

SOLICITATION, OFFER, AND AWARD		1. Caption Industrial Revenue Bond Counsel Legal Services		Page of Pages 1 57	
2. Contract Number	3. Solicitation Number DCEB-2018-R-0001	4. Type of Solicitation <input type="checkbox"/> Sealed Bid (IFB) <input checked="" type="checkbox"/> Sealed Proposals (RFP) <input type="checkbox"/> Sole Source <input type="checkbox"/> Human Care Agreements <input type="checkbox"/> Emergency	5. Date Issued March 2, 2018	6. Type of Market <input checked="" type="checkbox"/> Open <input type="checkbox"/> Set Aside <input type="checkbox"/> Open with Sub-Contracting Set Aside	
7. Issued By: D.C. Office of the Deputy Mayor for Planning and Economic Development Contracts, Procurement and Grants 1015 Half Street, S.E., Suite 675 Washington, DC 20003		8. Address Offer to: D.C. Office of the Deputy Mayor for Planning and Economic Development Contracts, Procurement and Grants 1015 Half Street, S.E., Suite 675 Washington, DC 20003			

NOTE: In sealed bid solicitations "offer" and "offeror" means "bid" and "bidder"

SOLICITATION

9. Sealed offers in original and 3 copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if hand carried to the bid counter located at 1015 Half Street, S.E., Suite 675 until 2:00PM local time April 2, 2018
(Hour) (Date)

CAUTION: Late Submissions, Modifications and Withdrawals: See 27 DCMR chapters 15 & 16 as applicable. All offers are subject to all terms & conditions contained in this solicitation.

10. For Information Contact	A. Name Lindel Reid, Senior Contract Specialist	B. Telephone (Area Code) 202 (Number) 724-7330 (Ext)		C. E-mail Address lindel.reid@dc.gov
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12. In compliance with the above, the undersigned agrees, if this offer is accepted within 120 calendar days from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified herein.

13. Discount for Prompt Payment 10 Calendar days % 20 Calendar days % 30 Calendar days % Calendar days %

14. Acknowledgement of Amendments (The offeror acknowledges receipt of amendments to the SOLICITATION):	Amendment Number	Date	Amendment Number	Date

15A. Name and Address of Offeror	15B. Telephone (Area Code) (Number) (Ext)			15 C. Check if remittance address is different from above - Refer to Section G <input type="checkbox"/>	17. Signature	18. Offer Date
	16. Name and Title of Person Authorized to Sign Offer/Contract					

AWARD (TO BE COMPLETED BY GOVERNMENT)

19. Accepted as to Items Numbered	20. Amount	21. Accounting and Appropriation

22. Name of Contracting Officer (Type or Print) Jacque McDonald, CPPO, CPPB, SPSM, MBA, MST	23. Signature of Contracting Officer (District of Columbia)	24. Award Date
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Government of the District of Columbia



Office of the Deputy Mayor for Planning and Economic Development

SECTION B: CONTRACT TYPE, SUPPLIES OR SERVICES AND PRICE/COST

B.1 The District of Columbia Government (the “District”), Office of the Deputy Mayor for Planning and Economic Development (“DMPED”) is seeking proposals from qualified law firms to serve as bond counsel on behalf of the District, in its capacity as the bond issuer for issuance and sale of 501(c)(3) enterprise zone facility, qualified zone academy and industrial development bonds and notes authorized under the District of Columbia Home Rule Act, as amended, on an as needed basis in support of the District of Columbia’s Industrial Revenue Bond Program (“IRB”), and for other District programs to be determined as projects are identified.

B.2 The District contemplates award of multiple Indefinite Delivery Indefinite Quantity (IDIQ) contracts with payment based on fixed hourly labor rates in accordance with 27 DCMR Chapter 24.

B.3 FEE SCHEDULES – INDEFINITE DELIVERY-INDEFINITE QUANTITY

B.3.1 BASE YEAR (Date of Award through One Year Thereafter)

B.3.1.1 INDEFINITE DELIVERY-INDEFINITE QUANTITY

Contract Line Item No. (CLIN)	Item Description	Price Per Hour	Quantity Minimum	Minimum Total Price (Unit price x minimum quantity)	Quantity Maximum	Maximum Total Price (Unit Price x maximum quantity)
0001	Partner, C.5.3.1	\$_____ per hr.	1	\$_____	500	\$_____
0002	Associate Attorney, C.5.3.2	\$_____ per hr.	1	\$_____	500	\$_____
0003	Paralegal, C.5.3.3	\$_____ per hr.	1	\$_____	250	\$_____
0004	Tax Accountant, C.5.3.4	\$_____ per hr.	1	\$_____	250	\$_____
B.3.1 Total Estimated Labor Price						\$_____

* The fixed hourly rates shall be fully loaded and include wages, benefits, overhead, general and administrative expenses and profit.

B.3.2 OPTION YEAR ONE

B.3.2.1 INDEFINITE DELIVERY-INDEFINITE QUANTITY

Contract Line Item No. (CLIN)	Item Description	*Price Per Hour	Quantity Minimum	Minimum Total Price (Unit price x minimum quantity)	Quantity Maximum	Maximum Total Price (Unit Price x maximum quantity)
1001	Partner, C.5.3.1	\$_____ per hr.	1	\$_____	500	\$_____
1002	Associate Attorney, C.5.3.2	\$_____ per hr.	1	\$_____	500	\$_____
1003	Paralegal, C.5.3.3	\$_____ per hr.	1	\$_____	250	\$_____
1004	Tax Accountant, C.5.3.4	\$_____ per hr.	1	\$_____	250	\$_____
B.3.2 Total Estimated Labor Price						\$_____

* The fixed hourly rates shall be fully loaded and include wages, benefits, overhead, general and administrative expenses and profit.

B.3.3 OPTION YEAR TWO

B.3.3.1 INDEFINITE DELIVERY-INDEFINITE QUANTITY

Contract Line Item No. (CLIN)	Item Description	*Price Per Hour	Quantity Minimum	Minimum Total Price (Unit price x minimum quantity)	Quantity Maximum	Maximum Total Price (Unit Price x maximum quantity)
2001	Partner, C.5.3.1	\$_____ per hr.	1	\$_____	500	\$_____
2002	Associate Attorney, C.5.3.2	\$_____ per hr.	1	\$_____	500	\$_____
2003	Paralegal, C.5.3.3	\$_____ per hr.	1	\$_____	250	\$_____
2004	Tax Accountant, C.5.3.4	\$_____ per hr.	1	\$_____	250	\$_____
B.3.3 Total Estimated Labor Price						\$_____

* The fixed hourly rates shall be fully loaded and include wages, benefits, overhead, general and administrative expenses and profit.

B.3.4 OPTION YEAR THREE

B.3.4.1 INDEFINITE DELIVERY-INDEFINITE QUANTITY

Contract Line Item No. (CLIN)	Item Description	*Price Per Hour	Quantity Minimum	Minimum Total Price (Unit price x minimum quantity)	Quantity Maximum	Maximum Total Price (Unit Price x maximum quantity)
3001	Partner, C.5.3.1	\$_____ per hr.	1	\$_____	500	\$_____
3002	Associate Attorney, C.5.3.2	\$_____ per hr.	1	\$_____	500	\$_____
3003	Paralegal, C.5.3.3	\$_____ per hr.	1	\$_____	250	\$_____
3004	Tax Accountant, C.5.3.4	\$_____ per hr.	1	\$_____	250	\$_____
B.3.4 Total Estimated Labor Price						\$_____

* The fixed hourly rates shall be fully loaded and include wages, benefits, overhead, general and administrative expenses and profit.

B.3.5 OPTION YEAR FOUR

B.3.5.1 INDEFINITE DELIVERY-INDEFINITE QUANTITY

Contract Line Item No. (CLIN)	Item Description	*Price Per Hour	Quantity Minimum	Minimum Total Price (Unit price x minimum quantity)	Quantity Maximum	Maximum Total Price (Unit Price x maximum quantity)
4001	Partner, C.5.3.1	\$_____ per hr.	1	\$_____	500	\$_____
4002	Associate Attorney, C.5.3.2	\$_____ per hr.	1	\$_____	500	\$_____
4003	Paralegal, C.5.3.3	\$_____ per hr.	1	\$_____	250	\$_____
4004	Tax Accountant, C.5.3.4	\$_____ per hr.	1	\$_____	250	\$_____
B.3.5 Total Estimated Labor Price						\$_____

* The fixed hourly rates shall be fully loaded and include wages, benefits, overhead, general and administrative expenses and profit.

B.4 INDEFINITE DELIVERY- INDEFINITE QUANTITY (IDIQ) CONTRACT

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

- a) Performance shall be made only as authorized by task orders issued in accordance with the Ordering Clause, G.10. The Contractor shall furnish to the District, when and if ordered, the services specified in the Schedule up to and including the maximum quantity of 500 labor hours for CLINs 0001, 0002, 1001, 1002, 2001, 2002, 3001, 3002, 4001 and 4002 and 250 labor hours each for CLINs 0003, 0004, 1003, 1004, 2003, 2004, 3003, 3004. The District will order at least the minimum quantity of 1 labor hour for each CLIN listed above.
- b) There is no limit on the number of task orders that may be issued. The District may issue task orders requiring performance at multiple locations.
- c) Any task order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the task order. The contract shall govern the Contractor's and District's rights and obligations with respect to that task order to the same extent as if the task order were completed during the contract's effective period; provided that the contractor shall not be required to make any deliveries under this contract after five years from the date of award.

- B.5** An offeror responding to this solicitation which is required to subcontract shall be required to submit with its proposal, any subcontracting plan required by law. Proposals responding to this RFP may be rejected if the offeror fails to submit a subcontracting plan that is 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.9.

A Subcontracting Plan form is available at <http://ocp.dc.gov>, click on "Required Solicitation Documents".

SECTION C: SPECIFICATIONS/WORK STATEMENT

C.1 SCOPE

The District Office of the Deputy Mayor for Planning and Economic Development (DMPED), Industrial Revenue Bond program (IRB) is seeking proposals from qualified law firms to serve as bond counsel on behalf of the District in its capacity as the bond issuer on an as needed basis for the issuance and sale of 501(c)(3) enterprise zone facility, qualified zone academy and industrial development bonds and notes authorized under the District of Columbia Home Rule Act, as amended. The selected firm shall work closely with the IRB project manager, and the Office of the Attorney General for the District of Columbia (OAG), and shall be responsible for: preparing for and overseeing bond offerings; ensuring that the District meets all legal requirements and authorization of the bond offering; disclosing and analyzing all relevant legal proceedings that have bearing on the validity of the bond offering; interpreting relevant regulations and laws; assisting in structuring the bond issue; and preparing all key financing documents.

C.2 APPLICABLE DOCUMENTS

The following documents are applicable to this procurement and are hereby incorporated by this reference:

Item No.	Document Type	Title	Location
01	DC Home Rule Act	Section 490 – Revenue Bonds and Other Obligations	http://dcclims1.dccouncil.us/homeruleact
02	SEC Policy	All SEC Rules/Laws	www.sec.gov/rules/final.shtml
03	Federal Law Code	Tax Exempt Bonds	http://www.irs.gov/Tax-Exempt-Bonds

C.3 DEFINITIONS

C.3.1 Industrial Revenue Bond – A below market interest rate loan to help lower the cost of funds available for capital projects in the areas of health care, housing, transit and utility facilities, recreational facilities, health facilities, manufacturing, sports, convention and entertainment facilities, elementary, secondary, college, and university facilities, student loan programs, pollution control facilities, and industrial and commercial development.

C.3.2 Retainer Fee – An upfront cost incurred by the borrower to pay for bond counsel services provide for certain DC Revenue Bond transactions.

C.3.3 Bond Recipient – The borrowing entity for a DC Revenue Bond transaction that is responsible for all the debt service and cost related to the transaction.

C.3.4 Capital Project – Long-term investment used to build, add or improve on a project. It is any task that requires the use of significant capital, both financial and labor, to start and finish.

C.3.5 Note – A debt security that promises to pay interest during the term that the issuer has use of the money, and to repay the principal on or before the maturity date.

C.3.6 TEFRA Notice – (Tax Equity Fiscal Responsibility Act) Announcement of a public hearing, advertised in a periodical (generally a newspaper of high circulation) that provides the details and logistics of the proposed DC Revenue Bond transaction, (the notice is advertised no later than 14 days prior to the hearing)

C.4 BACKGROUND

DMPED assists the Mayor in the coordination, planning, supervision and execution of economic development efforts in the District with the goal of creating and preserving affordable housing, creating jobs and increasing tax revenue. DMPED administers IRB. The IRB provides access to tax-exempt financing to help businesses and non-profit organizations renovate and build new construction, make tenant improvements, and purchase capital.

The IRB provides below market interest rate loans to help lower the cost of funds available for capital projects. Program funds are generated through the issuance and sale of tax-exempt and taxable municipal revenue bonds, notes or other obligations. Proceeds from the sale of these securities are loaned to borrowers and may be used to finance, refinance and reimburse costs of acquiring, constructing, restoring, rehabilitating, expanding, improving, equipping and furnishing real property, and related and subordinate facilities.

Non-profit organizations and manufacturing businesses located within the District are generally eligible for the IRB program. Other businesses may be eligible as well depending on the type of good or service produced and the location of their site within the District. The IRB closes 8 to 12 tax exempt bond deals per year. The average time for a bond deal closing is 3 to 6 months from submission of a loan application, often depending on exactly when the borrower needs the deal closed. By utilizing IRB, these entities can significantly reduce their cost of capital. Since 1994, IRB has issued financing in excess of \$9.5 billion to non-profit organizations and businesses located within Washington, D.C. Visit the DMPED website at www.dmped.dc.gov for more information about the IRB program and projects.

C.5 REQUIREMENTS

C.5.1 The selected firm, shall work closely with the IRB project manager, and the Office of the Attorney General for the District of Columbia (OAG), and shall assume the responsibility for preparing written preliminary legal determinations; assisting in drafting of legal documents; preparing TEFRA notices; reviewing the legality of the project and the closing; rendering a legal opinion regarding the status of the transaction for purposes of federal income taxation; and assisting in certain other legal matters in connection with the issuance, sale and delivery of bonds.

C.5.2 The selected firm shall provide bond counsel legal services on behalf of the District in its capacity as the bond issuer. Services shall include, but are not limited to the following:

C.5.2.1 Conduct preliminary legal sufficiency determination on conduit bond project;

C.5.2.2 Draft and provide all necessary legal documentation, which may include, but not be limited to the following:

- C.5.2.2.1** No Conflicts Letter;
- C.5.2.2.2** Legal Sufficiency Letter;
- C.5.2.2.3** Resolution; and
- C.5.2.2.4** TEFRA Notice

C.5.2.3 Draft, review and provide financing and closing documents, which may include; but not be limited to the following:

- C.5.2.3.1** District Certificates;
- C.5.2.3.2** Borrower Certificates;
- C.5.2.3.3** Trustee Documents;
- C.5.2.3.4** Bond Documents;
- C.5.2.3.5** Purchase Documents;
- C.5.2.3.6** Swap Documents; and
- C.5.2.3.7** Opinions

C.5.2.4 Provide assistance with the issuance and sale of the bonds and notes;

C.5.2.5 Review and verify financing calculations;

C.5.2.6 Provide and assist in the preparation and development of preliminary and final official statements and provide customary securities opinions;

C.5.2.7 Render and provide objective legal opinions as to the legality, validity and status of the bonds for the purposes of federal income taxation; federal tax laws and other matters;

C.5.2.8 When applicable, arrange for the printing of bonds or notes;

C.5.2.9 Coordinate administrative tasks required to complete closings of bond deals, note deals, or other such transactions;

C.5.2.10 Attend and participate in all meetings and conference calls associated with the issuance of the bonds, as needed;

C.5.2.11 Cooperate with OAG in the discharge of all duties as bond counsel, consistent with the OAG's statutory responsibility for all law business in the District;

C.5.2.12 Comply with the DC Bar Laws and other applicable law regarding conduct, including conflicts of interest; and

C.5.2.13 Perform other related legal services and duties required of bond counsel.

C.5.3 LABOR CATEGORY DESCRIPTIONS

The following staff positions are required, relevant to the services proposed, and shall at a minimum, be provided by the selected firm. Offerors must submit resumes for qualified staff, for each position required. The descriptions for each position are as follows:

C.5.3.1 Partner

- a. A minimum of 5 years of municipal finance experience serving as bond counsel with respect to public finance transactions similar in size, type and structure to District IRB issuances;
- b. Experience working on municipal bond issuances valued from \$2 million to over \$100 million;
- c. Resume demonstrating primary responsibility for providing complete and successful legal representation relating to all aspects of state or local government industrial revenue bond offerings including, but not limited to, overseeing planning and development of proposed bond issuances; advising governmental entities on structuring and closing of industrial revenue bonds in accordance with applicable District, state and federal laws; examining and interpreting applicable District, state and federal laws and ensuring that the issuer meets all the legal requirements and authorization of the bond offering; reviewing use of proceeds to ensure compliance with applicable District and federal law and regulations; rendering unqualified legal opinions concerning the validity and tax status of bond issuances based on applicable law; drafting, preparing and reviewing legal documents utilized in industrial revenue bond issuances; drafting enabling legislation; presenting information to bond rating agencies relating to legal issues affecting the issuance of the bond; and participating in activities associated with rating agency and/or bond insurer reviews;
- d. Proven record of providing sound legal advice and guidance to state or local governmental entities on industrial revenue bond issuances;
- e. Proven ability to effectively supervise and coordinate a team of attorneys, paralegals, tax accountants and other consultants or independent contractors within tight project timelines; and
- f. Must be licensed to practice law in the District of Columbia.

The work shall involve the handling of all aspects of the IRB bond issuance process. In this capacity, Partner shall act as lead counsel on all IRB bond sales and coordinate and supervise the work of associate attorneys, paralegals, tax accountants, and other consultants or independent contractors involved in the bond issuance process.

C.5.3.2 Associate Attorney

- a. A minimum of 5 years of progressive experience serving as bond counsel with respect to public finance transactions for financings of similar size, types and structures;

- b. Resume demonstrating responsibility for successfully serving as bond counsel, including but not limited to, experience providing guidance to governmental entities on structuring and closing of bonds; conducting preliminary legal sufficiency determinations on conduit bond project; reviewing and analyzing the sufficiency of documentation as it relates to District law or federal tax law requirements; participating in due diligence reviews; reviewing ordinances and other regulations to ensure the legality of bond issuance; drafting and reviewing necessary legal documents, including financing and closing documents; preparing and developing preliminary and final official statements; and providing objective legal opinions as to the legality, validity and status of the bonds; and
- c. Must be licensed to practice law in the District of Columbia.

C.5.3.3 Paralegal

- a) Demonstrated knowledge of administrative responsibilities required for bond issuances; and
- b) Proven experience in effectively providing administrative support to attorneys related to bond offerings including, but not limited to, assisting attorney in research, drafting and revision of required legal documents; drafting TERFA and other legal notices; preparing applications and submissions for governmental consent and approvals of the transaction; and assembling documents.

C.5.3.4 Tax Accountant

- a) A minimum of 5 years of progressive experience in providing tax consulting services related to bond offerings; and
- b) Resume demonstrating expertise in providing analysis and evaluation of tax issues related to industrial revenue bond offerings sponsored by state or local governmental entities and current developments affecting the use of the proceeds. The Tax Accountant shall work in consultation with the assigned Partner and Associate attorney.

SECTION D: PACKAGING AND MARKING

D.1 Not applicable

SECTION E: INSPECTION AND ACCEPTANCE

- E.1** The inspection and acceptance requirements for this contract shall be governed by clause number six (6), Inspection of Services of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated July 2010. (Attachment J.1)

SECTION F: PERIOD OF PERFORMANCE AND DELIVERABLES

F.1 TERM OF CONTRACT

The term of the contract shall be for a period of one year from the date of award specified on the cover page of this contract.

F.2 OPTION TO EXTEND THE TERM OF THE CONTRACT

F.2.1 The District may extend the term of this contract for a period of four (4) one-year option periods, or successive fractions thereof, by written notice to the Contractor before the expiration of the contract; provided that the District will give the Contractor 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.2.2 If the District exercises this option, the extended contract shall be considered to include this option provision.

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

F.2.4 The total duration of this contract, including the exercise of any options under this clause, shall not exceed five (5) years.

F.3 DELIVERABLES

The Contractor shall perform the activities required to successfully complete the District's requirements and submit each deliverable to the Contract Administrator (CA) identified in section G.9 in accordance with the following:

Item	Deliverable	Quantity	Format/Method of Delivery	Due Date
01	No Conflicts Letter as stated in C.5.2.2.1	2	Print and Electronic	Within one (1) week after bond deal award
02	Legal Sufficiency Letter as stated in C.5.2.2.2	2	Print and Electronic	Within one (1) week after bond deal award
03	Resolution as stated in C.5.2.2.3	2	Print and Electronic	Within two (2) weeks after bond deal award
04	TEFRA Notice as stated in C.5.2.2.4	2	Print and Electronic	Within two (2) weeks after bond deal award
05	All Financing and Closing Documents as stated in C.5.2.3	2	Print and Electronic, and the needed amount of Sig-Pages	Within two (2) weeks prior to bond deal pre-closing date
06	Preliminary Statement as stated in C.5.2.6	2	Print and Electronic	Prior to bond deal closing

07	Official Statement as stated in C.5.2.6	2	Print and Electronic	Prior to bond deal closing
08	Legal Opinion as stated in C.5.2.7	2	Print and Electronic	At closing of bond deal
09	Meetings and Conference Calls as stated in C.5.2.10	TBD	In person	As needed

F.3.1 The Contractor shall submit to the District, as a deliverable, the report described in section H.5.5 that is required by the 51% District Residents New Hires Requirements and First Source Employment Agreement. If the Contractor does not submit the report as part of the deliverables, final payment to the Contractor shall not be paid pursuant to section G.3.2.

SECTION G: CONTRACT ADMINISTRATION

G.1 INVOICE PAYMENT

G.1.1 The District will make payment of retainer fees to the Contractor, upon the submission of proper invoices, at the prices stipulated in this contract, for services performed and accepted, less any discounts, allowances or adjustments provided for in this contract.

G.1.2 The District will pay the Contractor on or before the 30th day after receiving a proper invoice from the Contractor.

G.2 INVOICE SUBMITTAL

G.2.1 The Contractor shall submit proper invoices on a monthly basis or as otherwise specified in Section G.4. Invoices shall be prepared and emailed to: edrcap.invoices1@dc.gov.

G.2.2 To constitute a proper invoice, the Contractor shall submit the following information on the invoice:

G.2.2.1 Contractor's name, federal tax ID and invoice date (date invoices as of the date of mailing or transmittal);

G.2.2.2 Contract number, Purchase order number and invoice number;

G.2.2.3 Description, price, quantity and the date(s) that the supplies or services were delivered or performed;

G.2.2.4 Other supporting documentation or information, as required by the Contracting Officer;

G.2.2.5 Name, title, telephone number and complete mailing address of the responsible official to whom payment is to be sent;

G.2.2.6 Name, title, phone number of person preparing the invoice;

G.2.2.7 Name, title, phone number and mailing address of person (if different from the person identified in G.2.2.6 above) to be notified in the event of a defective invoice; and

G.2.2.8 Authorized signature.

G.3 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT

G.3.1 For contracts subject to the 51% District Residents New Hires Requirements and First Source Employment Agreement requirements, final request for payment must be accompanied by the report or a waiver of compliance discussed in section H.5.5.

G.3.2 No final payment shall be made to the Contractor until the agency CFO has received the Contracting Officer's final determination or approval of waiver of the Contractor's compliance

with 51% District Residents New Hires Requirements and First Source Employment Agreement requirements.

G.4 PAYMENT

G.4.1 Lump Sum Payment

The District will pay the full retainer amount due the Contractor after:

- a) Issuance of fully executed task order; and
- b) Presentation of a properly executed invoice.

G.5 ASSIGNMENT OF CONTRACT PAYMENTS

G.5.1 In accordance with 27 DCMR 3250, the Contractor may assign to a bank, trust company, or other financing institution funds due or to become due as a result of the performance of this contract.

G.5.2 Any assignment shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party.

G.5.3 Notwithstanding an assignment of contract payments, 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.6 THE QUICK PAYMENT CLAUSE

G.6.1 Interest Penalties to Contractors

G.6.1.1 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 3rd day after the required payment date for meat or a meat product;
- b) the 5th day after the required payment date for an agricultural commodity; or
- c) the 15th day after the required payment date for any other item.

G.6.1.2 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.6.2 Payments to Subcontractors

- G.6.2.1** The Contractor must take one of the following actions within seven (7) days of receipt of any amount paid to the Contractor by the District for work performed by any subcontractor under this 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.6.2.2** The Contractor must pay any 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 3rd day after the required payment date for meat or a meat product;
 - b) the 5th day after the required payment date for an agricultural commodity; or
 - c) the 15th day after the required payment date for any other item.
- G.6.2.3** 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.6.2.4** 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.6.3 Subcontract requirements**
- G.6.3.1** The Contractor shall include in each subcontract under this contract a provision requiring the subcontractor to include in its contract with any lower-tier subcontractor or supplier the payment and interest clauses required under paragraphs (1) and (2) of D.C. Official Code §2-221.02(d).

G.7 CONTRACTING OFFICER (CO)

Contracts will be entered into and signed on behalf of the District only by contracting officers. The contact information for the Contracting Officer is:

Jacque McDonald, CPPO, CPPB, SPSM, MBA, MST
Director, Contracts, Procurement and Grants
Office of the Deputy Mayor for Planning and Economic Development
1015 Half Street SE, Suite 675

G.8 AUTHORIZED CHANGES BY THE CONTRACTING OFFICER

G.8.1 The CO is the only person authorized to approve changes in any of the requirements of this contract.

G.8.2 The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the CO.

G.8.3 In the event the Contractor effects any change at the instruction or request of any person other than the CO, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

G.9 CONTRACT ADMINSTRATOR (CA)

G.9.1 The CA is responsible for general administration of the contract and advising the CO as to the Contractor's compliance or noncompliance with the contract. The CA has the responsibility of ensuring the work conforms to the requirements of the contract and such other responsibilities and authorities as may be specified in the contract. These include:

G.9.1.1 Keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the contract;

G.9.1.2 Coordinating site entry for Contractor personnel, if applicable;

G.9.1.3 Reviewing invoices for completed work and recommending approval by the CO if the Contractor's costs are consistent with the negotiated amounts and progress is satisfactory and commensurate with the rate of expenditure;

G.9.1.4 Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions; and

G.9.1.5 Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.

G.9.2 The address and telephone number of the CA is:

William Liggins
Director of Revenue Bond Enterprise Program
Office of the Deputy Mayor for Planning and Economic Development
1015 Half Street, S.E., Suite 675
Washington, D.C. 20003
Telephone (202) 724-6199
Email: William.liggins@dc.gov

G.9.3 The CA shall NOT have the authority to:

1. Award, agree to, or sign any contract, delivery order or task order. Only the CO shall make contractual agreements, commitments or modifications;
2. Grant deviations from or waive any of the terms and conditions of the contract;
3. Increase the dollar limit of the contract or authorize work beyond the dollar limit of the contract,
4. Authorize the expenditure of funds by the Contractor;
5. Change the period of performance; or
6. Authorize the use of District property, except as specified under the contract.

G.9.4 The Contractor will be fully responsible for any changes not authorized in advance, in writing, by the CO; may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.

G.10 ORDERING CLAUSE

G.10.1 Any services to be furnished under this contract must be ordered by issuance of task orders by the CO. Such task orders may be issued during the term of this contract. Prior to issuance of a task order, the Bond Counsel shall make an initial review of the application/transaction to confirm that there are no conflicts of interest, and that the proposed transaction is legally sufficient. This initial review and any conflict waiver procedures will be billable hours against the retainer.

G.10.2 All task orders are subject to the terms and conditions of this contract. In the event of a conflict between a task order and this contract, the contract shall control.

G.10.3 If mailed, a task order is considered "issued" when the District deposits the task order in the mail. Task orders may be issued by facsimile or by electronic commerce methods.

G.10.4 The District will pay a retainer fee in an amount not to exceed \$10,000.00, unless otherwise specified by the DC Revenue Bond Program, for task orders associated with full bond applications. Any fees for services above the retainer will be the sole responsibility of the Borrower.

G.11 HOURLY RATE CEILING

G.11.1 The ceilings for specified hourly rate items are set forth in Sections B.3.1.1, B.3.2.1, B.3.3.1, B.3.4.1 and B.3.5.1.

G.11.2 The hourly rates in this contract shall be fully loaded and include wages, overhead, general and administrative expenses, and profit and the total cost to the District for these hourly rate items shall not exceed the ceilings specified in Sections B.3.1.1, B.3.2.1, B.3.3.1, B.3.4.1 and B.3.5.1.

G.11.3 The Contractor agrees to use its best efforts to perform the work specified in this contract for these hourly rate items and to meet all obligations under this contract within the hourly rate ceilings.

- G.11.4** The Contractor must notify the CO, in writing, whenever it has reason to believe that the total cost for the hourly rate items of this contract will be either greater or substantially less than the hourly rate ceilings.
- G.11.5** As part of the notification, the Contractor must provide the CO a revised estimate of the total cost of the hourly rate items of this contract.
- G.11.6** The District is not obligated to reimburse the Contractor for hourly rates incurred in excess of the hourly rate ceilings specified in Sections B.3.1.1, B.3.2.1, B.3.3.1, B.3.4.1 and B.3.5.1, and the Contractor is not obligated to continue providing hourly rate items under this contract (including actions under the Termination clauses of this contract), or otherwise incur costs in excess of the hourly rate ceilings specified in Sections B.3.1.1, B.3.2.1, B.3.3.1, B.3.4.1 and B.3.5.1, until the CO notifies the Contractor, in writing, that the estimated cost has been increased and provides revised hourly rate ceilings for the hourly rate items in this contract.
- G.11.7** No notice, communication, or representation in any form from any person other than the CO shall change the hourly rate ceilings. In the absence of the specified notice, the District is not obligated to reimburse the Contractor for any costs in excess of the hourly rate ceilings, whether such costs were incurred during the course of contract performance or as a result of termination.
- G.11.8** If any hourly rate ceiling specified in Sections B.3.1.1, B.3.2.1, B.3.3.1, B.3.4.1 or B.3.5.1 are increased, any costs the Contractor incurs before the increase that are in excess of the previous hourly rate ceilings shall be allowable to the same extent as if incurred afterward, unless the CO issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.
- G.11.9** A change order shall not be considered an authorization to exceed the applicable hourly rate ceilings specified in Sections B.3.1.1, B.3.2.1, B.3.3.1, B.3.4.1 and B.3.5.1, unless the change order specifically increases the hourly rate ceilings.

SECTION H: SPECIAL CONTRACT REQUIREMENTS

H.1 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES

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

H.1.1.1 At least fifty-one (51) percent of apprentices and trainees employed shall be residents of the District of Columbia registered in programs approved by the District of Columbia Apprenticeship Council.

H.1.2 The Contractor shall negotiate an Employment Agreement with the Department of Employment Services ("DOES") for jobs created as a result of this contract. The DOES shall be the Contractor's first source of referral for qualified apprentices and trainees in the implementation of employment goals contained in this clause.

H.2 DEPARTMENT OF LABOR WAGE DETERMINATIONS

The Contractor shall be bound by the Wage Determination No. 2015-4281, Revision No. 9, dated January 10, 2018, issued by the U.S. Department of Labor in accordance with the Service Contract Act, 41 U.S.C. §351 *et seq.*, and incorporated herein as Section J.2. The Contractor shall be bound by the wage rates for the term of the contract subject to revision as stated herein and in accordance with Section 24 of the SCP. If an option is exercised, the Contractor shall be bound by the applicable wage rates at the time of the option. If the option is exercised and the CO obtains a revised wage determination, the revised wage determination is applicable for the option periods and the Contractor may be entitled to an equitable adjustment.

H.3 PREGNANT WORKERS FAIRNESS

H.3.1 The Contractor shall comply with the Protecting Pregnant Workers Fairness Act of 2016, D.C. Official Code § 32-1231.01 *et seq.* (PPWF Act).

H.3.2 The Contractor shall not:

(a) Refuse to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding for an employee, unless the Contractor can demonstrate that the accommodation would impose an undue hardship;

(b) Take an adverse action against an employee who requests or uses a reasonable accommodation in regard to the employee's conditions or privileges of employment, including failing to reinstate the employee when the need for reasonable accommodations ceases to the employee's original job or to an equivalent position with equivalent:

(1) Pay;

(2) Accumulated seniority and retirement;

(3) Benefits; and

(4) Other applicable service credits;

(c) Deny employment opportunities to an employee, or a job applicant, if the denial is based on the need of the employer to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding;

(d) Require an employee affected by pregnancy, childbirth, related medical conditions, or breastfeeding to accept an accommodation that the employee chooses not to accept if the employee does not have a known limitation related to pregnancy, childbirth, related medical conditions, or breastfeeding or the accommodation is not necessary for the employee to perform her duties;

(e) Require an employee to take leave if a reasonable accommodation can be provided; or

(f) Take adverse action against an employee who has been absent from work as a result of a pregnancy-related condition, including a pre-birth complication.

H.3.3 The Contractor shall post and maintain in a conspicuous place a notice of rights in both English and Spanish and provide written notice of an employee's right to a needed reasonable accommodation related to pregnancy, childbirth, related medical conditions, or breastfeeding pursuant to this chapter to:

(a) New employees at the commencement of employment;

(b) Existing employees; and

(c) An employee who notifies the employer of her pregnancy, or other condition covered by this chapter, within 10 days of the notification.

H.3.4 The Contractor shall provide an accurate written translation of the notice of rights to any non-English or non-Spanish speaking employee.

H.3.5 Violations of the PPWF Act shall be subject to civil penalties as described in the Act.

H.4 UNEMPLOYED ANTI-DISCRIMINATION

H.4.1 The Contractor shall comply with the Unemployed Anti-Discrimination Act of 2012, D.C. Official Code § 32-1361 *et seq.*

H.4.2 The Contractor shall not:

(a) Fail or refuse to consider for employment, or fail or refuse to hire, an individual as an employee because of the individual's status as unemployed; or

(b) Publish, in print, on the Internet, or in any other medium, an advertisement or announcement for any vacancy in a job for employment that includes:

(1) Any provision stating or indicating that an individual's status as unemployed disqualifies the individual for the job; or

(2) Any provision stating or indicating that an employment agency will not consider or hire an individual for employment based on that individual's status as unemployed.

H.4.3 Violations of the Unemployed Anti-Discrimination Act shall be subject to civil penalties as described in the Act.

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

Delete Article 35, 51% District Residents New Hires Requirements and First Source Employment Agreement, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts and substitute the following Section **H.5 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT** in its place:

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

H.5.1 For contracts for services in the amount of \$300,000 or more, the Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code § 2-219.01 et seq. (First Source Act).

H.5.2 The Contractor shall enter into and maintain during the term of the contract, a First Source Employment Agreement (Employment Agreement) with the District of Columbia Department of Employment Service's (DOES), in which the Contractor shall agree that:

- (a) The first source for finding employees to fill all jobs created in order to perform the contract shall be the First Source Register; and
- (b) The first source for finding employees to fill any vacancy occurring in all jobs covered by the Employment Agreement shall be the First Source Register.

H.5.3 The Contractor shall not begin performance of the contract until its Employment Agreement has been accepted by DOES. Once approved, the Employment Agreement shall not be amended except with the approval of DOES.

H.5.4 The Contractor agrees that at least 51% of the new employees hired to perform the contract shall be District residents.

H.5.5 The Contractor's hiring and reporting requirements under the First Source Act and any rules promulgated thereunder shall continue for the term of the contract.

H.5.6 The CO may impose penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract, for a willful breach of the Employment Agreement, failure to submit the required hiring compliance reports, or deliberate submission of falsified data.

- H.5.7** If the Contractor does not receive a good faith waiver, the CO may also impose an additional penalty equal to 1/8 of 1% of the total amount of the direct and indirect labor costs of the contract for each percentage by which the Contractor fails to meet its hiring requirements.
- H.5.8** Any contractor which violates, more than once within a 10-year timeframe, the hiring or reporting requirements of the First Source Act shall be referred for debarment for not more than five (5) years.
- H.5.9** The contractor may appeal any decision of the CO pursuant to this clause to the D.C. Contract Appeals Board as provided in **clause 14, Disputes**.
- H.5.10** The provisions of the First Source Act do not apply to nonprofit organizations which employ 50 employees or less.
- H.6 RESERVED**
- H.7 RESERVED**
- H.8 RESERVED**
- H.9 SUBCONTRACTING REQUIREMENTS**
- H.9.1 Mandatory Subcontracting Requirements**
- H.9.1.1** Unless the Director of the Department of Small and Local Business Development (DSLBD) has approved a waiver in writing, for all contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted to qualified small business enterprises (SBEs).
- H.9.1.2** If there are insufficient SBEs to completely fulfill the requirement of paragraph H.9.1.1, then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any qualified certified business enterprises (CBEs); provided, however, that all reasonable efforts shall be made to ensure that SBEs are significant participants in the overall subcontracting work.
- H.9.1.3** A prime contractor that is certified by DSLBD as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of sections H.9.1.1 and H.9.1.2.
- H.9.1.4** Except as provided in H.9.1.5 and H.9.1.7, a prime contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A CBE prime contractor that performs less than 35% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- H.9.1.5** A prime contractor that is a certified joint venture and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A certified joint

venture prime contractor that performs less than 50% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

- H.9.1.6** Each CBE utilized to meet these subcontracting requirements shall perform at least 35% of its contracting effort with its own organization and resources.
- H.9.1.7** A prime contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the on-site work with its own organization and resources if the contract is \$1 million or less.

H.9.2 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.9.1 of this clause. The plan shall be submitted as part of the proposal and may only be amended after award with the prior written approval of the CO and Director of DSLBD. Any reduction in the dollar volume of the subcontracted portion resulting from an amendment of the plan after award shall inure to the benefit of the District.

Each subcontracting plan shall include the following:

- (1) The name and address of each subcontractor;
- (2) A current certification number of the small or certified business enterprise;
- (3) The scope of work to be performed by each subcontractor; and
- (4) The price that the prime contractor will pay each subcontractor.

H.9.3 Copies of Subcontracts

Within twenty-one (21) days of the date of award, the Contractor shall provide fully executed copies of all subcontracts identified in the subcontracting plan to the CO, CA, District of Columbia Auditor and the Director of DSLBD.

H.9.4 Subcontracting Plan Compliance Reporting

- H.9.4.1** If the Contractor has a subcontracting plan required by law for this contract, the Contractor shall submit a quarterly report to the CO, CA, District of Columbia Auditor and the Director of DSLBD. The quarterly report shall include the following information for each subcontract identified in the subcontracting plan:
- (A) The price that the prime contractor will pay each subcontractor under the subcontract;
 - (B) A description of the goods procured or the services subcontracted for;
 - (C) The amount paid by the prime contractor under the subcontract; and
 - (D) A copy of the fully executed subcontract, if it was not provided with an earlier quarterly report.
- H.9.4.2** If the fully executed subcontract is not provided with the quarterly report, the prime contractor will not receive credit toward its subcontracting requirements for that subcontract.

H.9.5 Annual Meetings

Upon at least 30-days written notice provided by DSLBD, the Contractor shall meet annually with the CO, CA, District of Columbia Auditor and the Director of DSLBD to provide an update on its subcontracting plan.

H.9.6 Notices

The Contractor shall provide written notice to the DSLBD and the District of Columbia Auditor upon commencement of the contract and when the contract is completed.

H.9.7 Enforcement and Penalties for Breach of Subcontracting Plan

- H.9.7.1** A contractor shall be deemed to have breached a subcontracting plan required by law, if the contractor (i) fails to submit subcontracting plan monitoring or compliance reports or other required subcontracting information in a reasonably timely manner; (ii) submits a monitoring or compliance report or other required subcontracting information containing a materially false statement; or (iii) fails to meet its subcontracting requirements.
- H.9.7.2** A contractor that is found to have breached its subcontracting plan for utilization of CBEs in the performance of a contract shall be subject to the imposition of penalties, including monetary fines in accordance with D.C. Official Code § 2-218.63.
- H.9.7.3** If the CO determines the Contractor's failure to be a material breach of the contract, the CO shall have cause to terminate the contract under the default provisions in **clause 8 of the SCP, Default.**

H.10 FAIR CRIMINAL RECORD SCREENING

- H.10.1** The Contractor shall comply with the provisions of the Fair Criminal Record Screening Amendment Act of 2014, effective December 17, 2014 (D.C. Law 20-152) (the "Act" as used in this section). This section applies to any employment, including employment on a temporary or contractual basis, where the physical location of the employment is in whole or substantial part within the District of Columbia.
- H.10.2** Prior to making a conditional offer of employment, the Contractor shall not require an applicant for employment, or a person who has requested consideration for employment by the Contractor, to reveal or disclose an arrest or criminal accusation that is not then pending or did not result in a criminal conviction.
- H.10.3** After making a conditional offer of employment, the Contractor may require an applicant to disclose or reveal a criminal conviction.
- H.10.4** The Contractor may only withdraw a conditional offer of employment, or take adverse action against an applicant, for a legitimate business reason as described in the Act.
- H.10.5** This section and the provisions of the Act shall not apply:

(a) Where a federal or District law or regulation requires the consideration of an applicant's criminal history for the purposes of employment;

(b) To a position designated by the employer as part of a federal or District government program or obligation that is designed to encourage the employment of those with criminal histories;

(c) To any facility or employer that provides programs, services, or direct care to, children, youth, or vulnerable adults; or

(d) To employers that employ less than 11 employees.

H.10.6 A person claiming to be aggrieved by a violation of the Act may file an administrative complaint with the District of Columbia Office of Human Rights, and the Commission on Human Rights may impose monetary penalties against the Contractor.

H.11 ETHICAL OBLIGATIONS AND LEGAL CONFLICTS OF INTEREST

H.11.1 An attorney-client relationship will exist between the District and any attorney who performs work under the contract, as well as between the District and the firm of any attorney who performs work under the contract. The D.C. Rules of Professional Conduct (RPC) and the ethical rules of any other jurisdiction in which work is performed are binding on the Contractor. The parties agree that the District may have a contractual cause of action based on violation of such rules, in addition to any other remedies available.

H.11.2 In addition to the prohibitions contained in the RPC and the ethical rules of any other jurisdiction in which work is performed, the Contractor agrees that it shall recognize that in the performance of the contract it may receive certain information submitted to the District government on a proprietary basis by third parties, information which relates to potential or actual claims against the District government, or information which relates to matters in dispute or litigation. Unless the District consents to a particular disclosure, the Contractor shall use such information exclusively in the performance of the contract and shall forever hold inviolate and protect from disclosure all such information, except disclosures required by applicable law or court order. The Contractor also agrees that, to the extent it is permitted to disclose such information, it will make such disclosures only to those individuals who need to know such information in order to perform required tasks in their official capacity and will restrict access to such information to such individuals.

H.11.3 Before any Contractor can be retained to perform legal services under the contract, on behalf of the District government, the Attorney General for the District of Columbia must review and waive all actual or potential direct and indirect conflicts of interest pursuant to RPC 1.6, 1.7, 1.8, 1.9 and 1.10. After notice of its selection, each prospective Contractor shall provide the Attorney General with the following: (1) a written statement that there exists no Rule 1.7(a) direct conflict of interest regarding the work to be performed under the contract; (2) a written description of all actual or potential conflicts of interest regarding the work to be performed under the contract that require waiver pursuant to Rule 1.7(b) because the Contractor represents another client in a matter adverse to any of the following: (i) the District government agency or instrumentality to be represented under the contract; (ii) the District government as a whole; or (iii) any other agency or instrumentality of the District government (for this purpose, under D.C.

Bar Legal Ethics Committee Opinion No. 268, a representation of a private client against a discrete government agency or instrumentality can have government-wide implications and thus constitute a representation adverse to the government as a whole pursuant to the RPC); and (3) a written description of all representations of clients who are or will be adverse to the District government with regard to the work to be performed under the contract, whether or not such representations are related to the matter for which the work is to be performed under the contract.

H.11.4 The Attorney General generally does not grant prospective conflict of interest waivers, except in certain *pro bono* matters. Thus, in addition to the prohibitions contained in the RPC and the ethical rules of any other jurisdiction in which work is performed under the contract, without the consent of the Attorney General, the Contractor shall not represent any party other than the District in any disputes, negotiations, proceedings or litigation adverse to any agency or instrumentality of the District government or the District government as a whole, including, but not limited to, matters related to the work to be performed under the contract. The Contractor shall notify the Attorney General immediately, in writing, of any potential conflicts of interest (as defined in the RPC) that arise during the period that the Contractor is performing work under the contract. The Attorney General makes every attempt to be reasonable in deciding whether or not to consent to a conflict of interest and usually makes this decision promptly after receiving notice and sufficient information regarding the conflict. If the Attorney General does not waive a conflict of interest, the Contractor shall undertake immediate action to eliminate the source of any such conflict of interest.

H.11.5 Before any Contractor can be retained pursuant to the contract, the Attorney General for the District of Columbia must review all actual, direct and potential conflicts of interest on behalf of the District government in light of D.C. Bar Rules of Professional Conduct (“RPC”) 1.6, 1.7, 1.8, 1.9 and 1.10. Each prospective Contractor shall provide the Attorney General with written notice of all actual or potential direct and indirect conflicts of interest in which the Contractor represents (or may represent) another client with interests adverse to the District government agency to be represented as well as against the District government as a whole. For this purpose, under D.C. Bar Legal Ethics Committee Opinion No. 268, attached as Attachment J.12 hereto, a representation of a private client against a discrete government agency can have government-wide implications and thus qualify under the RPC as being against the government as a whole, including the individual agency that the private firm represents. In that situation, the private firm would be required to notify the Attorney General of the existence of a conflict under RPC 1.7 and obtain consent to such representation and waiver of the conflict. The Attorney General makes every attempt to be reasonable in deciding whether or not to consent to a conflict and usually makes this decision promptly after receiving notice of the conflict.

H.12 DISTRICT RESPONSIBILITIES

H.12.1 For new bond issuance transactions, the District will assist and facilitate payment of a retainer fee to Bond Counsel.

H.12.2 For other bond related transactions and or projects needing bond counsel assistance, the District reserves the right to assist, facilitate and or pay Bond Counsel a retainer fee in an amount that will be agreed upon by the District and Bond Counsel.

H.13 AUDITS AND RECORDS

H.13.1 As used in this clause, “records” includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

H.13.2 Examination of Costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the CO, or an authorized representative of the CO, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor’s plants, or parts of them, engaged in performing the contract.

H.13.3 Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the CO, or an authorized representative of the CO, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor’s records, including computations and projections, related to:

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

H.13.4 Comptroller General

H.13.4.1 The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor’s directly pertinent records involving transactions related to this contract or a subcontract hereunder.

H.13.4.2 This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

H.13.5 Reports. If the Contractor is required to furnish cost, funding, or performance reports, the CO or an authorized representative of the CO shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating:

- a) The effectiveness of the Contractor’s policies and procedures to produce data compatible with the objectives of these reports; and
- b) the data reported.

H.13.6 Availability. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in clauses H.13.1 through H.13.5, for examination, audit, or reproduction, until three (3) years after final payment under this

contract or for any shorter period specified in the solicitation, or for any longer period required by statute or by other clauses of this contract. In addition:

- a) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until three (3) years after any resulting final termination settlement; and
- b) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

H.13.7 The Contractor shall insert a clause containing all the terms of this clause, including this section H.13.7, in all subcontracts under this contract that exceed the small purchase threshold of \$100,000, and:

- a) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
- b) For which cost or pricing data are required; or
- c) That requires the subcontractor to furnish reports as discussed in H.13.5 of this clause.

H.14 ADVISORY AND ASSISTANCE SERVICES

This contract is a “nonpersonal services contract”. The Contractor and the Contractor’s employees: (1) shall perform the services specified herein as independent contractors, not as employees of the government; (2) shall be responsible for their own management and administration of the work required and bear sole responsibility for complying with any and all technical, schedule, financial requirements or constraints attendant to the performance of this contract; (3) shall be free from supervision or control by any government employee with respect to the manner or method of performance of the service specified; but (4) shall, pursuant to the government’s right and obligation to inspect, accept or reject work, comply with such general direction of the CO, or the duly authorized representative of the CO as is necessary to ensure accomplishment of the contract objectives.

SECTION I: CONTRACT CLAUSES

I.1 APPLICABILITY OF STANDARD CONTRACT PROVISIONS

The Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts dated July 2010 (“SCP”) are incorporated as part of the contract. To obtain a copy of the SCP go to www.ocp.dc.gov, click on OCP Policies under the heading “Information”, then click on “Standard Contract Provisions – Supplies and Services Contracts”.

I.2 CONTRACTS THAT CROSS FISCAL YEARS

Continuation of this contract beyond the current fiscal year is contingent upon future fiscal appropriations.

I.3 CONFIDENTIALITY OF INFORMATION

The Contractor shall keep all information relating to any employee or customer of the District in absolute confidence and shall not use the information in connection with any other matters; nor shall it disclose any such information to any other person, firm or corporation, in accordance with the District and federal laws governing the confidentiality of records.

I.4 TIME

Time, if stated in a number of days, will include Saturdays, Sundays, and holidays, unless otherwise stated herein.

I.5 RIGHTS IN DATA

Delete Article 42, Rights in Data, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts and substitute the following Article 42, Rights in Data) in its place:

A. Definitions

1. “Products” - A deliverable under any contract that may include commodities, services and/or technology furnished by or through Contractor, including existing and custom Products, such as, but not limited to: a) recorded information, regardless of form or the media on which it may be recorded; b) document research; c) experimental, developmental, or engineering work; d) licensed software; e) components of the hardware environment; f) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings); g) third party software; h) modifications, customizations, custom programs, program listings, programming tools, data, modules, components; and i) any intellectual property embodied therein, whether in tangible or intangible form, including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, and object code.

2. “Existing Products” - Tangible Products and intangible licensed Products that exist prior to the commencement of work under the contract. Existing Products must be identified on the Product prior to commencement of work or else will be presumed to be Custom Products.

3. “Custom Products” - Products, preliminary, final or otherwise, which are created or developed by Contractor, its subcontractors, partners, employees, resellers or agents for the District under the contract.
4. “District” – The District of Columbia and its agencies.

B. Title to Project Deliverables

The Contractor acknowledges that it is commissioned by the District to perform services detailed in the contract. The District shall have ownership and rights for the duration set forth in the contract to use, copy, modify, distribute, or adapt Products as follows:

1. Existing Products: Title to all Existing Licensed Product(s), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall: (1) remain with Contractor or third party proprietary owner, who retains all rights, title and interest (including patent, trademark or copyrights). Effective upon payment, the District is granted an irrevocable, non-exclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, adapt (unless Contractor advises the District as part of Contractor’s proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the District’s satisfaction) and distribute Existing Product to District users up to the license capacity stated in the contract with all license rights necessary to fully effect the general business purpose(s) of the project or work plan or contract; and (2) be licensed in the name of the District. The District agrees to reproduce the copyright notice and any other legend of ownership on any copies authorized under this paragraph.
2. Custom Products: Effective upon Product creation, Contractor hereby conveys, assigns, and transfers to the District the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all patent, trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor.

C. Transfers or Assignments of Existing or Custom Products by the District

The District may transfer or assign Existing or Custom Products and the licenses thereunder to another District agency. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a project or work plan in the course of Contractor’s business.

D. Subcontractor Rights

Whenever any data, including computer software, are to be obtained from a subcontractor under the contract, the Contractor shall use this clause, **Rights in Data**, in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the District’s or the Contractor’s rights in that subcontractor data or computer software which is required for the District.

E. Source Code Escrow

1. For all computer software furnished to the District with the rights specified in section B.2, the Contractor shall furnish to the District, a copy of the source code with such rights of the scope as specified in section B.2 of this clause. For all computer software furnished to the District with the restricted rights specified in section B.1 of this clause, the District, if the Contractor either directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided the District under the contract or any paid-up maintenance agreement, or if the Contractor should be declared insolvent by a court of competent jurisdiction, shall have the right to obtain, for its own and sole use only, a single copy of the current version of the source code supplied under the contract, and a single copy of the documentation associated therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.

2. If the Contractor or Product manufacturer/developer of software furnished to the District with the rights specified in section B.1 of this clause offers the source code or source code escrow to any other commercial customers, the Contractor shall either: (1) provide the District with the source code for the Product; (2) place the source code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the District, and who shall be directed to release the deposited source code in accordance with a standard escrow arrangement acceptable to the District; or (3) will certify to the District that the Product manufacturer/developer has named the District as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the District, and who shall be directed to release the deposited source code in accordance with the terms of escrow.

3. The Contractor shall update the source code, as well as any corrections or enhancements to the source code, for each new release of the Product in the same manner as provided above, and certify such updating of escrow to the District in writing.

F. Indemnification and Limitation of Liability

The Contractor shall indemnify and save and hold harmless the District, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or (ii) based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.

I.6 OTHER CONTRACTORS

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

I.7 SUBCONTRACTS

The Contractor hereunder shall not subcontract any of the Contractor's work or services to any subcontractor without the prior written consent of the CO. 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.

I.8 INSURANCE

- A. **GENERAL REQUIREMENTS.** The Contractor at its sole expense shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the CO giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A- / VII or higher. The Contractor shall require all of its subcontractors to carry the same insurance required herein.

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

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

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

1. Commercial General Liability Insurance (“CGL”) - The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries a CGL policy, written on an occurrence (not claims-made) basis, on Insurance Services Office, Inc. (“ISO”) form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by the CO in writing), covering liability for all ongoing and completed operations of the Contractor, including ongoing and completed operations under all subcontracts, and covering claims for bodily injury, including without limitation sickness, disease or death of any persons, injury to or destruction of property, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising out of an Insured Contract (including the tort liability of another assumed in a contract) and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than \$1,000,000 each occurrence, a \$2,000,000 general aggregate (including a per location or per project aggregate limit endorsement, if applicable) limit, a \$1,000,000 personal and advertising injury limit, and a \$2,000,000 products-completed operations aggregate limit.
2. Automobile Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of commercial (business) automobile liability insurance written on ISO form CA 00 01 10 13 (or another form with coverage at least as broad and approved by the CO in writing) including coverage for all owned, hired, borrowed and non-owned vehicles and equipment used by the Contractor, with minimum per accident limits equal to the greater of (i) the limits set forth in the Contractor’s commercial automobile liability policy or (ii) \$1,000,000 per occurrence combined single limit for bodily injury and property damage.
3. Workers’ Compensation Insurance - The Contractor shall provide evidence satisfactory to the CO of Workers’ Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

Employer’s Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of employer’s liability insurance as follows: \$500,000 per accident for injury; \$500,000 per employee for disease; and \$500,000 for policy disease limit.

All insurance required by this paragraph 3 shall include a waiver of subrogation endorsement for the benefit of Government of the District of Columbia.

4. Cyber Liability Insurance - The Contractor shall provide evidence satisfactory to the Contracting Officer of Cyber Liability Insurance, with limits not less than \$5,000,000 per occurrence or claim, \$5,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. This insurance requirement will be considered met if the general liability insurance includes an affirmative cyber endorsement for the required amounts and coverages.
5. Professional Liability Insurance (Errors & Omissions) - The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of \$5,000,000 per claim or per occurrence for each wrongful act and \$5,000,000 annual aggregate. The Contractor warrants that any applicable retroactive date precedes the date the Contractor first performed any professional services for the Government of the District of Columbia and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least ten years after the completion of the professional services.
6. Commercial Umbrella or Excess Liability - The Contractor shall provide evidence satisfactory to the CO of commercial umbrella or excess liability insurance with minimum limits equal to the greater of (i) the limits set forth in the Contractor's umbrella or excess liability policy or (ii) \$10,000,000 per occurrence and \$10,000,000 in the annual aggregate, following the form and in excess of all liability policies. All liability coverages must be scheduled under the umbrella and/or excess policy. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by the District and the "other insurance" provision must be amended in accordance with this requirement and principles of vertical exhaustion.

B. PRIMARY AND NONCONTRIBUTORY INSURANCE

The insurance required herein shall be primary to and will not seek contribution from any other insurance, reinsurance or self-insurance including any deductible or retention, maintained by the Government of the District of Columbia.

- C. DURATION. The Contractor shall carry all required insurance until all contract work is accepted by the District of Columbia, and shall carry listed coverages for ten years for

construction projects following final acceptance of the work performed under this contract and two years for non-construction related contracts.

- D. **LIABILITY.** These are the required minimum insurance requirements established by the District of Columbia. **HOWEVER, THE REQUIRED MINIMUM INSURANCE REQUIREMENTS PROVIDED ABOVE WILL NOT IN ANY WAY LIMIT THE CONTRACTOR'S LIABILITY UNDER THIS CONTRACT.**
- E. **CONTRACTOR'S PROPERTY.** Contractor and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia.
- F. **MEASURE OF PAYMENT.** The District shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price.
- G. **NOTIFICATION.** The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event of coverage and / or limit changes or if the policy is canceled prior to the expiration date shown on the certificate. The Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium. The Contractor will also provide the CO with an updated Certificate of Insurance should its insurance coverages renew during the contract.
- H. **CERTIFICATES OF INSURANCE.** The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Certificates of insurance must reference the corresponding contract number. Evidence of insurance shall be submitted to:

The Government of the District of Columbia

And mailed to the attention of:

Jacque McDonald, CPPO, CPPB, SPSM, MBA, MST

Director, Contracts, Procurement and Grants

Office of the Deputy Mayor for Planning and Economic Development

1015 Half Street SE, Suite 675

Washington, DC 20003

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

- I. **DISCLOSURE OF INFORMATION.** The Contractor agrees that the District may disclose the name and contact information of its insurers to any third party which presents a claim against the District for any damages or claims resulting from or arising out of work performed by the Contractor, its agents, employees, servants or subcontractors in the performance of this contract.

- J. **CARRIER RATINGS.** All Contractor's and its subcontractors' insurance required in connection with this contract shall be written by insurance companies with an A.M. Best Insurance Guide rating of at least A- VII (or the equivalent by any other rating agency) and licensed in the in the District.

I.9 EQUAL EMPLOYMENT OPPORTUNITY

In accordance with the District of Columbia Administrative Issuance System, Mayor's Order 85-85 dated June 10, 1985, the forms for completion of the Equal Employment Opportunity Information Report are incorporated herein as Section J.3. An award cannot be made to any offeror who has not satisfied the equal employment requirements.

I.10 ORDER OF PRECEDENCE

Any contracts awarded as a result of this RFP will contain the following clause:

ORDER OF PRECEDENCE

A conflict in language shall be resolved by giving precedence to the document in the highest order of priority that contains language addressing the issue in question. The following documents are incorporated into the contract by reference and made a part of the contract in the following order of precedence:

- (1) An applicable Court Order, if any
- (2) Contract document
- (3) Standard Contract Provisions
- (4) Contract attachments other than the Standard Contract Provisions
- (5) RFP, as amended
- (6) BAFOs (in order of most recent to earliest)
- (7) Proposal

I.11 DISPUTES

Delete Article 14, Disputes, of the Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts and substitute the following Article 14, Disputes) in its place:

14. Disputes

All disputes arising under or relating to the contract shall be resolved as provided herein.

- (a) **Claims by the Contractor against the District:** Claim, as used in paragraph (a) 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 the 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

- (1) 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:
 - (i) A description of the claim and the amount in dispute;
 - (ii) Data or other information in support of the claim;
 - (iii) A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and
 - (iii) The Contractor's request for relief or other action by the CO.
- (2) The CO may meet with the Contractor in a further attempt to resolve the claim by agreement.
- (3) The CO shall issue a decision on any claim within 120 calendar days after 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.
- (4) The CO's written decision shall do the following:
 - (i) Provide a description of the claim or dispute;
 - (ii) Refer to the pertinent contract terms;
 - (iii) State the factual areas of agreement and disagreement;
 - (iv) 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;
 - (v) 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;
 - (vi) Indicate that the written document is the CO's final decision; and
 - (vii) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.
- (5) Failure by the CO to issue a decision on a contract claim within 120 days of receipt of the claim will be deemed to be a denial of the claim, and will authorize the commencement of an appeal to the Contract Appeals Board as provided by D.C. Official Code § 2-360.04.
- (6) If a contractor is unable to support any part of its claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim. Liability under this paragraph (a)(6) shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.

- (7) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the CO.
- (b) **Claims by the District against the Contractor:** Claim as used in paragraph (b) 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 the 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.
- (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:
- (i) Provide a description of the claim or dispute;
 - (ii) Refer to the pertinent contract terms;
 - (iii) State the factual areas of agreement and disagreement;
 - (iv) 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;
 - (v) 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;
 - (vi) Indicate that the written document is the CO's final decision; and
 - (vii) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.
- (3) The CO shall support the decision by reasons and shall inform the Contractor of its rights as provided herein.
- (4) Before or after issuing the decision, the CO may meet with the Contractor to attempt to resolve the claim by agreement.
- (5) The authority contained in this paragraph (b) 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.
- (6) This paragraph shall not authorize the CO to settle, compromise, pay, or otherwise adjust any claim involving fraud.
- (c) Decisions of the CO shall be final and not subject to review unless the Contractor timely commences an administrative appeal for review of the decision, by filing a complaint with the Contract Appeals Board, as authorized by D.C. Official Code § 2-360.04.

- (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.12 COST AND PRICING DATA

Delete Article 25, Cost and Pricing Data, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts.

SECTION J: ATTACHMENTS

The following list of attachments is incorporated into the solicitation by reference.

Attachment Number	Document
J.1	Government of the District of Columbia Standard Contract Provisions for Use with the Supplies and Services Contracts (July 2010) available at www.ocp.dc.gov click on “OCP Solicitations then click on Required Solicitation Documents”
J.2	U.S. Department of Labor, Wage Determination No. 2015-4281, Revision No. 9, dated January 10, 2018
J.3	Office of Local Business Development Equal Employment Opportunity Information Report and Mayor’s Order 85-85 available at www.ocp.dc.gov click on “OCP Solicitations then click on Required Solicitation Documents”
J.4	Department of Employment Services First Source Employment Agreement available at www.ocp.dc.gov click on “OCP Solicitations then click on Required Solicitation Documents”
J.5	Way to Work Amendment Act of 2006 - Living Wage Notice 2018 available at www.ocp.dc.gov click on “OCP Solicitations then click on Required Solicitation Documents”
J.6	Way to Work Amendment Act of 2006 - Living Wage Fact Sheet 2018 available at www.ocp.dc.gov click on “OCP Solicitations then click on Required Solicitation Documents”
J.7	Tax Certification Affidavit available at www.ocp.dc.gov click on “OCP Solicitations then click on Required Solicitation Documents”
J.8	Bidder/Offeror Certifications available at www.ocp.dc.gov click on “OCP Solicitations then click on Required Solicitation Documents”
J.9	Subcontracting Plan Form <i>(If applicable)</i> available at www.ocp.dc.gov click on “OCP Solicitations then click on Required Solicitation Documents”
J.10	Contractor Experience Questionnaire Form available at www.ocp.dc.gov click on “OCP Solicitations then click on Required Solicitation Documents”
J.11	Past Performance Evaluation Form available at www.ocp.dc.gov click on “OCP Solicitations then click on Required Solicitation Documents”
J.12	D.C. Bar Legal Ethics Committee Opinion No. 268

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

Bidder/Offeror Certification Form
available at www.ocp.dc.gov click on
“OCP Solicitations then click on Required Solicitation Documents”

SECTION L: INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS

L.1 CONTRACT AWARD

L.1.1 Most Advantageous to the District

The District intends to award multiple contracts resulting from this solicitation to the responsible offerors whose offers conforming to the solicitation will be most advantageous to the District, cost or price, technical and other factors, specified elsewhere in this solicitation considered.

L.1.2 Selection of Negotiation Process

In accordance with 27 DCMR § 1632, after evaluation of the proposals using only the criteria stated in the RFP and in accordance with weightings provided in the RFP, the CO may elect to proceed with any method of negotiations, discussions or award of the contract without negotiations, which is set forth in subsections (a), (b), (c), or (d) of 27 DCMR § 1632.1. If the CO elects to proceed with negotiations under subsection (c) of 27 DCMR §1632.1, the CO may limit, for purposes of efficiency, the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

L.2 PROPOSAL ORGANIZATION AND CONTENT

L.2.1 One original and three (3) copies of the written proposals shall be submitted in two parts, titled "Technical Proposal" and "Fee Proposal". Proposals shall be typewritten in 12 point font size on 8.5" by 11" bond paper. Telephonic, telegraphic, and facsimile proposals will not be accepted. Each proposal shall be submitted in a sealed envelope conspicuously marked: **"Proposal in Response to Solicitation No. DCEB-2018-R-0001 – Industrial Revenue Bond Counsel Legal Services"**

L.2.2 Offerors are directed to the specific proposal evaluation criteria found in Section M of this solicitation, Evaluation Factors. The offeror shall respond to each factor in a way that will allow the District to evaluate the offeror's response. The offeror shall submit information in a clear, concise, factual and logical manner providing a comprehensive description of program supplies and services and delivery thereof. The information requested below for the technical proposal shall facilitate evaluation for all proposals. The technical proposal must contain sufficient detail to provide a clear and concise response fully reflecting the manner in which the offeror proposes to fully meet the requirements in Section C.

L.2.3 Offerors shall complete, sign and submit all Representations, Certifications and Acknowledgments as appropriate.

L.2.4 The District will reject any offer that fails to include a subcontracting plan that is required by law.

L.3 TECHNICAL PROPOSAL

The proposal shall include all of the information outlined in this Section.

L.3.1 Executive Summary

Each offeror shall submit an executive summary outlining offeror's overall proposal, including a brief description of its organization's mission, history, and philosophy, and describing how the work set forth in Section C, Statement of Work will be accomplished in sufficient detail to permit the District to evaluate it in accordance with Section M, Evaluation Factors.

L.3.1.1 Factor A – Knowledge and Experience:

Offeror must have a minimum of five (5) years of municipal finance experience serving as bond counsel with respect to public finance transactions. Offeror shall provide a brief description of the firm and describe its qualifications, knowledge and experience in providing bond counsel services in public financings of similar size, types and structures.

L.3.1.2 Offeror shall describe its understanding of the requirements by providing a description of how the work outlined in Section C will be accomplished as required and on schedule, utilizing all available resources.

L.3.2 Factor B – Qualifications of Key Personnel:

L.3.2.1 Offeror shall provide the identity and describe the qualifications of key personnel, team members, and subcontractors to be involved with this project, including their project assignments and the extent of their participation. Describe each attorney's experience advising and representing public agencies and institutions. The following key personnel are considered to be a part of the offeror's team: Partner; Associate Attorney; and Tax Accountant.

L.3.2.2 Offeror shall describe its key personnel and project teams and those of its subcontractors, demonstrating their capability and experience, and shall include resumes of all assigned personnel as attachments to the proposal.

L.3.3 Factor C - Capacity, Organization, and Management Approach:

L.3.3.1 Offeror shall describe its capacity to successfully apply and commit to project tasks and to complete required services. Offeror should clearly convey its understanding of the nature of the work related to bond counsel services and the general approach the firm will use in its ability to provide the services outlined in Section C.

L.3.3.2 Offeror shall describe its proposed organizational structure and management approach to assigned projects, including a description of offeror's project team and its plan to maintain schedule and cost control on assigned projects, to resolve constraints, and its plan for coordination of activities. Identify the individual(s) who will manage the bond counsel

responsibilities on a day-to-day basis. Describe the manager’s availability and other commitments and how those commitments might impact the manager’s availability.

L.3.3.3 Offeror shall specifically address the teamwork and division of responsibilities envisioned for the District’s underwriters, financial advisors, and other capital financing team members. Describe each team member’s roles and responsibilities and each member’s background relevant to serving as bond counsel. Staff who will be assigned responsibilities for performance of services under the contract must have the education, experience, knowledge skill and qualifications necessary to adequately perform the services for which they will be responsible. Explain how the firm and assigned personnel will evaluate legal issues, prepare documents and complete other tasks of bond transaction in a timely manner. Describe offeror’s process and resources for keeping abreast of changes in state and federal law and regulations and for maintaining the legal expertise necessary to successfully represent the District’s interests in such matters.

L.3.4 Factor D – Past Performance:

L.3.4.1 Offeror shall provide, with proposal, the completed Experience Questionnaire (Attachment J.10) listing all contracts in which the Offeror or its major subcontractors or joint venture partners have performed work of similar complexity, function and scope in the past five (5) years. Work is similar, if the function, responsibilities, and duties of the Offeror are essentially the same as the required services described in Section C.5; and

L.3.4.2 Offeror shall provide completed past performance evaluations from a minimum of three (3) references listed in the Experience Questionnaire (Attachment J.10), that are satisfactory or better, as described in the instructions and rating criteria on page 2 of the District’s Past Performance Evaluation Form (Attachment J.11).

Offeror shall disclose any investigative, disciplinary or enforcement actions pending against its firm and information on any such investigations which concluded with an enforcement or disciplinary action against your firm in the last 5 years.

Offeror shall disclose any professional or personal financial interests that could be possible conflicts of interest in representing the District.

L.3.5 Section 5 – Attachments: The Offeror shall complete and provide in this section, the following documents and pertinent information:

- A. Solicitation, Offer and Award form; and
- B. Attachments referenced in Section J.

L.4 FEE PROPOSAL

L.4.1 The Offeror shall identify this portion of the proposal as the “FEE PROPOSAL”, and bind it separately from the remainder of the proposal. The fee proposal will be evaluated separately from the Technical Proposal. Fee data shall not be presented in the technical portion of the proposal.

L.4.2 The Offeror shall submit the fee information in the manner and format stated in Section B, Contract Type, Supplies or Services and Price/Cost, and shall conform to the requirements of that Section. Offeror shall submit pricing for all Contract Line Item Numbers (CLINs). Proposals that fail to provide pricing for each CLIN may be considered unacceptable.

L.5 REQUIREMENT FOR AN ELECTRONIC COPY OF PROPOSALS TO BE MADE AVAILABLE TO THE PUBLIC

In addition to the proposal submission requirements in Section L.2 above, the offeror must submit an electronic copy of its proposal, redacted in accordance with any applicable exemptions from disclosure under D.C. Official Code § 2-534. Redacted copies of the offeror's proposal must be submitted by e-mail attachment to the contact person designated in the solicitation. D.C. Official Code § 2-536(b) requires the District to make available electronically copies of records that must be made public. The District's policy is to release documents relating to District proposals following award of the contract, subject to applicable Freedom of Information Act (FOIA) exemption under § 2-534(a)(1). Successful proposals will be published on the OCP website in accordance with D.C. Official Code § 2-361.04, subject to applicable FOIA exemptions.

L.6 PROPOSAL SUBMISSION DATE AND TIME, AND LATE SUBMISSIONS, LATE MODIFICATIONS, WITHDRAWAL OR MODIFICATION OF PROPOSALS AND LATE PROPOSALS

L.6.1 Proposal Submission

Proposals must be submitted no later than 2:00 PM local time, Monday, April 2, 2018, to 1015 Half Street, SE, Suite 675, Washington, DC 20003. Proposals, modifications to proposals, or requests for withdrawals that are received in the designated District office after the exact local time specified above, are "late" and shall be considered only if they are received before the award is made and one (1) or more of the following circumstances apply:

- (a) The proposal or modification was sent by registered or certified mail not later than the fifth (5th) day before the date specified for receipt of offers;
- (b) The proposal or modification was sent by mail and it is determined by the CO that the late receipt at the location specified in the solicitation was caused by mishandling by the District, or
- (c) The proposal is the only proposal received.

L.6.2 Withdrawal or Modification of Proposals

An offeror may modify or withdraw its proposal upon written, telegraphic notice, or facsimile transmission if received at the location designated in the solicitation for submission of proposals, but not later than the closing date and time for receipt of proposals.

L.6.3 Postmarks

The only acceptable evidence to establish the date of a late proposal, late modification or late withdrawal sent either by registered or certified mail shall be a U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the proposal, modification or request for withdrawal shall be deemed to have been mailed late. When the postmark shows the date but not the hour, the time is presumed to be the last minute of the date shown. If no date is shown on the postmark, the proposal shall be considered late unless the offeror can furnish evidence from the postal authorities of timely mailing.

L.6.4 Late Modifications

A late modification of a successful proposal, which makes its terms more favorable to the District, shall be considered at any time it is received and may be accepted.

L.6.5 Late Proposals

A late proposal, late modification or late request for withdrawal of a proposal that is not considered shall be held unopened, unless opened for identification, until after award and then retained with unsuccessful proposals resulting from this solicitation.

L.7 EXPLANATION TO PROSPECTIVE OFFERORS

If a prospective offeror has any questions relating to this solicitation, the prospective offeror shall submit the question in writing to the contact person, identified on page one. The prospective offeror shall submit questions no later than five (5) days prior to the closing date and time indicated for this solicitation. The District will not consider any questions received less than five (5) days before the date set for submission of proposals. The District will furnish responses promptly to all prospective offerors. An amendment to the solicitation will be issued if the CO decides that information is necessary in submitting offers, or if the lack of it would be prejudicial to any prospective offeror. Oral explanations or instructions given by District officials before the award of the contract will not be binding.

L.8 RESTRICTION ON DISCLOSURE AND USE OF DATA

L.8.1 Offerors who include in their proposal data that they do not want disclosed to the public or used by the District except for use in the procurement process shall mark the title page with the following legend:

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

If, however, a contract is awarded to this offeror as a result of or in connection with the submission of this data, the District will have the right to duplicate, use, or disclose the data to the extent consistent with the District's needs in the procurement process. This restriction does not limit the District's rights to use, without restriction, information contained in this proposal if it is obtained from another source. The data subject to this restriction are contained in sheets (insert page numbers or other identification of sheets)."

L.8.2 Mark each sheet of data it wishes to restrict with the following legend:

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

L.9 PROPOSALS WITH OPTION YEARS

The offeror shall include option year prices in its price/cost proposal. An offer may be determined to be unacceptable if it fails to include pricing for the option year(s).

L.10 PROPOSAL PROTESTS

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

L.11 SIGNING OF OFFERS

The offeror shall sign the offer and print or type its name on the Solicitation, Offer and Award form of this solicitation. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the Contracting Officer.

L.12 UNNECESSARILY ELABORATE PROPOSALS

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective response to this solicitation are not desired and may be construed as an indication of the offeror's lack of cost consciousness. Elaborate artwork, expensive visual and other presentation aids are neither necessary nor desired.

L.13 RETENTION OF PROPOSALS

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

L.14 PROPOSAL COSTS

The District is not liable for any costs incurred by the offerors in submitting proposals in response to this solicitation.

L.15 CERTIFICATES OF INSURANCE

Prior to commencing work, the Contractor shall have its insurance broker or insurance company submit certificates of insurance giving evidence of the required coverages as specified in Section I.8 to:

Jacque McDonald, CPPO, CPPB, SPSM, MBA, MST
Director, Contracts, Procurement and Grants
Office of the Deputy Mayor for Planning and Economic Development
1015 Half Street SE, Suite 675
Washington, DC 20003

L.16 ACKNOWLEDGMENT OF AMENDMENTS

The offeror shall acknowledge receipt of any amendment to this solicitation (a) by signing and returning the amendment; (b) by identifying the amendment number and date in the space provided for this purpose in Section A, Solicitation, Offer and Award form; or (c) by letter, telegram or e-mail from an authorized negotiator. The District must receive the acknowledgment by the date and time specified for receipt of proposals. An offeror's failure to acknowledge an amendment may result in rejection of its offer.

L.17 BEST AND FINAL OFFERS

If, subsequent to receiving original proposals, negotiations are conducted under 27 DCMR § 1632.1(c), all offerors within the competitive range will be so notified and will be provided an opportunity to submit written best and final offers at a designated date and time. Best and final offers will be subject to the Late Submissions, Late Modifications and Late Withdrawals of Proposals provisions of the solicitation. After evaluation of best and final offers, the CO may award the contract to the highest-ranked offeror, or negotiate with the highest ranked offeror in accordance with 27 DCMR § 1634.

L.18 LEGAL STATUS OF OFFEROR

Each proposal must provide the following information:

L.18.1 Name, address, telephone number and federal tax identification number of offeror;

L.18.2 A copy of each District of Columbia license, registration or certification that the offeror is required by law to obtain. If the offeror is a corporation or partnership and does not provide a copy of its license, registration or certification to transact business in the District of Columbia, the offer shall certify its intent to obtain the necessary license, registration or certification prior to contract award or its exemption from such requirements; and

L.18.3 If the offeror is a partnership or joint venture, the names and addresses of the general partners or individual members of the joint venture, and copies of any joint venture or teaming agreements.

L.19 FAMILIARIZATION WITH CONDITIONS

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

L.20 GENERAL STANDARDS OF RESPONSIBILITY

The prospective contractor must demonstrate to the satisfaction of the District its capability in all respects to perform fully the contract requirements; therefore, the prospective contractor must submit relevant documentation within five (5) days of the request by the District.

L.20.1 To be determined responsible, a prospective contractor must demonstrate that it:

- (a) Has adequate financial resources, or the ability to obtain such resources, required to perform the contract;
- (b) Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and government contract commitments;
- (c) Has a satisfactory performance record;
- (d) Has a satisfactory record of integrity and business ethics;
- (e) Has a satisfactory record of compliance with the applicable District licensing and tax laws and regulations;
- (f) Has a satisfactory record of compliance with the law, including labor and civil rights laws and rules, and the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code § 2-219.01 *et seq.*;
- (g) Has, or has the ability to obtain, the necessary organization, experience, accounting, and operational control, and technical skills;
- (h) Has, or has the ability to obtain, the necessary production, construction, technical equipment, and facilities;
- (i) Has not exhibited a pattern of overcharging the District;
- (j) Does not have an outstanding debt with the District or the federal government in a delinquent status; and
- (k) Is otherwise qualified and is eligible to receive an award under applicable laws and regulations.

L.20.2 If the prospective contractor fails to supply the information requested, the CO shall make the determination of responsibility or non-responsibility based upon available information. If the available information is insufficient to make a determination of responsibility, the CO shall determine the prospective contractor to be non-responsible.

SECTION M - EVALUATION FACTORS

M.1 EVALUATION FOR AWARD

The contract will be awarded to the responsible offeror whose offer is most advantageous to the District, based upon the evaluation criteria specified below. Thus, while the points in the evaluation criteria indicate their relative importance, the total scores will not necessarily be determinative of the award. Rather, the total scores will guide the District in making an intelligent award decision based upon the evaluation criteria.

M.2 TECHNICAL RATING

M.2.1 The Technical Rating Scale is as follows:

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

M.2.2 The technical rating is a weighting mechanism that will be applied to the point value for each evaluation factor to determine the offeror’s score for each factor. The offeror’s total technical score will be determined by adding the offeror’s score in each evaluation factor. For example, if an evaluation factor has a point value range of zero (0) to forty (40) points, using the Technical Rating Scale above, if the District evaluates the offeror’s response as “Good,” then the score for that evaluation factor is 4/5 of 40 or 32.

If subfactors are applied, the offeror’s total technical score will be determined by adding the offeror’s score for each subfactor. For example, if an evaluation factor has a point value range of zero (0) to forty (40) points, with two subfactors of twenty (20) points each, using the Technical Rating Scale above, if the District evaluates the offeror’s response as “Good” for the first subfactor and “Poor” for the second subfactor, then the total score for that evaluation

factor is 4/5 of 20 or 16 for the first subfactor plus 1/5 of 20 or 4 for the second subfactor, for a total of 20 for the entire factor.

M.3 EVALUATION CRITERIA

Proposals will be evaluated based on the following evaluation factors in the manner described below:

M.3.1 TECHNICAL CRITERIA (75 Points Maximum)

Description: These factors consider the Offeror's past performance, experience and key personnel used in performing services similar to the required services as described in Section C. These factors include an examination of the quality of services provided, timeliness in service delivery, business practices and overall satisfaction with the Offeror's performance.

M.3.1.1 Factor A - Knowledge and Experience (0 – 25 points)

M.3.1.1.1 This evaluation factor considers the Offeror's specific knowledge and experience in providing bond counsel services for municipal financing for public and/or private sector clients within the past five (5) years. – **15 points**

M.3.1.1.2 The factor will be evaluated on the Offeror's demonstrated understanding of the requirements with a description of how the work outlined in Section C will be accomplished as required and on schedule, utilizing all available resources. The firm's proposed assigned attorneys will be evaluated on their demonstrated knowledge of District and federal law related to the issuance of bonds by municipal entities, number of years in bond counsel profession, experience advising state governments and municipalities. Offerors with a proven track record of bond counsel experience will be rated higher. – **10 points**

M.3.1.2 Factor B - Qualifications of Key Personnel (0 – 20 points)

M.3.1.2.1 This evaluation factor considers the education, experience, knowledge, past performance, qualifications and necessary skills of offeror's key personnel, team members, and subcontractors to be directly assigned to this project, including their project assignments and the extent of their participation. - **10 points**

M.3.1.2.2 This factor will be evaluated on the specific skill sets of the offeror's key personnel and project teams and those of its subcontractors. Each team member must provide required specific expertise based on his/her project role. – **10 points**

M.3.1.3 Factor C - Capacity, Organization, and Management Approach (0 – 15 points)

M.3.1.3.1 This evaluation factor considers the Offeror's capacity and proposed methodology for committing to project tasks and timely and successfully completing the required services. Firm's commitment and ability to provide each item in scope of work. – **5 points**

M.3.1.3.2 This factor will be evaluated based on the Offeror’s proposed organizational structure and management approach to assigned projects, including the viability of its plan to maintain schedule and cost control on assigned projects, to resolve constraints, and offeror’s plan for coordination of activities. – **5 points**

M.3.1.3.3 This factor also considers how Offeror’s proposal has addressed the offeror’s teamwork and division of responsibilities envisioned for the District’s underwriters, financial advisors, and other capital financing team members. – **5 points**

M.3.1.4 **Factor D - Past Performance (0 – 15 points)**

M.3.1.4.1 Evaluation of past performance allows the District to assess the Offeror’s ability to perform and the extent to which the Offeror or its major subcontractors or joint venture partners have performed work of similar complexity, function and scope in the past five (5) years. (Work is similar, if the function, responsibilities, and duties of the Offeror are essentially the same as the required services described in Section C.5.) – **5 points**

M.3.1.4.2 This factor considers the extent of the Offeror’s past performance within the last five (5) years in achieving a high degree of overall customer satisfaction. Evaluation of this factor will be based on the quantity and quality of Offeror’s performance on projects of comparable size, scope and complexity, timeliness in service delivery, business practices, and overall satisfaction of Offeror’s performance, as described in the instructions and rating criteria on page 2 of the District’s Past Performance Evaluation Form (Attachment J.11). – **10 points**

M.3.2 PRICE CRITERION (25 Points Maximum)

The price evaluation will be objective. The offeror with the lowest fees will receive the maximum price points. All other proposals will receive a proportionately lower total score. The following formula will be used to determine each offeror's evaluated price score:

$$\frac{\text{Lowest fee proposal}}{\text{Fee of proposal being evaluated}} \times 25 = \text{Evaluated price score}$$

M.3.3 PREFERENCE POINTS AWARDED PURSUANT TO SECTION M.5.2 (12 Points Maximum)

M.3.4 TOTAL POINTS (112 Points Maximum)

Total points shall be the cumulative total of the offeror’s technical criteria points, price criterion points and preference points, if any.

M.4 EVALUATION OF OPTION YEARS

The District will evaluate offers for award purposes by evaluating the total price for all options as well as the base year. Evaluation of options shall not obligate the District to exercise them. The total District’s requirements may change during the option years. Quantities to be awarded will be determined at the time each option is exercised.

M.5. PREFERENCES FOR CERTIFIED BUSINESS ENTERPRISES

Under the provisions of the “Small and Certified Business Enterprise Development and Assistance Act of 2014”, D.C. Official Code § 2-218.01 *et seq.*, as amended (“Act”, as used in this section), the District shall apply preferences in evaluating proposals from businesses that are certified by the Department of Small and Local Business Development (DSLBD) pursuant to Part D of the Act.

M.5.1 Application of Preferences

For evaluation purposes, the allowable preferences under the Act shall be applicable to prime contractors as follows:

- M.5.1.1** Any prime contractor that is a small business enterprise (SBE) certified by the DSLBD will receive the addition of three points on a 100-point scale added to the overall score.
- M.5.1.2** Any prime contractor that is a resident-owned business (ROB) certified by DSLBD will receive the addition of five points on a 100-point scale added to the overall score.
- M.5.1.3** Any prime contractor that is a longtime resident business (LRB) certified by DSLBD will receive the addition of five points on a 100-point scale added to the overall score.
- M.5.1.4** Any prime contractor that is a local business enterprise (LBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score.
- M.5.1.5** Any prime contractor that is a local business enterprise with its principal offices located in an enterprise zone (DZE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score.
- M.5.1.6** Any prime contractor that is a disadvantaged business enterprise (DBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score.
- M.5.1.7** Any prime contractor that is a veteran-owned business (VOB) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score.
- M.5.1.8** Any prime contractor that is a local manufacturing business enterprise (LMBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score.

M.5.2 Maximum Preference Awarded

Notwithstanding the availability of the preceding preferences, the maximum total preference to which a certified business enterprise is entitled under the Act is the equivalent of twelve (12) points on a 100-point scale for proposals submitted in response to this RFP. There will be no preference awarded for subcontracting by the prime contractor with certified business enterprises.

M.5.3 Preferences for Certified Joint Ventures

A certified joint venture will receive preferences as determined by DSLBD in accordance with D.C. Official Code § 2-218.39a(h).

M.5.4 Verification of Offeror's Certification as a Certified Business Enterprise

M.5.4.1 Any vendor seeking to receive preferences on this solicitation must be certified at the time of submission of its proposal. The CO will verify the offeror's certification with DSLBD, and the offeror should not submit with its proposal any additional documentation regarding its certification as a certified business enterprise.

M.5.4.2 Any vendor seeking certification in order to receive preferences under this solicitation should contact the:

Department of Small and Local Business Development
ATTN: CBE Certification Program
441 Fourth Street, NW, Suite 850N
Washington DC 20001

M.5.4.3 All vendors are encouraged to contact DSLBD at (202) 727-3900 if additional information is required on certification procedures and requirements.

M.6 EVALUATION OF PROMPT PAYMENT DISCOUNT

M.6.1 Prompt payment discounts shall not be considered in the evaluation of offers. However, any discount offered will form a part of the award and will be taken by the District if payment is made within the discount period specified by the offeror.

M.6.2 In connection with any discount offered, time will be computed from the date of delivery of the supplies to carrier when delivery and acceptance are at point of origin, or from date of delivery at destination when delivery, installation and acceptance are at that, or from the date correct invoice or voucher is received in the office specified by the District, if the latter date is later than date of delivery. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the District check.