

GOVERNMENT OF THE DISTRICT OF  
COLUMBIA

STANDARD CONTRACT PROVISIONS

FOR USE WITH

DISTRICT OF COLUMBIA GOVERNMENT  
SUPPLIES AND SERVICES CONTRACTS

March 2007

OFFICE OF CONTRACTING AND  
PROCUREMENT  
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STANDARD CONTRACT PROVISIONS

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**1. Covenant Against Contingent Fees:**

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the District will have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of the commission, percentage, brokerage, or contingent fee.

**2. Shipping Instructions – Consignment:**

Unless otherwise specified in this Invitation for Bids/Request for Proposals, each case, crate, barrel, package, etc., delivered under this contract must be plainly stencil marked or securely tagged, stating the Contractor's name, contract number and delivery address as noted in the contract. In case of carload lots, the Contractor shall tag the car, stating Contractor's name and contract number. Any failure to comply with these instructions will place the material at the Contractor's risk. Deliveries by rail, water, truck or otherwise, must be within the working hours and in ample time to allow for unloading and if necessary, the storing of the materials or supplies before closing time. Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the contact person identified in the contract at the delivery point.

**3. Patents:**

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

**4. Quality:**

Contractor's workmanship shall be of the highest grade, and all materials provided under this Contract shall be new, of the best quality and grade, and suitable in every respect for the purpose intended.

**5. Inspection Of Supplies:**

- (a) Definition. "Supplies," as used in this clause, includes, but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.
- (b) The Contractor shall be responsible for the materials or supplies covered by this contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notification of rejection. Upon the Contractor's failure to cure within ten (10) days after date of notification, the District may return the rejected materials or supplies to the Contractor at the Contractor's risk and expense.
- (c) The Contractor shall provide and maintain an inspection system acceptable to the District covering supplies under this contract and shall tender to the District for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Contractor to be in conform/ with contract requirements. As part of the

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system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the District during contract performance and for as long afterwards as the contract requires. The District may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under this contract.

- (d) The District has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The District will perform inspections and tests in a manner that will not unduly delay the work. The District assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in the contract.
- (e) If the District performs inspection or test on the premises of the Contractor or subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, the District will bear the expense of District inspections or tests made at other than Contractor's or subcontractor's premises; provided, that in case of rejection, the District will not be liable for any reduction in the value of inspection or test samples.
  - (1) When supplies are not ready at the time specified by the Contractor for inspection or test, the Contracting Officer may charge to the Contractor the additional cost of inspection or test.
  - (2) Contracting Officer may also charge the Contractor for any additional cost of inspection or test when prior rejection makes re-inspection or retest
- (f) The District has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or otherwise not in conformity with contract requirements. The District may reject nonconforming supplies with or without disposition instructions.
- (g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and when required, shall disclose the corrective action taken.
- (h) If the Contractor fails to remove, replace, or correct rejected supplies that are required to be replaced or corrected within ten (10) days, the District may either (1) by contract or otherwise, remove, replace or correct the supplies and charge the cost to the Contractor or (2) terminate the contract for default. Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Contracting Officer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

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If this contract provides for the performance of District quality assurance at source, and if requested by the District, the Contractor shall furnish advance notification of the time (i) when Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract, and (ii) when the supplies will be ready for District inspection.

- (j) The District request shall specify the period and method of the advance notification and the District representative to whom it shall be furnished. Requests shall not require more than 2 business days of advance notification if the District representative is in residence in the Contractor's plant, nor more than 7 business days in other instances.
- (k) The District will accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. District failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability upon the District, for non-conforming supplies.

Inspections and tests by the District do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

- (m) If acceptance is not conclusive for any of the reasons in subparagraph (1) hereof, the District, in addition to any other rights and remedies provided by law, or under provisions of this contract, shall have the right to require the Contractor (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; provided, that the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Contractor of notice of defects or noncompliance, to repay such portion of the contract as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the District will have the right to return the rejected materials at Contractor's risk and expense or contract or otherwise to replace or correct such supplies and charge to the Contractor the cost occasioned the District thereby.

6. Inspection Of Services:

- (a) Definition. "Services" as used in this clause includes services performed, workmanship, and material furnished or utilized in the performance of services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the District covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the District during contract performance and for as long afterwards as the contract requires.

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- (c) The District has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The District will perform inspections and tests in a manner that will not unduly delay the work.
- (d) If the District performs inspections or tests on the premises of the Contractor or subcontractor, the Contractor shall furnish, without additional charge, all reasonable facilities and assistance for the safety and convenient performance of these duties.
- (e) If any of the services do not conform to the contract requirements, the District may require the Contractor to perform these services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by performance, the District may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect value of services performed.
- (f) If the Contractor fails to promptly perform the services again or take the necessary action to ensure future performance in conformity to contract requirements, the District may (1) by contract or otherwise, perform the services and charge the Contractor any cost incurred by the District that is directly related to the performance of such services, or (2) terminate the contract for default.

**7. Waiver:**

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

**8. Default:**

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

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- (c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the District or Federal Government in either their sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without fault or negligence of the Contractor. If the failure to perform is caused by the default of the subcontractor, and if such default arises out of causes beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess cost for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.
- (d) If this contract is terminated as provided in paragraph (a) of this clause, the District, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the District, in the manner and to the extent directed by the Contracting Officer, (i) completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures plans, drawing information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the District has an interest. Payment for completed supplies delivered to and accepted by the District will be at the contract price. Payment for manufacturing materials delivered to and accepted by the District will be at the contract price. Payment for manufacturing materials delivered to and accepted by the District and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". The District may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the District against loss because of outstanding liens or claims of former lien holders.
- (e) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination of convenience of the District, be the same as if the notice of termination had been issued pursuant to such clause. See Clause 20 for Termination for Convenience of the District
- (f) The rights and remedies of the District provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.
- (g) As used in paragraph (c) of this clause, the terms "subcontractor(s) means subcontractor(s) at any tier.

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9. Indemnification:

The Contractor agrees to defend, indemnify and hold harmless the District, its officers, agencies, departments, agents, and employees (collectively the "District") from and against any and all claims, losses, liabilities, penalties, fines, forfeitures, demands, causes of action, suits, costs and expenses incidental thereto (including cost of defense and attorneys' fees), resulting from, arising out of, or in any way connected to activities or work performed by the Contractor, Contractor's officers, employees, agents, servants, subcontractors, or any other person acting for or by permission of the Contractor in performance of this Contract. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed in performance of this Contract. The Contractor shall also repair or replace any District property that is damaged by the Contractor, Contractor's officers, employees, agents, servants, subcontractors, or any other person acting for or by permission of the Contractor while performing work hereunder.

The indemnification obligation under this section shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor, and shall survive the termination of this Contract. The District agrees to give Contractor written notice of any claim of indemnity under this section. Additionally, Contractor shall have the right and sole authority to control the defense or settlement of such claim, provided that no contribution or action by the District is required in connection with the settlement. Monies due or to become due the Contractor under the contract may be retained by the District as necessary to satisfy any outstanding claim which the District may have against the Contractor.

10. Transfer:

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

11. Taxes:

- (a) The Government of the District of Columbia is exempt from and will not pay Federal Excise Tax, Transportation Tax, and the District of Columbia Sales and Use Taxes.
- (b) Tax exemption certificates are no longer issued by the District for Federal Excise Tax. The following statement may be used by the supplier when claiming tax deductions for Federal Excise Tax exempt items sold to the District.

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

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

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

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

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12. Appointment of Attorney:

- (a) The bidder/offeror or contractor (whichever the case may be) does hereby irrevocably designate and appoint the Clerk of the District of Columbia Superior Court and his successor in office as the true and lawful attorney of the Contractor for the purpose of receiving service of all notices and processes issued by any court in the District of Columbia, as well as service of all pleadings and other papers, in relation to any action or legal proceeding arising out of or pertaining to this contract or the work required or performed hereunder.
- (b) The bidder/offeror or contractor (whichever the case may be) expressly agrees that the validity of any service upon the said Clerk as herein authorized shall not be affected either by the fact that the contractor was personally within the District of Columbia and otherwise subject to personal service at the time of such service upon the said Clerk or by the fact that the contractor failed to receive a copy of such process, notice or other paper so served upon the said Clerk provided the said Clerk shall have deposited in the United States mail, registered and postage prepaid, a copy of such process, notice, pleading or other paper addressed to the bidder/offeror or contractor at the address stated in this contract.

13. District Employees Not To Benefit:

Unless a determination is made as provided herein, no officer or employee of the District will be admitted to any share or part of this contract or to any benefit that may arise therefrom, and any contract made by the Contracting Officer or any District employee authorized to execute contracts in which they or an employee of the District will be personally interested shall be void, and no payment shall be made thereon by the District or any officer thereof, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit. A District employee shall not be a party to a contract with the District and will not knowingly cause or allow a business concern or other organization owned or substantially owned or controlled by the employee to be a party to such a contract, unless a written determination has been made by the head of the

procuring agency that there is a compelling reason for contracting with the employee, such as when the District's needs cannot reasonably otherwise be met. (DC Procurement Practices Act of 1985, D.C. Law 6-85, D.C. Official Code, section 2-310.01, and Chapter 18 of the DC Personnel Regulations)

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

14. Disputes:

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

Claim, as used in Section B of this clause, means a written assertion by the Contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that

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contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

- (a) All claims by a Contractor against the District arising under or relating to a contract shall be in writing and shall be submitted to the Contracting Officer for a decision. The contractor's claim shall contain at least the following:
  - (1) A description of the claim and the amount in dispute;
  - (2) Any data or other information in support of the claim;
  - (3) A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and
  - (4) The Contractor's request for relief or other action by the Contracting Officer.
- (b) The Contracting Officer may meet with the Contractor in a further attempt to resolve the claim by agreement.
- (c) For any claim of \$50,000 or less, the Contracting Officer shall issue a decision within sixty (60) days from receipt of a written request from a Contractor that a decision be rendered within that period.
- (d) For any claim over \$50,000, the Contracting Officer shall issue a decision within ninety (90) days of receipt of the claim. Whenever possible, the Contracting Officer shall take into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.
- (e) The Contracting Officer's written decision shall do the following:
  - (1) Provide a description of the claim or dispute;
  - (2) Refer to the pertinent contract terms;
  - (3) State the factual areas of agreement and disagreement;
  - (4) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
  - (5) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
  - (6) Indicate that the written document is the contracting officer's final decision; and
  - (7) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.
- (f) Any failure by the Contracting Officer to issue a decision on a contract claim within the required time period will be deemed to be a denial of the claim, and will authorize the commencement of an appeal to the Contract Appeals Board as authorized by D.C. Official Code § 2-309.04.

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- (g) (1) If a Contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim.
- (2) Liability under paragraph (g)(1) shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.
- (h) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor as authorized by D. C. Official Code § 2-309.04.
- (i) Pending final decision of an appeal, action, or final settlement, a Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

#### C. Claims by the District against a Contractor

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

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- (3) The decision shall be supported by reasons and shall inform the Contractor of its rights as provided herein.
  - (4) The authority contained in this clause shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle, or determine.
  - (5) This clause shall not authorize the Contracting Officer to settle, compromise, pay, or otherwise adjust any claim involving fraud.
- (c) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor as authorized by D.C. Official Code §2-309.04.
  - (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 Contracting Officer.

15. Changes:

The Contracting Officer may, at any time, by written order, and without notice to the surety, if any, make changes in the contract within the general scope hereof. If such change causes an increase or decrease in the cost of performance of this contract, or in the time required for performance, an equitable adjustment shall be made. Any claim for adjustment under this paragraph must be asserted within ten (10) days from the date the change is offered; provided, however, that the Contracting Officer, if he or she determines that the facts justify such action, may receive, consider and adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in the Disputes clause at Section 18. Nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

16. Termination For Convenience Of The District:

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

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- (4) Assign to the District, as directed by the Contracting Officer, all rights, title and interest of the Contractor under the subcontracts terminated, in which case the District will have the right to settle or pay any termination settlement proposal arising out of those terminations.
  - (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts. The approval or ratification will be final for purposes of this clause.
  - (6) As directed by the Contracting Officer, transfer title and deliver to the District (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other materials produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract has been completed, would be required to be furnished to the District.
  - (7) Complete performance of the work not terminated.
  - (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the District has or may acquire an interest.
  - (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (6) above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the District under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- (c) After the expiration of ninety (90) days (or such longer period as may be agreed to) after receipt by the Contracting Officer of acceptable inventory schedules, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality of termination inventory not previously disposed of excluding items authorized for disposition by the Contracting Officer. The Contractor may request the District to remove those items or enter into an agreement for their storage. Within fifteen (15) days, the District will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within forty five (45) days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (d) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this one year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be

received and acted on after one year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due to the Contractor because of the termination and shall pay the amount determined.

- (e) Subject to paragraph (d) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) below, exclusive of costs shown in subparagraph (0)(3) below, may not exceed the total contract price as reduced by (1) the amount of payment previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Contractor paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- (f) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (e) above:
  - (1) The contract price for completed supplies or services accepted by the District (or sold or acquired under subparagraph (b)(9) above) not previously paid for, adjusted for any saving of freight and other charges.
  - (2) The total of :
    - The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (0)(1) above;
    - The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (0)(1) above; and
  - (iii) A sum, as profit on subparagraph f(1) above, determined by the Contracting Officer to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subparagraph (iii) and shall reduce the settlement to reflect the indicated rate of loss.
- (3) The reasonable cost of settlement of the work terminated, including-
  - @ Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
  - (ii) The termination and settlement of subcontractors (excluding the amounts of such settlements); and

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- (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
  - (g) Except for normal spoilage, and except to the extent that the District expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (f) above, the fair value as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the District or to a buyer.
  - (h) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraphs (d), (f) or (j), except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) or (j), and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (d), (f) or (j), the District will pay the Contractor (1) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.
  - (<sup>1</sup>) In arriving at the amount due the Contractor under this clause, there shall be deducted:
    - (1) All unliquidated advances or other payments to the Contractor under the termination portion of the contract;
    - (2) Any claim which the District has against the Contractor under this contract; and
    - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the District.
- If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within ninety (90) days from the effective date of termination unless extended in writing by the Contracting Officer.
- (k) (1) The District may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor shall be entitled.
  - (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the District upon demand together with interest computed at the rate of 10 percent (10%) per year. Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess payment is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or

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other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

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

**17. Recovery Of Debts Owed The District:**

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

**18. Retention and Examination Of Records:**

The Contractor shall establish and maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting principles and practices which sufficiently and properly reflect all revenues and expenditures of funds provided by the District under the contract that results from this solicitation.

The Contractor shall retain all records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to the contract for a period of three (3) years after termination of the contract, or if an audit has been initiated and audit findings have not been resolved at the end of three (3) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of the contract.

The Contractor shall assure that these records shall be subject at all reasonable times to inspection, review, or audit by Federal, District, or other personnel duly authorized by the Contracting Officer.

The Contracting Officer, the Inspector General and the District of Columbia Auditor, or any of their duly authorized representatives shall, until three years after final payment, have the right to examine any directly pertinent books, documents, papers and records of the Contractor involving transactions related to the contract.

**19. Non-Discrimination Clause:**

- (a) The Contractor shall not discriminate in any manner against any employee or applicant for employment that would constitute a violation of the District of Columbia Human Rights Act, approved December 13, 1977, as amended (D. C. Law 2-38; D. C. Official Code §2-1402.11) (2001 Ed.)("Act" as used in this Section). The Contractor shall include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials. In addition, Contractor agrees and any subcontractor shall agree to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause as provided in Section 251 of the Act.

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(b) Pursuant to rules of the Office of Human Rights, published on August 15, 1986 in the D. C. Register, Mayor' s Order 2002-175 (10/23/02), 49 DCR 9883 and Mayor' s Order 2006-151 (11/17/06), 52 DCR 9351, the following clauses apply to this contract:

- (1) The Contractor shall not discriminate against any employee or applicant for employment because of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, genetic information, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act.
- (2) The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, genetic information, source of income, or place of residence or business.

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

- (a) employment, upgrading or transfer;
  - (b) recruitment, or recruitment advertising;
  - (c) demotion, layoff, or termination;
  - (d) rates of pay, or other forms of compensation; and
  - (e) selection for training and apprenticeship.
- (3) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Agency, setting forth the provisions in subsections (b)(1) and (b)(2) concerning non-discrimination and affirmative action.
  - (4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in subsection (b)(2).
  - (5) The Contractor agrees to send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the contracting agency, advising the said labor union or workers' representative of that contractor' s commitments under this nondiscrimination clause and the Act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

20. Definitions:

The terms Mayor, Chief Procurement Officer, Contract Appeals Board and District will mean the Mayor of the District of Columbia, the Chief Procurement Officer of the District of Columbia or his/her alternate, the Contract Appeals Board of the District of Columbia, and the Government of the District of Columbia respectively. If the Contractor is an individual, the term Contractor shall mean the Contractor, his heirs, his executor and his administrator. If the Contractor is a corporation, the term Contractor shall mean the Contractor and its successor.

21. Health And Safety Standards:

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

22. Appropriation Of Funds:

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

23. Buy American Act:

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

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

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

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

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

24. Service Contract Act of 1965:

- (a) Definitions. "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. §351, *et seq.*).
- (1) "Contractor," as used in this clause, means the prime Contractor or any subcontractor at any tier.
  - (2) "Service employee," as used in this clause, means any person (other than a person employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR 541) engaged in performing a District contract not exempted under 41 U.S.C. §356, the principal purpose of which is to furnish services in the United States, as defined in section 22.1001 of the Federal Acquisition Regulation. It includes all such persons regardless of the actual or alleged contractual relationship between them and a contractor.
- (b) Applicability. To the extent that the Act applies, this contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (20 CFR part 4). All interpretations of the Act in Subpart C of 29 CFR 4 are incorporated in this contract by reference. This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. §356, as interpreted in Subpart C of 29 CFR 4.
- (c) Compensation

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- (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or the Secretary's authorized representative, as specified in any wage determination attached to this contract.
- (2) If a wage determination is attached to this contract, the Contractor shall classify any class of service employees not listed in it, but to be employed under this contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph. This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee.
  - (a) The Contractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration (ESA), Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary;
  - (b) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contracting Officer with a written copy of such determination or it shall be posted as a part of the wage determination;
  - (c) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General

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

- (d) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds to a contract under which the classification in question was previously conformed pursuant to this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in this clause need not be followed;
  - (e) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended;
  - (f) The wage rate and fringe benefits finally determined under this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract;
  - (g) Upon discovery of failure to comply with this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.
- (3) If the term of this contract is more than 1 year, the minimum wages and fringe benefits required for service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by ESA.
  - (4) The Contractor can discharge the obligation to furnish fringe benefits specified in the attachment or determined under paragraph (2) of this clause by furnishing any equivalent combinations of bona fide fringe

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benefits, or by making equivalent or differential cash payments, in accordance with Subpart B and C of 29 CFR 4.

- (d) Minimum wage: In the absence of a minimum wage attachment for this contract, the Contractor shall not pay any service or other employees performing this contract less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §206). Nothing in this clause shall relieve the Contractor of any other legal or contractual obligation to pay a higher wage to any employee.
- (e) Successor contracts: If this contract succeeds a contract subject to the Act under which substantially the same services were furnished and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, then, in the absence of a minimum wage attachment to this contract, the Contractor may not pay any service employee performing this contract less than the wages and benefits, including those accrued and any prospective increases, provided for under that agreement. No Contractor may be relieved of this obligation unless the limitations of 29 CFR 4.1c(b) apply or unless the Secretary of Labor or the Secretary's authorized representative:
- (1) Determines that the agreement under the predecessor was not the result of arms-length negotiations; or
  - (2) Finds, after a hearing under 29 CFR 4.10, that the wages and benefits provided for by that agreement vary substantially from those prevailing for similar services in the locality or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and 4.11 and parts 6 and 8 that some or all of the wages and fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.
- (f) Notification to employees: The Contractor shall notify each service employee commencing work on this contract of a minimum wage and any fringe benefits required to be paid, or shall post a notice of these wages and benefits in a prominent and accessible place at the worksite, using such poster as may be provided by the Department of Labor.

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- (<sup>g</sup>) Safe and sanitary working conditions: The Contractor shall not permit services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor that are unsanitary, hazardous, or dangerous to the health or safety of service employees. The Contractor shall comply with the health standards applied under 29 CFR Part 1925.
- (h) Records: The Contractor shall maintain for 3 years from the completion of work, and make available for inspection and transcription by authorized ESA representatives, a record of the following:
  - (1) For each employee subject to the Act:
    - (a) Name and address;
    - (b) Work classification or classifications, rate or rates of wages and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;
    - (c) Daily and weekly hours worked; and
    - (d) Any deductions, rebates, or refunds from total daily or weekly compensation.
  - (2) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by ESA under the terms of paragraph (c)(3) of this clause. A copy of the report required by paragraph (e) of this clause will fulfill this requirement.
  - (<sup>3</sup>) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by this clause. The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division. Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases. The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.
- (i) Pay periods : The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.
- (j) Withholding of payments and termination of contract The Contracting Officer shall withhold from the prime Contractor under this or any other District contract

with the prime contractor any sums the Contracting Officer, or an appropriate officer of the Labor Department, decides may be necessary to pay underpaid employees. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination for default. In such event, the District may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(k) Subcontracts: The Contractor agrees to insert this clause in all subcontracts.

(1) Contractor's report:

- (1) If there is a wage determination attachment to this contract and any classes of service employees not listed on it are to be employed under the contract, the Contractor shall report promptly to the Contracting Officer the wages to be paid and the fringe benefits to be provided each of these classes, when determined under paragraph (c) of this clause.
- (2) If wages to be paid or fringe benefits to be furnished any service employees under the contract are covered in a collective bargaining agreement effective at any time when the contract is being performed, the Contractor shall provide to the Contracting Officer a copy of the agreement and full information on the application and accrual of wages and benefits (including any prospective increases) to service employees working on the contract. The Contractor shall report when contract performance begins, in the case of agreements then in effect, and shall report subsequently effective agreements, provisions, or amendments promptly after they are negotiated.

(m) Contractor's Certification: By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded District contracts by virtue of the sanctions imposed under section 5 of the Act. No part of this contract shall be subcontracted to any person or firm ineligible for award of a District contract under section 5 of the Act. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. §1001.

(n) Variations, tolerances, and exemptions involving employment: Notwithstanding any of the provisions in paragraphs (c) through (1) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions authorized by the Secretary of Labor.

(1)(i) In accordance with regulations issued under Section 14 of the Fair Labor Standards Act of 1938 by the Administrator of the Wage and Hour Division, ESA (29 CFR 520, 521, 524, and 525), apprentices, student learners, and workers whose earning capacity is impaired by age or by physical or mental deficiency or injury, may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1)

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of the Service Contract Act, without diminishing any fringe benefits or payments in lieu of these benefits required under section 2(a)(2) of the Act.

- (ii) The Administrator will issue certificates under the Act for employing apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages, but without changing requirements concerning fringe benefits or supplementary cash payments in lieu of these benefits.
  - (iii) The Administrator may also withdraw, annul, or cancel such certificates under 29 CFR 525 and 528.
- (2) An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips shall be credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with regulations in 29 CFR 531. However, the amount of credit shall not exceed 40 percent of the minimum rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 as amended.

**25. Cost and Pricing Data:**

- (a) This paragraph and paragraphs b through e below shall apply to contractors or offerors in regards to: (1) any procurement in excess of \$100,000, (2) any contract awarded through competitive sealed proposals, (3) any contract awarded through sole source procurement, or (4) any change order or contract modification. By entering into this contract or submitting this offer, the Contractor or offeror certifies that, to the best of the Contractor's or offeror's knowledge and belief, any cost and pricing data submitted was accurate, complete and current as of the date specified in the contract or offer.
- (b) Unless otherwise provided in the solicitation, the offeror or Contractor shall, before entering into any contract awarded through competitive sealed proposals or through sole source procurement or before negotiating any price adjustments pursuant to a change order or modification, submit cost or pricing data and certification that, to the best of the Contractor's knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of the date of award of this contract or as of the date of negotiation of the change order or modification.
- (c) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified by the Contractor, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified by the Contractor, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

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- (d) Any reduction in the contract price under paragraph c above due to defective data from a prospective subcontractor that was not subsequently awarded, the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided that the actual subcontract price was not itself affected by defective cost or pricing data.
- (e) Cost or pricing data includes all facts as of the time of price agreement that prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective Contractor's judgment about estimated future costs or projections, cost or pricing data do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred.
- (f) The following specific information should be included as cost or pricing data, as applicable:
  - (1) Vendor quotations;
  - (2) Nonrecurring costs;
  - (3) Information on changes in production methods or purchasing volume;
  - (4) Data supporting projections of business prospects and objectives and related operations costs;
  - (5) Unit — cost trends such as those associated with labor efficiency;
  - (6) Make or buy decisions;
  - (7) Estimated resources to attain business goals;
  - (8) Information on management decisions that could have a significant bearing on costs.
- (g) If the offeror or contractor is required by law to submit cost or pricing data in connection with pricing this contract or any change order or modification of this contract, the Contracting Officer or representatives of the Contracting Officer shall have the right to examine all books, records, documents and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the contract, change order or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. Contractor shall make available at its office at all reasonable times the materials described above for examination, audit, or reproduction until three years after the later of:
  - (1) final payment under the contract;

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- (2) final termination settlement; or
- (3) the final disposition of any appeals under the disputes clause or of litigation or the settlement of claims arising under or relating to the contract.

**26. Multiyear Contract:**

If this contract is a multiyear contract, then the following provision is made part of this contract:

If funds are not appropriated or otherwise made available for the continued performance in a subsequent year of a multiyear contract, the contract for the subsequent year shall be terminated, either automatically or in accordance with the termination clause of the contract. Unless otherwise provided for in the contract, the effect of termination is to discharge both the District and the Contractor from future performance of the contract, but not from the existing obligations. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract.

**27. Termination Of Contracts For Certain Crimes And Violations:**

- (a) The District may terminate without liability any contract and may deduct from the contract price or otherwise recover the full amount of any fee, commission, percentage, gift, or consideration paid in violation of this title if:
  - (1) The Contractor has been convicted of a crime arising out of or in connection with the procurement of any work to be done or any payment to be made under the contract; or
  - (2) There has been any breach or violation of:
    - (A) Any provision of the Procurement Practices Act of 1985, as amended, or
    - (B) The contract provision against contingent fees.
- (b) If a contract is terminated pursuant to this section, the Contractor:
  - (1) May be paid only the actual costs of the work performed to the date of termination, plus termination costs, if any; and
  - (2) Shall refund all profits or fixed fees realized under the Contract.
- (c) The rights and remedies contained in this are in addition to any other right or remedy provided by law, and the exercise of any of them is not a waiver of any other right or remedy provided by law.

## Attachment B

Source Data

Located at

<https://eee.co-exprise.com/marketplace/>

TAX CERTIFICATION AFFIDAVIT

Date \_\_\_\_\_, 20

Name of Organization/Entity: \_\_\_\_\_

Address: \_\_\_\_\_

Principal Officers: Name Soc. Sec. No. Title

\_\_\_\_\_

Business Telephone No.: \_\_\_\_\_

Finance and Revenue Registration \_\_\_\_\_

No.: Federal Identification No.: \_\_\_\_\_

DUNS No.: \_\_\_\_\_ Contract No.: \_\_\_\_\_

Unemployment Insurance Account No.: \_\_\_\_\_

I hereby certify that:

I have complied with the applicable tax filing and licensing requirements of the District of Columbia. The following information is true and correct concerning tax compliance for the following taxes for the past five (5) years:

Table with 3 columns: District, Tax Type, and status markers. Rows include Sales and Use, Employment Withholding, Hotel Occupancy, Corporation Franchise, Unincorporated Franchise, Personal Property, Professional License, Arena/Public Safety Fee, and Vendor Fee.

If not current, as checked in item 2, I am in compliance with a payment agreement with the Department of Finance and Revenue. Yes No

Attach copy of the Agreement. If outstanding liabilities exists and no agreement has been made, please attach a listing of all such liabilities.

- The Department of Finance and Revenue also requires: (A) Copies of FR-532 (Notice of Registration) or a copy of an FR-500 (Combined Registration Form) (B) Copies of canceled checks for the last tax period(s) filed for each tax liability; i.e., sales and use, employer withholding, etc.

The District of Columbia Government is hereby authorized to verify the above information with appropriate Government authorities. Penalty for making false statements is a fine of not more than \$1,000.00, imprisonment for not more than one year, or both, as prescribed in D.C. Code Sec. 22-2514. Penalty for false swearing is a fine of not more than \$2,500.00, imprisonment for not more than three (3) years, or both, as prescribed in D.C. Code sec. 22-2513.

Signature of Person Authorized to Sign This Document Title

Print Name

Notary: DISTRICT OF COLUMBIA, ss:

Subscribed and sworn before me this \_\_\_\_\_ Month and Year

Notary Public

My Commission Expires \_\_\_\_\_

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF CONTRACTING AND PROCUREMENT

\* \*

XXXXXXXXXX

XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX

Re: Price Offer

To XXXXXXXXXXXX:

The District of Columbia hereby notifies and confirms to the XXXXXXXXXXXX that The District of Columbia will submit to City Council this Price Offer of \$.XXXX per therm that XXXXX submitted in response to the Invitation for Bids # DCAM-2007-B-2103, dated XXXXXXXX XX, XXXX, during the Online Auction on XXXXXXXXXXXXXXXX. The Price Offer covers Lot 4X (XX months) for Natural Gas Supply to the District Energy Purchaser.

Pursuant to D.C. Official Code §2-301.05a and § 1-204.51(c), the District is obligated to submit to Council for approval, contracts in excess of \$1,000,000 as well as all multiyear contracts .

**Further 1 certify that funds are available for the fiscal year (XXXXXXXXXXXXXXXXXX). The remainder of the contract period is subject to the availability of funds clause in the Government of the District of Columbia Standard Contract Provisions.**

Congratulations and thank you for participation.

Yours very truly,

John Soderberg  
Contracting Officer

# ATTACHMENT E

## **Northern Virginia Jurisdictions Zone 1**

- 1) City of Alexandria
- 2) Alexandria Schools
- 3) Alexandria Sanitation Authority
- 4) Arlington County
- 5) Arlington Public Schools
- 6) Fairfax County
- 7) Fairfax County Schools
- 8) Fairfax County Water Authority
- 9) City of Falls Church
- 10) Town of Leesburg
- 11) Loudoun County
- 12) Loudoun County Schools
- 13) Manassas City Schools
- 14) Prince William County Service Authority
- 15) Prince William County
- 16) Prince William County Schools
- 17) Upper Occoquan Sewage Authority

## **State of Maryland Zone 2**

- 18) Charles County
- 19) Montgomery County Government
- 20) Prince George County
- 21) Prince George County Schools

## **District of Columbia Jurisdictions Zone 3**

- 22) District of Columbia Government Agencies
- 23) Washington Convention Center

**City of Alexandria**

**Contracting Officer: (TO BE PROVIDED)**

**COTOR: Ann Turner**

**e-mail: [ann.turner@alexandriavirginia.gov](mailto:ann.turner@alexandriavirginia.gov)**

**Phone: 703-838-4946 ex 208**

**Fax: 703-838-6439**

**Virginia Contract Provisions will apply.**

**Method of Award: See Required Submittal.**

**P A R T 2  
R E Q U I R E D S U B M I T T A L  
A T T A C H M E N T ( A )**

**THIS OFFER AND AWARD FORM SHALL BE SIGNED**

For and in consideration of the payment of the Contract Sum, as set forth in the Proposal, subject to modification in the final Contract as mutually agreed upon by the City and Offeror as a result of further negotiations, if any,

NAME OF OFFER: _____
ADDRESS: _____
TELEPHONE NUMBER: ( __ ) _____
FAX NUMBER: ( ____ ) _____
FEDERAL EMPLOYMENT IDENTIFICATION NO. _____
ALEXANDRIA BUSINESS LICENSE NO. _____
VIRGINIA CONTRACTOR'S REGISTRATION NO. _____

(the "Offeror") offers to perform the Work set forth in Request for Proposals No. \_\_\_\_\_, together with any addenda, in accordance with the terms of the Offeror's Proposal, as modified in further negotiations with the City.

By signing this document, the Offeror agrees that, if its Proposal is accepted for the consideration mentioned, it will at its own expense do all of the Work and furnish all the materials, equipment and labor necessary to carry out this agreement within the time specified in the Request for Proposals pursuant to the Contract Documents identified as:

X	PART	DESCRIPTION
1	1	Instructions, Conditions and Notices
2	2	Required Submittals
3a	3a	General Terms and Conditions
3b	3b	Specific Terms and Conditions
4	4	Drawings
		Addenda

\_\_\_\_\_  
Offeror's Authorized Signatory                      Date

\_\_\_\_\_  
Name and Title of Authorized Signatory

Accepted by the City of Alexandria, Virginia,  
This \_\_\_\_ day of \_\_\_\_\_, 20 \_\_

\_\_\_\_\_  
Jack T. Pitzer, Ph.D., CPPO,  
Purchasing Agent

**PART 2**

**REQUIRED SUBMITTAL (B)**

**EQUAL EMPLOYMENT OPPORTUNITY AGREEMENT**

The contractor hereby agrees:

(1) Not to discriminate against any employee or applicant for employment on account of race, color, religion, sex, ancestry, national origin, marital status, age or handicap, except as is otherwise provided by law.

(2) To implement an affirmative action employment program as defined in section 12-4-3 of the Code of the City of Alexandria, Virginia, 1981, as amended, to ensure non-discrimination in employment under guidelines to be developed by the commission and approved by the city council.

(3) To include in all solicitations or advertisements for employees placed by or in behalf of the contractor the words "Equal Opportunity Employer" or a symbol, approved by the Alexandria Human Rights Commission, meaning the same

(4) To notify each labor organization or representative of employees with which said contractor is bound by a collective bargaining agreement or other contract of the contractor's obligations pursuant to this equal employment opportunity clause.

(5) To submit to the city manager and the city's human rights administrator, upon request, no more frequently than annually, regular equal employment opportunity reports on a form to be prescribed by the city manager.

(6) To make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the contractor can demonstrate that the accommodation would impose an undue hardship on the operation of the contractor's business, factors to be considered include but are not limited to, the following;

- a. the overall size of the contractor's business with respect to the number of employees, the number and type of facilities and size of budget;
- b. the type of the contractor's operation, including the composition and structure of the contractor's work force; and
- c. the nature and cost of the accommodation needed.

Contractor may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

(7) To include the provisions in paragraphs (1) through (6) hereof in every subcontract so that such provisions will be binding upon each subcontractor.

(8) In the event of the contractor's non-compliance with any provision, upon a finding of such non-compliance by the city's human rights commission and certification of such finding by the city manager, the city council may terminate or suspend or not renew, in whole or in part, this contract.

SIGNATURE \_\_\_\_\_

P A R T 2

REQUIRED SUBMITTAL (C)

CERTIFIED STATEMENT OF NON-COLLUSION

A. This is to certify that the undersigned is seeking, offering or agreeing to transact business or commerce with the City of Alexandria, a municipal corporation of Virginia, or seeking, offering or agreeing to receive any portion of the public funds or moneys, and that the offer or agreement or any claim resulting there from is not the result of, or affected by, any act of collusion with another person engaged in the same line of business or commerce; or any act of fraud punishable under Article 1.1 (Virginia Governmental Frauds Act), Chapter 12 (Miscellaneous), Title 18.2 (Crimes and Offenses Generally) of the Code of Virginia (1950), as amended.

B. This is to further certify that the undersigned has read and understands the following:

(1) The City is authorized by Section 18.2-498.4 of the Code of Virginia (1950) as amended, to require this certified statement. That section also provides that any person required to submit this statement who knowingly makes a false statement **shall** be guilty of a Class 6 felony.

(2) Section 18.2-498.3 of the Code of Virginia (1950), as amended, provides that any person, in any commercial dealing in any matter within the jurisdiction of any local government or any department or agency thereof, who knowingly falsifies, conceals, misleads, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be guilty of a Class 6 felony.

(3) Section 59.1-68.7 of the Code of Virginia (1950), as amended, provides that any combination, conspiracy or agreement to intentionally rig, alter or otherwise manipulate, or to cause to be rigged, altered or otherwise manipulated, any bid submitted to any governmental unit for the purpose of allocating purchases or sales to or among persons, raising or otherwise fixing the prices of goods or services, or excluding other persons from dealing with the state or any other governmental unit shall be unlawful. Any person violating the foregoing shall be guilty of a Class 6 felony.

SIGNATURE \_\_\_\_\_

PART 2

REQUIRED SUBMITTAL (D)

DISCLOSURES RELATING TO CITY OFFICIALS AND EMPLOYEES

A. I hereby state that, as of this date (check one):

( ) Our firm has **no reason** to believe that any member of the City Council, any official or employee of the City, or any member of any commission, committee, board or corporation controlled or appointed by the City Council has already received, in connection with or related in any way to this contract, or has been promised, in the event this contract is awarded to the firm, any commission, finder's fee or other thing of value

( ) Our firm **has reason** to believe that the following City Council members, City officials and/or employees, and/or members of a Council-appointed or -controlled commission, committee, board or corporation have already received, in connection with or related in any way to this contract, or have been promised, in the event this contract is awarded to the firm, any commission, finder's fee or other thing of value:

\_\_\_\_\_ name

\_\_\_\_\_ title/position

\_\_\_\_\_ name

\_\_\_\_\_ title/position

I hereby state that, as of this date:

( ) Our firm has **no reason** to believe that any member of the City Council or any official or employee of the City would or may be financially affected, whether affirmatively or negatively, and whether personally or through a spouse or other family member, if this contract were awarded to the firm

( ) Our firm **has reason** to believe that the following members of the City Council and officials and employees of the City would or may be financially affected, whether affirmatively or negatively, and whether personally or through a spouse or other family member, if this contract were awarded to the firm:

\_\_\_\_\_ name

\_\_\_\_\_ title/position

\_\_\_\_\_ name

\_\_\_\_\_ title/position

\_\_\_\_\_  
COMPANY NAME DATE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TITLE

**P A R T 2**

**OPTIONAL SUBMITTAL**

**USE OF CONTRACTS BY REGIONAL JURISDICTIONS**

Under the provisions of Section 3-3-21, Alexandria City Code, the Purchasing Agent may solicit bids and award contracts on behalf of other jurisdictions for supplies and services of common use.

1. If authorized by the bidder(s), resultant contract(s) will be extended to any or all of the listed jurisdictions as designated by the bidder to purchase at contract prices in accordance with contract terms.
2. Any jurisdiction using such contract(s) will place its own order(s) directly with the successful contractor. There shall be no obligation on the part of any jurisdiction to use the contract(s). (The City of Alexandria acts only as the Contracting Agent and is not responsible for placement of orders, payment or discrepancies of the participating jurisdictions.)
3. A negative reply does not adversely affect consideration of Bid/Proposal.
4. Each participating jurisdiction has the option of executing a separate contract with the awardee. Contracts entered into with a participating jurisdiction may contain general terms and conditions unique to that jurisdiction including, by way of illustration and not limitation, clauses covering minority participation, non-discrimination, indemnification, naming the jurisdiction as an additional insured under any required Comprehensive General Liability policies, and venue. If, when preparing such as contract, the general terms and conditions of a jurisdiction are unacceptable to the awardee, the awardee may withdraw its extension of the award to that jurisdiction.
5. It is the awarded vendor's responsibility to notify the jurisdictions listed below of the availability of the contract(s). 4

**CHECK ALL THAT APPLY**

BIDDER'S AUTHORIZATION TO EXTEND CONTRACT:					
Alexandria Public Schools		Alexandria Sanitation Authority	Et	Alexandria Transit Company (DASH)	
Alexandria Redevelopment & Housing Authority	i D	Alexandria City Libraries	:	Alexandria Economic Development Partnership, Inc.	
Arlington County, VA	.._	Arlington Public Schools	0	Bowie, MD	'
Charles County Public Schools		College Park, MD	.._	Culpepper County, VA	5
District of Columbia	.._	District of Columbia Courts	0	DC Public Schools	<input type="checkbox"/>
DC Water & Sewer Authority	li	Fairfax, VA		Fairfax County, VA	C
Fairfax County Water Auth.		Falls Church, VA	i	Fauquier County	
Fauquier County Schools	i	Frederick, MD	-	Frederick County, MD	LI
Frederick County Schools	r	Gaithersburg, MD	<input type="checkbox"/>	Greenbelt, MD	'
Hemdon, VA	a	Loudoun County, VA		Manassas, VA	D
Manassas Public Schools	<input type="checkbox"/>	Md-Natl. Capitol Park & Plan	iti	Metro. Wash. Airports Auth.	
Metro. Wash. Council of Govt.	s	Montgomery Community College	0	Montgomery County	.ii
Montgomery County Schools	0	No. Va. Community College	a	No. Va. Planning Dist. Comm.	
OmniRide	:1]	Prince George's County	0	Prince George's Schools	0
Prince William County	C	Prince Williams Schools	III	Prince William Service Auth.	
Rockville, MD		Stafford County, VA	J	Stafford County Schools	0
Takoma Park, MD		Town of Leesburg	t'	Upper Occoquan Sewage Auth.	C.,'
Vienna, VA		Virginia Railway Express (VRE)	is	Wash. Metro Area Tran. Auth.	
Wash. Suburb Sanitary Comm.		Winchester Public Schools			



require certification or licensing.

**Umbrella**

\$1,000,000 bodily injury and property damage and personal injury.

**City of Alexandria Insurance Checklist**

8.	Garage Liability	\$1,000,00 bodily injury and property damage each occurrence Garagekeepers' legal liability; Indicate limit \$ - Comprehensive Indicate limit \$ - Collision
9.	City of Alexandria named as additional insured on other than Worker's Compensation and Auto. This coverage is primary to all other coverages the City may possess.	
10.	Other insurance required.	
11.	Thirty (30) Days Cancellation, non-renewal, material change or coverage reduction notice required. The words "endeavor to" are to be eliminated from the Notice of Cancellation on standard ACORD certificates.	
12.	Best's Guide rating: "A" IV or better, or its equivalent.	
13.	The Certificate(s) of Insurance shall state Bid Number and Bid Title.	

\_\_\_\_\_  
Company Name

**Alexandria Schools**

**Contracting Officer: (TO BE PROVIDED)**

**COTOR: B.J. Clyburn**

**e-mail: [b.j.clyburn@etacps.k12.va.us](mailto:b.j.clyburn@etacps.k12.va.us)**

**Phone: 703-834-6627**

**Fax: 703-824-0382**

**Virginia Contract Provisions will apply.**

**Alexandria Sanitation Authority**  
**Contracting Officer: (TO BE PROVIDED)**

**COTOR: Diana Johnson**

**e-mail: [dianani@ialexsan.com](mailto:dianani@ialexsan.com)**

**Phone: 703-549-4904**

**Fax: 703-549-9671**

**Virginia Contract Provisions will apply.**

**Arlington County**  
**Contracting Officer: (TO BE PROVIDED)**

**COTOR: John Morrill**

**E-mail: [imorrill/darlingtonva.us](mailto:imorrill@darlingtonva.us)**

**Phone: 703-228-4426**

**Fax: 703-228-4397**

**Virginia Contract Provisions will apply.**

**Arlington Public Schools**  
**Contracting Officer: (TO BE PROVIDED)**

**COTOR: Kevin Chisholm**

**E-mail:**

**Phone: 703-228-7731**

**Virginia Contract Provisions will apply.**

**Fairfax County**

**Contracting Officer: Cathy Muse**

**E-mail: [cathy.muse@fairfaxcountv.gov](mailto:cathy.muse@fairfaxcountv.gov)**

**Phone: 703-324-3203**

**COTOR: (TO BE PROVIDED)**

**Virginia Contract Provisions will apply.**

CONTRACT PROVISIONS FOR  
VIRGINIA JURISDICTIONS

**"The following provisions are generally applicable to public bodies in the Commonwealth of Virginia. However, the specific language in these provisions may vary among Jurisdictions participating in the Agreement. Therefore, the Contractor is responsible for obtaining from any Jurisdiction participating in this Agreement the specific provisions applicable to that Jurisdiction prior to providing any goods or services to said Jurisdiction under the Agreement."**

1. AUTHORITY:

- 1.1. The Purchasing Agent has the sole responsibility and authority for negotiating, placing and when necessary modifying every contract and purchase order (except for capital construction projects) issued by the Jurisdiction. In the discharge of these responsibilities, the Purchasing Agent may be assisted by assigned contract administrators. Specifically delegated employees are authorized to order supplies or services, and obligate the government of the Jurisdiction for an indebtedness. Any purchase ordered or contract made which is contrary to these provisions and authorities shall be of no effect and void and shall not be binding on the Jurisdiction.
- 1.2. Certain provisions of this agreement may not be applicable to specific contracts for either goods or services and may be waived at the discretion of the Purchasing Agent.
- 1.3. Multiyear contracts may be continued each fiscal year only after funding appropriations and program approval have been granted by the Governing body. In the event that the Governing body does not grant necessary funding appropriation/program approval, then the affected multiyear contract becomes null and void, effective July 1 of the fiscal year for which such approvals have been denied.
- 1.4. Performance under this contract is not to begin until receipt of the purchase order, Procurement Card order, or other notification to proceed by the Jurisdiction Purchasing Agent and/or Jurisdiction agency to proceed. Purchase requisitions shall not be used for placing orders.

2. TAX EXEMPTION:

- 2.1. The Jurisdiction is exempt from the payment of any federal excise or any Virginia sales tax. Contract prices must be net, exclusive of taxes. However, when under established trade practice any federal excise tax is included in the list price, a contractor may quote the list price and shall show separately the amount of federal tax, either as a flat sum or as a percentage of the list price, which shall be deducted by the Jurisdiction. The jurisdiction's Federal Excise Tax Exemption Number is 54-74-0127K. Contractors located outside the Commonwealth of Virginia are advised that when materials are picked up by the Jurisdiction at their place of business, they may charge and collect their own local/state sales tax. Materials used in the performance of construction contracts are subject to Virginia Sales/Use Tax as described in Section 630-10-27J of the Virginia Retail Sales and Use Tax Regulations.

3. CONTRACT INSURANCE PROVISIONS:

- 3.1. The contractor shall be responsible for its work and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all description used in connection therewith. The contractor assumes all risk of direct and indirect damage or injury to the property or persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the contract.
  - a. The contractor shall, during the continuance of all work under the contract provide the following:
  - b. Maintain statutory Workers' Compensation and Employer's Liability insurance in limits of not less than \$100,000 to protect the contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia.

CONTRACT PROVISIONS FOR  
VIRGINIA JURISDICTIONS

- c. The contractor agrees to maintain Commercial General Liability insurance in the amount of \$500,000 per occurrence/aggregate, to protect the Contractor, its subcontractors, and the interest of the Jurisdiction, its officers and employees against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Contract or in connection with the contracted work.
- The General Liability insurance shall include the Broad Form Property Damage endorsement, in addition to coverages for explosion, collapse, and underground hazards, where required. Completed operations liability endorsement shall continue in force for three years following completion of the contract.
- d. The contractor agrees to maintain owned, non-owned, and hired Automobile Liability insurance, in the amount of \$500,000 per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the contractor. In addition, all mobile equipment used by the contractor in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy. The Garage Keeper's Liability coverage shall also be maintained where appropriate.
- e. The contractor agrees to maintain Contractors Liability insurance in the amount of \$500,000 per occurrence/aggregate to insure against loss due to liability imposed upon an owner/contractor for acts arising out of the operations of independent contractors/subcontractors or out of an owner's/contractor's supervisory activity.
- f. Liability Insurance "Claims Made" basis:
- If the liability insurance purchased by the contractor has been issued on a "claims made" basis, the contractor must comply with the following additional conditions. The limit of liability and the extensions to be included as described previously in these provisions, remain the same. The Contractor must either:
1. Agree to provide certificates of insurance evidencing the above coverage for a period of two years after final payment for the contract. This certificate shall evidence a "retroactive date" no later than the beginning of the Contractor's or subcontractor's work under this contract, or
  2. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.
- g. Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
- h. The contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.
- i. European markets including those based in London, and the domestic surplus lines markets that operate on a non-admitted basis are exempt from this requirement provided that the Contractor's broker can provide financial data to establish that a market is equal to or exceeds the financial strengths associated with the A.M. Best's rating of A:VI or better.
- i. The contractor will provide an original, signed Certificate of Insurance citing the contract number and such endorsements as prescribed herein.
- j. The contractor will secure and maintain all insurance certificates of its subcontractors, which shall be made available to the Jurisdiction on demand.

- k. The contractor will provide on demand certified copies of all insurance policies related to the contract within ten business days of demand by the Jurisdiction. These certified copies will be sent to the Jurisdiction from the contractor's insurance agent or representative.
- a) No change, cancellation, or non-renewal shall be made in any insurance coverage without a 45 day written notice to the Jurisdiction. The contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
  - b) Compliance by the contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the contractor and all subcontractors of their liabilities provisions of the contract.
  - c) Contractual and other liability insurance provided under this contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the Jurisdiction from supervising and/or inspecting the project as to the end result. The contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors.
  - d) Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the Jurisdiction. The contractor shall be as fully responsible to the Jurisdiction for the acts and omissions of the subcontractors and of persons employed by them as it is for acts and omissions of person directly employed by it.
  - e) Precaution shall be exercised at all times for the protection of persons (including employees) and property.
  - f) The contractor and all subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-596, as it may apply to this Contract.
  - g) The Jurisdiction, its officers and employees shall be named as an "additional insured" in the Automobile and General Liability policies and it shall be stated on the Insurance Certificate that this coverage "is primary to all other coverage the Jurisdiction may possess."
  - h) If an "ACORD" Insurance Certificate form is used by the contractor's insurance agent, the words, "endeavor to" and "...but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" paragraph of the form shall be deleted or crossed out.

#### 4. INDEMNIFICATION:

- 4.1. Contractor shall indemnify, keep and save harmless the Jurisdiction, its agents, officials, employees and volunteers against claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, cost and expenses which may otherwise accrue against the Jurisdiction in consequence of the granting of a contract or which may otherwise result there from, if it shall be determined that the act was caused through negligence or error, or omission of the Contractor or his or her employees, or that of the subcontractor or his or her employees, if any; and the Contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising there from or incurred in connection therewith; and if any judgment shall be rendered against the Jurisdiction in any such action, the Contractor shall, at his or her own expense, satisfy and discharge the same. The contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Jurisdiction as herein provided.

CONTRACT PROVISIONS FOR  
VIRGINIA JURISDICTIONS

5. FUNDING:

- 5.1. A contract shall be deemed binding only to the extent of appropriations available to each agency for the purchase of goods and services.

6. CONTRACT ALTERATIONS:

- 6.1. No alterations in the terms of the contract shall be valid or binding upon the Jurisdiction unless made in writing and signed by the Purchasing Agent or his or her authorized agent. Should it become proper or necessary in the execution of this contract to make any change in design, or to make any alterations which will increase the expense, the Purchasing Agent shall determine an equitable adjustment.
- 6.2. No payment shall be made to the Contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the Contractor shall first have been expressly authorized and ordered in writing by contract amendment or otherwise furnished by the Purchasing Agent.
- 6.3. The Jurisdiction reserves the right to add similar items/services or delete items/services specified in the resultant contract as requirements change during the period of the contract. The jurisdiction and the Contractor will mutually agree to prices for items/services to be added to the contract. Contract amendments will be issued for all additions or deletions.

7. SUBLETTING OF CONTRACT OR ASSIGNMENT OF CONTRACT FUNDS:

- 7.1. The contractor shall not assign, transfer, convey, sublet or otherwise dispose of his or her contractual duties to any other person, firm or corporation, without the previous written consent of the Purchasing Agent. If the Contractor desires to assign his or her right to payment of the contract, Contractor shall notify the Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the contractor from his or her obligations or change the terms of the contract.

8. TERMINATION FOR CONVENIENCE:

- 8.1. The contract will remain in force for the full period specified and/or until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and until all requirements and conditions shall have been met, unless:
- a. Terminated prior to expiration date by satisfactory deliveries of entire contract requirements, or upon termination by the Jurisdiction for Convenience or Cause.
  - b. Extended upon written authorization of the Purchasing Agent and accepted by Contractor, to permit ordering of unordered balances or additional quantities at contract prices and in accordance with contract terms.

- 8.2. A contract may be terminated in whole or in part by the Jurisdiction in accordance with this clause whenever the Jurisdiction Purchasing Agent shall determine that such a termination is in the best interest of the Jurisdiction. Any such termination shall be effected by delivery to the contractor at least five working days prior to the termination date of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. An equitable adjustment in the contract price shall be made for completed service, but no amount shall be allowed for anticipated profit on unperformed services.

9. TERMINATION OF CONTRACT FOR CAUSE:

- 9.1. If, through any cause, the contractor fails to fulfill in a timely and proper manner his or her obligations under this contract, or if the contractor violates any of the covenants, agreements, or stipulations of this contract, the Jurisdiction shall have the right to terminate, specifying the effective date, at least five (5) days before the effective date of such termination. In such event all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the contractor under the contract shall, at the option of the Jurisdiction, become its property and the contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.
- 9.2. Notwithstanding the above, the contractor shall not be relieved of liability to the Jurisdiction for damages sustained by the Jurisdiction by virtue of any breach of contract by the contractor for the purpose of set off until such time as the exact amount of damages due to the Jurisdiction from the contractor is determined.

10. GUARANTIES & WARRANTIES:

- 10.1. All guarantees and warranties required shall be furnished by the contractor and shall be delivered to the Purchasing Agent before final payment on the contract is made. Unless in conflict with this contract or as otherwise stated, manufacturer's standard warranty applies.

11. GENERAL GUARANTY:

11.1. Contractor agrees to:

Save the Jurisdiction, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a contract for which the Contractor is not the patentee, assignee, licensee or owner.

Protect the Jurisdiction against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.

Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible.

Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the Jurisdiction.

Protect the Jurisdiction from loss or damage to Jurisdiction owned property while it is in the custody of the contractor.

12. SERVICE CONTRACT GUARANTY

12.1. Contractor agrees to:

Furnish services described in the contract at the times and places and in the manner and subject to conditions set forth provided that the Jurisdiction may reduce the said services at any time.

Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.

All work and services rendered in strict conformance to all laws, statues, and ordinances and the applicable rules, regulations, methods and procedures of all government boards, bureaus, offices and other agents.

Allow services to be inspected or reviewed by an employee of the Jurisdiction at any reasonable time and place selected by the Jurisdiction. The jurisdiction shall be under no obligation to

compensate contractor for any services not rendered in strict conformity with the contract.

Stipulate that the presence of a Jurisdiction Inspector shall not lessen the obligation of the contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the Contractor for infraction. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.

13. OFFICIALS NOT TO BENEFIT:

13.1. Upon acceptance of this contract, the Contractor certifies that to the best of his or her knowledge no The jurisdiction official or employee having official responsibility for the procurement transaction, or member of his or her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed as soon as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.

13.2. Whenever there is reason to believe that a financial benefit of the sort described in above paragraph has been or will be received in connection with a contract, and that the contractor has failed to disclose such benefit or has inadequately disclosed it, the Jurisdiction Executive, as a prerequisite to payment pursuant to the contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.

13.3. In the event the contractor has knowledge of benefits as outlined above, this information should be submitted to the The jurisdiction Purchasing Agent. The contract number should be referenced in the disclosure.

14. LICENSE REQUIREMENT:

14.1. All firms doing business in The jurisdiction shall obtain a license as required by Chapter 4, Article 7, of The Code of the Jurisdiction, Virginia, as amended, entitled "Business, Professional and Occupational Licensing (BPOL) Tax." Questions concerning the BPOL Tax should be directed to the Department of Tax Administration, telephone (703) 222-8234 or visit: [http://www.fairfaxcounty.gov/dta/business\\_tax.htm](http://www.fairfaxcounty.gov/dta/business_tax.htm).

15. REGISTERING OF CORPORATIONS:

15.1. Any foreign corporation transacting business in Virginia shall secure a certificate of authority as required by Section 13.1-757 of the Code of Virginia, from the State Corporation Commission, Post Office Box 1197, Richmond, Virginia 23209. The Commission may be reached at (804) 371-9733. The consequences of failing to secure a certificate of authority are set forth in Virginia Code Section 13.1-758.

16. COVENANT AGAINST CONTINGENT FEES:

16.1. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the Jurisdiction shall have the right to terminate or suspend this contract without liability to the Jurisdiction or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

17. INELIGIBILITY:

CONTRACT PROVISIONS FOR  
VIRGINIA JURISDICTIONS

- 17.1. Any person or firm suspended or debarred from participation in Jurisdiction procurement shall be notified in writing by the Purchasing Agent.
  - 17.2. The Notice of Suspension shall state the reasons for the actions taken and such decision shall be final unless the person or firm appeals within 30 days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.
  - 17.3. The Notice of Debarment shall state the reasons for the actions taken and the decision shall be final unless the person or firm appeals within 30 days of receipt of the notice by instituting legal action as provided in the Code of Virginia.
  - 17.4. The Purchasing Agent shall have the authority to suspend or debar a person or firm from bidding on any contract for the causes stated in the The Jurisdiction Purchasing Resolution.
  - 17.5. If, upon appeal, it is determined that the action taken by the Purchasing Agent was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief available to the person or firm shall be restoration of eligibility. The person or firm may not institute legal action until all statutory requirements have been met.
18. ORDER OF PRECEDENCE:
- 18.1. In the event of conflict, the provisions of this contract shall take precedence over the any other contract document.
19. CONTRACTUAL DISPUTES:
- 19.1. Any dispute concerning a question of fact as a result of a contract with the Jurisdiction which is not disposed of by agreement shall be decided by the Jurisdiction Purchasing Agent, who shall reduce his decision to writing and mail or otherwise forward a copy to the contractor within 30 days. The decision of the Jurisdiction Purchasing Agent shall be final and conclusive unless the contractor appeals within six months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A contractor may not institute legal action, prior to receipt of the Jurisdiction's decision on the claim, unless the Jurisdiction fails to render such decision within the time specified.
  - 19.2. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment; however, written notice of the contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. The contractor may be required to submit an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.
20. LEGAL ACTION:
- 20.1. All terms and conditions of this contract are subject to the laws of the Commonwealth of Virginia and other local laws, policies, resolutions, and regulations, as applicable. No contractor shall institute any legal action until all statutory requirements have been met.
21. NON-DISCRIMINATION:
- 21.1. The jurisdiction does not discriminate against faith-based organizations, in accordance with the Code of Virginia, § 2.2-4343.1, or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment in the performance of its procurement activity.
  - 21.2. During the performance of this contract, the Contractor agrees as follows:

**Fairfax County Schools**  
**Contracting Officer: (TO BE PROVIDED)**

**COTOR: Jeff Levine**

**E-mail:**

**Phone: 703-764-2418**

**Fax: 703-764-2483**

**Virginia Contract Provisions will apply.**

**Fairfax County Water Authority  
Contracting Officer: (TO BE PROVIDED)**

**COTOR: Carol Huffman**

**E-mail:**

**Phone: 703-289-6553**

**Fax:**

**Virginia Contract Provisions will apply.**

**City of Falls Church**  
**Contracting Officer: (TO BE PROVIDED)**

**COTOR: Ron Lansdowne**

**E-mail:**

**Phone: 703-248-5007**

**Virginia Contract Provisions will apply.**

**Town of Leesburg**

**Contracting Officer: Kathy Eldgen**

**Phone: 703-737-7176**

**COTOR: Ed Rockholt**

**E-mail:**

**Phone: 703-737-7092**

**Virginia Contract Provisions will apply.**

**Loudoun County**  
**Contracting Officer: (TO BE PROVIDED)**

**COTOR: Mike Haifly**

**E-mail:**

**Phone: 703-771-5246**

**Virginia Contract Provisions will apply.**

**Loudoun County Schools**  
**Contracting Officer: (TO BE PROVIDED)**

**COTOR: Mike Barancewicz or John Lord**

**E-mail:**

**Phone: 571-252-1150**

**Virginia Contract Provisions will apply.**

**Manassas City Schools**  
**Contracting Officer: (TO BE PROVIDED)**

**COTOR: Russ Helton**

**Phone:**

**Virginia Contract Provisions will apply.**

**Prince William County Service Authority  
Contracting Officer: (TO BE PROVIDED)**

**COTOR: Aaron Medes**

**E-mail:**

**Phone: 202-962-3316**

**Fax: 202-962-3715**

**Virginia Contract Provisions will apply.**

**Prince William County**

**Contracting Officer: Darron Kenley**

**E-mail: [dkenley\(a\)pwc.gov.org](mailto:dkenley@pwc.gov)**

**Phone: 703-792-7931**

**COTOR: Matthew Groff**

**E-mail:**

**Phone: 703-792-7182**

**Virginia Contract Provisions will apply.**

**Prince William County Schools**  
**Contracting Officer: (TO BE PROVIDED)**

**COTOR: Brian Burtner**

**E-mail:**

**Phone: 703-791-8736**

**Fax: 703-791-7462**

**Virginia Contract Provisions will apply.**

**Upper Occoquan Sewage Authority  
Contracting Officer: (TO BE PROVIDED)**

**COTOR: Ralph Rossi**

**E-mail:**

**Phone: 703-830-2200 ex: 576**

**Virginia Contract Provisions will  
apply.**

**Charles County**  
**Contracting Officer: (TO BE PROVIDED)**

**COTOR: Nelson Sample**

**E-mail:**

**Phone: 301-934-7340**

**Virginia Contract Provisions will apply.**

Montgomery County Government  
Contracting Officer: (TO BE PROVIDED)

COTOR: Victor Sousa

E-mail:

Phone: 240-777-6036

Montgomery has Contract Provisions that will apply.

## GENERAL CONDITIONS OF CONTRACT BETWEEN COUNTY & CONTRACTOR

### 1. ACCOUNTING SYSTEM AND AUDIT, ACCURATE INFORMATION

The contractor certifies that all information the contractor has provided or will provide to the County is true and correct and can be relied upon by the County in awarding, modifying, making payments, or taking any other action with respect to this contract including resolving claims and disputes. Any false or misleading information is a ground for the County to terminate this contract for cause and to pursue any other appropriate remedy. The contractor certifies that the contractor's accounting system conforms with generally accepted accounting principles, is sufficient to comply with the contractor's budgetary and financial obligations, and is sufficient to produce reliable financial information.

The County may examine the contractor's and any first-tier subcontractors' records to determine and verify compliance with the contract and to resolve or decide any claim or dispute arising under this contract. The contractor and any first-tier subcontractor must grant the County access to these records at all reasonable times during the contract term and for 3 years after final payment. If the contract is supported to any extent with federal or state funds, the appropriate federal or state authorities may also examine these records. The contractor must include the preceding language of this paragraph in all first-tier subcontracts.

### 2. AMERICANS WITH DISABILITIES ACT

The contractor agrees to comply with the nondiscrimination requirements of Titles II and III, and other provisions, of the Americans with Disabilities Act of 1990, Pub. Law 101-336, as amended, currently found at 42 U.S.C., § 12101, et seq.

### 3. APPLICABLE LAWS

This contract must be construed in accordance with the laws and regulations of Maryland and Montgomery County. The Montgomery County Procurement Regulations are incorporated by reference into, and made a part of, this contract. In the case of any inconsistency between this contract and the Procurement Regulations, the Procurement Regulations govern. The contractor must, without additional cost to the County, pay any necessary fees and charges, obtain any necessary licenses and permits, and comply with applicable federal, state and local laws, codes and regulations. For purposes of litigation involving this contract, except for contract Disputes discussed in paragraph 8 below, exclusive venue and jurisdiction must be in the Circuit Court for Montgomery County, Maryland or in the District Court of Maryland for Montgomery County.

Furthermore, by signing, or performing work under, a contract for services or arising from a grant award to participate in a County-funded program, contractor expressly certifies and agrees that it will not expend County funds to assist, promote, deter, or otherwise influence union activity or organizing, and that it will comply with the requirements of Montgomery County Code, Section 11 B-33B.

### 4. ASSIGNMENTS AND SUBCONTRACTS

The contractor may not assign or transfer this contract, any interest herein or any claim hereunder, except as expressly authorized in writing by the Director, Office of Procurement. Unless performance is separately and expressly waived in writing by THE DIRECTOR, OFFICE OF PROCUREMENT, an assignment does not release the contractor from responsibility for performance of this contract. Unless otherwise provided in the contract, the contractor may not contract with any other party for furnishing any of the materials or services herein contracted / or without the written approval of the Director, Office of Procurement.

### 5. CHANGES

The Director, Office of Procurement, may unilaterally change the work, materials and services to be performed. The change must be in writing and within the general scope of the contract. The contract will be modified to reflect any time or money adjustment the contractor is entitled to receive. Contractor must bring to the Contract Administrator, in writing, any claim about an adjustment in time or money resulting from a change, within 30 days from the date the Director, Office of Procurement, issued the change in work, or the claim is waived. Any failure to agree upon a time or money adjustment must be resolved under the "Disputes" clause of this contract. The contractor must proceed with the prosecution of the work as changed, even if there is an unresolved claim. No charge for any extra work, time or material will be allowed, except as provided in this section.

### 6. CONTRACT ADMINISTRATION

A. The contract administrator, subject to paragraph B below, is the Department representative designated by the Director, Office of Procurement, in writing and is authorized to:

- (1) serve as liaison between the County and Contractor;
- (2) give direction to the Contractor to ensure satisfactory and complete performance;
- (3) monitor and inspect the Contractor's performance to ensure acceptable timeliness and quality;
- (4) serve as records custodian for this contract, including wage requirements;
- (5) accept or reject the Contractor's performance;
- (6) furnish timely written notice of the contractor's performance failures to the Director, Office of Procurement and to the County Attorney, as appropriate;
- (7) prepare required reports;
- (8) approve or reject invoices for payment;
- (9) recommend contract modifications or terminations to the Director, Office of Procurement;
- (10) issue notices to proceed; and
- (11) monitor and verify compliance with any MFD Performance Plan.

B. The contract administrator is NOT authorized to make determinations (as opposed to recommendations) that alter, modify, terminate or cancel the contract, interpret ambiguities in contract language, or waive the County's contractual rights.

### 7. COST & PRICING DATA

Chapter 11 B of the County Code and the Montgomery County Procurement Regulations require that cost & pricing data be obtained from proposed awardees/contractors in certain situations. The contractor guarantees that any cost & pricing data provided to the County will be accurate and complete. The contractor grants the Director, Office of Procurement, access to all books, records, documents, and other supporting data in order to permit adequate evaluation of the contractor's proposed price(s). The contractor also agrees that the price to the county, including profit or fee, may, at the option of the County, be reduced to the extent that the price was based on inaccurate, incomplete, or noncurrent data supplied by the contractor.

### 8. DISPUTES

Any dispute by Contractor arising under this contract that is not disposed of by agreement must be decided under the Montgomery County Code and the Montgomery County Procurement Regulations. Pending final resolution of a dispute, the Contractor must proceed diligently with contract performance. Subject to subsequent revocation or alteration by the Director, Office of Procurement, the head of the County department, office or agency ("Department Head") of the contract administrator is the designee of the Director, Office of Procurement, for the purpose of dispute resolution. The Department Head, or his/her designee, must forward to the Director, Office of Procurement, a copy of any written resolution of a dispute. The Department Head may, with the contractors consent, delegate this responsibility to another person (other than the contract administrator). A contractor must notify, in writing, the contract administrator of a claim, and must attempt to resolve a claim with the contract administrator prior to filing a dispute with the Director, Office of Procurement. The contractor waives any dispute or claim not made in writing and received by the Director, Office of Procurement, within 30 days of the event giving rise to the dispute or claim, whether or not the contract administrator has responded to a written notice of claim or resolved the claim. The Director, Office of Procurement, must dismiss a dispute that is not timely filed. A dispute must be in writing, for specific relief, and any requested relief must be fully supported by affidavit of all relevant calculations, including cost and pricing information, records, and other information. At the County's option, the Contractor agrees to be made a party to any related dispute involving another contractor.

#### 9. DOCUMENTS, MATERIALS AND DATA

All documents, materials or data developed as a result of this contract are the County's property. The County has the right to use and reproduce any documents, materials, and data, including confidential information, used in the performance of, or developed as a result of, this contract. The County may use this information for its own purposes, including reporting to state and federal agencies. The contractor warrants that it has title to or right of use of all documents, materials or data used or developed in connection with this contract. The Contractor must keep confidential all documents, materials, and data prepared or developed by the contractor or supplied by the County.

#### 10. DURATION OF OBLIGATION

The contractor agrees that all of contractors obligations and warranties, including all requirements imposed by the Minority Owned Business Addendum to these General Conditions, if any, which directly or indirectly are intended by their nature or by implication to survive contractor performance, do survive the completion of performance, termination for default, termination for convenience, or termination by mutual consent of the contract.

#### 11. ENTIRE AGREEMENT

There are no promises, terms, conditions, or obligations other than those contained in this contract. This contract supersedes all communications, representations, or agreements, either verbal or written, between the parties hereto, with the exception of express warranties given to induce the County to enter into the contract.

#### 12. ETHICS REQUIREMENTS/ POLITICAL CONTRIBUTIONS

The contractor must comply with the ethics provisions contained in Chapters 11B and 19A, Montgomery County Code, which include the following:

- (a) a prohibition against making or offering to make certain gifts. Section 11B-51(a).
- (b) a prohibition against kickbacks. Section 11B-51(b).
- (c) a prohibition against a person engaged in a procurement from employing or offering to employ a public employee. Section 11B52 (a).
- (d) a prohibition against a contractor that is providing a recommendation to the County from assisting another party or seeking to obtain an economic benefit beyond payment under the contract. Section 11B-52 (b)
- (e) a restriction on the use of confidential information obtained in performing a contract. Section 11B-52 (c).
- (f) a prohibition against contingent fees. Section 11 B-53.

Furthermore, the contractor specifically agrees to comply with County Code Sections 11B-51, 11B-52, 11B-53, 19A-12, and/or 19A-13 .

In addition, the contractor must comply with the political contribution reporting requirements currently codified under Title 14 of Article 33 of the Annotated Code of Maryland.

#### 13. GUARANTEE

- A. Contractor guarantees for one year from acceptance, or for a longer period that is otherwise expressly stated in the County's written solicitation, all goods, services, and construction offered, including those used in the course of providing the goods, services, and/or construction. This includes a guarantee that all products offered (or used in the installation of those products) carry a guarantee against any and all defects for a minimum period of one year from acceptance, or for a longer period stated in the County's written solicitation. The contractor must correct any and all defects in material and/or workmanship that may appear during the guarantee period, or any defects that occur within one (1) year of acceptance even if discovered more than one (1) year after acceptance, by repairing, (or replacing with new items or new materials, if necessary) any such defect at no cost to the County and to the County's satisfaction.
- B. Should a manufacturers or service providers warranty or guarantee exceed the requirements stated above, that guarantee or warranty will be the primary one used in the case of defect. Copies of manufacturers or service providers warranties must be provided upon request.
- C. All warranties and guarantees must be in effect from the date of acceptance by the County of the goods, services, or construction.
- D. The contractor guarantees that all work shall be accomplished in a workmanlike manner, and the contractor must observe and comply with all Federal, State, County and local laws, ordinances and regulations in providing the goods, and performing the services or construction.
- E. Goods and materials provided under this contract must be of first quality, latest model and of current manufacture, and must not be of such age or so deteriorated as to impair their usefulness or safety. Items that are used, rebuilt, or demonstrator models are unacceptable, unless specifically requested by the County in the Specifications.

#### 1. HAZARDOUS AND TOXIC SUBSTANCES

Manufacturers and distributors are required by federal "Hazard Communication" provisions (29 CFR 1910.1200), and the Maryland "Access to Information About Hazardous and Toxic Substances" Law, to label each hazardous material or chemical container, and to provide Material Safety Data Sheets to the purchaser. The contractor must comply with these laws and must provide the County with copies of all relevant documents, including Material Safety Data Sheets, prior to performance of work or contemporaneous with delivery of goods.

**15. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) COMPLIANCE**

In addition to the provisions stated above in Section 3. "Applicable Laws," contractor must comply with all requirements in the federal Health Insurance Portability and Accountability Act (HIPAA), to the extent that HIPAA is applicable to this contract. Furthermore, contractor must enter into the County's standard Business Associate Agreement when contractor or the County, as part of this contract, may use or disclose to one another, to the individual whose health information is at issue, or to a third-party, any protected health information that is obtained from, provided to, made available to, or created by, or for, the contractor or the County.

**16. IMMIGRATION REFORM AND CONTROL ACT**

The contractor warrants that both the contractor and its subcontractors do not, and shall not, hire, recruit or refer for a fee, for employment under this contract or any subcontract, an alien while knowing the alien is an unauthorized alien, or any individual without complying with the requirements of the federal Immigration and Nationality laws, including any verification and record keeping requirements. The contractor further assures the County that, in accordance with those laws, it does not, and will not, discriminate against an individual with respect to hiring, recruitment, or referral for a fee, of an individual for employment or the discharge of an individual from employment, because of the individual's national origin or, in the case of a citizen or prospective citizen, because of the individual's citizenship status.

**17. INCONSISTENT PROVISIONS**

Notwithstanding any provisions to the contrary in any contract terms or conditions supplied by the contractor, this General Conditions of Contract document supersedes the contractors terms and conditions, in the event of any inconsistency.

**18. INDEMNIFICATION**

The contractor is responsible for any loss, personal injury, death and any other damage (including incidental and consequential) that may be done or suffered by reason of the contractors negligence or failure to perform any contractual obligations. The contractor must indemnify and save the County harmless from any loss, cost, damage and other expenses, including attorney's fees and litigation expenses, suffered or incurred due to the contractors negligence or failure to perform any of its contractual obligations. If requested by the County, the contractor must defend the County in any action or suit brought against the County arising out of the contractors negligence, errors, acts or omissions under this contract. The negligence of any agent, subcontractor or employee of the contractor is deemed to be the negligence of the contractor. For the purposes of this paragraph, County includes its boards, agencies, agents, officials and employees.

**19. INDEPENDENT CONTRACTOR** The contractor is an independent contractor. The contractor and the contractors employees or agents are not agents of the County.

**20. INSPECTIONS**

The County has the right to monitor, inspect and evaluate or test all supplies, goods, services, or construction called for by the contract at all reasonable places (including the contractors place of business) and times (including the period of preparation or manufacture).

**21. INSURANCE**

Prior to contract execution by the County, the proposed awardee/contractor must obtain at its own cost and expense the insurance specified in the applicable table (See Tables A and B) or attachment to these General Conditions, with one or more insurance company(ies) licensed or -mantled to do business in the State of Maryland, and acceptable to the County's Division of Risk Management. Contractor must keep this insurance in full force and effect during the term of this contract, including all extensions. Unless expressly provided otherwise, Table A is applicable to this contract. The insurance must be evidenced by one or more Certificate(s) of Insurance and, if requested by the County, the proposed awardee/contractor must provide a copy of any and all insurance policies to the County. At a minimum, the proposed awardee/contractor must submit to the Director, Office of Procurement, one or more Certificate(s) of Insurance prior to award of this contract, and prior to any contract modification extending the term of the contract, as evidence of compliance with this provision. The contractors insurance must be primary. Montgomery County, MD, including its officials, employees, agents, boards, and agencies, must be named as an additional insured on all liability policies. Forty-five days written notice to the County of cancellation or material change in any of the policies is required. In no event may the insurance coverage be less than that shown on the applicable table, attachment, or contract provision for required insurance. The Director, Office of Procurement, may waive the requirements of this section, in whole or in part.

**22. INTELLECTUAL PROPERTY APPROVAL AND INDEMNIFICATION - INFRINGEMENT**

If contractor will be preparing, displaying, publicly performing, reproducing, or otherwise using, in any manner or form, any information, document, or material that is subject to a copyright, trademark, patent, or other property or privacy right, then contractor must: obtain all necessary licenses, authorizations, and approvals related to its use; include the County in any approval, authorization, or license related to its use; and indemnify and hold harmless the County related to contractors alleged infringing or otherwise improper or unauthorized use. Accordingly, the contractor must protect, indemnify, and hold harmless the County from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions, and attorneys' fees and the costs of the defense of the County, in any suit, including appeals, based upon or arising out of any allegation of infringement, violation, unauthorized use, or conversion of any patent, copyright, trademark or trade name, license, proprietary right, or other related property or privacy interest in connection with, or as a result of, this contract or the performance by the contractor of any of its activities or obligations under this contract.

**23. NON-CONVICTION OF BRIBERY**

The contractor hereby declares and affirms that, to its best knowledge, none of its officers, directors, or partners or employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery, or conspiracy to bribe under any federal, state, or local law.

**24. NON-DISCRIMINATION IN EMPLOYMENT**

The contractor agrees to comply with the non-discrimination in employment policies and/ or provisions prohibiting unlawful employment practices in County contracts as required by Section 11B-33 and Section 27-19 of the Montgomery County Code, as well as all other applicable state and federal laws and regulations regarding employment discrimination.

The contractor assures the County that, in accordance with applicable law, it does not, and agrees that it will not, discriminate in any manner on the basis of race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, or sexual orientation.

he contractor must bind its subcontractors to the provisions of this section.

TABLE A. - INSURANCE REQUIREMENTS  
(See Paragraph #21 Under the General Conditions of Contract Between County and Contractor)

	CONTRACT DOLLAR VALUES (IN \$1,000's)			
	Up to 50	Up to 100	Up to 1,000	Over 1,000
Workers Compensation (for contractors with employees)				
Bodily Injury by Accident (each)	100	100	100	See Attachment
Disease (policy limits)	500	500	500	
Disease (each employee)	100	100	100	
Commercial General Liability minimum combined single limit for bodily injury and property damage per occurrence, including contractual liability, premises and operations, and independent contractors	300	500	1,000	See Attachment
Minimum Automobile Liability (including owned, hired and non-owned automobiles)				
Bodily Injury each person	100	250	500	See Attachment
each occurrence	300	500	1,000	
Property Damage each occurrence	300	300	300	
Professional Liability* for errors, omissions and negligent acts, per claim and aggregate, with one year discovery period and maximum deductible of \$25,000	250	500	1,000	See Attachment

Certificate Holder  


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Montgomery County Maryland (Contract #)  
Office of Procurement  
Rockville Center  
255 Rockville Pike, Suite 180  
Rockville, Maryland 20850-4166

\*Professional services contracts only

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TABLE B. - INSURANCE REQUIREMENTS

(See Paragraph #21 Under the General Conditions of Contract Between County and Contractor)

	<u>Up to 50</u>	<u>Up to 100</u>	<u>Up to 1,000</u>	<u>Over 1,000</u>
Commercial General Liability Minimum combined single limit for bodily injury and property damage per occurrence, including contractual liability, premises and operations, independent contractors, and product liability	300	500	1,000	See Attachment

Certificate Holder

Montgomery County Maryland (Contract # )  
Office of Procurement  
Rockville Center  
255 Rockville Pike, Suite 180  
Rockville, Maryland 20850-4166

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## 25. PAYMENTS

No payment by the County may be made, or is due, under this contract, unless funds for the payment have been appropriated and encumbered by the County. Under no circumstances will the County pay the contractor for legal fees. The contractor must not proceed to perform any work (provide goods, services, or construction) prior to receiving written confirmation that the County has appropriated and encumbered funds for that work. If the contractor fails to obtain this verification from the Office of Procurement prior to performing work, the county has no obligation to pay the contractor for the work.

If this contract provides for an additional contract term for contractor performance beyond its initial term, continuation of contractors performance under this contract beyond the initial term is contingent upon, and subject to, the appropriation of funds and encumbrance of those appropriated funds for payments under this contract. If funds are not appropriated and encumbered to support continued contractor performance in a subsequent fiscal period, contractors performance must end without further notice from, or cost to, the County. The contractor acknowledges that the County Executive has no obligation to recommend, and the County Council has no obligation to appropriate, funds for this contract in subsequent fiscal years. Furthermore, the County has no obligation to encumber funds to this contract in subsequent fiscal years, even if appropriated funds may be available. Accordingly, for each subsequent contract term, the contractor must not undertake any performance under this contract until the contractor receives a purchase order or contract amendment from the County that authorizes the contractor to perform work for the next contract term.

## 26. PERSONAL PROPERTY

All furniture, office equipment, equipment, vehicles, and other similar types of personal property specified in the contract, and purchased with funds provided under the contract, become the property of the County upon the end of the contract term, or upon termination or expiration of this contract, unless expressly stated otherwise.

## 27. TERMINATION FOR DEFAULT

The Director, Office of Procurement, may terminate the contract in whole or in part, and from time to time, whenever the Director, Office of Procurement, determines that the contractor is:

- (a) defaulting in performance or is not complying with any provision of this contract;
- (b) failing to make satisfactory progress in the prosecution of the contract; or
- (c) endangering the performance of this contract.

The Director, Office of Procurement, will provide the contractor with a written notice to cure the default. The termination for default is effective on the date specified in the County's written notice. However, if the County determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the County may terminate the contract immediately upon issuing oral or written notice to the contractor without any prior notice or opportunity to cure. In addition to any other remedies provided by law or the contract, the contractor must compensate the County for additional costs that foreseeably would be incurred by the County, whether the costs are actually incurred or not, to obtain substitute performance. A termination for default is a termination for convenience if the termination for default is later found to be without justification.

## 28. TERMINATION FOR CONVENIENCE

This contract may be terminated by the County, in whole or in part, upon written notice to the contractor, when the County determines this to be in its best interest. The termination for convenience is effective on the date specified in the County's written notice. Termination for convenience may entitle the contractor to payment for reasonable costs allocable to the contract for work or costs incurred by the contractor up to the date of termination. The contractor must not be paid compensation as a result of a termination for convenience that exceeds the amount encumbered to pay for work to be performed under the contract.

## 29. TIME

Time is of the essence.

## 30. WORK UNDER THE CONTRACT

Work may not commence under this contract until all conditions for commencement are met, including execution of the contract by both parties, compliance with insurance requirements, encumbrance of funds, and issuance of any required notice to proceed.

THIS FORM MAY NOT BE MODIFIED WITHOUT THE PRIOR APPROVAL OF THE OFFICE OF THE COUNTY ATTORNEY. PMMD-45. REVISED 01/06/05

MONTGOMERY COUNTY GOVERNMENT

MANDATORY INSURANCE REQUIREMENTS

*Natural Gas Supply & Delivery — Firm (Uninterruptible) and Interruptible - Purchase of the gas and the delivery of the product (piped in) May be used County wide (heating, fueling, etc)@ \$2,900,000 annual*

Prior to the execution of the contract by the County, the proposed awardee must obtain at their own cost and expense the following insurance with an insurance company/companies licensed to do business in the State of Maryland and acceptable to the Division of Risk Management. This insurance must be kept in full force and effect during the term of this contract, including all extensions. The insurance must be evidenced by a certificate of insurance, and if requested by the County, the proposed awardee/Contractor shall provide a copy of the insurance policies. The Contractor's insurance shall be primary.

Commercial General Liability

A minimum limit of liability of **three million dollars (\$3,000,000)**, combined single limit, for bodily injury and property damage coverage per occurrence including the following coverages:

- Contractual Liability
- Premises and Operations
- Independent Contractors
- Products and Completed Operations

Environmental Impairment Liability

A minimum limit of liability of **three million dollars (\$3,000,000)** combined single limit for bodily injury and property damage coverage per occurrence. Such insurance shall cover any gradual, sudden and/or accidental release of toxic or hazardous waste or other hazardous substance requiring monitoring, clean-up or other corrective actions under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA).

Automobile Liability Coverage (May be waived if no auto entr<sup>y</sup> to County Property)

A minimum limit of liability of **one million dollars (\$1,000,000)**, combined single limit, for bodily injury and property damage coverage per occurrence including the following:

- owned automobiles
- hired automobiles
- non-owned automobiles

Worker's Compensation/Employer's Liability

Meeting all requirements of Maryland Law and with the following minimum limits:

- Bodily Injury by Accident - \$100,000 each accident***
- Bodily Injury by Disease - \$500,000 policy limits***
- Bodily Injury by Disease - \$100,000 each employee***

Additional Insured

Montgomery County, Maryland, its elected and appointed officials, officers, consultants, agents and employees must be named as an additional insured on Contractor's Commercial and Excess/Umbrella Insurance for liability arising out of contractor's products, goods and services provided under this contract.

Policy Cancellation

Forty-five (45) days written notice of cancellation or material change of any of the policies is required.

Certificate Holder

Montgomery County, Maryland  
DPWT / Fleet Management / Patrick Cauley  
16630 Crabbs Branch Way  
Rockville, Maryland 20855

**MINORITY, FEMALE, DISABLED PERSON SUBCONTRACTOR  
PERFORMANCE PLAN**

Contractor's Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_ Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ E-mail: \_\_\_\_\_

CONTRACT NUMBER/PROJECT DESCRIPTION:

\_\_\_\_\_

- A. Individual designated by Contractor to monitor Contractor's compliance with MFD Subcontractor Performance Plan:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_ Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ E-mail: \_\_\_\_\_

- B. This Plan covers life of the contract from contract execution through final contract expiration date.
- C. The percentage of total contract dollars, including modifications and renewals, to be paid to all certified minority owned business subcontractors, is \_\_\_\_\_ % of the total dollars awarded to Contractor.
- D. Each of the following certified minority owned businesses will be paid the percentage of total contract dollars indicated below as a subcontractor under the contract.

All listed MFD subcontractors are required to be Maryland Department of Transportation (MDOT) certified or SBA 8(a) certified. For assistance, please call (240) 777-9912.

I hereby certify that the business(es) listed below are Maryland Department of Transportation (MDOT) certified or SBA 8(a) certified.

1. Certified Minority Owned Business

Subcontractor Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_ Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ E-mail: \_\_\_\_\_

CONTACT PERSON:

\_\_\_\_\_

MDOT or SBA 8(a) Certification Number: \_\_\_\_\_

Attach your MDOT or SBA 8(a) certification documents.

Circle MFD Type:

AFRICAN AMERICAN  
NATIVE AMERICAN

ASIAN AMERICAN  
FEMALE

HISPANIC AMERICAN  
DISABLED PERSON

The percentage of total contract dollars to be paid to this subcontractor is \_\_\_\_\_

This subcontractor will provide the following goods and/or services: \_\_\_\_\_

Certified Minority Owned Business  
Subcontractor Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ E-mail: \_\_\_\_\_

**CONTACT PERSON:** \_\_\_\_\_

MDOT or SBA 8(a) Certification Number: \_\_\_\_\_

Attach your MDOT or SBA 8(a) certification documents.

Circle MFD Type:

AFRICAN AMERICAN  
NATIVE AMERICAN

ASIAN AMERICAN  
FEMALE

HISPANIC AMERICAN  
DISABLED PERSON

The percentage of total contract dollars to be paid to this subcontractor is \_\_\_\_\_

This subcontractor will provide the following goods and/or services: \_\_\_\_\_

3. Certified Minority Owned Business  
Subcontractor Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ E-mail: \_\_\_\_\_

**CONTACT PERSON:** \_\_\_\_\_

MDOT or SBA 8(a) Certification Number: \_\_\_\_\_

Attach your MDOT or SBA 8(a) certification documents.

Circle MFD Type:

AFRICAN AMERICAN  
NATIVE AMERICAN

ASIAN AMERICAN  
FEMALE

HISPANIC AMERICAN  
DISABLED PERSON

The percentage of total contract dollars to be paid to this subcontractor is \_\_\_\_\_

This subcontractor will provide the following goods and/or services: \_\_\_\_\_

4. Certified Minority Owned

Business Subcontractor Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ E-mail: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

MDOT or SBA 8(a) Certification Number: \_\_\_\_\_

Attach your MDOT or SBA 8(a) certification documents.

Circle MFD Type:

AFRICAN AMERICAN

ASIAN AMERICAN

HISPANIC AMERICAN

NATIVE AMERICAN

FEMALE

DISABLED PERSON

The percentage of total contract dollars to be paid to this subcontractor is \_\_\_\_\_

This subcontractor will provide the following goods and/or services: \_\_\_\_\_

E. The following language will be inserted in each subcontract with a certified minority owned business listed in D above, regarding the use of binding arbitration with a neutral arbitrator to resolve disputes with the minority owned business subcontractor; the language must describe how the costs of dispute resolution will be apportioned:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

F. Contractor applies for the following full or partial waiver; specify the basis for the waiver request:

---

Full Waiver Approved:

Partial Waiver Approved:

\_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_ Date \_\_\_\_\_

Minority Procurement Officer

Minority Procurement Officer

---

Full Waiver Approved:

Partial Waiver Approved:

\_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_ Date \_\_\_\_\_

Director Office of Procurement

Director Office of Procurement

Contractor submits this MFD Subcontractor Performance Plan (Plan Modification No. \_\_\_\_\_ )  
in accordance with the Minority Owned Business Addendum to General Conditions of Contract  
between County and Contractor.

CONTRACTOR SIGNATURE

USE ONE:

1. TYPE CONTRACTOR'S NAME: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Date

2. TYPE CORPORATE CONTRACTOR'S NAME: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

I hereby affirm that the above named person is a corporate officer or a designee empowered to sign  
contractual agreements for the corporation.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
D a t e

APPROVED:

\_\_\_\_\_  
Director of Procurement

\_\_\_\_\_  
Date

7.3.3.4(a) of the Procurement Regulations requires:

The contract between the Contractor and the County requires the Contractor to notify the Director of  
Procurement of any proposed change to the Subcontractor Performance Plan.

**MINORITY BUSINESS PROGRAM & OFFEROR'S REPRESENTATION**

It is the policy of the County to recruit actively minority-owned businesses to provide goods and services to perform governmental functions pursuant to Section 11 B-57 of the County Code. Minority-owned businesses are described in County law as Minority/Female/Disabled Person owned businesses (MFD). MFD businesses include certain non-profit entities organized to promote the interests of persons with a disability demonstrating (on a contract by contract basis) that at least 51% of the persons used by the non-profit entity to perform the services or manufacture the goods contracted for by the County, are persons with a disability. MFD firms also include those firms that are 51% owned, controlled and managed by one or more members of a socially or economically disadvantaged minority group, which include African Americans who are not of Hispanic origin, Hispanic Americans, Native Americans, Asian Americans, Women and Mentally or Physically Disabled Persons.

Section 7 – "Minority Contracting," Montgomery County Procurement Regulations specifies the procedure to be followed and will govern the evaluation of offers received pursuant to this solicitation. A copy of Section 7 of the Procurement Regulations is available upon request.

Prior to awarding contracts with a value of \$50,000 or more, a prospective Contractor (who is not a certified MFD firm) must demonstrate that a minimum percentage of the overall contract value as set by the County, will be subcontracted to certified MFD businesses. A decision as to whether the prospective Contractor has demonstrated a good faith effort to meet this subcontracting requirement will be made by the Director, Office of Procurement or his/her designee, who may waive this requirement.

A sample MFD Report of Payments Received form is attached. This form is mailed to the MFD Subcontractor to complete for documentation of payment by the Prime Contractor. It is not to be completed by the Prime Contractor nor submitted with the MFD Subcontractor Performance Plan.

The Director, Office of Procurement, or his /her designee determines whether a waiver of MFD subcontracting would be appropriate, under Section 7.3.3.5 of the Procurement Regulations.

For further information regarding the MFD Business Program, please contact the Minority Procurement Office at (240) 777-9912.

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**Offerors are encouraged (but not required) to complete the following: I**

**hereby represent that is firm (CIRCLE ONE)    IS    or IS NOT a**

**Minority Business firm as indicated below (CIRCLE ONE):**

**AFRICAN AMERICAN**

**HISPANIC AMERICAN**

**NATIVE AMERICAN**

**ASIAN AMERICAN**

**FEMALE**

**DISABLED PERSON**

**Indicate Maryland Department of Transportation (MDOT) or SBA 8(a) Certification # \_\_\_\_\_  
(Attach your MDOT or SBA 8(a) certification documents)**

Prince George County

Contracting Officer: (TO BE PROVIDED)

COTOR: Aretha Jones

E-mail:

Phone:

Prince George County Schools  
Contracting Officer: (TO BE PROVIDED)

COTOR: Keith Miles

District of Columbia Government Agencies

See IFB

Washington Convention Center

Contracting Officer: (TO BE PROVIDED)

COTOR: Jack Schreibman

E-mail:

Phone:

**Attachment F**  
**Fee Agreement**

\_\_\_\_\_ ("Contractor") and Co-exprise agrees as follows:

The Contractor hereby agrees to include the following fees in its Natural Gas Supply Price Offer and the Contractor shall pay to Co-exprise the following fees on all accounts included in any contract resulting for this Competitive Event.

The fees shall be paid as follows:

The Co-exprise sourcing fee is \$0.00495 per Therm. The Contractor which receive contracts from any Energy Purchaser under this Competitive Event will pay to Co-eXprise on a monthly basis for all Natural Gas that has been consumed and for which Contractor has received payment from the applicable Energy Purchaser. The Contractor will make the first payment to Co-eXprise within 30 calendar days of receiving first payment from the applicable Energy Purchaser. The Contractor shall may payment every month for all Natural Gas consumed and paid for up to the end of the month most recently ended, but no later than 30 days of receiving payment for such month. Payment is to be made payable to Co-eXprise, Inc. and send it to the following address:

Co-eXprise - Accounts Receivable  
6000 Brooktree Road, Suite 200  
Wexford, Pennsylvania 15090

The Contractor shall be responsible for providing to the District and Co-eXprise a summary accounting of the monthly fees collected and monthly volume of Natural Gas delivered per account on or before the 25th of each month.

\_\_\_\_\_  
Contractor Name

\_\_\_\_\_  
Name and Title of Person Authorized to Sign

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Co-exprise, Inc.

\_\_\_\_\_  
Name and Title of Person Authorized to Sign

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

ATTACHMENT G

Manual Pricing Form  
Located at

<http://eee.co-exprise.com/marketplace/>

**Exhibit H - Transaction Confirmation**

**ENERGY PURCHASER INFORMATION**

Energy Purchaser Name	Billing Contact
Contact Name	Billing Address
Address	
Telephone Fax	Telephone Fax

**TRANSACTION CONFIRMATION**

This Transaction Confirmation confirms the terms of the \_\_\_\_\_ entered into between \_\_\_\_\_ ("Contractor"), and the transaction \_\_\_\_\_ For Bid ("IFS") dated \_\_\_\_\_, 2007 conducted by the District of Columbia Office of Contracting and Procurement in conjunction with other \_\_\_\_\_ entities in the Metropolitan Washington Sale of Natural Gas between Energy Purchaser Council of Governments (including, the Energy Purchaser) for the \_\_\_\_\_ governmen tal

Service Locations (Additional pages may be attached if necessary)	Service Address: Utility Account No.: Rate: Utility Meter No.:	Service Address: Utility Account No.: Rate: Utility Meter No.:
Delivery Period	Begin: _____, End: _____ If the Delivery Period under this Transaction Confirmation is extended ("Extended Delivery Period"), the Purchase Price for such Extended Delivery Period will be the then market price for delivery to the Delivery Point, unless otherwise agreed to in writing by the parties.	
Delivery Point	_____ Burnertip or _____ (check one)	
Tax Exemption Status:	_____ Non-Exempt or _____ (check one) If exempt, certificate is attached to the IFB.	
Contract Quantity (th)	Usage Estimates per month for the purchase period selected below are set forth in the IFB.	
Purchase Price	<ul style="list-style-type: none"> <li>The Basis charge will \$ _____ per Therm for the purchase period. be _____</li> <li>Forward Contract _____, 20 _____ through _____, _____ Month</li> <li>NYMEX Price for a _____ 20____, _____ : _____ am/pm</li> <li>Energy Purchaser's written _____ (circle one) to make the above-referenced purchase. communicatio</li> </ul>	
Special Provisions		

PLEASE SIGN AND RETURN THIS CONFIRMATION LETTER BY FACSIMILE TO ( ) -

ENERGY PURCHASER: By: _____ Print Name: _____ Title: _____ Date: _____	CONTRACTOR: By: _____ Print Name: _____ Title: _____ Date: _____
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