CO determines the contractor's failure to be a material breach of the contract, the CO shall have cause to terminate the contract under the default clause of the Standard Contract Provisions.
- H. 38.2** There shall be a rebuttable presumption that a contractor willfully breached its approved subcontracting plan if the contractor (i) fails to submit any required monitoring or compliance report; or (ii) submits a monitoring or compliance report with the intent to defraud.
- H. 38.3** A contractor that is found to have willfully breached its approved subcontracting plan for utilization of certified business enterprises in the performance of a contract shall be subject to the imposition of penalties, including monetary fines of \$15,000 or 5% of the total amount of the work that the contractor was to subcontract to certified business enterprises, whichever is greater, for each such breach.

**END OF SECTION H**

## **SECTION I: CONTRACT CLAUSES**

### **I.1 APPLICABILITY OF STANDARD CONTRACT PROVISIONS:**

The Standard Contract Provisions For Use With Specifications for District of Columbia Government Construction Projects, Revised January 2007 is incorporated herein as Attachment J.1.2.

### **I.2 DEPARTMENT OF LABOR WAGE DETERMINATIONS:**

- A. Davis Bacon Wage Rates are applicable. The current prevailing wage determination is incorporated herein as an Attachment in Section J.
- B. In accordance with the applicable provisions of 29 CFR, Part 1, Section 1.6 (c) (3) (IV), if the intent to award letter is not issued within ninety (90) days of bid opening, all intervening modifications (or new wage decision) are made a part of this contract. The Contractor will be reimbursed this added labor cost.

### **I.3 CONFLICT OF INTEREST:**

- A. No official or employee of the District of Columbia or the Federal Government who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this contract shall, prior to the completion of the project, voluntarily acquire any personal interest, direct or indirect, in the contract or proposed contract. (DC Procurement Practices Act of 1985, D.C. Law 6-85, D.C. Official Code Section 2-310.01, and Chapter 18 of the DC Personnel Regulations).
- B. 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.4 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 shall be completed and incorporated with the bid. The forms can be found at [www.dcbiz.dc.gov](http://www.dcbiz.dc.gov) under "Procurement Opportunities". An award cannot be made to any Bidder who has not satisfied the equal employment requirements as set forth by the Department of Small and Local Business Development.

### **I.5 INSURANCE:**

- A. **GENERAL REQUIREMENTS.** Prior to commencement of any work under this Contract, and in addition to other insurance bonds or securities required by law or under the Contract terms, the Contractor shall procure and maintain during the life of the Contract, the following types of insurance:
  - 1. **Commercial General Liability Insurance.** The Contractor shall furnish evidence satisfactory to the CO with respect to the operations performed by it, its employees and subcontractor, it carries in its own behalf, Owners' and Contractors' Protective Liability Insurance with minimum \$1,000,000.00 per occurrence limit for bodily injury and property damage. If this Contract is for building construction, the Commercial General Liability policy must be endorsed to include coverage for Explosion, Collapse and

- Underground (XCU). The policy must name the District as an additional insured, contain a waiver of subrogation, and state that coverage is primary and non-contributory.
2. Umbrella/Excess Liability. Contracts valued at over \$100,000.00 or determined to be high risk must carry Umbrella/ Excess Liability Insurance with \$2,000,000.00 limits per occurrence. The policy must name the District as an additional insured, contain a waiver of subrogation, and state that coverage is primary and non-contributory. If properties adjacent to the building site present unusual or hazardous conditions, higher Umbrella/ Excess Liability limits may be required.
  3. Workers' Compensation. The Contractor shall carry according to the statutes of the District of Columbia workers' compensation insurance covering all of its employees employed upon the premises and in connection with its other operations pertaining to this Contract, including Employer's Liability, \$100,000.00 per accident for injury, \$100,000 per employee for disease, \$500,000.00 policy limit disease. The policy must contain a waiver of subrogation endorsement. The Contractor agrees to comply, at all times, with the provisions of the workers' compensation laws of the District.
  4. Automobile Liability Insurance. The Contractor shall furnish automobile liability insurance to cover all owned, hired or non-owned motor vehicles used in conjunction with the project. The policy shall cover the operations performed in the District with a \$1,000,000.00 per occurrence combined single limit for bodily injury and property damage. The policy coverage shall be Primary and Non-Contributory.
  5. Builder's Risk Insurance. Contractor shall provide a Builder's Risk policy or Installation Floater with limits equal to the projected market value of the completed project to cover property damage to existing facilities at the site. This policy is not required for contracts involving demolition only.
- B. **CERTIFICATE OF INSURANCE**. The Contractor must submit verification of insurance on a standard Certificate of Insurance Associate for Cooperative Operations Research and Development (ACORD) form and receive approval from the CO prior to commencement of any work. The Contractor shall obtain the insurance from responsible companies licensed by the District of Columbia's Department of Insurance, Securities and Banking, and shall deliver the certificate of insurance to the CO within fourteen (14) days of contract award. The policies of insurance shall provide for at least thirty (30) days written notice to the CO prior to their termination or material alteration.
- C. **DURATION**. The Contractor shall carry all insurance until all contract work is accepted by the District. Each insurance policy shall contain a binding endorsement that: The insurer hereby warrants and agrees that it shall not cancel this policy, except after thirty (30) days written notice, by certified mail, to the CO.
- D. **CONTRACTOR'S PROPERTY**. Contractors and subcontractor are solely responsible for any loss or damage to their personal property, including owned and leased equipment, whether such equipment is located at a project site or "in transit". This includes Contractor tools and equipment, scaffolding and temporary structures, and rented machinery, storage sheds or trailers placed on the project site.
- E. **MEASURE OF PAYMENT**. The District will 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 lump sum bid price.

## **I.6 PAYMENT AND PERFORMANCE BONDS:**

At contract award, the Contractor shall provide payment bonds in an amount not less than 50% of the amount payable by the terms of the contract and a performance bond in an amount not less than 100% of the amount payable by the terms of the contract.

## **I.7 DISCRIMINATION CLAUSES:**

### **I.7.1 Anti-Discrimination Clause:**

The Contractor:

**I.7.1.1** Shall not discriminate in any manner against any employee or applicant for employment in violation of Section 211 of the District of Columbia Human Rights Act (DC Law 2-38; DC Official Code Section 2-1402.11);

**I.7.1.2** Shall include a similar clause in every subcontract, except subcontracts for standard commercial supplies or raw materials;

**I.7.1.3** Shall, along with all subcontractors, post in a conspicuous place available to employees and applicants for employment, a notice setting forth the provisions of the anti-discrimination clause set out in Section 251 of the District of Columbia Human Rights Act (DC Official Code Section 2-1402.51).

### **I.7.2 Non-Discrimination Clause:**

**I.7.2.1** 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 (D. 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.

**I.7.2.2** Pursuant to rules of the Office of Human Rights, published on August 15, 1986 in the D. C. Register and Mayor’s Order 2002-175 (10/23/02), 49 DCR 9883, the following clauses apply to this contract:

**I.7.2.2.1** The Contractor shall not discriminate against any employee or applicant for employment because of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, disability, matriculation, political affiliation, 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.

**I.7.2.2.2** The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without

regard to their actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, or place of residence or business.

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

- (a) employment, upgrading or transfer;
- (b) recruitment, or recruitment advertising;
- (c) demotion, layoff, or termination;
- (d) rates of pay, or other forms of compensation; and
- (e) selection for training and apprenticeship.

- I.7.2.2.3** The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Agency, setting forth the provisions in subsections I.7.2.2.1 and I.7.2.2.2 concerning non-discrimination and affirmative action.
- I.7.2.2.4** The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in subsection I.7.2.2.2.
- I.7.2.2.5** The Contractor agrees to send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the contracting agency, advising the said labor union 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.
- I.7.2.2.6** The Contractor agrees to permit access to his books, records and accounts pertaining to its employment practices, by the Chief Procurement 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.
- I.7.2.2.7** The Contractor agrees to comply with the provisions of this chapter and with all guidelines for equal employment opportunity applicable in the District of Columbia adopted by the Director of the Office of Human Rights, or any authorized official.
- I.7.2.2.8** The Contractor shall include in every subcontract the equal opportunity clauses, subsections I.7.2.2.1 through I.7.2.2.9 of this section, so that such provisions shall be binding upon each subcontractor or vendor.
- I.7.2.2.9** The Contractor shall take such action with respect to any subcontract as the CO 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.8 CONTRACTS IN EXCESS OF \$1 MILLION:**

Any contract in excess of \$1,000,000.00 shall not be binding or give rise to any claim or demand against the District until approved by the Council of the District of Columbia, and signed by the CO.

**I.9 DISPUTES:** (Delete Article 7, Disputes, of the Standard Contract Provisions for use with Specifications for District of Columbia Government Construction Projects, Revised January 2007 and substitute the following Article 7, Disputes):

- A. All disputes arising under or relating to this contract shall be resolved as provided herein.
- B. Claims by a Contractor against the District.

Claim, as used in Section B of this clause, 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 CO 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 CO.
- (b) The CO may meet with the Contractor in a further attempt to resolve the claim by agreement.
- (c) For any claim of \$50,000.00 or less, the CO shall issue a decision within sixty (60) calendar days from receipt of a written request from a Contractor that a decision is rendered within that period.
- (d) For any claim over \$50,000.00, the CO shall issue a decision within ninety (90) calendar days of receipt of the claim. Whenever possible, the CO 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 CO'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 CO's final decision; and
  - (7) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.
- (f) Any failure by the CO 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 Contract Appeals Board as authorized by D.C. Official Code § 2-309.04.
- (g) (1) If a Contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim.
- (2) Liability under paragraph (9)(1) shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.
- (h) The decision of the CO shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor as authorized by D. C. Official Code § 2-309.04.
- (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 CO.

C. Claims by the District against a Contractor

- (a) Claim as used in Section C of this clause, means a written demand or written assertion by the District seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.
- (b) (1) The CO shall decide all claims by the District against a Contractor arising under or relating to a contract.
- (2) The CO shall send written notice of the claim to the Contractor. The CO'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 CO's final decision; and
  - (g) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.
- (3) The decision shall be supported by reasons and shall inform the Contractor of his or her rights as provided herein.
  - (4) The authority contained in this clause shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle, or determine.
  - (5) This clause shall not authorize the CO to settle, compromise, pay, or otherwise adjust any claim involving fraud.
- (c) The decision of the CO shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the District as authorized by D.C. Official Code §2-309.04.
  - (d) 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 CO.

**I.10 CONFIDENTIALITY OF INFORMATION:**

The Contractor shall keep all the information obtained relating to any employee or customer of the District in absolute confidence, and shall not use it in connection with any other matters, or disclose it to any other person, firm, or corporation, in accordance with the District and Federal laws governing the confidentiality of records.

**I.11 TIME:**

Time or performance period, if stated in number of days, shall mean calendar days which includes Saturdays, Sundays, and holidays, unless stated otherwise therein.

**I.12 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.13 INCORPORATION AND ORDER OF PRECEDENCE:**

The following documents are incorporated herein by reference and in case of any discrepancy the following Order Of Precedence shall apply: (1) Schedule For Demolition, Construction, Alteration, Repairs Prices (Section B), (2) Scope, Drawings (Section C), and Specifications (3) Special Contract Requirements (Section H), (4) Contract Clauses (Section I), (5) Standard Contract Provisions For Use With Specifications for District of Columbia Government Construction Projects, Revised January 2007(J.1.6), (6) Certifications and Representations (Section K), (7) Contractor's Proposal, First Source Employment Agreement, Sections D, E, F, G and L, Required Labor Contract Provisions, The Living Wage Act Notice and Fact Sheet.

**END OF SECTION I**

## ATTACHMENTS

### J.1 INCORPORATED LIST OF ATTACHMENTS

All attachments shall be retrieved at [www.dcbiz.dc.gov](http://www.dcbiz.dc.gov) under “Procurement Opportunities unless stated otherwise herein

**J.1.1** Wage Determination - [General Decision](#) (see [www.wdol.gov](http://www.wdol.gov) for current Wage Determination)

**J.1.2** Standard Contract Provisions For Use With Specifications for District of Columbia Government Construction Projects, Revised January 2007

**J.1.3** The Living Wage Act Notice and Fact Sheet

**J.1.4** Required Labor Contract Provisions –Payment of Predetermined Minimum Wages

### J.2 ADDITIONAL INCORPORATED ATTACHMENTS

*(The contractor shall complete and submit the following forms for processing \* and items listed below shall be incorporated into this contract.)*

**J.2.1** E.E.O. Information and Mayor’s Order 85-85\*

**J.2.2** Tax Certification Affidavit\*

**J.2.3** First Source Employment Agreement\*

**J.2.4** Subcontracting Plan\*

**J.2.5** Certification regarding Debarment\*

**J.2.6** Payment to Subcontractor and Suppliers Certificate\*

**J.2.7** Contractor’s Proposal

**END OF SECTION J**

**SECTION K: REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS  
OF BIDDERS**

**K.1 TYPE OF BUSINESS ORGANIZATION**

K.1.1 The bidder, by checking the applicable line, represents that

(a) It operates as:

- a corporation incorporated under the laws of the state of \_\_\_\_\_
- an individual,
- a partnership,
- a nonprofit organization, or
- a joint venture.

(b) If the bidder is a foreign entity, it operates as:

- an individual,
- a joint venture, or
- a corporation registered for business in \_\_\_\_\_  
(Country)

**K.2 CERTIFICATION AS TO COMPLIANCE WITH EQUAL OPPORTUNITY  
OBLIGATIONS**

Mayor’s Order 85-85, “Compliance with Equal Opportunity Obligations in Contracts”, dated June 10, 1985 and the Office of Human Rights’ regulations, Chapter 11, “Equal Employment Opportunity Requirements in Contracts”, promulgated August 15, 1986 (4 DCMR Chapter 11, 33 DCR 4952) are included as a part of this solicitation and require the following certification for contracts subject to the order. Failure to complete the certification may result in rejection of the bidder for a contract subject to the order. I hereby certify that I am fully aware of the content of the Mayor’s Order 85-85 and the Office of Human Rights’ regulations, Chapter 11, and agree to comply with them in performance of this contract.

Bidder \_\_\_\_\_ Date \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_

Bidder \_\_\_\_ has \_\_\_\_ has not participated in a previous contract or subcontract subject to the Mayor’s Order 85-85. Bidder \_\_\_\_ has \_\_\_\_ has not filed all required compliance reports, and representations indicating submission of required reports signed by proposed sub-bidders. (The above representations need not be submitted in connection with contracts or subcontracts which are exempt from the Mayor’s Order.)

**K.3 BUY AMERICAN CERTIFICATION**

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

\_\_\_\_\_ EXCLUDED END PRODUCTS

\_\_\_\_\_ COUNTRY OF ORIGIN

**K.4 DISTRICT EMPLOYEES NOT TO BENEFIT CERTIFICATION**

Each bidder shall check one of the following:

\_\_\_\_\_ No person listed in clause 13 of the SCP (Attachment J.1), “District Employees Not To Benefit” will benefit from this contract.

\_\_\_\_\_ The following person(s) listed in clause 13 of the SCP (Attachment J.1) may benefit from this contract. For each person listed, attach the affidavit required by clause 13

\_\_\_\_\_  
\_\_\_\_\_

**K.5 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION**

(a) Each signature of the bidder is considered to be a certification by the signatory that:

- 1) The prices in this contract have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any bidder or competitor relating to:
  - (i) those prices
  - (ii) the intention to submit a contract, or
  - (iii) the methods or factors used to calculate the prices in the contract.
- 2) The prices in this contract have not been and will not be knowingly disclosed by the bidder, directly or indirectly, to any other bidder or competitor before contract opening unless otherwise required by law; and
- 3) No attempt has been made or will be made by the bidder to induce any other concern to submit or not to submit a contract for the purpose of restricting competition.

(b) Each signature on the bid is considered to be a certification by the signatory that the signatory:

- 1) Is the person in the bidder’s organization responsible for determining the prices being offered in this contract, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

- 2) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above:

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

As an authorized agent, does certify that the principals named in subdivision (b)(2) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

As an agent, has not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.

- (c) If the bidder deletes or modifies subparagraph (a)(2) above, the bidder must furnish with its bid a signed statement setting forth in detail the circumstances of the disclosure.

**K.6 TAX CERTIFICATION**

Each bidder must submit with its bid, a sworn Tax Certification Affidavit, incorporated herein as Attachment J.2.2.

**K.7 CERTIFICATION OF ELIGIBILITY**

The bidder's signature shall be considered a certification by the signatory that the bidder, or any person associated therewith in the capacity of owner, partner, director, officer, principal, or any position involving the administration of funds:

- A. is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility under any federal, District or state statutes;
- A. has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal, District or state agency within the past three (3) years;
- B. does not have a proposed debarment pending; and
- C. has not been indicted, convicted, or had a civil judgment rendered against it or them by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

Indicate below any exception to your certification of eligibility and to whom it applies, their position in the bidder's organization, the initiating agency, and dates of action. Exceptions will not necessarily result in denial of award, but will be considered in determining responsibility of the bidder. Providing false information may result in criminal prosecution or administrative sanctions.

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**END OF SECTION K**