

<b>SOLICITATION, OFFER, AND AWARD</b>			1. Caption			Page of Pages		
			<b>Housing Unit Inspection Services</b>			1	30	
2. Contract Number		3. Solicitation Number		5. Date Issued		6. Type of Market		
		<b>DCDB-2009-B-9999</b>		<b>09/24/09</b>		<input checked="" type="checkbox"/> Open <input type="checkbox"/> Set Aside <input type="checkbox"/> Open Market with Set-Aside <input type="checkbox"/> SBE Designated Category:		
7. Issued By:				8. Address Offer to:				
Office of Contracting and Procurement 441 4th Street, NW, Suite 700 South Washington, D.C. 20001				Office of Contracting and Procurement - Bid Counter 441 4th Street, NW, Suite 703 South, Bid Room Washington, D.C. 20001				
NOTE: In sealed bid solicitations "offer" and offeror" means "bid" and "bidder"								
<b>SOLICITATION</b>								
9. Sealed offers in original and <u>1</u> copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if hand carried to the								
<b>441 4th Street, NW, Suite 703S, Bid Room, Washington, DC</b>			until	<b>2:00 PM</b>		local time	<b>September 28, 2009</b>	
Address				(Hour)			(Date)	
CAUTION: Late Submissions, Modifications and Withdrawals: See 27 DCMR chapters 15 & 16 as applicable. All offers are subject to all terms & conditions contained in this solicitation.								
10. For Information Contact	A. Name			B. Telephone			C. E-mail Address	
	<b>Chris Yi</b>			(Area Code)	(Number)	(Ext)	<a href="mailto:chris.yi@dc.gov">chris.yi@dc.gov</a>	
			<b>202</b>		<b>724-5069</b>			
11. Table of Contents								
(X)	Section	Description		Page No.	(X)	Section	Description	Page No.
PART I - THE SCHEDULE				PART II CONTRACT CLAUSES				
<input checked="" type="checkbox"/>	A	Solicitation/Contract Form		1	<input checked="" type="checkbox"/>	I	Contract Clauses	17
<input checked="" type="checkbox"/>	B	Supplies or Services and Price/Cost		2	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS			
<input checked="" type="checkbox"/>	C	Specifications/Work Statement		4	<input checked="" type="checkbox"/>	J	List of Attachments	18
<input checked="" type="checkbox"/>	D	Packaging and Marking		9	PART IV - REPRESENTATIONS AND INSTRUCTIONS			
<input checked="" type="checkbox"/>	E	Inspection and Acceptance		10			Representations, certifications and other statements of offerors	19
<input checked="" type="checkbox"/>	F	Deliveries or Performance		11	<input checked="" type="checkbox"/>	K		
<input checked="" type="checkbox"/>	G	Contract Administration Data		12	<input checked="" type="checkbox"/>	L	Instructions, conditions & notices to offerors	22
<input checked="" type="checkbox"/>	H	Special Contract Requirements		16	<input checked="" type="checkbox"/>	M	Evaluation factors for award	27
<b>OFFER</b>								
12. In compliance with the above, the undersigned agrees, if this offer is accepted within <u>120</u> calendar days from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified herein.								
13. Discount for Prompt Payment		10 Calendar days %		20 Calendar days %		30 Calendar days %		Calendar days %
14. Acknowledgement of Amendments (The offeror acknowledges receipt of amendments to the SOLICITATION):			Amendment Number		Date		Amendment Number	
15A. Name and Address of Offeror			16. Name and Title of Person Authorized to Sign Offer/Contract					
15B. Telephone			15 C. Check if remittance address is different from above - Refer to Section G			17. Signature		18. Offer Date
(Area Code)	(Number)	(Ext)						
<b>AWARD (TO BE COMPLETED BY GOVERNMENT)</b>								
19. Accepted as to Items Numbered			20. Amount		21. Accounting and Appropriation			
22. Name of Contracting Officer (Type or Print)			23. Signature of Contracting Officer (District of Columbia)				24. Award Date	
<b>James H. Marshall</b>								



**Section A**

**Solicitation Offer Award Form**

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

**B.1 INTRODUCTION**

The District of Columbia, Office of Contracting and Procurement (OCP), on behalf of the Department of Housing and Community Development is seeking contractor to provide housing using inspection services.

**B.2 CONTRACT TYPE**

The District contemplates the award of a Firm Fixed Type Contract.

**B.3 PRICE SCHEDULE**

**B.3.1** The prices stated shall include all items to effectively conduct and complete the required service described in Statement of Work, Section 3.

**B.3.2 Base year**

Contract Line Item No. (CLIN)	Item Description	Unit Price	Estimated Quantity	Total Estimated Price
0001	Housing Unit Inspection as described in Section 3.		1500	\$ _____
	Base Year Total Amount			\$ _____

**B.3.3 1<sup>st</sup> Option year**

Contract Line Item No. (CLIN)	Item Description	Estimated Quantity	Unit Price	Estimated Total Price
CLIN 0101	Housing Unit Inspection as described in Section 3.		1000	\$ _____
	1 <sup>st</sup> Option Year Total Amount			\$ _____

**B.3.4 2<sup>nd</sup> Option year**

Contract Line Item No. (CLIN)	Item Description	Estimated Quantity	Unit Price	Estimated Total Price
CLIN 0201	Housing Unit Inspection as described in Section 3.		500	\$ _____
	2 <sup>nd</sup> Option Year Total Amount			\$ _____

Estimated Base Year \$ \_\_\_\_\_

Estimated 1<sup>st</sup> Option Year \$ \_\_\_\_\_

Estimated 2<sup>nd</sup> Option Year \$ \_\_\_\_\_

Estimated Grand Total \$ \_\_\_\_\_

## SECTION C SPECIFICATIONS/WORK STATEMENT

### C.1 SCOPE

Contractor conducting habitability housing inspections shall insure that the unit occupied by a family or individual receiving Homelessness Prevention Rapid Re-housing Program (HPRP) assistance is in compliance with all Federal and District of Columbia housing codes, licensing requirements, and any other requirements in the District of Columbia where the housing unit is located and as it relates to the condition of the structure and the operation of the housing or services.

### C.2 Applicable Documents

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

Item No.	Document Type	Title	Date/Version
1	Act	Recovery Act	Recent

### C.3 REQUIREMENTS

#### C.3.2 Habitability Standards

Except for less stringent variations as may be proposed by the District of Columbia Department of Housing and Community Development (DHCD), and approved by HUD, housing occupied by a family or individual receiving HPRP assistance shall be inspected by Contractor to meet the following minimum requirements:

##### C.3.2.1 Structure and materials

The structures must be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the residents from the elements.

##### C.3.2.2 Access

The housing must accessible and capable of being utilized without unauthorized use of other private properties. Structures must provide alternate means of egress in case of fire.

##### C.3.2.3 Space and Security

Each resident must be afforded adequate space and security for themselves and their

belongings. Each resident must be provided an acceptable place to sleep.

#### C.3.2.4 Interior Air Quality

Every room or space must be provided with natural or mechanical ventilation. Structures must be free of pollutants in the air at levels that threaten the health of residents.

#### C.3.2.5 Water Supply

The water supply must be free from contamination.

#### C.3.2.6 Sanitary Facilities

Residents must have access to sufficient sanitary facilities that are in proper operating condition, may be used in privacy, and are adequate for personal cleanliness and the disposal of human waste.

#### C.3.2.7 Thermal Environment

The housing must have adequate heating and or cooling facilities in proper operating condition.

#### C.3.2.8 Illumination and electricity

The housing must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of residents. Sufficient electrical sources must be provided to permit use of essential electrical appliances while assuring safety from fire.

#### C.3.2.9 Food Preparation and Refuse Disposal

All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a sanitary manner.

#### C.3.2.10 Sanitary Condition

The housing and any equipment must be inspected in order to ascertain if it is maintained in sanitary condition.

#### C.3.2.11 Fire Safety

- a. Each unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each occupied level of the unit. Smoke detectors must be located, to the extent practicable, in a hallway adjacent to a bedroom. If the unit is occupied by hearing impaired persons, smoke detectors must have an alarm system designed for hearing-impaired persons in each bedroom occupied by a hearing-impaired person.

- b. The public areas of all housing must be equipped with a sufficient number, but not less than one for each area, of battery-operated or hard-wired smoke detectors. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

Note:

- a. These standards for housing unit inspections are the housing habitability standards described in Appendix C of the HPRP Notice. These standards apply only when a program participant is moving into a new unit. They do NOT apply to persons served with HPRP prevention assistance in an existing unit.
- b. The habitability standards are different from the Housing Quality Standards (HQS) used for other HUD programs. Because the HS criteria are more stringent than the habitability standards, Contractor could use either standard EXCEPT as it relates to inspecting units with a child under the age of six OR when DHCD requires HQS inspections to be performed.
- c. The HPRP Notice does not exempt units from having to be compliant with local housing codes. Therefore, if there are requirements that are in both the local housing code and the HPRP Notice, the grantee must comply with the more stringent of the two.
- d. In contrast to HS inspections, the habitability standards do not require a certified inspector. For example, HPRP project staff or staff from or hired by DHCD can conduct the inspection. In addition, if a program participant is moving in to a unit and using another subsidy program that requires an inspection, staff from the other program may conduct the inspection, as long as they follow the minimum habitability standards required by HPRP. Inspections must be conducted upon initial occupancy and then on an annual basis for the term of HPRP assistance and or the term of DHCD;s agreement with Contractor.
- e. Please note that housing that is occupied by families with children and that was constructed before 1978-whether served with prevention or re-housing assistance must also comply with Lead Based Paint inspection requirements, per the Lead Based Paint Poisoning Prevention Act.

### C.3.3 Monthly Report and Record Keeping

- C.3.3.1 The District of Columbia Department of Housing and Community Development is the Recipient of Recovery Funds pursuant to Sections 1512, 1515, 1553, and 1606 of the American Recovery and Reinvestment Act of 2009, (ARRA), Public Law 111 – 5, 123 Stat. 115 (February 17, 2009).
- C.3.3.2 This contract is funded with Recovery Funds pursuant to Section 1512 of the ARRA. The use of ARRA funds has a variety of requirements for the reporting on the use of funds and as such the District of Columbia is responsible for a variety of reporting

requirements pursuant to the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282).

- C.3.3.3 One such reporting requirement provides that the contractor shall submit a report that contains, among other things, an estimate of the number of jobs created and the number of jobs retained by the project or activity funded with Recovery Funds. Sec. 1512 ( c) (3) (D)
- C.3.3.4 In order for the District to meet its reporting requirement, you as a Subrecipient of Recovery Funds must provide such data to DHCD.
- C.3.3.5 Specifically, within thirty (30) days the contractor shall report (and update periodically) and provide to the Department information on the number of jobs created by this contract [ INSERT contract name or number] and/or the number of jobs retained.
- C.3.3.6 A “job created” is a New position created and filled as a result of this Recovery funded contract.
- C.3.3.7 A “job retained” is an Existing position that would not have been continued or retained but for this Recovery funded contract.
- C.3.3.8 Positions should represent full time equivalent positions.
- C.3.3.9 Report should represent full time equivalent positions.
- C.3.3.10 Report should include a detailed description of each job/position created or retained.
- C.3.3.11 Report should include demographics of the work force created or retained as a result of this Recovery funded contract.
- C.3.3.12 Contractor shall provide any proposed Contractor budgets and subsequent amendments to DHCD, for its prior approval in accordance with the applicable provisions of the Recovery Act.
- C.3.3.13 The Contractor shall maintain records and receipts for the expenditure of all HPRP Funds provided under this contract for an uninterrupted period of no less than three (3) years from the date of expiration or termination of this contract, and, upon DHCD’s request, make these documents readily available for inspection by duly authorized representatives of DHCD and other officials as may be specified by DHCD, at its sole discretion. The reports and information must be in a form acceptable to DHCD and recorded in the manner prescribed in the Program and HPRP reporting requirements. Further, it is required that all records and reports be maintained as HUD may require under HPRP, which will require that the administering and implementation of HPRP use and any other reporting programs and tools to ensure compliance with HPRP.

C.3.3.14 The job reporting through reporting.dc.gov: It applies to all contractors paid by stimulus funds. Basically, COTR will add the Contractor contact information to the reporting system and the Contractor will receive an electronic invite to set up a user ID and password for filling out the information online.

C.3.4 The Minimum qualifications is to be UPC Certified and have a 3 year background in performing housing unit inspections.

**SECTION D  
PACKAGING AND MARKING**

Not Applicable.

**The remainder of this page has been left blank intentionally.**

**SECTION E  
INSPECTION AND ACCEPTANCE**

- E.1** The inspection and acceptance requirements for the Contract shall be governed **Clause Number Six (6)**, Inspection of Services of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated March 2007(Attachment J.1).

**The remainder of this page has been left blank intentionally.**

## SECTION F PERIOD OF PERFORMANCE AND DELIVERABLES

### F.1 TERM OF THE CONTRACT

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

### F.2 OPTION TO EXTEND THE TERM OF THE CONTRACT

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

**F.2.2** If the District exercises the option described in F.2.1, the extended Contract shall be considered to include this option provision.

**F.2.3** The price for the Option Period shall be specified in the Contract. The total duration of this Contract, including the exercise of any options under this Section F.2, shall not exceed three (3) years.

**F.2.4** The total duration of this contract, including the exercise of any options under this clause, shall not exceed three (3) years.

### F.3 DELIVERABLES

The Contractor shall perform the activities required to successfully complete the District's requirements and submit each deliverable to the COTR identified in G.9 in accordance with the following due dates:

<b>Deliverable Number</b>	<b>Deliverable</b>	<b>Quantity/Format/Method of Deliver</b>	<b>Due Date</b>
1	Monthly Report	One, MS word or MS Excel document, delivered by mail and e-mail to COTR	Monthly
2	HQS Inspection Report	As many HQS Inspection Reports as produced based on inspections performed on a monthly basis to COTR	Monthly

**SECTION G  
CONTRACT ADMINISTRATION****G.1 INVOICE PAYMENT**

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

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

**G.2 INVOICE SUBMITTAL**

**G.2.1** The Contractor shall submit proper invoices on a monthly basis or as otherwise specified in Section G.4. Invoices shall be prepared in duplicate and submitted to the agency Chief Financial Officer (CFO) with concurrent copies to the Contracting Officer's Technical Representative (COTR) specified in G.7 below. The address of the CFO is:

Office of the Chief Financial Officer  
Department of Housing and Community Development  
1800 Martin Luther King Jr., Ave., SE  
Washington, DC 20020

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

- a. Contractor's name, Federal tax ID, DUNS number and invoice date (Contractors are encouraged to date invoices as close to the date of mailing or transmittal as possible.);
- b. Contract number and Invoice Number
- c. Description, price, quantity and the date(s) that the supplies/services were actually delivered and/or performed.
- d. Other supporting documentation or information, as required by the Contracting Officer;
- e. Name, title, telephone number and complete mailing address of the responsible official to whom payment is to be sent;
- f. Name, title, phone number of person preparing the invoice;
- g. Name, title, phone number and mailing address of person (if different from the person identified in (G.2.2.f) above to be notified in the event of a defective invoice); and
- h. Authorized signature

**G.3 RESERVED****G.4 PAYMENT**

Unless otherwise specified in this contract, payment will be made on partial deliveries of goods and services accepted by the District if:

- a) The amount due on the deliveries warrants it; or
- b) The Contractor requests it and the amount due on the deliveries are in accordance with the following:

“Payment will be made on completion and acceptance of each item in accordance with the agreed upon delivery schedule”.

**G.5 RESERVED****G.6 RESERVED****G.7 CONTRACTING OFFICER (CO)**

Contracts may be entered into and signed on behalf of the District Government only by contracting officers. The address and telephone number of the Contracting Officer is:

James H. Marshall, Contracting Officer  
441 4<sup>th</sup> Street, NW, #700 south  
Washington, DC 20001  
Telephone: 202-724-4197

**G.8 AUTHORIZED CHANGES BY THE CONTRACTING OFFICER**

- G.8.1** The Contracting Officer is the only person authorized to approve changes in any of the requirements of this contract, notwithstanding provisions contained elsewhere in this Contract.
- G.8.2** The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this Contract, unless issued in writing and signed by the Contracting Officer, or pursuant to specific authority otherwise included as part of this Contract.
- G.8.3** In the event the Contractor effects any change at the direction of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

**G.9 CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)**

**G.9.1** The Contracting Officers Technical Representative (COTR) will have the responsibility of ensuring the work conforms to the requirements of the contract and such other responsibilities and authorities as may be specified in the contract. These include:

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

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

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

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

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

**G.9.2** The address and telephone number of the Contracting Officer Technical Representative is:

Guyton Harvey  
Department of Housing and Community Development  
1800 Martin Luther King Jr., Ave. SE  
Washington, DC 20020  
202) 442-7140

**G.9.3** It is understood and agreed, in particular, that the COTR shall NOT have the authority to:

- a. Award, agree to, or sign any contract, delivery order or task order. Only the CO shall make
- b. contractual agreements, commitments, or modifications;
- c. Grant deviations from or waive any of the terms and conditions of the contract;
- d. Increase the dollar limit of the contract or authorize work beyond the dollar limit of the contract,
- e. or authorize the expenditure of funds by the Contractor;
- f. Change the period of performance; or
- g. Authorize the furnishing of District property, except as specified under the contract.

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

**SECTION H  
SPECIAL CONTRACT REQUIREMENTS**

This section does not apply to this solicitation.

## **SECTION I STANDARD CONTRACT CLAUSES**

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

The Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts dated March 2007 (Attachment J.1) are incorporated as part of the contract resulting from this solicitation.

### **I.2 CONTRACTS THAT CROSS FISCAL YEARS**

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

### **I.3 CONFIDENTIALITY OF INFORMATION**

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

### **I.4 TIME**

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

### **I.5 RESERVED**

### **I.6 OTHER CONTRACTORS**

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

### **I.7 SUBCONTRACTS**

Contractor hereunder shall not subcontract any of Contractor's work or services to any subcontractor without the prior written consent of the Contracting Officer. Any work or service so subcontracted shall be performed pursuant to a subcontract agreement, which the District will have the right to review and approve prior to its execution by Contractor. Any such subcontract shall specify that Contractor and the subcontractor shall be subject to every provision of this contract. Notwithstanding any such subcontract approved by the District, Contractor shall remain liable to the District for all Contractor's work and services required hereunder.

**SECTION J  
LIST OF ATTACHMENTS**

The following list of attachments are incorporated into the solicitation by reference and made a part of the resulting contract in the order of priority described in I.10.

<b>Attachment Number</b>	<b>Document</b>
<b>J.1</b>	Standard Contract Provisions for Use with the Supply and Service Contract, dated March 2007 available at <a href="http://www.ocp.dc.gov">www.ocp.dc.gov</a> click on "Solicitation Attachments"
<b>J.2</b>	HQS Inspection Report

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

**K.1 AUTHORIZED NEGOTIATORS**

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

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**K.2 TYPE OF BUSINESS ORGANIZATION**

The Bidder, by checking the applicable box, represents that

**K.2.1** It operates as:

A corporation incorporated under the laws of the State of:

- An individual,
- A partnership,
- A nonprofit organization, or
- A joint venture

**K.2.2** If the Bidder is a foreign entity, it operates as:

- An individual,
- A joint venture, or
- A corporation registered for business in (Country).

**K.3 RESERVED**

**K.4 RESERVED**

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

**K.5.1** Each signature of the Bidder is considered to be a certification by the signatory that:

**K.5.1.1** The prices in this contract have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any Bidder or competitor relating to:

- a. Those prices;
- b. The intention to submit a contract; or
- c. The methods or factors used to calculate the prices in the contract.

**K.5.1.2** The prices in this contract have not been and will not be knowingly disclosed by the Bidder, directly or indirectly, to any other Bidder or competitor before contract opening unless otherwise required by law; and

**K.5.1.3** No attempt has been made or will be made by the Bidder to induce any other concern to submit or not to submit a contract for the purpose of restricting competition.

**K.5.2** Each signature on the offer is considered to be a certification by the signatory that the signatory:

**K.5.2.1** Is the person in the Bidder's organization responsible for determining the prices being offered in this contract, and that the signatory has not participated and will not participate in any action contrary to Section K.5.1 above; or

**K.5.2.2** Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to Section K.5.1 above:

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

**K.5.2.3** As an authorized agent, does certify that the principals named in subdivision:

- a. Have not participated, and will not participate, in any action contrary to Section K.5.1 above; and
- b. As an agent, has not participated, and will not participate, in any action contrary to Section K.5.1 above.

**K.5.3**

If the Bidder deletes or modifies Section K.5.1.2 above, the Bidder shall furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

## SECTION L INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS

### L.1 METHOD OF AWARD

**L.1.1** The District reserves the right to accept/reject any/all bids resulting from this solicitation. The Contracting Officer may reject all bids or waive any minor informality or irregularity in bids received whenever it is determined that such action is in the best interest of the District.

**L.1.2** The District intends, but is not obligated, to award a single contract resulting from this solicitation to the responsive and responsible bidder who has the lowest bid.

### L.2 PREPARATION AND SUBMISSION OF BIDS

**L.2.1** Bidders shall submit a signed original and one copy. The District will not accept a facsimile copy of a bid as an original bid. All items accepted by the District, all pages of the Invitation for Bids (IFB), all attachments and all documents containing the bidder's offer shall constitute the formal contract. **Each bid shall be submitted in a sealed envelope conspicuously marked: "Bid in Response to Solicitation No. DCBD-2009-B-9999"**

**L.2.2** The original bid shall govern if there is a variance between the original bid and the copy submitted by the bidder. Each bidder shall return the complete solicitation as its bid.

**L.2.3** The District may reject as non-responsive any bid that fails to conform in any material respect to the Invitation for Bids.

**L.2.4** The District may also reject as non-responsive any bids submitted on forms not included in or required by the solicitation. Bidders shall make no changes to the requirements set forth in the solicitation.

### L.3 FAMILIARIZATION WITH CONDITIONS (SERVICES)

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

**L.4 BID SUBMISSION DATE AND TIME**

Bids must be submitted no later than 2:00 PM local time on September 28, 2009.

**L.5 WITHDRAWAL OR MODIFICATION OF BIDS**

A bidder may modify or withdraw its bid upon written, telegraphic notice, or facsimile transmission if received at the location designated in the solicitation for submission of bids, but not later than the exact time set for opening of bids.

**L.7 LATE SUBMISSIONS, LATE MODIFICATIONS, AND LATE WITHDRAWALS**

**L.7.1** Bids, modifications to bids, or requests for withdrawals that are received in the designated District office after the exact local time specified above, are "late" and shall be considered only if they are received before the award is made and one (1) or more of the following circumstances apply:

- a. The bid or modification was sent by registered or certified mail no later than the Fifth (5th) day before the date specified for receipt of bids; or
- b. The bid or modification was sent by mail and it is determined by the Contracting Officer that the late receipt at the location specified in the solicitation was caused by mishandling by the District after receipt.

**L.6.2 Postmarks**

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

**L.6.3 Late Submissions**

A late bid, late request for modification or late request for withdrawal shall not be considered, except as provided in this section.

**L.6.4 Late Modifications**

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

**L.6.5 Late Bids**

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

**L.12 SIGNING OF BIDS**

**L.12.1** The Contractor shall sign the bid and print or type its name on the Solicitation, Offer and Award form of this solicitation. Each bid must show a full business address and telephone number of the bidder and be signed by the person or persons legally authorized to sign contracts. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the Contracting Officer.

**L.12.2** All correspondence concerning the bid or resulting contract will be mailed to the address shown on the bid in the absence of written instructions from the bidder or contractor to the contrary. Any bid submitted by a partnership must be signed with the partnership name by a general partner with authority to bind the partnership. Any bid submitted by a corporation must be signed with the name of the corporation followed by the signature and title of the person having authority to sign for the corporation. Bidders shall complete and sign all Representations, Certifications and Acknowledgments as appropriate. Failure to do so may result in a bid rejection.

**L.13 VENDOR SUBMISSION FOR PREFERENCES**

Any vendor seeking to receive preferences on this solicitation must submit at the time of, and as a part of, its bid or proposal the following documentation, as applicable to the preference being sought:

- a. Evidence of the vendor's, subcontractor's, or joint venture partner's certification or self-certification as a LBE, DBE, or RBO, to include either:
  1. A copy of all relevant letters of certification from the Local Business Opportunity Commission (LBOC); or
  2. A copy of any sworn notarized Self-Certification forms prescribed by the LBOC, along with an acknowledgement letter issued by the Director of the LBOC. Businesses with principal offices located in outside of the District of Columbia must first be certified as LBEs before qualifying for self-certification.
- b. Evidence that the vendor or any subcontractor is located in an enterprise zone. In order for a bidder to receive allowable preferences

under this solicitation, the bidder must include the relevant information as described in subparagraphs (a) and (b) of this clause, as part of its bid or proposal. Refer to J.2.1 for the Self-Certification package.

In order to receive any preferences under this solicitation, any vendor seeking self-certification must complete and submit forms to:

Office of Local Business Development  
ATTN: LSDBE Certification Program  
441 Fourth Street, N.W., Suite 970N  
Washington, D.C. 20001

All vendors are encouraged to contact the Local, Small and Disadvantage Business Enterprises Certification Program at (202) 727-3900 if additional information is required on certification procedures and requirements.

#### **L.15 BIDS WITH OPTION YEARS**

The offeror shall include option year prices in its price/cost bid. A bid may be determined to be unacceptable if it fails to include option year pricing.

#### **L.16 LEGAL STATUS OF BIDDER**

Each bid must provide the following information:

**L.16.1** Name, Address, Telephone Number, Federal tax identification number and DUNS Number of bidder;

**L.16.2** A copy of each District of Columbia license, registration or certification that the bidder is required by law to obtain. This mandate also requires the bidder to provide a copy of the executed "Clean Hands Certification" that is referenced in D.C. Official Code §47-2862 (2001), if the bidder is required by law to make such certification. If the bidder is a corporation or partnership and does not provide a copy of its license, registration or certification to transact business in the District of Columbia, the bid shall certify its intent to obtain the necessary license, registration or certification prior to contract award or its exemption from such requirements; and

**L.16.3** If the bidder is a partnership or joint venture, the names and addresses of the general partners or individual members of the joint venture, and copies of any joint venture or teaming agreements.

#### **L.17 STANDARDS OF RESPONSIBILITY**

The prospective contractor must demonstrate to the satisfaction of the District the capability in all respects to perform fully the contract requirements, therefore, the

prospective contractor must submit the documentation listed below, within five (5) days of the request by the District.

- L.17.1** Evidence of adequate financial resources, credit or the ability to obtain such resources as required during the performance of the contract.
- L.17.2** Evidence of the ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.
- L.17.3** Evidence of the necessary organization, experience, accounting and operational control, technical skills or the ability to obtain them.
- L.17.4** Evidence of compliance with the applicable District licensing and tax laws and regulations.
- L.17.5** Evidence of a satisfactory performance record, record of integrity and business ethics.
- L.17.6** Furnish evidence of the necessary production, construction and technical equipment and facilities or the ability to obtain them.
- L.17.7** Evidence of other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations
- L.17.8** If the prospective contractor fails to supply the information requested, the Contracting Officer shall make the determination of responsibility or nonresponsibility based upon available information. If the available information is insufficient to make a determination of responsibility, the Contracting Officer shall determine the prospective contractor to be nonresponsible.

**SECTION M  
EVALUATION FACTORS FOR AWARD**

**SECTION M: EVALUATION FACTORS**

**M.1 OPEN MARKET CLAUSES WITH NO SUBCONTRACTING SET-ASIDE (SUPPLIES AND SERVICES)**

**M.1.1 Preferences for Local Businesses, Disadvantaged Businesses, Resident-owned Businesses, Small Businesses, Longtime Resident Businesses, or Local Businesses with Principal Offices Located in an Enterprise Zone**

Under the provisions of the “Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005” (the Act), Title II, Subtitle N, of the “Fiscal Year 2006 Budget Support Act of 2005”, D.C. Law 16-33, effective October 20, 2005, the District shall apply preferences in evaluating bids or proposals from businesses that are small, local, disadvantaged, resident-owned, longtime resident, or local with a principal office located in an enterprise zone of the District of Columbia.

**M.1.1.1 General Preferences**

For evaluation purposes, the allowable preferences under the Act for this procurement are as follows:

**M.1.1.1.1** Three percent (3%) reduction in the bid price or the addition of three (3) points on a one hundred (100) point scale for a small business enterprise (SBE) certified by the Small and Local Business Opportunity Commission (SLBOC) or the Department of Small and Local Business Development (DSLBD), as applicable;

**M.1.1.1.2** Three percent (3%) reduction in the bid price or the addition of three (3) points on a one hundred (100) point scale for a resident-owned business enterprise (ROB) certified by the SLBOC or the DSLBD, as applicable;

**M.1.1.1.3** Ten percent (10%) reduction in the bid price or the addition of ten (10) points on a one hundred (100) point scale for a longtime resident business (LRB) certified by the SLBOC or the DSLBD, as applicable;

**M.1.1.1.4** Two percent (2%) reduction in the bid price or the addition of two (2) points on a one hundred (100) point scale for a local business enterprise (LBE) certified by the SLBOC or the DSLBD, as applicable;

**M.1.1.1.5** Two percent (2%) reduction in the bid price or the addition of two (2) points on a one hundred (100) point scale for a local business enterprise with its principal

office located in an enterprise zone (DZE) and certified by the SLBOC or the DSLBD, as applicable; and

- M.1.1.1.6** Two percent (2%) reduction in the bid price or the addition of two (2) points on a one hundred (100) point scale for a disadvantaged business enterprise (DBE) certified by the SLBOC or the DSLBD, as applicable.

**M.1.2 Application of Preferences**

The preferences shall be applicable to prime Contractors as follows:

- M.1.2.1** Any prime Contractor that is an SBE certified by the SLBOC or the DSLBD, as applicable, will receive a three percent (3%) reduction in the bid price for a bid submitted by the SBE in response to an Invitation for Bids (IFB) or the addition of three (3) points on a one hundred (100) point scale added to the overall score for proposals submitted by the SBE in response to a Request for Proposals (IFB).
- M.1.2.2** Any prime Contractor that is an ROB certified by the SLBOC or the DSLBD, as applicable, will receive a three percent (3%) reduction in the bid price for a bid submitted by the ROB in response to an IFB or the addition of three (3) points on a one hundred (100) point scale added to the overall score for proposals submitted by the ROB in response to an IFB.
- M.1.2.3** Any prime Contractor that is an LRB certified by the SLBOC or the DSLBD, as applicable, will receive a ten percent (10%) reduction in the bid price for a bid submitted by the LRB in response to an IFB or the addition of ten (10) points on a one hundred (100) point scale added to the overall score for proposals submitted by the LRB in response to an IFB.
- M.1.2.4** Any prime Contractor that is an LBE certified by the SLBOC or the DSLBD, as applicable, will receive a two percent (2%) reduction in the bid price for a bid submitted by the LBE in response to an IFB or the addition of two (2) points on a one hundred (100) point scale added to the overall score for proposals submitted by the LBE in response to an IFB.
- M.1.2.5** Any prime Contractor that is a DZE certified by the SLBOC or the DSLBD, as applicable, will receive a two percent (2%) reduction in the bid price for a bid submitted by the DZE in response to an IFB or the addition of two (2) points on a one hundred (100) point scale added to the overall score for proposals submitted by the DZE in response to an IFB.
- M.1.2.6** Any prime Contractor that is a DBE certified by the SLBOC or the DSLBD, as applicable, will receive a two percent (2%) reduction in the bid price for a bid submitted by the DBE in response to an IFB or the addition of two (2) points on a one hundred (100) point scale added to the overall score for proposals submitted by the DBE in response to an IFB.

**M.1.3 Maximum Preference Awarded**

Notwithstanding the availability of the preceding preferences, the maximum total preference to which a certified business enterprise is entitled under the Act for this procurement is twelve percent (12%) for bids submitted in response to an IFB or the equivalent of twelve (12) points on a one hundred (100) point scale for proposals submitted in response to an IFB. There will be no preference awarded for subcontracting by the prime Contractor with certified business enterprises.

**M.1.4 Preferences for Certified Joint Ventures**

When the SLBOC or the DSLBD, as applicable, certifies a joint venture, the certified joint venture will receive preferences as a prime Contractor for categories in which the joint venture and the certified joint venture partner are certified, subject to the maximum preference limitation set forth in the preceding paragraph.

**M.1.5 Vendor Submission for Preferences**

**M.1.5.1** Any vendor seeking to receive preferences on this solicitation must submit at the time of, and as part of its bid or proposal, the following documentation, as applicable to the preference being sought:

**M.1.5.1.1** Evidence of the vendor's or joint venture's certification by the SLBOC as an SBE, LBE, DBE, DZE, LRB, or RBO, to include a copy of all relevant letters of certification from the SLBOC; or

**M.1.5.1.2** Evidence of the vendor's or joint ventures provisional certification by the DSLBD as an SBE, LBE, DBE, DZE, LRB, or RBO, to include a copy of the provisional certification from the DSLBD.

**M.1.5.2** Any vendor seeking certification or provisional certification in order to receive preferences under this solicitation should contact the:

Department of Small and Local Business Development  
ATTN: LSDBE Certification Program  
441 Fourth Street, N.W., Suite 970N  
Washington, DC 20001

**M.1.5.3** All vendors are encouraged to contact the DSLBD at (202) 727-3900 if additional information is required on certification procedures and requirements.

**M.2 EVALUATION OF OPTION YEARS**

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

**District of Columbia  
Department of Housing and Community Development  
HQS INSPECTION REPORT**

<b>Project Name and Address:</b>		<b>Inspection Date:</b>		
		<b>Date of Report:</b>		
<b>Management Agency:</b>		<b>Report Prepared By:</b>		
		<b>Owner's Name:</b>		
<b>Building Type:</b>		<b>Resident Manager's Name:</b>		
<b>Building #</b>		<b>Property Manager:</b>		
<b>Unit#</b>		<b># of Units:</b>		
<b># of Bedrooms:</b>		<b># of Vacant Units:</b>		
<b># of Bathrooms:</b>		<b># of Buildings:</b>		
<b>Results: Pass * Fail *</b>				
<b>Part B: Physical Condition. Indicate the physical condition of each item. If maintenance, describe the problem in the comment section.</b>				
	<b>Condition of Apartment</b>	<b>Pass</b>	<b>Fail</b>	<b>Comments:</b>
<b>Housekeeping</b>				
<b>L/D 1</b>	<b>Living Room/Dining Room</b>	<b>P</b>	<b>F</b>	<b>Comments:</b>
L/D 2	Entry Door/Peep Hole			
L/D 3	Ceiling			
L/D 4	Walls			
L/D 5	Carpet/Flooring			
L/D 6	Light Fixtures			
L/D 7	Outlets/Switches			
L/D 8	V-Blinds			
L/D 9	Patio Door/Screen			
L/D 10	Windows/Screens			
L/D 11	Paint (peeling or chipping)			
<b>K 1</b>	<b>Kitchen (incl. pantry)</b>	<b>P</b>	<b>F</b>	<b>Comments:</b>
K 2	Ceiling			
K 3	Walls			
K 4	Floor			
K 5	Light Fixtures			
K 6	Outlets/Switches			
K 7	Stove/Oven/Microwave			
K 8	Rangehood			
K 9	Refrigerator			
K 10	Cabinets			
K 11	Countertops/Splashguard			
K 12	Sink/Faucet/Supply Lines			
K 13	Garbage Disposal			
K 14	Dishwasher			
K 15	V-Blinds			
K 16	Windows/Screens			
K 17	Paint (peeling or chipping)			
<b>BA 1</b>	<b>Bathroom A</b>	<b>P</b>	<b>F</b>	<b>Comments:</b>
BA 2	Ceiling			
BA 3	Walls			
BA 4	Door			
BA 5	Floor			
BA 6	Light Fixtures			
BA 7	Outlets/Switches			
BA 8	Toilet/Paper Roller			
BA 9	Sink/Faucet/Supply Lines			
BA 10	Medicine Cabinet/Mirror			
BA 11	Exhaust Fan			
BA 12	Towel Bar/Fixtures			
BA 13	Bathtub/Shower Head			
BA 14	Shower Walls/Rod			
BA 15	Windows/Screens			
BA 16	V-Blinds			
BA 17	Paint (peeling or chipping)			
<b>BB 1</b>	<b>Bathroom B</b>	<b>P</b>	<b>F</b>	<b>Comments:</b>
BB 2	Ceiling			
BB 3	Walls			
BB 4	Door			
BB 5	Floor			
BB 6	Light Fixtures			
BB 7	Outlets/Switches			
BB 8	Toilet/Paper Roller			
BB 9	Sink/Faucet/Supply lines			
BB 10	Medicine Cabinet/Mirror			
BB 11	Exhaust Fan			
BB 12	Towel Bar/Fixtures			
BB 13	Bathtub/Shower Head			

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BB 14	Shower Walls/Rod			
BB 15	Window/Screens			
BB 16	V-Blinds			
BB 17	Paint (peeling or chipping)			
<b>BR 1</b>	<b>Bedroom 1</b>	<b>P</b>	<b>F</b>	<b>Comments:</b>
BR 1	Door/Closet Door			
BR 2	Ceiling			
BR 3	Walls			
BR 4	Carpet/Flooring			
BR 5	Light Fixtures			
BR 6	Outlets/Switches			
BR 7	Windows/Screens			
BR 8	V-Blinds			
BR 9	Paint (peeling or chipping)			
<b>BR 2</b>	<b>Bedroom 2</b>	<b>P</b>	<b>F</b>	<b>Comments:</b>
BR 1	Door/Closet Door			
BR 2	Ceiling			
BR 3	Walls			
BR 4	Carpet/Flooring			
BR 5	Light Fixtures			
BR 6	Outlet/Switches			
BR 7	Windows/Screens			
BR 8	V-Blinds			
BR 9	Paint (peeling or chipping)			
<b>BR 3</b>	<b>Bedroom 3</b>	<b>P</b>	<b>F</b>	<b>Comments:</b>
BR 1	Door/Closet Door			
BR 2	Ceiling			
BR 3	Walls			
BR 4	Carpet/Flooring			
BR 5	Light Fixtures			
BR 6	Outlet/Switches			
BR 7	Windows/Screens			
BR 8	V-Blinds			
BR 9	Paint (peeling or chipping)			
<b>BR 4</b>	<b>Bedroom 4</b>	<b>P</b>	<b>F</b>	<b>Comments:</b>
BR 1	Door/Closet Door			
BR 2	Ceiling			
BR 3	Walls			
BR 4	Carpet/Flooring			
BR 5	Light Fixtures			
BR 6	Outlets/Switches			
BR 7	Windows/Screens			
BR 8	V-Blinds			
BR 9	Paint (peeling or chipping)			
	<b>Other/Hallway</b>	<b>P</b>	<b>F</b>	<b>Comments:</b>
H 1	Ceiling			
H 2	Walls			
H 3	Carpet/Flooring			
H 4	Closet/Door			
	<b>HVAC/Plumbing/Electrical</b>	<b>P</b>	<b>F</b>	<b>Comments:</b>
H/P 1	Air Conditioning			
H/P 2	Heat			
H/P 3	Thermostat			
H/P 4	Hot Water Heater			
H/P 5	Laundry Connections			
H/P 6	Circuit Breaker Box			
	<b>General Health &amp; Safety</b>	<b>P</b>	<b>F</b>	<b>Comments:</b>
G 1	Access/Egress/Security			
G 2	Halls/Stairs/Railings			
G 3	Garbage/Chutes/Debris			
G 4	Infestation			
G 5	Paint Condition			
G 6	Electrical			
G 7	Smoke Detectors			
G 8	Emergency Lighting			
G 9	Sprinklers			
G 10	Elevator			
G 11	Interior Air Quality			
G 12	Asbestos			
G 13	Presence of Mold/Mildew			
G 14	Handicap Accessible			
G 15	Other Interior Hazards			

District of Columbia  
 Department of Housing and Community Development  
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G 16	Fire Extinguishers			
G 17	Tripping Hazards			
G 18	Emergency Fire Exits			
G 19	Grounds/Landscaping			
<b>Part C: Miscellaneous Observations. Answers each Question.</b>				
1a. Surrounding neighborhood is:		D	A	Depressed * Average * Prosperous
1b. This condition is expected to:		I	S	Improve* Stay Same * Decline
2a. Overall Physical Condition:		E	S	Excellent* Satisfactory*Below Average * Unsatisfactory
2b. Maintenance Policies		E	S	Excellent* Satisfactory*Below Average * Unsatisfactory
<b>NOTES:</b>				
revision by: pgodwin 6/14/07				
<b>Part F: Signatures</b>				
<b>1a. Inspection Performed By:</b>				
<b>1b. Title:</b>		Housing Inspector		
<b>1c. Date:</b>		Date		

**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  
SUITE 700 SOUTH  
441 4<sup>th</sup> STREET, NW  
WASHINGTON, DC 20001**

**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 conformity with contract requirements. As part of the

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.

- (i) 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.
- (l) 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 (l) 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.

- (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.

**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."

**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

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.

- (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.

- (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.

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

- (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (g) Except for normal spoilage, and except to the extent that the District expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (f) above, the fair value as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the District or to a buyer.
- (h) The Contractor shall have the right of appeal, under 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.
- (i) 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.
- (j) 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

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.

- (l) 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.

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

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

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

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

**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.

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

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

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

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

- (d) Minimum wage: In the absence of a minimum wage attachment for this contract, the Contractor shall not pay any service or other employees performing this contract less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §206). Nothing in this clause shall relieve the Contractor of any other legal or contractual obligation to pay a higher wage to any employee.
- (e) Successor contracts: If this contract succeeds a contract subject to the Act under which substantially the same services were furnished and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, then, in the absence of a minimum wage attachment to this contract, the Contractor may not pay any service employee performing this contract less than the wages and benefits, including those accrued and any prospective increases, provided for under that agreement. No Contractor may be relieved of this obligation unless the limitations of 29 CFR 4.1c(b) apply or unless the Secretary of Labor or the Secretary's authorized representative:
  - (1) Determines that the agreement under the predecessor was not the result of arms-length negotiations; or
  - (2) Finds, after a hearing under 29 CFR 4.10, that the wages and benefits provided for by that agreement vary substantially from those prevailing for similar services in the locality or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and 4.11 and parts 6 and 8 that some or all of the wages and fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of 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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- (g) Safe and sanitary working conditions: The Contractor shall not permit services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor that are unsanitary, hazardous, or dangerous to the health or safety of service employees. The Contractor shall comply with the health standards applied under 29 CFR Part 1925.
- (h) Records: The Contractor shall maintain for 3 years from the completion of work, and make available for inspection and transcription by authorized ESA representatives, a record of the following:
  - (1) For each employee subject to the Act:
    - (a) Name and address;
    - (b) Work classification or classifications, rate or rates of wages and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;
    - (c) Daily and weekly hours worked; and
    - (d) Any deductions, rebates, or refunds from total daily or weekly compensation.
  - (2) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by ESA under the terms of paragraph (c)(3) of this clause. A copy of the report required by paragraph (e) of this clause will fulfill this requirement.
  - (3) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by this clause. The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division. Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases. The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.
- (i) Pay periods: The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 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.
- (l) Contractor's report:
  - (1) If there is a wage determination attachment to this contract and any classes of service employees not listed on it are to be employed under the contract, the Contractor shall report promptly to the Contracting Officer the wages to be paid and the fringe benefits to be provided each of these classes, when determined under paragraph (c) of this clause.
  - (2) If wages to be paid or fringe benefits to be furnished any service employees under the contract are covered in a collective bargaining agreement effective at any time when the contract is being performed, the Contractor shall provide to the Contracting Officer a copy of the agreement and full information on the application and accrual of wages and benefits (including any prospective increases) to service employees working on the contract. The Contractor shall report when contract performance begins, in the case of agreements then in effect, and shall report subsequently effective agreements, provisions, or amendments promptly after they are negotiated.
- (m) Contractor's Certification: By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded District contracts by virtue of the sanctions imposed under section 5 of the Act. No part of this contract shall be subcontracted to any person or firm ineligible for award of a District contract under section 5 of the Act. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. §1001.
- (n) Variations, tolerances, and exemptions involving employment: Notwithstanding any of the provisions in paragraphs (c) through (l) 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)

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.