

SOLICITATION, OFFER, AND AWARD			1. Caption		Page of Pages		
			Utility Marking Contract		1	45	
2. Contract Number		3. Solicitation Number		4. Type of Solicitation		5. Date Issued	
DCKA-2009-C-0044		DCKA-2009-B-0044		<input checked="" type="checkbox"/> Sealed Bid (IFB)		<input checked="" type="checkbox"/> Open	
				<input type="checkbox"/> Sealed Proposals (RFP)		<input type="checkbox"/> Set Aside	
				<input type="checkbox"/> Sole Source		<input type="checkbox"/> Open with Sub-Contracting Set Aside	
				<input type="checkbox"/> Human Care Agreements			
				<input type="checkbox"/> Emergency			
7. Issued By:				8. Address Offer to:			
Office of Contracting and Procurement Roadways and Highways 2000 14th Street, NW, 6th Floor Washington, DC 20009				Department of Public Works Office of Contracting and Procurement 2000 14th Street, NW, 3rd Floor, Bid Room Washington, DC 20009			
NOTE: In sealed bid solicitations "offer" and offeror" means "bid" and "bidder"							
SOLICITATION							
9. Sealed offers in original and _____ copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if hand carried to the bid counter located at <u>2000 14th Street, NW, 3rd Floor, Bid Room, Washington, DC</u> until <u>2:00 p.m.</u> local time <u>16-Jan-09</u> (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
		Josephine Barrett-White		(Area Code)	(Number)	(Ext)	josephine.barrett-white@dc.gov
				202	671-2287		
11. Table of Contents							
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OFFER							
12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ 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		<input type="checkbox"/> 10 Calendar days %		<input type="checkbox"/> 20 Calendar days %		<input type="checkbox"/> 30 Calendar days %	
		<input type="checkbox"/> _____ Calendar days %					
14. Acknowledgement of Amendments (The offeror acknowledges receipt of amendments to the SOLICITATION):				Amendment Number		Date	
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)	<input type="checkbox"/>				
AWARD (TO BE COMPLETED BY GOVERNMENT)							
19. Accepted as to Items Numbered			20. Amount		21. Accounting and Appropriation		
22. Name of Contracting Officer (Type or Print)			23. Signature of Contracting Officer (District of Columbia)			24. Award Date	



SECTION B - SUPPLIES OR SERVICE AND PRICE

The District Department of Transportation (D-DOT) requires the services of a contractor to investigate, locate, and mark D-DOT utilities at the request of homeowners, excavators and developers at the request of the One Call Contractor (Miss Utility).

- A). The district agrees that it will purchase its requirements of the articles or services included herein from the Contractor. The estimated quantities stated herein reflect the best estimates available. The estimate shall not be construed as a representation that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable. They shall not be construed to limit the quantities which may be ordered from the Contractor by the District or to relieve the Contractor of his/her obligation to fill all such orders.

- B). Delivery or performance shall be made only as authorized in accordance with the Ordering clause. The District may issue orders requiring delivery to multiple destinations or performance at multiple locations. If the District urgently requires delivery before the earliest date that delivery may be specified under this contract, and if the Contractor will accept an order providing for the accelerated delivery, the District may acquire the urgently required goods or services from another source.

- C). Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and District's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period.

SCHEDULE – 180 DAY PERIOD

SERVICE/DESCRIPTION/PRICE/COST

Contract Line Item No. (CLIN)	Item Description	Unit	Price Per Unit	Estimated Quantity	Total Price
(0001)	Telephone Monitoring	Each Request	\$ _____	32000	\$ _____
(0002)	Conduit and Direct Cable Burial Investigation	Each Request	\$ _____	32000	\$ _____
(0003)	Conduit and Direct Cable Burial Field Marking	Each Request	\$ _____	30000	\$ _____
(0004)	Conduit and Direct Cable Burial Field Remarking	Each Request	\$ _____	1200	\$ _____
(0005)	Emergency Service Request Tickets	Each Ticket	\$ _____	700	\$ _____
(0006)	104 02 Maintenance of Traffic	Job	\$ _____	1	\$ _____
(0007)	Testimony	Hours	\$ _____	10	\$ _____

TOTAL PRICE \$ _____

SECTION C: DESCRIPTION/SPECIFICATIONS/WORK STATEMENT

C.1 SCOPE:

C.1.1 The purpose of this contract is to perform:

Monitoring and recording of telephone inquires concerning the locating various District of Columbia owned and operated underground utilities, conduits, manholes, hand-boxes, cables and direct burial cable by investigation of District records and to locate and mark with paint or flags as appropriate in the field, if and as required any such underground facilities. The District of Columbia is a member of a One Call System (Miss Utility). These utilities include the following: Street Lighting and Traffic Signal electrical and communication cables conduits, manholes, hand-boxes & direct burial cable.

Request for Investigations (Service Request) are generated by calls to the One Call Center by developers, excavators and the general public who are contemplating excavating. The One Call Center will notify the Contractor to investigate the request, locate D-DOT utilities and mark the actual location.

C.1.2 Applicable Documents

Document Type	Version	Title	Date
DC DDOT Publication	Section 107.16 UTILITY PROTECTIVE ALERT	Standard Specifications for Highways and Structures	2007
D.C. Official Code	2334-2701 et. Seq.		

C.2 DESCRIPTION

C.2.1 The Bid Items on this Contract are:

- CLIN 0001 TELEPHONE MONITORING
- CLIN 0002 CONDUIT INVESTIGATION
- CLIN 0003 CONDUIT FIELD MARKINGS
- CLIN 0004 CONDUIT FIELD REMARKINGS
- CLIN 0005 EMERGENCY SERVICE REQUEST TICKETS

CLIN 0006 MAINTENANCE OF TRAFFIC

CLIN 0007 TESTIMONY

C.3 TELEPHONE MONITORING

C.3.1 The Contractor shall be responsible for receiving, recording and processing of all service requests from the One Call Center. The One Call Center (Miss Utility) will forward to the Contractor, requests to locate and mark District utilities.

The Contractor shall establish a telephone line dedicated solely to receiving request. The telephone line shall have a “202” area code. The Contractor shall ensure that the telephone line is operational at all times.

C.4 CONDUIT INVESTIGATION

C.4.1 The Contractor shall investigate all service requests and notify the requestor within 48 hours of the disposition of the request.

C.4.2 Within 48 hours (Excluding Saturdays, Sundays and legal Holidays) of receipt of a service request ticket, the Contractor shall determine whether a proposed excavation planned within 5 feet of the horizontal plane of the District’s underground facility, or whether a proposed excavation, is planned in such proximity to an underground facility so that the facility may be disturbed or damaged.

C.4.2.1 The Contractor shall be familiar with District record keeping procedures and shall investigate the location of the District utilities using such records. These records include, but are not limited to, construction plans, records plats and as built construction drawings.

C.4.2.2 The District will not provide records of utility drawings. It shall remain the Contractor’s responsibility to locate the District’s utilities in the field accurately as possible utilizing whatever means are available, such as but not limited to, metal detectors or related equipment. The latest state-of-the-art equipment shall be utilized.

C.4.3 The Contractor shall notify the excavator within 48 hours (Excluding Saturdays, Sundays and Legal Holidays) of receipt of a service request ticket if an underground facility might be disturbed or damaged.

C.4.4 In the event the District’s facilities are damaged by a third party in a case where

the Contractor provided the location, the Contractor shall dispatch an authorized representative to the location (at the time requested by the District). The Contractor shall provide a written report (See Section F.3 – Deliverables) and information to complete the investigation process to determine responsibility. Where it is determined that the damages was caused due to the fact that the Contractor did not properly mark the facilities in accordance with the laws of the District, the Contractor shall be liable for repair or replacement expenses and consequential damages.

Where a third party is alleged to be responsible for damage to the facility, the Contractor shall give testimonial support in cases where deemed necessary by the District. The Contractor shall respond to interrogatories, depositions and testify in a court of law (see CLIN 0007).

C.5 CONDUIT FIELD MARKING

C.5.1 The Contractor shall be prepared to locate and mark all required utilities within the District of Columbia.

C.5.2 The Contractor shall perform a locate/field marking if:

C.5.2.1 The service request indicated that the intended excavation is within the public right of way; or

C.5.2.2 The service request ticket indicates that the caller is unsure if the intended excavation is within the public right of way; or

C.5.2.3 The intended excavation is on private property where District records indicate a utility right of way or easement exists.

C.5.3 The Contractor shall perform a field marking if a District underground facility is within a fifty-foot (50') radius from the proposed excavation.

C.5.4 The Contractor shall not perform a field marking if:

C.5.4.1 The service request ticket indicates that the intended excavation is entirely on private property and no utility right of way or easements exists.

C.5.5 The Contractor shall mark the location of an underground facility within 18 inches on a horizontal plane on either side of the facility if he determines that a proposed excavation is planned within 5 feet of the horizontal plane of an underground facility, or if a proposed excavation is planned in such proximity to the underground facility that the facility may be disturbed or damaged. If an

underground facility may be disturbed or damaged, the Contractor shall promptly notify the COTR.

The Contractor shall clearly mark the utility as required with the paint, flags, stakes or other appropriate marking devices. Paint shall be used wherever possible. The Contractor shall provide for the maintenance and safeguarding of pedestrian and vehicular traffic in accordance with the requirements of this contract.

The Contractor shall use the following color code when marking the location of an underground facility:

Red	Electric Power lines, cables, conduit and lighting cables
Orange	Communication, alarm or signal lines, cables or conduit

C.5.6 The Contractor shall notify the excavator of the date and time when a location will be marked if the marking cannot be completed within 48 hours (Excluding Saturdays, Sundays and Legal Holidays) of receipt of a service request ticket. The contractor shall notify the excavator, via tele-fax if possible or otherwise by telephone, immediately after the field location is complete.

C.5.7 The Contractor shall notify the excavator within 48 hours (Excluding Saturdays, Sundays and Legal Holidays) of receipt of a service request ticket that marking is unnecessary if:

C.5.7.1 The District does not have an underground facility at the location stated in the notice.

C.5.7.2 The proposed excavation is not planned within 5 feet of the horizontal plane of an underground facility; or

C.5.7.3 The proposed excavation, is not planned in such proximity to the underground facility that the facility may be disturbed or damaged.

C.6 CONDUIT FIELD RE-MARKING

C.6.1 The Contractor shall re-mark when any of the following arise:

C.6.1.1 If within fifteen (15) days of the original call a marker is obliterated, destroyed or removed, the Contractor shall re-mark the location of the facility not more than 48 hours (excluding Saturday, Sunday and legal holidays) after receipt of request to re-mark the location. The contractor shall remark the location at no additional

cost.

- C.6.1.2 If the excavator has commenced work within ten (10) days of the original call, the Contractor shall re-mark only if requested by the excavator on an updated service request.

If the excavator has not commenced work within ten (10) days of the original call, the Contractor shall re-mark at the fixed unit price of \$15.00, on an updated service request ticket.

When repeat notifications of the one call system by the excavator is required, the contractor shall return and re-mark the required facilities in response to an updated service request ticket. A fixed unit price of \$15.00 will be allowed for re-marking in response to each service request.

C.7 EMERGENCY SERVICE REQUEST

- C.7.1 Emergency service requests are requests identified by the One Call Center and/or COTR as such and referred to the Contractor during and after normal business hours (7:00 am – 5:00 pm). Emergency service requests which are received after normal business hours, on weekends, or holidays must be responded to by 12:00 p.m. on the following business day. If the excavator has completed work prior to the arrival of the Contractor, a fixed unit price of \$15.00 will be allowed for Work Done Before Arrival. If excavators work has not begun, or is in progress, a locate will be performed and charged at the bid unit prices.

C.8 MAINTENANCE OF TRAFFIC

- C.8.1 The Contractor shall submit a Traffic Control Plan (TCP) in accordance with Special Provision of the Standard Specifications for Highways and Structures, dated 2007. The TCP shall be submitted to the COTR twenty (20) days prior to the issuance of the Notice to Proceed.

C.9 RECORDS MAINTENANCE

- C.9.1 The Contractor shall maintain records of all contacts with excavators, whether written or verbal, utilizing a Utility Location Form, the form of which will be subject to the approval of the District prior to issuance of the Notice to Proceed. This form shall be completed for each service request in its entirety and submitted with the monthly invoice.

- C.9.2 The Contractor must maintain a computer, with Internet access and the following

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minimum attributes:

- Pentium 4 Processor
- 1 Gig DDR Non-ECC SDRAM
- 17 inch color monitor
- 32 MB, ATI, Radeon VE, VGA/DVI Video Board
- 140 GB Hard Drive
- Windows 2007 Professional Software
- PS/2 Keyboard in gray, with No Hot Keys
- PS/2 2-Button Mouse
- Integrated Intel Gigabit (10/100/1000) with Alert Standards Format Network Adapter
- 48X CD Writable CD ROM Drive

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SECTION D: PACKAGING AND MARKING

The packaging and marking requirements for the resultant contract shall be governed by clause number (2), Shipping Instructions-Consignment, of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated March, 2007.

SECTION E: INSPECTION AND ACCEPTANCE

- E.1** The inspection and acceptance requirements for the resultant contract shall be governed by Section 105 of the District of Columbia, Department of Transportation Standard Specifications for Highways and Structures, 2005.

SECTION F - DELIVERIES OR PERFORMANCE

F.1 CONTRACT TYPE

This is a requirements contract.

F.2 TERM OF CONTRACT

The term of the contract shall be for a period of six months from date of award specified on page one (1) of the contract.

F.3 DELIVERABLES:

DELIVERABLE	QUANTITY	DUE DATE
Traffic Control Plan	1	20 days prior to NTP
Utility Location Form	1 per request	Monthly with invoice
Software	1	Prior to Issuance of NTP
Utility Records	1	COTR at end of contract
Incident Report	1 per request	Monthly with invoice

SECTION G - CONTRACT ADMINISTRATION DATA

G.1 INVOICE PAYMENT

- G.1.1 The District shall make payments to the Contractor, upon the submission of proper invoices or vouchers, at the prices stipulated in this contract, for supplies delivered and accepted and/or services performed and accepted, less any discounts, allowances or adjustments provided for in this contract.
- G.1.2 The District shall pay the Contractor on or before the 30th day after receiving a proper invoice from the Contractor.

G.2 INVOICE SUBMITTAL

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

Office of the Controller/Agency CFO
2000 14th Street, N.W.
6th Floor
Washington, DC 20009
202-671-2300

- G.2.2 To constitute a proper invoice, the Contractor shall submit the following information:
- a. Contractor's name and invoice date (Contractors are encouraged to date invoices as close to the date of mailing or transmittal as possible.);
 - b. Contract number, section two (2) and encumbrance number, section twenty-one (21) of the Solicitation Cover sheet. Assignment of an invoice number by the Contractor is also recommended;
 - 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.2.2.6 above to be notified in the event of a defective invoice); and
- h. Authorized signature

G.3 METHOD OF PAYMENT -- PROGRESS PAYMENTS

For all pay items the District shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer. To provide a basis for determining progress payments, Contractor shall furnish to the Contracting Officer's Technical Representative a breakdown of the Total (Total Bid) and of each CLIN Price (Bid Amount) from the Schedule of Items, showing in the breakdown an amount included therein for each principal category of the work (i.e., each CLIN) in such detail as requested. In preparation of estimates, the Contracting Officer, at his discretion, may authorize material delivered on the site and preparatory work done to be taken into consideration. Materials delivered to the Contractor at locations other than the site may also be taken into consideration.

G.4 ASSIGNMENTS

- G.4.1 In accordance with 27 DCMR 3250, unless otherwise prohibited by this contract, the Contractor may assign funds due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution
- G.4.2 Any assignment shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party.
- G.4.3 Notwithstanding an assignment of money claims pursuant to authority contained in the contract, the Contractor, not the assignee, is required to prepare invoices. Where such an assignment has been made, the original copy of the invoice must refer to the assignment and must show that payment of the invoice is to be made directly to the assignee as follows:

Pursuant to the instrument of assignment dated _____,
make payment of this invoice to _____

(Name and address of assignee).

G.5 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT

G.5.1 For contracts subject to the 51% District Resident New Hires Requirements and First Source Employment Agreement, final request for payment must be accompanied by the report or a waiver of compliance discussed in H.17.5.

G.5.2 No final payment shall be made by the District to the Contractor until the CFO has received the CO's final determination or approval of waiver of the Contractor's compliance with 51% District Resident New Hires Requirements and First Source Employment Agreement.

G.6 QUICK PAYMENT ACT

G.6.1 INTEREST PENALTIES TO CONTRACTORS

- a. The District will pay interest penalties on amounts due to the Contractor under the Quick Payment Act, D.C. Official Code §2-221.01 *et seq.*, for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before:
- The 3rd day after the required payment date for meat or a meat product
 - The 5th day after the required payment date for an agricultural commodity; or
 - The 15th day after the required payment date for any other item.
- b. Any amount of an interest penalty which remains unpaid at the end of any 30-day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

G.6.2 PAYMENT TO SUBCONTRACTORS

- a. The Contractor must take one of the following actions within 7 days of receipt of any amount paid to the Contractor by the District for work performed by any subcontractor under a contract:
- Pay the subcontractor for the proportionate share of the total payment received from the District that is attributable to the subcontractor for work performed under the contract; or
 - Notify the District and the subcontractor, in writing, of the Contractor's intention to withhold all or part of the subcontractor's payment and state the reason for the nonpayment.

- b. The Contractor must pay any lower-tier subcontractor or supplier interest penalties on amounts due to the subcontractor or supplier beginning on the day after the payment is due and ending on the date on which the payment is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid on the following if payment for the completed delivery of the item of property or service is made on or before:
- The 3rd day after the required payment date for meat or a meat product;
 - The 5th day after the required payment date for an agricultural commodity; or
 - The 15th day after the required payment date for any other item.
- c. Any amount of an interest penalty which remains unpaid by the Contractor at the end of any 30-day period shall be added to the principal amount of the debt to the subcontractor and thereafter interest penalties shall accrue on the added amount.
- d. A dispute between the Contractor and subcontractor relating to the amounts or entitlement of a subcontractor to a payment or a late payment interest penalty under the Quick Payment Act does not constitute a dispute to which the District of Columbia is a party. The District of Columbia may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

G.6.3 FLOW DOWN REQUIREMENTS FOR SUBCONTRACTS

The contractor shall include in each subcontract a provision that requires the subcontractor to include in its contract with any lower-tier subcontractor or supplier the payment and interest clauses required under paragraphs (1) and (2) of the DC Official Code § 2-221.02 (d).

G.7 CONTRACTING OFFICER (CO)

- G.7.1 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:

Jerry M. Carter
Contracting Officer
District Department of Transportation
Office of Contracting and Procurement
2000 14th Street, N.W., 6th Floor
Washington, DC 20009
202-671-2270

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.
- 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.
- G.8.3 In the event the Contractor effects any change at the instruction or request of any person other than the Contracting Officer, the change shall be considered to have been made without authority and no adjustment shall 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 COTR is responsible for general administration of the contract and advising the Contracting Officer as to the Contractor's compliance or noncompliance with the contract. In addition, the COTR is responsible for the day-to-day monitoring and supervision of the contract, of ensuring that the work conforms to the requirements of this contract and such other responsibilities and authorities as may be specified in writing by the Contracting Officer. The COTR is synonymous with "Engineer" as identified in the District of Columbia, Department of Transportation Standard Specifications for Highways and Structures, 2005. The COTR for this contract is:

Frank Pacifico,
Public Space Maintenance Administration
District Department of Transportation
2000 14th Street, N.W., 5th Floor
Washington, D.C. 20009
202/576-6515

- G.9.2 It is understood and agreed that the COTR shall not have the authority to make changes in the specifications/scope of work or terms and conditions of the contract.
- G.9.3 Contractor may be held fully responsible for any changes not authorized in advance, in writing, by the Agency Chief Contracting Officer, may be denied compensation or other relief for any additional work performed that is not so authorized, and may also be required, at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.

SECTION H - SPECIAL CONTRACT REQUIREMENTS

H.1 POST AWARD CONFERENCE

A Post Award conference with the Contractor is required. The COTR shall schedule the conference within 15 days after date of contract award. The conference shall be held at District Department of Transportation, Infrastructure Project Management Administration, 64 New York Ave., N.E., 1st Floor, Washington, DC

H.2 COORDINATION WITH OTHERS

This Special Provision modifies Section 103.01, Article 18 of the District of Columbia Department of Transportation Standard Specifications for Highways and Structures, 2005

The Contractor is alerted to the fact that other contracts have been or may be let for work near the project area. These contracts may be associated with this project, or they could be different in scope.

The Contractor shall coordinate his work and cooperate fully with all others in order to eliminate or curtail delays and interference of any kind. Particular attention shall be paid to the proper maintenance of highway traffic through the project area. The Contractor shall perform his lane closings and reopening so as not to cause interference with others, or conflict with traffic maintenance by others.

H.3 FAILURE TO COMPLETE ON TIME

This Special Provision supplements Section 108 of the District of Columbia Department of Transportation Standard Specification for Highways and Structures 2005. Replace Section 108.07 with the following:

The Contractor shall pay to the District of Columbia the sum of **\$650.00** as agreed liquidated damages for each calendar day of delay in completion of the work for this project, within the time limits set forth subject to Article 5, Termination-Delays of the General Provisions of the SCPs (103.01).

In the event the District terminates for default the Contractor's right to proceed with the work, liquidated damages will continue to accrue until the work is completed and accepted. These liquidated damages are in addition to excess costs of re-procurement.

H.4 SUBCONTRACTING

This Special Provision modifies Section 108.01 of the District of Columbia Department of Transportation Standard Specifications for Highways and Structures, 2005.

The subcontractor approval request form included in Section J.1.5 should be used to request approval of subcontractors on this project. The form should be completed for each subcontractor requested for approval and submitted to:

Attention: Contracting Officer
Department of Transportation
2000 14th Street N.W., 6th Floor
Washington, D.C. 20009

H.5 SAFETY AND ACCIDENT PREVENTION:

In performing any work under this contract on premises which are under direct control of any participating District Agency, the Contractor shall conform to all safety practices and requirements as set forth in the Safety Standard, Rules and Regulations Journal published by the District of Columbia and enforced by the Minimum Wage and Industrial Safety Board. In addition, the Contractor shall conform with Departmental Orders, Bulletins and/or Memoranda issued by the Department of Safety Officer. For copies of the relevant documents and incident report forms, contact:

Natalie Jones-Best, Risk Manager, DDOT
(202) 671-2403
Department of Transportation
2000 14th Street, N. W., 5th Floor
Washington, D.C. 20009

The Contractor shall agree to take all reasonable steps and precautions to prevent accidents and reserve the health and welfare of Contractor and departmental employees while in performance of their duties. The Contractor shall promptly correct any violations of a law standard, rule or regulations when notified in writing by the Safety Officer. The Contractor shall submit the incident report form in accordance with the requirements of the Department Safety Officer that may be in effect as of the time of any injury.

H.6 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT

H.6.1 The Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code, sec. 2-219.01 et seq. ("First Source Act").

H.6.2 The Contractor shall enter into and maintain, during the term of the contract, a First Source Employment Agreement, in which the Contractor shall agree that:

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

H.6.3 The Contractor shall submit to DOES, no later than the 10th of each month following execution of the contract, a First Source Agreement Contract Compliance Report (“contract compliance report”) verifying its compliance with the First Source Agreement for the preceding month. The contract compliance report for the contract shall include the following:

- a. Number of employees needed;
- b. Number of current employees transferred;
- c. Number of new job openings created;
- d. Number of job openings listed with DOES;
- e. Total number of all District residents hired for the reporting period and the cumulative total number of District residents hired; and
- f. Total number of all employees hired for the reporting period and the cumulative total number of employees hired, including:
 - Name;
 - Social Security number;
 - Job title;
 - Hire date;
 - Residence; and
 - Referral source for all new hires.

H.6.4 If the contract amount is equal to or greater than \$100,000, the Contractor agrees that 51% of the new employees hired for the Contractor shall be District residents.

H.6.5 With the submission of the Contractor’s final request for payment from the District, the Contractor shall:

- a. Document in a report to the Contracting Officer its compliance with the section H.6.4 of this clause; or
- b. Submit a request to the Contracting Officer for a waiver of compliance with section H.6.4 and include the following documentation:

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- Material supporting a good faith effort to comply;
- Referrals provided by DOES and other referral sources;
- Advertisement of job openings listed with DOES and other referral sources; and
- Any documentation supporting the waiver request pursuant to section H.6.6.

H.6.6 The Contracting Officer may waive the provisions of section H.6.4 if the Contracting Officer finds that:

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

H.6.7 Upon receipt of the Contractor's final payment request and related documentation pursuant to sections H.6.5 and H.6.6, the Contracting Officer shall determine whether the Contractor is in compliance with section H.6.4 or whether a waiver of compliance pursuant to section H.6.6 is justified. If the Contracting Officer determines that the Contractor is in compliance, or that a waiver of compliance is justified, the Contracting Officer shall, within two (2) business days of making the determination forward a copy of the determination to the Agency Chief Financial Officer and the COTR.

H.6.8 Shall breach of the First Source Employment Agreement, or failure to submit the report pursuant to section H.6.5, or deliberate submission of falsified data, may be enforced by the Contracting Officer through imposition of penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract. The Contractor shall make payment to DOES. The Contractor may appeal to the DC Contract Appeals Board as provided in the contract any decision of the Contract Officer pursuant to this section H.6.8.

H.6.9 The provisions of section H.6.4 through H.6.8 do not apply to nonprofit organizations.

H.7 FREEDOM OF INFORMATION ACT

The District of Columbia Freedom of Information Act, at D.C. Official Code § 2-532 (a-3), requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If the Contractor receives a request for such information, the Contractor shall immediately send the request to the COTR designated in subsection G.7 who will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by the Contractor pursuant to the contract, the COTR will forward a copy to the Contractor. In either event, the Contractor is required by law to provide all responsive records to the COTR within the timeframe designated by the COTR. The FOIA Officer for the agency with programmatic responsibility will determine the releasability of the records. The District will reimburse the Contractor for the costs of searching and copying the records in accordance with D.C. Official Code § 2-532 and Chapter 4 of Title 1 of the *D.C. Municipal Regulations*

H.9 AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)

During the performance of the contract, the Contractor and any of its subcontractors shall comply with the ADA. The ADA makes it unlawful to discriminate in employment against a qualified individual with a disability. See 42 U.S.C. § 12101 *et seq.*

H.10 SECTION 504 OF THE REHABILITATION ACT OF 1973, as amended.

During the performance of the contract, the Contractor and any of its subcontractors shall comply with Section 504 of the Rehabilitation Act of 1973, as amended. This Act prohibits discrimination against disabled people in federally funded program and activities. See 29 U.S.C. § 794 (1983) *et seq.*

H.11 ORDER OF PRECEDENCE

Any inconsistency in this solicitation or the contract shall be resolved by giving precedence in the following order: the Supplies or Services and Price/Cost Section (Section B), Specifications/Work Statement (Section C), the Special Contract Requirements (Section H), the Contract Clauses (Section I), and the SCP.

H.12 CONTRACTS IN EXCESS OF ONE MILLION DOLLARS

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

H.13 AUDITS, RECORDS, AND RECORD RETENTION:

H.24.1 At any time or times before final payment and three (3) years thereafter, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be reduced by amounts found by the Contracting Officer not to constitute allowable costs as adjusted for prior overpayment or underpayment. In the event that all payments have been made to the Contractor by the District Government and an overpayment is found, the Contractor shall reimburse the District for said overpayment within thirty (30) days after written notification.

H.13.2 The Contractor shall establish and maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting principles and practices which sufficiently and properly reflect all revenues and expenditures of funds provided by the District under the contract that results from this solicitation.

H.13.3 The Contractor shall retain all records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to the contract for a period of five (5) years after termination of the contract, or if an audit has been initiated and audit findings have not been resolved at the end of five (5) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of the contract.

H.13.4 The Contractor shall assure that these records shall be subject at all reasonable times to inspection, review, or audit by Federal, District, or other personnel duly authorized by the Contracting Officer.

H.13.5 Persons duly authorized by the Contracting Officer shall have full access to and the right to examine any of the Contractor's contract and related records and documents, regardless of the form in which kept, at all reasonable times for as long as records are retained.

H.13.6 The Contractor shall include these aforementioned audit and record keeping requirements in all approved subcontracts and assignments.

H.14 WAY TO WORK AMENDMENT ACT OF 2006

H.14.1 Except as described in H.25. 8 below, the Contractor shall comply with Title I of the Way to Work Amendment Act of 2006, effective June 8, 2006 (D.C. Law 16-118, D.C. Official Code §2-220.01 *et seq.*) ("Living Wage Act of 2006"), for contracts for services in the amount of \$100,000 or more in a 12-month period.

H.14.2 The Contractor shall pay its employees and subcontractors who perform services under the contract no less than the current living wage published on the OCP website at

www.ocp.dc.gov.

H.14.3 The Contractor shall include in any subcontract for \$15,000 or more a provision requiring the subcontractor to pay its employees who perform services under the contract no less than the current living wage rate.

H.14.4 The Department of Employment Services may adjust the living wage annually and the OCP will publish the current living wage rate on its website at www.ocp.dc.gov.

H.14.5 The Contractor shall provide a copy of the Fact Sheet attached as J.1.4 to each employee and subcontractor who performs services under the contract. The Contractor shall also post the Notice attached as J.1.3 in a conspicuous place in its place of business. The Contractor shall include in any subcontract for \$15,000 or more a provision requiring the subcontractor to post the Notice in a conspicuous place in its place of business.

H.14.6 The Contractor shall maintain its payroll records under the contract in the regular course of business for a period of at least three (3) years from the payroll date, and shall include this requirement in its subcontracts for \$15,000 or more under the contract.

H.14.7 The payment of wages required under the Living Wage Act of 2006 shall be consistent with and subject to the provisions of D.C. Official Code §32-1301 *et seq.*

H.14.8 The requirements of the Living Wage Act of 2006 do not apply to:

- a. Contracts or other agreements that are subject to higher wage level determinations required by federal law;
- b. Existing and future collective bargaining agreements, provided, that the future collective bargaining agreement results in the employee being paid no less than the established living wage;
- c. Contracts for electricity, telephone, water, sewer or other services provided by a regulated utility;
- d. Contracts for services needed immediately to prevent or respond to a disaster or eminent threat to public health or safety declared by the Mayor;
- e. Contracts or other agreements that provide trainees with additional services including, but not limited to, case management and job readiness services; provided that the trainees do not replace employees subject to the Living Wage Act of 2006;
- f. An employee under 22 years of age employed during a school vacation period, or enrolled as a full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than 25 hours per week; provided that he or she does not replace employees subject to the Living Wage Act of 2006;
- g. Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia; provided, that the tenant or retail establishment did not receive direct government assistance from the District;
- h. Employees of nonprofit organizations that employ not more than 50 individuals and

qualify for taxation exemption pursuant to section 501(c)(3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3));

i. Medicaid provider agreements for direct care services to Medicaid recipients, provided, that the direct care service is not provided through a home care agency, a community residence facility, or a group home for mentally retarded persons as those terms are defined in section 2 of the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501); and

j. Contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.

H.14.9 The Mayor may exempt a contractor from the requirements of the Living Wage Act of 2006, subject to the approval of Council, in accordance with the provisions of Section 109 of the Living Wage Act of 2006.

SECTION I: CONTRACT CLAUSES

I.1 APPLICABILITY OF STANDARD CONTRACT PROVISIONS

The Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts dated November 2004 (“SCP”), are incorporated as part of the contract resulting from this solicitation. To obtain a copy of the SCP go to www.ocp.dc.gov, click on OCP Policies under the heading “Information”, then click on “Standard Contract Provisions – Supplies and Services Contracts”.

I.2 CONTRACTS THAT CROSS FISCAL YEARS

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

I.3 CONFIDENTIALITY OF INFORMATION

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

I.4 TIME

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

I.5 RIGHTS IN DATA

I.5.1 “Data,” as used herein, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

I.5.2 The term “Technical Data”, as used herein, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work, or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer printouts. Examples of technical data include research and engineering data,

engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.

- I.5.3** The term “Computer Software”, as used herein means computer programs and computer databases. “Computer Programs”, as used herein means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. "Computer Programs" include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort merge programs, and automated data processing equipment maintenance diagnostic programs, as well as applications programs such as payroll, inventory control and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general purpose in nature or designed to satisfy the requirements of a particular user.
- I.5.4** The term "computer databases", as used herein, means a collection of data in a form capable of being processed and operated on by a computer.
- I.5.5** All data first produced in the performance of this Contract shall be the sole property of the District. The Contractor hereby acknowledges that all data, including, without limitation, computer program codes, produced by Contractor for the District under this Contract, are works made for hire and are the sole property of the District; but, to the extent any such data may not, by operation of law, be works made for hire, Contractor hereby transfers and assigns to the District the ownership of copyright in such works, whether published or unpublished. The Contractor agrees to give the District all assistance reasonably necessary to perfect such rights including, but not limited to, the works and supporting documentation and the execution of any instrument required to register copyrights. The Contractor agrees not to assert any rights in common law or in equity in such data. The Contractor shall not publish or reproduce such data in whole or in part or in any manner or form, or authorize others to do so, without written consent of the District until such time as the District may have released such data to the public.
- I.5.6** The District will have restricted rights in data, including computer software and all accompanying documentation, manuals and instructional materials, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, provided however, notwithstanding any contrary provision in any such license or agreement, such restricted rights shall include, as a minimum the right to:
- I.5.6.1** Use the computer software and all accompanying documentation and manuals or instructional materials with the computer for which or with which it was acquired,

including use at any District installation to which the computer may be transferred by the District;

I.5.6.2 Use the computer software and all accompanying documentation and manuals or instructional materials with a backup computer if the computer for which or with which it was acquired is inoperative;

I.5.6.3 Copy computer programs for safekeeping (archives) or backup purposes; and modify the computer software and all accompanying documentation and manuals or instructional materials, or combine it with other software, subject to the provision that the modified portions shall remain subject to these restrictions.

I.5.7 The restricted rights set forth in section I.5.6 are of no effect unless

(i) the data is marked by the Contractor with the following legend:

RESTRICTED RIGHTS LEGEND

Use, duplication, or disclosure is subject to restrictions stated in Contract No. _____

With _____ (Contractor's Name); and

(ii) If the data is computer software, the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The Contractor may not place any legend on the computer software indicating restrictions on the District's rights in such software unless the restrictions are set forth in a license or agreement made a part of the contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the District of liability with respect to such unmarked software.

I.5.8 In addition to the rights granted in Section I.5.6 above, the Contractor hereby grants to the District a nonexclusive, paid-up license throughout the world, of the same scope as restricted rights set forth in Section I.5.6 above, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the District under this contract. Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the District under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the District any rights necessary to perfect a copyright license of the scope specified in the first sentence of this paragraph.

I.5.9 Whenever any data, including computer software, are to be obtained from a subcontractor under this contract, the Contractor shall use this clause, I.5, Rights in Data, in the

subcontract, without alteration, and no other clause shall be used to enlarge or diminish the District's or the Contractor's rights in that subcontractor data or computer software which is required for the District.

I.5.10 For all computer software furnished to the District with the rights specified in Section I.5.5, the Contractor shall furnish to the District, a copy of the source code with such rights of the scope specified in Section I.5.5. For all computer software furnished to the District with the restricted rights specified in Section I.5.6, the District, if the Contractor, either directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided the District under this contract or any paid-up maintenance agreement, or if Contractor should be declared bankrupt or insolvent by a court of competent jurisdiction, shall have the right to obtain, for its own and sole use only, a single copy of the then current version of the source code supplied under this contract, and a single copy of the documentation associated therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.

I.5.11 The Contractor shall indemnify and save and hold harmless the District, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or (ii) based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.

I.5.12 Nothing contained in this clause shall imply a license to the District under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the District under any patent.

I.5.13 Paragraphs I.5.6, I.5.7, I.5.8, I.5.11 and I.5.12 above are not applicable to material furnished to the Contractor by the District and incorporated in the work furnished under contract, provided that such incorporated material is identified by the Contractor at the time of delivery of such work

I.6 OTHER CONTRACTORS

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

I.7 INSURANCE

This Special Provisions supplements and modifies Section 107.13 of the District of Columbia Department of Transportation Standard Specifications for Highways and Structures, 2005. All types of coverage and all minimum coverage amounts required in 107.13 are in effect in the

stated amounts unless specifically delete and/or changed in this section I.6.

The Contractor shall obtain the minimum insurance coverage's set forth in 107.13 and/or below prior to award of the contract and within ten (10) calendar days after being called upon by the District to do so and keep such insurance in force throughout the contract period.

Commercial General Liability: Per Aggregate: \$4,000,000 \$2,000,000	Per Occurrence: \$2,000,000 Products/Completed Operations:
Umbrella or Excess Liability: Act: \$2,000,000	Per Occurrence for Each Wrongful
Automobile Liability: \$1,000,000	
Workers' Compensation: Employer's liability: \$1,000,000 \$1,000,000	Workers' Compensation: <i>See</i> statutory limit Employee disease: Policy disease limit: \$1,000,000
Professional Liability (Errors & Omissions)(if needed): Per Occurrence for Each Wrongful Act: Per Aggregate for Each Wrongful Act: \$2,000,000	Per \$1,000,000
Builders' Risk or Installation Floater Insurance <i>a replacement cost basis</i>	<i>(if needed, on</i>
Crime Insurance(if needed): \$1,000,000 \$2,000,000	<i>Per Occurrence for Each Wrongful Act:</i> <i>Per Aggregate for Each Wrongful Act:</i>

All insurance provided by the Contractor as required by 107.13 and this section, except comprehensive automobile liability insurance, shall set forth the District as an additional named insured. All insurance shall be written with responsible companies licensed by the District of Columbia's Department of Insurance and Securities Regulation, 810 1st St. N.E. #701, Washington, DC 20002, with a certificate of insurance to be delivered to the District's Contracting Officer within ten (10) days of contract award. The policies of insurance shall provide for at least thirty (30) days written notice to the District prior to their termination or material alteration.

I.8 BID GUARANTY:

This Special Provision modifies Section 102, Article 12.A of the District of Columbia Department of Transportation Standard Specifications for Highways and Structures, 2005.

The bid guaranty period shall be ninety (90) working days after bid opening. An Irrevocable Letter of Credit or United States government securities that are assigned to the District which pledge the full faith and credit of the United States are acceptable.

I.9 LABOR PROVISIONS AND DEPARTMENT OF LABOR WAGE DETERMINATIONS

In accordance with the applicable provisions of 29 CFR, Part 1, which requires that the correct wage determination and the appropriate wage rates therein, is incorporated into this contract, Wage Determination No. 2005-2103, Rev. No. 5, dated 05/08/2008 is attached as Section J.1.1 and contains the specific applicable wage rates which are:

SERVICE CONTRACT ACT WAGE DECISION

Further, as set forth in 29 CFR, Part 1, Section 1.6(c)(3)(IV), if the intent to award letter is not issued within ninety (90) days of bid opening, all intervening modifications (or new wage decision) will be made a part of this contract by modification to the Contract. The Contractor shall be reimbursed for any added labor cost monthly upon submission of sufficient documentation with his/her monthly request for payment. Attachment J.1.2 replaces Section 103.02A, 103.02B and 103.02C of the Standard Specifications for Highways and Structures, 2005. The contractor must adhere to the labor provisions in Attachment J.1.2, Required Labor Contract Provisions.

I.10 CONFLICT OF INTEREST

I.10.1 No official or employee of the District of Columbia or the Federal Government who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this contract shall, prior to the completion of the project, voluntarily acquire any personal interest, direct or indirect, in the contract or proposed contract. (DC Procurement Practices Act of 1985, D.C. Law 6-85, DC Official Code 2-310.01 and Chapter 18 of the DC Personnel Regulations).

I.10.2 The Contractor represents and covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants not to employ any person having such known interests in the performance of the contract.

I.11 DDOT TITLE VI ASSURANCE

During the performance of this Contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

I.6.1 Compliance with Regulations

The contractor shall comply with the Regulations relative to Non-Discrimination in Federally Assisted Programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, (hereinafter referred to as the “Regulations”), as they may be amended from time to time, which are incorporated by reference and made a part of this contract.

I.6.2 Non-Discrimination

The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, gender or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. A contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

I.6.3 Solicitations for Subcontractors, including Procurements of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor’s obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, gender, or national origin.

I.6.4 Information and Reports

The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts and other sources of information, and its facilities as may be determined by DDOT or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to DDOT, or the Federal Highway Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

I.6.5 Sanctions for Non-Compliance

In the event of the contractor's non-compliance with non-discrimination provisions of this contract, DDOT shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- a. withholding of payments to the contractor under the contract until the contractor complies, and/or
- b. cancellation, termination, or suspension of the contract, in whole or in part.

I.6.6 Incorporation of Provisions

The Contractor shall include the provisions of paragraphs (1) through (6) of this Assurance in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as DDOT or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of this direction, the contractor may request DDOT to enter into such litigation to protect the interests of DDOT, and in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

SECTION J: LIST OF ATTACHMENTS

J.1 ATTACHMENTS:

J.1.1 Wage Determination Number 2005-2103, Rev. No. 5 dated 05/08/2008 **(11 Pages)**

J.1.2 Standard Contract Provisions **(25 Pages)**

J.1.3 Living Wage Act of 2006 **(1 Page)**

J.1.4 Living Wage Act of 2006 Fact Sheet **(2 Pages)**

J.1.5 Subcontractor Approval Form **(1 Page)**

J.2 **INCORPORATED ATTACHMENTS** (*The following forms, located at www.ocp.dc.gov shall be completed and incorporated with the bid.*)

J.2.1 LSDBE Certification Package

J.2.2 E.E.O. Information and Mayor's Order 85-85

J.2.3 Tax Certification Affidavit

J.2.4 First Source Employment Agreement

SECTION K: REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF BIDDERS

K.1 TYPE OF BUSINESS ORGANIZATION

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

(a) It operates as:

- a corporation incorporated under the laws of the State of: _____
- an individual,
- a partnership,
- a nonprofit organization, or
- a joint venture.

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

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

K.2 CERTIFICATION AS TO COMPLIANCE WITH EQUAL OPPORTUNITY OBLIGATIONS

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

Bidder _____ Date _____

Name _____ Title _____

Signature _____

Bidder ___ has ___ has not participated in a previous contract or subcontract subject to the Mayor's Order 85-85. Bidder ___ has ___ has not filed all required compliance

reports, and representations indicating submission of required reports signed by proposed sub-bidders. (The above representations need not be submitted in connection with contracts or subcontracts which are exempt from the Mayor’s Order.)

K.3 BUY AMERICAN CERTIFICATION

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

	EXCLUDED END PRODUCTS
	COUNTRY OF ORIGIN

K.4 DISTRICT EMPLOYEES NOT TO BENEFIT CERTIFICATION

Each Bidder shall check one of the following:

_____ No person listed in Clause 13 of the SCP, “District Employees Not To Benefit” will benefit from this contract.

_____ The following person(s) listed in Clause 13 may benefit from this contract. For each person listed, attach the affidavit required by Clause 13 of the SCP.

K.5 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

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

1) The prices in this contract have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any bidder or competitor relating to:

- (i) those prices
- (ii) the intention to submit a contract, or
- (iii) the methods or factors used to calculate the prices in the contract.

2) The prices in this Contract have not been and will not be knowingly disclosed by the Bidder, directly or indirectly, to any other Bidder or competitor before Contract opening unless otherwise required by law; and

- 3) No attempt has been made or will be made by the bidder to induce any other concern to submit or not to submit a contract for the purpose of restricting competition.
- (b) Each signature on the bid is considered to be a certification by the signatory that the signatory:
- 1) Is the person in the bidder's organization responsible for determining the prices being offered in this contract, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
 - 2) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above:

(insert full name of person(s) in the organization responsible for determining the prices offered in this contract and the title of his or her position in the bidder's organization);
- As an authorized agent, does certify that the principals named in subdivision (b)(2) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and
- As an agent, has not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.
- (c) If the bidder deletes or modifies subparagraph (a)(2) above, the bidder must furnish with its bid a signed statement setting forth in detail the circumstances of the disclosure.

K.7 TAX CERTIFICATION

Each bidder must submit with its bid, a sworn Tax Certification Affidavit, incorporated herein by reference.

SECTION L: INSTRUCTIONS, CONDITIONS AND NOTICES TO BIDDERS

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 one (1) 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 of the specifications. 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. (as specified in Section A.3)"**

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 *p.m.* local time on the date and year specified in Section A.9.

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.6 LATE SUBMISSIONS, LATE MODIFICATIONS, AND LATE WITHDRAWALS

L.6.1 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.7 HAND DELIVERY OR MAILING OF BIDS

Bidders must deliver or mail their bids to the address in Section A.8 of the cover page.

L.8 ERRORS IN BIDS

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

L.9 QUESTIONS ABOUT THE SOLICITATION

If a prospective bidder has any questions relative to this solicitation, the prospective bidder shall submit the questions in writing to the Contracting Officer. The prospective bidder shall submit questions no later than (*insert #*) days prior to the closing date and time indicated for this solicitation. The District will not consider any questions received less than (*insert #*) days before the date set for submission of bids. The District will furnish responses promptly to all other prospective bidders. An amendment to the solicitation will be issued, if that information is necessary in submitting bids, or if the lack of it would be prejudicial to any other prospective bidders. Oral explanations or instructions given before the award of the contract will not be binding.

L.10 FAILURE TO SUBMIT BIDS

Recipients of this solicitation not responding with a bid should not return this solicitation. Instead, they should advise the Contracting Officer, District Department of Transportation (DDOT), 2000 14th Street, N.W., 6th Floor, Washington, DC 20009, 202-671-2270, by letter or postcard whether they want to receive future solicitations for similar requirements. It is also requested that such recipients advise the Contracting Officer, DDOT, of the reason for not submitting a bid in response to this solicitation. If a recipient does not submit a bid and does not notify the Contracting Officer, DDOT, that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

L.11 BID PROTESTS

Any actual or prospective bidder or contractor who is aggrieved in connection with the solicitation or award of a contract, must file with the D.C. Contract Appeals Board (Board) a protest no later than 10 business days after the basis of protest is known or should have been known, whichever is earlier. A protest based on alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial bids shall be filed with the Board prior to bid opening or the time set for receipt of initial bids. In procurements in which bids are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into this solicitation, must be protested no later than the next closing time for receipt of bids following the incorporation. The protest shall be filed in writing, with the Contract Appeals Board, 717 14th Street, N.W., Suite 430, Washington, D.C. 20004. The aggrieved person shall also mail a copy of the protest to the Contracting Officer.

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 ACKNOWLEDGMENT OF AMENDMENTS

The bidder shall acknowledge receipt of any amendment to this solicitation (a) by signing and returning the amendment; (b) by identifying the amendment number and date in the space provided for this purpose in Section A.14 of the solicitation; or (c) by letter or telegram, including mailgrams. The District must receive the acknowledgment by the date and time specified for receipt of bids. Bidder's failure to acknowledge an amendment may result in rejection of the bid.

L.14 BIDS WITH OPTION YEARS

The bidder 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.15 LEGAL STATUS OF BIDDER

Each bid must provide the following information:

L.15.1 Name, address, telephone number and federal tax identification number of bidder;

L.15.2 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.15.3 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.16 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.16.1 Evidence of adequate financial resources, credit or the ability to obtain such resources as required during the performance of the contract.

L.16.2 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.16.3 Evidence of the necessary organization, experience, accounting and operational control, technical skills or the ability to obtain them.

L.16.4 Evidence of compliance with the applicable District licensing and tax laws and

regulations.

- L.16.5** Evidence of a satisfactory performance record, record of integrity and business ethics.
- L.16.6** Furnish evidence of the necessary production, construction and technical equipment and facilities or the ability to obtain them.
- L.16.7** Evidence of other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations
- L.16.8** 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

M.1 CLAUSES APPLICABLE TO OPEN MARKET SOLICITATIONS IN WHICH THERE WILL BE LBE, DBE, OR RBO SUBCONTRACTING OR SUBCONTRACTING WITH A BUSINESS LOCATED IN AN ENTERPRISE ZONE

1. Subcontracting Plan

A notarized statement detailing a subcontracting plan shall be submitted, as part of the bid or proposal, by any prime Contractor seeking a preference on the basis of proposed subcontracting with a local business enterprise (LBE), disadvantaged business enterprise (DBE), resident business ownership (RBO) or business located in an enterprise zone; and by any prime contractor responding to a solicitation in which there is a LBE, DBE, or RBO subcontracting set-aside. Each subcontracting plan shall include the following:

- (a) A description of the goods and services to be provided by the LBE, DBE, or RBO or business located in an enterprise zone;
- (b) If the prime contractor is seeking a preference on the basis of proposed subcontracting with a LBE, DBE, RBO, or a business located in an enterprise zone, a statement of the dollar amount, by type of business enterprise, of the bid or proposal that is designated by the prime contractor for a LBE, DBE, RBO, or business located in an enterprise zone;
- (c) If the solicitation contains a LBE, DBE, or RBO subcontracting set-aside, a statement of the dollar value, by type of business enterprise, of the bid or proposal that pertains to the subcontracts to be performed by the LBEs, DBEs, or RBOs;
- (d) The names and addresses of all proposed subcontractors who are LBEs, DBEs, RBOs or businesses located in an enterprise zone;
- (e) The name of the individual employed by the prime contractor who will administer the subcontracting plan, and a description of the duties of the individual;
- (f) A description of the efforts the prime contractor will make to ensure that LBEs, DBEs, RBOs, or businesses located in an enterprise zone will have an equitable opportunity to compete for subcontracts;
- (g) In all subcontracts that offer further subcontracting opportunities, assurances that the prime contractor will include a statement, approved by the contracting officer, that the subcontractor will adopt a subcontracting plan similar to the subcontracting plan required by the contract;

- (h) Assurances that the prime contractor will cooperate in any studies or surveys that may be required by the contracting officer, and submit periodic reports, as requested by the contracting officer, to allow the District to determine the extent of compliance by the prime contractor with the subcontracting plan;
- (i) List the type of records the prime contractor will maintain to demonstrate procedures adopted to comply with the requirements set forth in the subcontracting plan, and include assurances that the prime contractor will make such records available for review upon the District's request; and
- (j) A description of the prime Contractor's recent effort to locate LBEs, DBEs, RBOs, and businesses located in an enterprise zone and to award subcontracts to them.

2. **Liquidated Damages**

- (a) If during the performance of this contract, the contractor fails to comply with the subcontracting plan submitted in accordance with the requirements of this contract and 27 DCMR 804.9, 39 DCR 5578 (July 24, 1992), and as approved by the contracting officer, the contractor shall pay to the District liquidated damages in the sum of twenty five dollars (\$25.00), for each calendar day the contractor fails to comply with the subcontracting plan, unless the contracting officer determines that the contractor made good faith efforts to comply with the subcontracting plan in accordance with subparagraph (b) below.
- (b) Prior to assessing any liquidated damages under this provision, the contracting officer shall issue a written notice informing the contractor that it is not in compliance with the subcontracting plan and set forth the areas of non-compliance. The written notice from the contracting officer shall provide the contractor with ten (10) days from the date of receipt of the written notice to correct any areas of non-compliance or to demonstrate that the contractor has used good faith efforts to comply with the subcontracting plan. If the contractor fails to correct any areas of non-compliance or demonstrate good faith efforts within the ten-day period, the contracting officer shall assess liquidated damages beginning on the first day after the end of the ten-day period.
- (c) If failure to comply with the subcontracting plan is such that the contracting officer determines it to be a material breach of the contract and terminates the contract under the Default Clause of the Standard Contract Provisions, the contractor shall be liable for aforementioned liquidated damages accruing until the time the District may reasonably obtain similar goods or services.