

A. SOLICITATION, OFFER, AND AWARD			1. Caption Design-Build Services for the St. Elizabeths East Campus --Stage 1 Infrastructure Improvements Project			Page of Pages 1 of 94 (plus attachments)			
2. Contract Number		3. Solicitation Number DCKA-2014-R-0063		4. Type of Solicitation Sealed Bid (IFB) <input checked="" type="checkbox"/> Sealed Proposals (RFP) <input type="checkbox"/> Sole Source Human Care Agreements <input type="checkbox"/> Emergency		5. Date Issued 08/12/2014		6. Type of Market <input checked="" type="checkbox"/> Open <input type="checkbox"/> Set Aside <input type="checkbox"/> Open with Sub-Contracting Set Aside	
7. Issued By: District Department of Transportation Office of Contracting and Procurement 55 M Street, SE – Suite 700S Washington, DC 20003				8. Address Offer to: Department of Transportation Office of Contracting and Procurement 55 M Street, SE Bid Room, 4 th Floor Washington, DC 20003					
NOTE: In sealed bid solicitations "offer" and offeror" means "bid" and "bidder"									
SOLICITATION									
9. Sealed offers in original and <u>10</u> copies for furnishing the supplies or services in the Schedule will be received at address in 8 above until 2:00 pm local time on 10/02/2014									
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 Lisa Minor-Smith , Contract Specialist		B. Telephone (Area Code) 202 (Number) 671-2282 (Ext)			C. E-mail Address lisa.smith@dc.gov		
11. Table of Contents									
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OFFER									
12. In compliance with the above, the undersigned agrees, if this offer is accepted within <u>180</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 Not Applicable									
14. Acknowledgement of Amendments (The offeror acknowledges receipt of amendments to the SOLICITATION):		Amendment Number		Date		Amendment Number		Date	
15A. Name and Address of Offeror				16. Name and Title of Person Authorized to Sign Offer/Contract					
15B. Telephone (Area Code) (Number) (Ext)			15 C. Check if remittance address is different from above - Refer to Section G		17. Signature		18. Offer Date		
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)  Government of the District of Columbia				23. Signature of Contracting Officer (District of Columbia)  Office of Contracting & Procurement			24. Award Date		

SECTION B: CONTRACT TYPE AND PRICE

B.1 The District of Columbia Office of Contracting and Procurement, on behalf of the District Department of Transportation (“DDOT”) (the “District”) is issuing this Request for Proposals (“RFP”) to engage a firm (“Contractor”) to design and construct the St. Elizabeths East Campus Stage One Infrastructure Improvement Project (the “Project”) as further described in the following sections. The District plans on awarding one Firm Fixed Price Design Build Contract (“Contract”).

The Offeror’s total price should be "all inclusive" and should include sufficient funding to cover all of the Contractor's costs necessary to timely perform all Work to complete the Project, including, but not limited to, profit, home and field office overhead, supervision, labor, materials, equipment, bonds, insurance and such professional services as may be required to complete the design and obtain the necessary permits.

B.3 PRICE SCHEDULE – FIRM FIXED PRICE

Contract Line Item No. (CLIN)	Item Description	Total Price
0001	Design-Build St. Elizabeths East Campus Stage One Infrastructure Improvement Project	\$ _____ For detailed tabulation (see section L.2.1.3)

Offeror is offering to perform the Contract for the above total amount in dollars.

Offeror must submit an itemized breakdown of the amount as shown in Section L.2.1.3. Offeror must submit a completed Attachment J.17, schedule of values.

Timing of payments is as shown in Section L.2.1.3. Offeror must submit a completed Attachment J.18, a Contractor Draws/Cash Flow Table.

B.4 ECONOMIC INCLUSION

The District requires that Local, Small and Disadvantaged Business Enterprises (“LSDBEs”) participate in this project to the greatest extent possible and desires that such businesses perform at least Fifty Percent (50%) of the work under this procurement. Thirty Five Percent (35%) of the Contract Work must be awarded to entities that are certified as either Small or Disadvantaged Business Enterprises by the District of Columbia Department of Small and Local Business Development, and Twenty Percent (20%) of the Work to entities that are certified as Disadvantaged Business Enterprises.

The District will also require that the Contractor and all of its subconsultants, subcontractors, and suppliers, enter into a First Source Employment Agreement with the Department of Employment

Services (“DOES”) and hire District residents for new jobs created on the project. Please see **Section H.5** of this RFP for additional information.

SECTION C: SCOPE OF WORK

C.1 SCOPE

The Project includes new utilities and roadway systems to serve the new campus envisioned by the St. Elizabeths East Campus Master Plan. The Contractor will be required to design and construct the Project and perform Work consistent with the District's general goals, the approved Master Plan, and all criteria described in this RFP, Attachment J.3, Technical Requirements, in the Reference Information Documents (RIDs) listed in Attachment J.13 that are located on the Procurement Web site at <http://dashboard.ddot.dc.gov/ddotdashboard/#SolicitationDetail/ProjectID=194> and the Contract Documents.

All forms identified in this RFP are listed in Section J, Attachments, unless otherwise noted. All times shown in this document are Eastern Standard Time or Eastern Daylight Time, as applicable.

C.2 APPLICABLE DOCUMENTS

Refer to Section J, Attachments.

C.3 ABBREVIATIONS/DEFINITIONS / ACRONYMS

See Attachment J.4.

C.4 BACKGROUND

The Project is located on the 170 acre East Campus of the former St. Elizabeths mental hospital. For the past two years the District has been diligently developing a physical redevelopment plan and complimentary economic development strategy to guide the revitalization of the East Campus and surrounding communities. The planned consolidation of the Department of Homeland Security and eventual location of approximately 15,000 employees on the West Campus, directly across MLK Jr. Ave., was the initial impetus for this planning. Redevelopment of the East Campus has become necessary to realize the District's goals of fiscal stability, job creation, and economic competitiveness. Success is critical here as the communities surrounding St. Elizabeths are among the most economically distressed in the District. Redevelopment offers the opportunity to provide amenities for local communities and the thousands of Coast Guard employees headquartered on the West Campus, while creating a new center for innovation which will serve to further diversify the District's economy.

Previous work completed on the east campus related to this Project includes:

- NEPA work for Roadway plans and 30% Roadway plans by the District Department of Transportation (DDOT). This effort has resulted in a completed Environmental Assessment (EA) for the impacts of the redevelopment and the proposed roadway system. A Finding of No Significant Impact (FONSI) was obtained by DDOT in July 2012. A copy of the Project Finding of No Significant Impact and Environmental Assessment are included in the Reference Information Documents located on the Procurement Web site listed in Section C.4.1.1.

- Existing Infrastructure Condition Review Report by the Deputy Mayor of Planning and Economic Development (DMPED). DMPED prepared an existing conditions survey of the infrastructure systems on the east campus in January 2012. See Attachment J.13 and Procurement Web site.
- DDOT completed preliminary roadway plans for the proposed Project. The plans were incorporated into the preliminary Utility infrastructure plans with the result being a preliminary set of infrastructure plans (roadway and utilities) for Stage 1 of the East Campus. See attachment J-13 for the preliminary plans and listing of other RIDs.

New infrastructure systems and transportation systems are needed to serve the new uses and the increased density of the development. As such the scope contained here has been prioritized by the District. The District has commissioned a Master Plan for the site. The selected Contractor will be required to complete the Project in a manner consistent with the approved Master Plan and the District’s goals.

Should potential offerors want to conduct a site visit to the St. Elizabeths East Campus property, a Right of Entry (ROE) may be sent to Gary Ellis (DMPED) at gary.ellis@dc.gov and the DDOT COTR listed in Section H.9. A sample ROE is included in the RIDs.

C.5 GENERAL GOALS

The District’s general goals regarding the Project, in no particular order, include:

- (1) Having the Project contribute to the growth of businesses in the District;
- (2) Having the Project serve as an example of District-wide efforts to diversify the local economy;
- (3) Ensuring that District residents and businesses participate in economic opportunities related to the Project;
- (4) Having the Work performed and the Project completed to achieve, to the extent reasonable, goals of the Sustainable DC Plan,
- (5) Ensuring that the Project is completed to achieve goals of the Master Plan (reference);
- (6) Ensuring that the Project is an example of the District’s responsible spending;
- (7) Ensuring that Contractor performs the Work in coordination with Utility companies;
- (8) Ensuring that Contractor performs the Work in coordination with the ongoing activities related to the Master Plan.

C.6 EMPLOYMENT ACTIVITIES

Toward achieving the Contractor’s compliance with the District’s hiring requirements, the Contractor shall participate in three job fairs that will be arranged by DOES and/or DMPED. The Contractor will cooperate with DOES and/or DMPED in setting the times and locations of these job fairs.

C.7 LICENSING, ACCREDITATION AND REGISTRATION

The Contractor and all of its subcontractors and subconsultants (regardless of tier) shall comply with all applicable District of Columbia, state, and federal licensing, accreditation, and registration requirements and standards necessary for the performance of the Work. Without limiting the

generality of the foregoing, all drawings shall be signed and sealed by a professional architect or engineer licensed in the District of Columbia.

C.8 CONFORMANCE WITH LAWS

The Contractor shall be responsible for the performance of all Work in conformance with Legal Requirements.

C.9 COOPERATION WITH DDOT

The Contractor shall cooperate with the assigned DDOT Project Manager throughout performance of Work as stated in Contract Documents.

C.10 COOPERATION WITH UTILITY COMPANIES.

The Contractor shall cooperate and coordinate Work with Utility Companies throughout performance of Work as stated in Contract Documents.

C.11 COOPERATION WITH DISTRICT CONTRACTORS

The Contractor shall cooperate and coordinate Work with other District contractors throughout performance of Work. The Contractor shall use its best efforts to allow a District contractor access to or through the Site when required for performance of the District contractor's District contract as stated in Contract Documents

C.12 PERFORMANCE OF WORK TO ACHIEVE GOALS OF THE MASTER PLAN

The Contractor shall cooperate with DDOT and DMPED in performance of the Work, including but not limited to, completing the Project to fulfill the goals of the Master Plan as it exists throughout the Term.

SECTION D: PACKAGING AND MARKING

NOT APPLICABLE

SECTION E: INSPECTION AND ACCEPTANCE:

E.1 The goods and services for this procurement are lump sum with a schedule of values (Price Breakdown) and a Contractor draws/cash flow table as detailed in Section L of this document. The inspection and acceptance requirements for this Contract shall be governed by the Government of the District of Columbia Department of Transportation, Standard Specifications for Highways & Structures, 2013 edition and referenced specifications detailed in Section C.5.11 of Attachment J.3 Technical Requirements.

Substantial and Final Completion shall be defined as per DDOT Standard Specifications for Highways & Structures, 2013 edition and referenced specifications detailed in Section C.5.11 of Attachment J.3 Technical Requirements.

SECTION F: PERIOD OF PERFORMANCE AND DELIVERABLES

F.1 TERM OF CONTRACT

Time is of the essence with respect to the Contract. The term of the Contract shall be for a period of 36 months from date of NTP1 specified on the cover page of this Contract ? (Term). Contractor must complete the Work within the Term.

F.2 DELIVERABLES

F.2.1 The Contractor shall submit each deliverable identified below to the Contracting Officer’s Technical Representative identified in Section G.9 in accordance with the following due dates. This list of deliverables is not comprehensive. In addition to those stated below, Contractor shall provide all deliverables to DDOT, other governmental agencies and utility companies as required to perform the Contract.

SOW Reference	Deliverable	Quantity	Format/Method of Delivery	Due Date
	Copy of the final organizational documents for Contractor			Within 7 days of award
	Escrowed Proposal Documents mutually agreed upon financial institution			Within 7 days of award
	Detailed SBE/CBE Performance Plan			Within 7 days after conditional award
	Evidence of insurance and licenses for Contractor and Major Participants			Within 7 days after conditional award
	Match Bond Requirements			Within 7 days after contract received from DDOT
	Job training and small business mentoring plan			Within 7 days after contract received from DDOT
	All governmental approvals necessary for commencement of construction			Prior to commencement of construction
Attach J.3	All environmental permits			Prior to commencement of construction and throughout the term of the project design and construction periods
Attach J.3	All necessary rights of access obtained			Prior to commencement of construction
Attach. J.3	All Utility Provider and WMATA approvals obtained of final designs			Prior to commencement of construction

SOW Reference	Deliverable	Quantity	Format/Method of Delivery	Due Date
Attach. J.3	Design Quality Management Plan			Within 7 days after NTP-1
Attach. J.3	Construction Quality Management Plan			Within 30 days after NTP-1
Attach. J.3	Maintenance Management Plan			60 days prior to NTP-2
Attach. J.3	Risk Management Plan			Within a reasonable time after NTP-1
Attach. J.3	Safety Plan			Within 7 days after NTP-1
Attach. J.3	Public Information and Communications Plan			Within 7 days after NTP-1
Attach. J.3	DDOT-Contractor Communication Plan			Within 7 days after NTP-1
Attach. J.3	Comprehensive Environmental Protection Program (CEPP)			Within 21 days after NTP-1
Attach. J.3	Resource loaded project schedule			Prior to NTP-2 (Construction)
Attach. J.3	Updated resource loaded project schedule			At least monthly after NTP- 2
Attach. J.3	DDOT Field Office & Equipment			Within 60 calendar days of NTP-1
Attach. J.3	Project Utility Agreements			Within 45 days after NTP-1
Attach. J.3	Traffic Management Plan			Prior to NTP-1 and throughout duration of project
Attach J.3	Final survey control values, computations and records and final ROW surveying and mapping			Within 90 days of final acceptance
Attach. J.3	ROW monuments			Within 90 days after final acceptance
Attach. J.3	Drainage Design Report			With each design plan submittal of the design plans
Attach J.3	Design Construction Agreement (DCA) or rail facility agreement with WMATA – JDAC for work adjacent to Congress Heights Metro Station and adjacent to Green Line.			Prior to NTP-2
Attach J.3	Signal Warrant studies			Prior to finalization of design plans
	Performance Bond			At time of intent to award
	Payment Bond			At time of intent to award

SOW Reference	Deliverable	Quantity	Format/Method of Delivery	Due Date
	All warranties applicable to Work			Upon Project final acceptance notice by DDOT
	Certifications from Contractor's design manager certifying final design documents meet the requirements of the Contract			Prior to Project completion notice to DDOT from Contractor
	Certifications from Contractor's quality manager and project manager certifying construction meets the requirements of the Contract			Prior to Project completion notice to DDOT from contractor
	As-Built plans or "record drawings" of improvements to DDOT, Utility Providers and WMATA			Prior to Project completion notice to DDOT from contractor
	All Utility Provider and WMATA approvals obtained regarding the Project			Prior to Project completion notice to DDOT from contractor

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 the Contract, for supplies delivered and accepted or services performed and accepted, less any discounts, allowances or adjustments provided for in the Contract.
- G.1.2** The District will pay the Contractor on or before the 30th day after receiving a proper invoice from the Contractor.

G.2 INVOICE SUBMITTAL

- G.2.1** The Contractor shall submit proper invoices on a monthly basis or as otherwise specified in Section G.4, Payment. Invoices shall be prepared in duplicate and submitted to the Agency's Chief Financial Officer (CFO) with concurrent copies to the COTR specified in Section G.9. The address of the CFO is:

George Dines
Office of the Chief Financial Officer/Agency CFO
Accounts Payable
2000 14th Street, NW, 6th Floor
Washington, DC 20009
Telephone No.: (202) 671-2300

- G.2.2** To constitute a proper invoice, the Contractor shall submit the three (3) paper copies and one (1) electronic copy of the following information:
- G.2.2.1** Contractor's name, federal tax ID and invoice date (date invoices as of the date of mailing or transmittal)
 - G.2.2.2** Invoice cover sheet – including Contract number and title, invoice number, invoice period, total amount invoiced for current period, total amount invoiced to date, total contract value and Contractor's authorized signature.
 - G.2.2.3** Payment breakdown - includes Work Activity Identification, Activity Name, percent complete, amount invoiced for specific activity during current period, remaining amount to be invoiced and copies of paid invoices to subcontractors and suppliers.
 - G.2.2.4** Monthly progress schedule update, month CBE Status report, inclusive of copied of DDOT SBE/CBE Contractor Payment Form and Local Contract Compliance, progress photographs and other supporting documentation

or information, as required by the Contracting Officer (CO) or Contracting Officer's Technical Representative (COTR).

- G.2.2.5** Name, title, telephone number and complete mailing address of the responsible official to whom payment is to be sent
- G.2.2.6** Name, title, phone number of person preparing the invoice
- G.2.2.7** Name, title, phone number and mailing address of person (if different from the person identified in G.2.2.6 above) to be notified in the event of a defective invoice
- G.2.2.8** Authorized signature

DDOT may withhold invoice payment if the Contractor does not submit any of the documents listed above.

G.3 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT

- G.3.1** For contracts subject to the 51 percent District Residents New Hires Requirements and First Source Employment Agreement requirements, final request for payment must be accompanied by the report or a waiver of compliance discussed in Section H.5.5.
- G.3.2** No final payment shall be made to the Contractor until the DDOT CFO has received the CO's final determination or approval of waiver of the Contractor's compliance with 51 percent District Residents New Hires Requirements and First Source Employment Agreement requirements.

G.4 PAYMENT

G.4.1 Invoices and Payment

Requirements relating to invoicing are set forth in Attachment J.3, Technical Requirements. Within 30 Days after Approval by the District of each final and complete invoice, as described in Attachment J.3, the District shall pay the Contractor the amount of the invoice Approved for payment less any amounts that the District is entitled to withhold.

G.4.2 Limitations on Payment

In no event shall the District have any obligation to pay the Contractor any amount that would result in: (i) payment for any Activity in excess of the value of the Activity times the completion percentage of such Activity; or (ii) aggregate payments hereunder in excess of: (i) the overall completion percentage for the Project times the Contract Price; or (ii) the payment caps described herein. The District does not have the obligation to pay the Contractor for any Nonconforming Work.

G.4.3 Requirement to Provide Corrected Monthly Update

After Approval of the Original Baseline Schedule as defined in C.5.12.1.1 (Attachment J.3), no payment will be processed or owed to the Contractor for Work performed during any period not covered by the accepted current Monthly Progress Schedule. If at any time the Contractor falls more than 10 percent behind the current schedule or payment curve, the District will have the right to withhold payment until an acceptable recovery plan is submitted by the Contractor and approved by the District.

G.4.4 NTP1 Payment Cap

The amount of funds available to pay the Contractor for Work performed prior to issuance of NTP2 is limited to the amount of the NTP1 payment cap. The District has no obligation to make any payment to the Contractor in excess of this amount until such time (if any) as the second Notice to Proceed (NTP2) is issued. If the Contractor performs any Work in excess of the NTP1 payment cap, it does so at its own risk. The NTP1 payment cap is \$1,300,000 million dollars.

G.4.5 Stockpiled Materials

Payment for stockpiled materials, at 100 percent of supplier invoice value, shall be included in the monthly progress payments provided the following conditions are met:

1. The stockpile site is under the control or leased by the Contractor from a 3rd party and will remain so until the material is incorporated in the Work. The stockpile materials must have been specifically authorized by and acquired for the Project. The site must be a licensed and bonded as a secure facility and be acceptable to the District and must be kept secure at all times by the Contractor. Proof of such bond and control shall be submitted to the District prior to any payments for materials.
2. Appropriate test reports, if required, shall be submitted to the District prior to any payments showing that the materials meet the requirements of the Contract. The District has the authority to inspect, test, and approve the stockpiled materials.
3. If the stockpiled materials are stored at in a site that is more than 20 miles from the Project site, the Contractor shall be responsible for payment of all costs for the District to inspect the stockpile site and the materials stored at the Project site. The District anticipates to conduct quarterly inspections of any stockpiled materials.
4. Copies of all Suppliers' paid invoices shall accompany all requests for payment submitted to the District. Failure to provide timely submissions of paid invoices

with a monthly request for payment shall be cause to reject payment for materials stored

5. Payment shall be limited to the following stockpiled materials (“Stockpiled Materials”) unless specifically approved in writing by the District: sewer pipe, water pipe, water and sewer valves, guardrail, electrical work materials, mechanical work materials, piling, Portland Cement Concrete (PCC) form materials, reinforcing steel, pre-stressed concrete beams, structural steel, paint, stone masonry, railing, bridge deck drainage, steel sign structures, and wall tile. The District will not make payment and will not be liable for invoices for Stockpiled Materials as follows: (a) individual invoices for less than \$10,000, (b) Stockpiled Materials stored for fewer than 30 Days, (c) invoices exceeding \$1,000,000 cumulatively in any given month, (d) invoices exceeding \$3,000,000 cumulatively throughout the Term

G.4.6 Mobilization, Bonds and Insurance Payment

Contractor may submit an invoice for the actual amount of premiums paid by the Contractor for the Payment and Performance Bonds and for insurance required to be provided by the Contractor under Sections L.2.1.3, Item/Line No. 30 and 31 at any time after issuance of NTP1. The District will reimburse the Contractor for insurance premiums only if the Contractor purchases Project-specific insurance. The District will reimburse the Contractor for the Payment and Performance Bonds’ premiums following submission of proper Invoices for these premiums

In addition, the Contractor shall be entitled to four additional mobilization payments totaling \$1,000,000 (that is, the maximum amount payable for mobilization under this Section G.4.6 shall be \$1,000,000). Contractor will be entitled to payment for mobilization if and only if the District issues NTP2. Following issuance of NTP2, Contractor may invoice. The initial for four mobilization payments, each shall be in the amount of \$250,000 and may be invoiced at any time after issuance of NTP2. as follows (a) initial invoice immediately after issuance of NTP2, (b) The second payment shall be in the amount of \$250,000, and may be invoiced at any time second invoice any time after 30 Days after issuance of NTP2m (c) . The third payment shall be in the amount of \$250,000, and may be invoiced at third invoice any time after 60 Days after issuance of NTP2, (d). The fourth invoice payment shall be in the amount of \$250,000, and may be invoiced at any time after 90 Days after issuance of NTP2.

G.4.7 Retainage Deductions

G.4.7.1 Retainage

The District shall withhold funds (the "Retainage") from each payment to be made to Contractor. The Retainage shall be an amount equal to 10 percent of the amount owing. If the District determines, in its discretion, that Contractor has made satisfactory progress in performance of Work at the time the Project is 50 percent complete, the District may discontinue or reduce retainage withholding, at the District's discretion.

G.4.7.2 Deductions

The District may deduct from any amounts otherwise owing to Contractor, including each monthly progress payment and the final payment, the amount of any of the following owed to the District or for which the District has a good faith claim:

1. Any accrued losses, liability, Liquidated Damages, or other damages for which Contractor is responsible.
2. The estimated cost of remedying any Nonconforming Work or otherwise remedying any breach of Contract by Contractor.
3. The amount of any outstanding Claim relating to the Work.
4. The amount for Work that the Contractor is obligated to perform under the Contract, which the Contractor has failed to perform
5. Any other sums which the District is entitled to recover from the Contractor under the terms of the Contract

The District's failure to deduct from a progress payment any amount which the District is entitled to recover, or has a good faith claim that it is entitled to recover, from the Contractor under the Contract, shall not constitute a waiver of the District's right to such amounts.

G.4.8 Final Payment

Final payment will be made in accordance with this Section G.4.8.

G.4.8.1 Application for Final Payment

On or about the date of delivery of its Affidavit of Final Completion, the Contractor shall prepare and submit a proposed Application for Final Payment to the District showing the proposed total amount due the Contractor. In addition to meeting all other requirements for invoices hereunder, the Application for Final Payment shall include: (a) an affidavit, on the form prescribed by the District, to the effect that all payments have been made and all Claims have been released for all material, labor and other items covered by the Contract bond; or (b) a list of any outstanding or pending Potential Change Order (PCO) Notices and all existing or threatened Claims, Liens, and stop notices by Subcontractors, laborers, Utility Companies, or other third parties relating to

the Project, including any notices filed or to be filed with the Affidavit of Final Completion, stating the amount at issue associated with each such notice; (c) the written consent by the Surety to such payment; and (d) such other documentation as the District may reasonably require. Prior applications and payments shall be subject to correction in the proposed Application for Final Payment. PCO Notices filed concurrently with the Application for Final Payment must be otherwise timely and meet all requirements under Section G.10. If a Subcontractor refuses to furnish a release or waiver required by the District, the Contractor may furnish a bond satisfactory to the District to indemnify the District against such Lien. If such Lien remains unsatisfied after payments are made, and is not bonded over as provided in the previous sentence, the Contractor shall promptly pay to the District all money that the District may be compelled to pay in discharging such Lien, including all costs and attorneys' fees.

The District will review the Contractor's proposed Application for Final Payment, and changes or corrections will be forwarded to the Contractor for correction. If no changes or corrections are required, the District will approve the Application for Final Payment. Final payment procedures are to be in accordance with the Government of the District of Columbia Department of Transportation, Standard Specifications for Highways & Structures, 2013 edition and referenced specifications detailed in Section C.5.11 of Attachment J.3 Technical Requirements.

G.4.8.2 Payment

As a condition to its obligation to make payment to the Contractor based on the Application for Final Payment, the District shall have received an Affidavit Regarding Settlement of Claims from the Contractor, releasing and waiving any Claims against the Indemnified Parties and those matters identified in any PCO Notices listed as outstanding in the Application for Final Payment, and otherwise satisfactory in form and content to the District.

The Settlement of Claims Affidavit shall include, as a minimum, a certification by the Contractor:

1. That it has resolved any Claims made by Subcontractors, Utility Companies, and others against the Contractor or the Project.
2. That it has no reason to believe that any Person has a valid Claim against the Contractor or the Project that which has not been communicated in writing by the Contractor to the District as of the date of the certificate.
3. That all guarantees and warranties are in full force and effect.

The Settlement of Claims Affidavit shall survive final payment. The payment amount will be reduced by any amounts deductible under Section G.10.

All prior partial estimates and payments shall be subject to correction in the final payment. The Contractor's acceptance of final payment shall constitute a waiver of affirmative Claims by Contractor except those previously made in writing and identified as unsettled at the time of final payment.

G.5 ASSIGNMENT OF CONTRACT PAYMENTS

G.5.1 In accordance with Title 27 District of Columbia Municipal Regulations (DCMR) § 3250, the Contractor may assign to a bank, trust company, or other financing institution funds due or to become due as a result of the performance of this Contract.

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

G.5.3 Notwithstanding an assignment of Contract payments, the Contractor, not the assignee, is required to prepare invoices. Where such an assignment has been made, the original copy of the invoice must refer to the assignment and must show that payment of the invoice is to be made directly to the assignee as follows:

“Pursuant to the instrument of assignment dated _____, make payment of this invoice to (name and address of assignee).”

G.6 THE QUICK PAYMENT CLAUSE

G.6.1 Interest Penalties to Contractor

G.6.1.1 The District will pay interest penalties on amounts due to the Contractor under the Quick Payment Act, D.C. Official Code §2-221.01 *et seq.*, for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of 1 percent per month.

G.6.1.2 Any amount of an interest penalty that remains unpaid at the end of any 30-Day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

G.6.2 Payments to Subcontractors

G.6.2.1 The Contractor must take one of the following actions within 7 Days of receipt of any amount paid to the Contractor by the District for work performed by any Subcontractor under this Contract:

1. 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
2. Notify the District and the Subcontractor, in writing, of the Contractor's intention to withhold all or part of the Subcontractor's payment and state the reason for the nonpayment.

G.6.2.2 The Contractor must pay any Subcontractor or Supplier interest penalties on amounts due to the Subcontractor or Supplier beginning on the day after the payment is due and ending on the date on which the payment is made. Interest shall be calculated at the rate of 1 percent 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 15th day after the required payment date for any other item

G.6.2.3 Any amount of an interest penalty that remains unpaid by the Contractor at the end of any 30-Day period shall be added to the principal amount of the debt to the Subcontractor and thereafter interest penalties shall accrue on the added amount.

G.6.2.4 A Dispute between the Contractor and Subcontractor relating to the amounts or entitlement of a Subcontractor to a payment or a late payment interest penalty under the Quick Payment Act does not constitute a Dispute to which the District of Columbia is a party. The District of Columbia may not be interpleaded in any judicial or administrative proceeding involving such a Dispute.

G.6.3 Subcontract Requirements

The Contractor shall include in each Subcontract under this Contract a provision requiring the Subcontractor to include in its Contract with any lower-tier Subcontractor or Supplier the payment and interest clauses required under paragraphs (1) and (2) of D.C. Official Code §2-221.02(d).

G.7 CONTRACTING OFFICER

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

Courtney B. Lattimore
Contracting Officer
55 M Street, SE, Suite 700S
Washington, DC 20003

Telephone No.: 202-671-2270
Courtney.lattimore@dc.gov

G.8 AUTHORIZED CHANGES BY THE CONTRACTING OFFICER (CO):

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

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

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

G.9 CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE

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

- G.9.1.1** Keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the Contract
- G.9.1.2** Coordinating Site entry for Contractor personnel, if applicable
- G.9.1.3** Reviewing invoices for completed work and recommending approval by the CO if the Contractor's costs are consistent with the negotiated amounts and progress is satisfactory and commensurate with the rate of expenditure
- G.9.1.4** Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions
- G.9.1.5** Maintaining a file that includes all Contract correspondence, modifications, records of inspections (Site, data, equipment) and invoice or vouchers

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

Huntae Kim, P.E.
Supervisory Civil Engineer
55 M Street, SE, 4th Floor
Washington, DC 20003
(202) 671-4636
Huntae.Kim@dc.gov

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

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

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

G.10. CHANGES

G.10.1 Change Order Risk Allocation

G.10.1.1 Time and Money Changes

The Contractor may request a Change Order, subject to the limitations set forth below, for increased costs or additional time for Completion Dates only for the following:

1. Additional costs or time directly attributable to additional Work resulting from District-Directed Changes.
2. Additional costs or time directly attributable to unavoidable delays, arising from a suspension order.
3. Failure or inability of the District to provide the Contractor with access to ROW identified on the ROW Drawings on or before the deadline for such access set forth in the ROW Schedule.

4. Delay in issuance of NTP2 or in providing reasons why the District was unable to do so to the extent provided in attachment J.3 (Approval of Quality Plan and Approved Baseline Schedule).
5. Additional costs or time directly attributable to Differing Site Conditions, to the extent provided in this Section.
6. Certain additional costs or time relating to Remediation Work as described in this Section, to the extent provided therein.
7. Certain additional costs (in the case of added Utility Work) as described in attachment J.3, to the extent provided therein.
8. Certain additional costs or time relating to material errors in the ROW Drawings, as described in this Section, to the extent provided therein.
9. Additional costs or time directly attributable to uncovering, removing, and restoring Work, to the extent provided in attachment J.3.
10. Additional costs or time directly attributable to the discovery at, near, or on the Site articles of historical, architectural, or archaeological significance discovered within the ROW, provided that the existence of such resources was not disclosed in the RFP.
11. Additional costs or time directly attributable to the suspension, termination, interruption, denial, failure to obtain, nonrenewal or amendment of any Environmental Approval or New Environmental Approval required to be obtained by the District, except as otherwise provided in attachment J.3.
12. Any change in a Legal Requirement, change in the judicial interpretation of a Legal Requirement, or adoption of any new Legal Requirement, excluding changes in tax laws, which is materially inconsistent with Legal Requirements in effect on the Proposal Due Date (excluding any such change or new Legal Requirement which was passed or adopted as of the Proposal Due Date but has a defined future effective date), and which: (i) requires a material modification in the Project Work; (ii) requires the Contractor to obtain a major District or Environmental approval not previously required for the Project; or (iii) specifically targets the Project or the Contractor
13. Any lawsuit seeking to restrain, enjoin, challenge, or delay construction of the Project, except to the extent that the risk of such lawsuit has been assumed by Contractor; or the lawsuit otherwise arises out of any act, omission or breach of obligation of Contractor, a Subcontractor or any person for whom Contractor is contractually or legally liable.

14. Failure to award the Contract and issue NTP1 within 5 Business Days after Contract execution by the District.

G.10.1.2 Time Only Changes

The Term will be extended for each day of delay for which Contractor demonstrates the following conditions have been met.

1. The delay is critical. A delay is critical if and only to the extent it delays performance of Work that cannot be delayed without delaying performance of Work to achieve Final Completion beyond the Term.
2. Within **2** days of the date the Contractor discovers a conditions listed in this section, Contractor submits a timely and complete Change Order Request
3. 3. The delay is caused by :
 - a. Fire that is not caused in whole or in part, directly or indirectly, by Contractor;
 - b. Strikes, boycotts, or like obstructive actions by labor organizations;
 - c. Natural phenomena whose effects could not be prevented by the exercise of Contractor's reasonable care and foresight;
 - d. The failure of the District to perform a material Contract obligation, unless such failure is due, in whole or in part, to Contractor's neglect or default;
 - e. Action on behalf of a Utility, the delaying effect of which could not be prevented by the exercise of Contractor's reasonable care and foresight.

G.10.2 Changes in the Work

This Section G.10 sets forth the requirements for obtaining all Change Orders under the Contract. The Contractor hereby acknowledges and agrees that the Contract Price constitutes full compensation for performance of all of the Work, subject only to those exceptions specified in this Section, and that the District is subject to constraints that limit its ability to increase the Contract Price or extend the Completion Dates. The Contractor hereby waives the right to make any Claim for a time extension or for any monetary compensation in addition to the Contract Price and other compensation specified in the Contract, except as set forth in this Section.

G.10.2.1 Circumstances under Which Change Orders may be Issued

G.10.2.1.1 Change Orders

The term "Change Order" shall mean a written amendment to the terms and conditions of the Contract Documents issued in accordance with this Section. A Change Order shall not be effective for any purpose unless executed by the District. Execution of a Change

Order by the District shall mean that the Change Order has been fully approved by the District and any other necessary parties of the District. Change Orders may be requested by the Contractor only pursuant to Section G.10. Change Orders may be issued for the following purposes (or combination thereof):

- To modify the Work
- To revise a Completion Date
- To revise the Contract Price
- To revise other terms and conditions of the Contract Documents

Upon the District's Approval of the Change Order form, the District will execute the Change Order form indicating Approval thereof.

G.10.2.1.2 Issuance of Directive Letter

The District may at any time issue a Directive Letter to the Contractor in the event of any Dispute regarding the Work or for any desired change in the Work. The Directive Letter will state that it is issued under this Section, will describe the Work in question, and will state the basis for determining compensation, if any. The Contractor shall proceed immediately with the Work as directed in the letter, pending the execution of a formal Change Order (or, if the letter states that the Work is within the original scope of the Work, the Contractor shall proceed with the Work as directed but shall have the right pursuant to this Section to request that the District issue a Change Order with respect thereto).

Receipt of a Directive Letter from the District is a condition precedent to the Contractor's right to Claim that a District-Directed Change has occurred, provided that no Directive Letter shall be required for alleged District-Directed Changes directly attributable to delays caused by bad faith actions, active interference, gross negligence, or comparable tortious conduct by the District. The fact that a Directive Letter was issued by the District shall not be considered evidence that in fact a District-Directed Change occurred. The determination as to whether a District-Directed Change in fact occurred shall be based on an analysis of the original Contract document requirements and a determination as to whether the Directive Letter in fact constituted a change in those requirements. The foregoing requirements shall not imply that a Directive Letter would be required in order for the Contractor to have the right to receive compensation for Work within its original scope for which additional compensation is specifically allowed under this Section.

G.10.2.1.3 Performance of Changed or Extra Work

As a condition precedent to the Contractor's right to receive additional payment or an extension of a Completion Date for changed or extra work, the Contractor shall have received either a Directive Letter from the District stating that it is issued pursuant to this Section or a Change Order for such work executed by the District. To the extent that the Contractor undertakes any such work without receiving a Directive Letter or Change Order executed by the District, the Contractor shall be deemed to have performed such work voluntarily and shall not be entitled to a Change Order in connection therewith. In addition, the Contractor may be required to remove or otherwise undo any such work, at its sole cost.

G.10.2.2 Value Engineering Change Proposals

The District desires for the Contractor to have significant flexibility in determining how best to deliver the Project within the parameters established by the Contract Documents. The Contractor is encouraged to submit VECPs whenever it identifies potential savings. Notwithstanding the foregoing, the District's Approval is required with respect to any proposed changes in the requirements of the Contract Documents. This Section sets forth the requirements applicable to VECPs.

G.10.2.2.1 Definition of Value Engineering Change Proposal

A VECP is a proposal developed and documented by the Contractor that is a change in the requirements of the Contract Documents, must demonstrate increased value to the Contract Price and must maintain the finished product's required function such as service life, reliability, economy of operation, ease of maintenance, necessary standardized features and appearance, and not require an extension of the Contract Completion Dates.

G.10.2.2.2 Required Information

At a minimum, the following information shall be submitted by the Contractor with each VECP:

- A statement that the submission is a VECP, a narrative description of the proposed change, the advantages and disadvantages of the proposed change and the justification for changes in function or characteristics, and the effect the proposed change has on performance.
- Identification of all Contract requirements (with reference to specific sections) that must be changed if the VECP is approved.
- A description of any previous use or tests of the proposed change and the conditions and results.

- Date or time, by which a Change Order adopting the VECP must be issued in order to obtain the maximum cost reduction, noting any effect on the Contract Schedule.
- A complete cost analysis, including current pricing for the existing Contract requirements compared to the Contractor’s cost estimate of the proposed changes.

The Contractor shall provide any additional information requested by the District in a timely manner. Additional information could include results of field investigations and surveys, design computations, and field change sheets.

G.10.2.2.3 District Review

Upon receipt of a VECP, the District will process it, but will not be liable for any delay in acting upon any proposal submitted pursuant to this Section. The Contractor may withdraw all or part of any VECP at any time prior to approval by the District. Until and unless the VECP is approved, the Contractor shall comply with the Contract Documents.

The District may approve, in its sole discretion, in whole or in part, by Change Order, any VECP submitted. Until a Change Order is issued on a VECP, the Contractor shall remain obligated to perform in accordance with the Contract Documents. The decision of the District as to rejection or Approval of any VECP shall be at the sole discretion of the District and shall be final and not subject to partnering, Dispute resolution or appeal. The Contractor shall have no Claim for any additional costs or delays resulting from the rejection of a VECP, including development costs, loss of anticipated profit, or increased material or labor costs.

G.10.2.2.4 Contract Price Adjustment

If the District Approves a VECP submitted by the Contractor pursuant to this Section, the Contract Price shall be adjusted in accordance with the following:

- a. The term “estimated net savings,” as used in this Section, shall mean: (i) the difference between the cost of performing the Work according to the Contract Documents using current estimates and the actual cost to perform it according to the proposed change; less (ii) the costs of studying and preparing the VECP as proven by the Contractor and Approved by the District in accordance with the Change Order procedures set forth herein; less (iii) any additional costs incurred by the District (including costs relating to any Relocations and ROW and implementation costs) resulting from the VECP. The Contractor’s profit shall not be considered part of the cost.
- b. Except as specified in this Section, the Contractor is not entitled to share in either collateral or future contract savings. The term “collateral savings” means those measurable net reductions in the District’s costs resulting from the VECP, including costs of maintenance by the District, logistics, and the District-furnished property. The term “future contract savings” shall mean reductions in

the cost of performance of future construction contracts resulting from a VECP submitted by the Contractor.

- c. Subject to this Section, the Contract Price shall be reduced by an amount equal to the sum of (i) 100 percent of any additional costs incurred by the District resulting from the VECP; plus (ii) 50 percent of the estimated net savings.
- d. In a case where a VECP involves an adjustment to the ROW Plans (such as a proposal that additional real property be purchased to reduce construction costs), the VECP shall compare:
 - i. The incremental reduction in costs (such as for not designing and building a wall); and
 - ii. The costs involved in adjusting the ROW Drawings and Environmental Approvals (which shall be based on the Contractor's additional costs, such as for providing real property acquisition support services, including profit, plus the District's additional costs, including land acquisition, appraisals, negotiation, relocation, condemnation, closing, property management, and environmental permitting, specifically including allocated costs of the District personnel involved in the acquisition);
 - iii. or as (appropriate) shall compare:
 - The incremental reduction in costs (if any) for not acquiring the unnecessary real property; and
 - The additional construction costs to be incurred.

The estimated net savings shall be shared 50-50 between the District and the Contractor. The Contractor shall include in its VECP an analysis of any impacts on Utility Companies for consideration by the District.

G.10.2.2.5 Use of Value Engineering Changes by the District

All Approved VECPs and negotiated changes will become the property of the District, and shall contain no restrictions imposed by the Contractor on their use or disclosure. The District retains the right to use, duplicate, and disclose in whole or in part any data necessary for the utilization of the Approved VECP or negotiated change proposal on any other or subsequent projects without any obligation to the Contractor. This provision is not intended to deny rights provided by law with respect to patented materials or processes.

G.10.2.3 Lump Sum Change Orders

The preferred approach by both parties is that Change Orders will be reimbursed on a lump sum payment basis, if the parties can agree on a lump sum amount. If the parties

cannot agree on a lump sum amount for Change Orders, the Change Orders will be paid as Force Account Change Orders described in this Section.

G.10.2.3.1 Procedure for District-Initiated Lump Sum Change Orders

This Section concerns Change Orders requested by the District.

G.10.2.3.2 Issuance of Request for Change Proposal

If the District desires to evaluate whether to initiate such a change, the District may, at its discretion, issue a Request for Change Proposal.

Within seven Days after the Contractor's receipt of a Request for Change Proposal, the District and the Contractor shall consult to define the proposed scope of the change. Within 7 Days after the initial consultation, the District and the Contractor shall consult concerning an estimated Rough Order of Magnitude (ROM) cost and time impacts, if any. The Contractor shall prepare the ROM at its cost. The Contractor shall provide data regarding such matters as requested by the District.

Within 7 Days after the ROM consultation meeting and provision of any data requested by the District, the District shall notify the Contractor whether the District:

- a. Wishes to request the Contractor to prepare a Change Order form as discussed at the meeting
- b. No longer wishes to issue a Change Order

The District may at any time, in its sole discretion, require the Contractor to provide two alternative Change Order forms, one of which shall provide for a time extension, if applicable, and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the original Completion Dates, as well as any additional costs permitted hereunder.

If requested by the District, the Contractor shall, within 21 Days after receipt of the notification, prepare and submit to the District for Approval a Change Order form for the requested change, complying with all applicable requirements of this Section, and incorporating all requests made by the District. The Contractor shall bear the cost of developing the Change Order form, including any modifications thereto requested by the District, except that costs of design and engineering Work required for preparation of plans or exhibits necessary to the Change Order form and pre-authorized by the District shall be included in the Change Order as reimbursable items. If the Change Order is approved, the design and engineering costs will be included within the Change Order. If the Change Order is not approved, the Contractor shall be separately reimbursed for the design and engineering costs through a separate Change Order.

If the District and the Contractor agree that a change in the requirements relating to the Work has occurred but disagree as to whether the change justifies additional compensation or time or disagree as to the amount of any change to be made to the Contract Price or a Completion Date, the District may, in its sole discretion, order the Contractor to proceed with the performance of the Work in question notwithstanding such disagreement. Such order may, at the District's option, be in the form of a:

- a. Force Account Change Order
- b. Directive Letter

G.10.2.3.3 Procedures for Contractor-Initiated Lump Sum Change Orders

The Contractor's entitlement to a Change Order for eligible changes is subject to the procedure, restrictions and limitations contained in this Section.

G.10.2.3.4 Conditions Precedent

The requirements set forth in this Section constitute conditions precedent to the Contractor's entitlement to request and receive a Change Order in all circumstances. The Contractor agrees that the filing of a PCO Notice and subsequent filing of a Request for Change Order (RCO) with the District pursuant to this Section are necessary in order to begin the administrative process for Contractor-requested Change Orders. The Contractor understands that it shall be forever barred from recovering against the District under this Section if it fails to give notice of any act, or failure to act, by the District or any of its representatives or the happening of any event, thing, or occurrence pursuant to a proper PCO Notice, and thereafter complies with the remaining requirements of this section.

The Contractor shall deliver to the District a PCO Notice stating that an event or situation has occurred and shall state whether it is entitled to additional time or money. The first notice shall be labeled "PCO No. 1" and subsequent notices shall be numbered sequentially.

Each PCO Notice shall be delivered as promptly as possible after the occurrence of such event or situation. If any PCO Notice is delivered later than 10 Days after the Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence which is described therein, the Contractor shall be deemed to have waived the right to collect any and all costs incurred prior to the date of delivery of the PCO Notice, and shall be deemed to have waived the right to see an extension of any Completion Date with respect to any delay in the Critical Path that accrued prior to the date of delivery of the written notice. Furthermore, if any PCO Notice concerns any condition or material described in attachment J.3, the Contractor shall be deemed to have waived the right to collect any and all costs incurred in connection therewith to the

extent that the District is not afforded the opportunity to inspect such material or condition before it is disturbed. The Contractor's failure to provide a PCO Notice within 30 Days after the Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence of a given event or situation shall preclude the Contractor from any relief, unless the Contractor can show, based on a preponderance of the evidence that: (i) the District was not materially prejudiced by the lack of notice; or (ii) the District's designated representative had actual knowledge, prior to the expiration of the 30-Day period, of the event or situation and that the Contractor believed it was entitled to a Change Order with respect thereto. A PCO Notice shall be deemed delivered only if it fully conforms to the requirements of this Section.

The PCO Notice shall (i) state in detail the facts underlying the PCO, the reasons why the Contractor believes additional compensation or time will or may be due and the date of occurrence; (ii) state in detail the basis that the work is not required by the Contract, if applicable; (iii) identify particular elements of Contract performance for which additional compensation may be sought under this Section ; (vi) identify any potential Critical Path impacts affecting a Completion Date; and (v) provide an estimate of the time within which a response to the notice is required to minimize cost, delay, or disruption of performance.

Any adjustments made to the Contract shall not include increased costs or time extensions for delay resulting from the Contractor's failure to provide requested additional information under this section.

The Contractor shall deliver all RCOs under this Section to the District within 30 Days after delivery of the PCO Notice. The District may require design and construction costs to be covered by separate Change Order requests. If the Contractor requests a time extension, then the District, in its sole discretion, may require the Contractor to provide two alternative Change Order requests, one of which shall provide for a time extension and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the original Completion Dates, as well as any additional costs permitted hereunder.

The Contractor acknowledges and agrees that, due to the limited availability of funds for the Project, timely delivery of notification of such events and situations and requests for Change Orders and updates thereto are of vital importance to the District. The District is relying on the Contractor to evaluate, promptly upon the occurrence of any event or situation, whether the event or situation will affect schedule or costs and, if so, whether the Contractor believes a time extension and/or price increase is required hereunder. If an event or situation occurs that may affect the Contract Price or a Completion Date, the District will evaluate the situation and determine whether it wishes to make any

changes to the definition of the Project so as to bring it within the District's funding and time restraints.

The following matters (among others) shall be considered in determining whether the District has been prejudiced by the Contractor's failure to provide timely notice:

- a. The effect of the delay on alternatives available to the District (that is, a comparison of alternatives that are available at the time notice was actually given and alternatives that would have been available had notice been given within 10 Days after occurrence of the event or when such occurrence should have been discovered in the exercise of reasonable prudence);
- b. The impact of the delay on the District's ability to obtain and review objective information contemporaneously with the event.

Prior to submission by the Contractor of any PCO Notice or a RCO to the District that is based in whole or in part on a request by a Subcontractor to the Contractor for a price increase or time extension under its Subcontract, the Contractor shall have reviewed all Claims by the Subcontractor that constitute the basis for the RCO and determined in good faith that each such Claim is justified hereunder and that the Contractor is justified in requesting an increase in the Contract Price and/or change in Completion Dates in the amounts specified in the RCO. Each RCO involving Subcontractor Work shall include a sworn certification in form acceptable to the District, signed by the Contractor's Project Manager, stating that the Contractor has investigated the basis for the Subcontractor's Claims and has concluded that all such Claims are justified as to entitlement and amount of money and/or time requested and has no reason to believe and does not believe that the factual basis for the Subcontractor's Claim is falsely represented. Any RCO involving Subcontractor Work shall be considered incomplete if it is not accompanied by such certification.

If the District refuses to issue a Change Order based on the Contractor's request, the Contractor shall nevertheless perform all work as specified in an appropriate Directive Letter, with the right to submit the issue of entitlement to a Change Order to Dispute resolution in accordance with DDOT procedures. The Contractor shall maintain and deliver to the District, upon request, contemporaneous records, meeting the requirements of this Section, for all work performed that the Contractor believes constitutes extra work, until all Disputes regarding entitlement or cost of such work are resolved.

G.10.2.4 Force Account Change Orders

The District may at its discretion issue a Force Account Change Order whenever the parties cannot agree to a Lump Sum Change Order or the District determines that a Force Account Change Order is advisable. The Force Account Change Order shall instruct

the Contractor to perform the Work, indicating expressly the intention to treat the items as changes in the Work, and setting forth the kind, character, and limits of the Work as far as they can be ascertained, the terms under which changes to the Contract Price will be calculated, and the estimated total change in the Contract Price anticipated thereunder. Upon final determination of the allowable costs, the District shall issue a modified Change Order setting forth the final adjustment to the Contract Price. The costs and additional amounts allowed in this Section (and no others) shall be used for calculating the change in the Contract Price. No direct compensation will be allowed for other miscellaneous costs for which no specific allowance is provided in this Section.

The District and the Contractor may agree to negotiate unit prices for a Force Account Change Order. Measurement of any unit-priced quantities will be as specified in the Change Order. Unit prices shall be deemed to include all costs for labor, material, overhead and profit, and shall not be subject to change regardless of any change in the estimated quantities. Upon final determination of the quantities, the District will issue a modified Change Order setting forth the final adjustment to the Contract Price.

G.10.2.4.1 Force Account Records

The Contractor shall maintain its records in a manner that provides a clear distinction between: (i) the direct cost of Work for which it is entitled (or for which it believes it is entitled) to an increase in the Contract Price; and (ii) the costs of other operations. The Contractor shall contemporaneously collect, record in writing, segregate, and preserve: (i) all data necessary to determine the costs described in this Section with respect to all Work which is the subject of a Change Order or a requested Change Order, specifically including costs associated with design Work as well as Utility Relocations; and (ii) all data necessary to show the actual impact (if any) of the change on the Critical Path affecting a Completion Date with respect to all Work which is the subject of a Change Order or a proposed Change Order, if the impact on the Critical Path affecting a Completion Date is in Dispute. Such data shall be provided on forms Approved by the District. The cost of furnishing such reports is included in the Contractor's predetermined overhead and profit.

The Contractor shall furnish daily, on forms Approved by the District, reports of Force Account Change Order Work. The cost of furnishing such reports shall be included in the Contractor's overhead and profit percentages. The reports shall include:

- Name, classification, date, daily hours, total hours, rate, and extension for each worker (including both construction and non-construction personnel) and foreman

- Designation, dates, daily hours, total hours, equipment rental rates from the *Rental Rate Blue Book for Construction Equipment*, and extension for each unit of machinery and equipment
- Quantities of materials, prices and extensions
- Transportation costs of materials, machinery, and equipment
- Invoices for materials used and for transportation charges

The reports shall also state the total costs to date for the Force Account Change Order Work.

If materials used on the Force Account Change Order Work are not specifically purchased for the Work but are taken from the Contractor's stock, the Contractor shall furnish an affidavit certifying that such materials were taken from the Contractor's stock, that the quantity claimed was actually used, and that the price and transportation costs claimed represent actual costs to the Contractor.

All Force Account Change Order reports shall be signed by the Contractor's Project Manager. The District will compare its records with the Contractor's reports, make the necessary adjustments and compile the costs of Force Account Change Order Work. When such reports are agreed upon and signed by both parties, they will become the basis of payment, but shall not preclude subsequent adjustment based on a later audit. The Contractor's (and each Subcontractor's) cost records pertaining to Work paid for on a Force Account basis shall be open, during all regular business hours, to inspection or audit by representatives of the District during the life of the Contract and for a period of not less than 7 years after Final Acceptance, and the Contractor (and each Subcontractor) shall retain such records for that period. If an audit is to be commenced more than 60 Days after Final Acceptance, the Contractor will be given a 20-Day notice of the time when such audit is to begin.

G.10.2.5 Contents of Change Orders

Each lump sum, force account, and VECP and RCO shall meet all applicable requirements of this this Section and shall include a Cost Analysis.

The Contractor shall prepare a scope of work, cost estimate, impacted delay analysis, if any, and other information as required by this section for each Change Order form and RCO.

Scope of Work: The scope of work shall describe in detail satisfactory to the District all Activities associated with the Change Order, including a description of additions, deletions, and modifications to the existing Contract requirements.

Cost Estimate: The cost estimate shall set out the estimated costs in such a way that a fair evaluation can be made. It shall include a breakdown for labor, materials, equipment, overhead (which includes all indirect costs) and profit, unless the District agrees otherwise. The estimate shall include costs allowable under this Section, if any. If the work is to be performed by Subcontractors and if the work is sufficiently defined to obtain Subcontractor quotes, the Contractor shall obtain quotes (with breakdowns showing cost of labor, materials, equipment, overhead and profit) on the Subcontractor's stationery and shall include such quotes as back-up for the Contractor's estimate. No additional payment shall be allowed except as provided in this Section.

CBE Requirement: The Contractor shall ensure that CBEs have full and equal opportunity to compete fairly in the performance of Change Orders

Impacted Delay Analysis: If the Contractor claims that such event, situation, or change affects the Critical Path affecting the Completion Date, it shall provide an impacted delay analysis indicating all Activities represented or affected by the change, with Activity numbers, durations, predecessor and successor Activities, resources and cost, and with a narrative report, in form satisfactory to the District, which compares the proposed new schedule to the Original Baseline Schedule or Revised Baseline Schedule, as appropriate. Except as otherwise provided in this section, the impacted delay analysis shall only modify the Activities that have been impacted by the event and justify the extension. The Contractor may reschedule Activities not otherwise affected by the event in order to take advantage of additional Float available as a result of the requested time extension. Any such rescheduling shall be reflected in the impacted delay analysis.

Other Supporting Documentation: The Contractor shall provide such other supporting documentation as may be required by the District.

G.10.2.5.1 Justification

All requests for Change Orders shall include a narrative justification therefor, detailing all causes of the proposed change, making specific reference to the applicable provisions of this Section that permit a Change Order to be issued, and describing the data and documents that establish the necessity of such proposed change.

G.10.2.5.2 Contractor Representation

Each Change Order shall contain a sworn certification in form acceptable to the District by the Contractor (or Subcontractor, if applicable) that the amount of time and/or compensation requested includes all known and anticipated impacts or amounts (direct, indirect, and consequential) that may be incurred as a result of the event or matter giving rise to such proposed change and that the Contractor has no reason to believe and does not believe that the factual basis for the Change Order is falsely represented.

G.10.2.5.3 Incomplete Requests for Change Orders

Each RCO provided under this Section shall meet all requirements set forth in this Section, provided that if any such requirements cannot be met due to the nature of the occurrence, the Contractor shall provide an incomplete RCO, which shall:

- Comply with all requirements capable of being met
- Include a list of requirements that are not fulfilled, together with an explanation reasonably satisfactory to the District stating why such requirements cannot be met
- Provide such information regarding projected impact on the Critical Path affecting a Completion Date as is requested by the District
- In all events include sufficient detail to ascertain the basis for the proposed Change Order and for any price increase associated therewith, to the extent such amount is then ascertainable

The Contractor shall furnish, when requested by the District, such further information and details as may be required to determine the facts or contentions involved. The Contractor agrees that it shall give the District access to any and all of the Contractor's books, records, and other materials relating to the Work, and shall cause its Subcontractors to do the same, so that the District can investigate the basis for such proposed Change Order. The Contractor shall provide the District with a monthly update to all outstanding incomplete requests for Change Order, describing the status of all previously unfulfilled requirements and stating any changes in projections previously delivered to the District, time expenditures to date, and time anticipated for completion of the Activities for which the time extension is claimed. The District may reject the Contractor's Claim at any point in the process. Once a complete RCO is provided, the District's failure to respond thereto within 14 Days of delivery of the request shall be deemed a rejection of such request. Although the District intends to review incomplete Change Orders for the purposes of timely delivery as described in this Section, the District shall have no obligation to review the backup associated with any RCO until a complete RCO is provided.

G.10.2.5.4 Phased Change Orders

The District and Contractor may mutually agree to use a multiple-step process involving issuance of a Change Order that includes an estimated design cost and provides for a revised Change Order to be issued after a certain design level has been reached, thereby allowing a refinement and definition of the estimated construction cost.

G.10.2.6 Certain Limitations for all Change Orders

G.10.2.6.1 Limitation on Contract Price Increases

Any increase in the Contract Price allowed hereunder shall exclude:

G.10.2.6.1.1 Costs caused by the breach of contract or fault or negligence, or act or failure to act of Contractor or any Contractor-Related Entity.

G.10.2.6.1.2 Costs that could reasonably have been avoided by the Contractor, including by re-sequencing, reallocating, or redeploying its forces to other portions of the Work or to other activities unrelated to the Work (including any additional costs reasonably incurred in connection with such reallocation or redeployment).

G.10.2.6.1.3 Costs for any rejected Work that failed to meet the requirements of the Contract Documents and any necessary remedial Work.

G.10.2.6.2 Limitation on Acceleration Costs; Delay and Disruption Damages

Acceleration Costs; Delay and Disruption Damages: Acceleration Costs shall be compensable hereunder only with respect to Change Orders issued by the District as an alternative to allowing an extension of a Completion Date as contemplated by Section F and Section L.2.1.2.1 (5). Delay and disruption damages shall be compensable hereunder only in the case of a delay pursuant to this Section to the extent that it entitles the Contractor to an extension of a Completion Date. Costs of rearranging the Contractor's work plan not associated with an extension of a Completion Date shall not be compensable hereunder.

Other Limitations: Delay and disruption damages shall be limited to direct costs directly attributable to the delays described in this Section and overhead and profit thereon in accordance with this Section and any additional field office and jobsite overhead costs incurred by the Contractor directly attributable to such delays. In addition, before the Contractor may obtain any increase in the Contract Price to compensate for any delay and disruption damages or Acceleration Costs, the Contractor shall have demonstrated to the District's satisfaction that:

- Its schedule, which defines the affected Critical Path in fact, sets forth a reasonable method for completion of the Work.
- The change in the Work or other event or situation, which is the subject of the requested Change Order, has caused or will result in an identifiable and measurable disruption of the Work, which impacted the Critical Path affecting a Completion Date.
- The delay or disruption damage was not due to any breach of contract or fault or negligence, or act or failure to act of any Contractor-Related Entity, and could not reasonably have been avoided by the Contractor, including by re-sequencing, reallocating or redeploying its forces to other portions of the Work or other activities unrelated to the Work (subject to reimbursement for additional costs reasonably incurred in connection with such reallocation or redeployment).

- The delay for which compensation is sought is not concurrent with any other delay, excluding a District-caused delay.
- The Contractor has suffered or will suffer actual costs due to such delay, each of which cost shall be documented in a manner satisfactory to the District.

G.10.2.6.3 Limitation on Time Extensions

Any extension of a Completion Date allowed hereunder shall exclude any delay to the extent that it:

- Did not impact the Critical Path affecting a Completion Date
- Was due to the fault or negligence, or act or failure to act of any Contractor-Related Entity
- Could reasonably have been avoided by the Contractor, including by re-sequencing, reallocating or redeploying its forces to other portions of the Work (provided that if the request for extension involves a District caused delay, the District shall have agreed, if requested to do so, to reimburse the Contractor for its costs incurred, if any, in re-sequencing, reallocating, or redeploying its forces)

The Contractor shall demonstrate to the District’s satisfaction that the change in the Work or other event or situation that is the subject of the RCO seeking a change in a Completion Date has caused or will result in an identifiable and measurable disruption of the Work that has impacted the Critical Path Activity affecting a Completion Date.

G.10.2.7 Pricing of Change Orders

The District and the Contractor (on its own behalf and on behalf of its Subcontractors) shall endeavor to negotiate, in good faith, a reasonable cost for each Change Order. Subject to the foregoing exceptions, in general the price of a Change Order shall be negotiated in accordance with this Section or shall be based on Force Account records pursuant to this Section.

G.10.2.7.1 Scope Development Risk

Risk associated with the Work described in the Change Order defined as scope development risk may be included in a Change Order through an additional amount agreed to by the District and the Contractor.

G.10.2.7.2 Labor Costs

The cost of labor shall be separated into construction-related Work and non-construction-related Work as described below. The use of a labor classification that would unnecessarily increase the extra work cost will not be permitted unless the Contractor establishes the necessity for such additional costs. The cost of labor shall be

calculated based on straight time for all hours worked, unless the Contractor obtains the District's prior Approval for overtime.

Construction Labor: The cost of labor for workers used in the actual and direct performance of construction-related Work, including Lead Workers, whether provided by the Contractor or a Subcontractor, will equal the sum of the following: (i) actual unburdened wages (i.e., the base wage paid to the employee exclusive of any fringe benefits); plus (ii) the actual costs paid to, or on behalf of, employees for liability and worker's compensation insurance premiums, unemployment insurance contributions and Social Security taxes, health and welfare benefits, pension fund benefits or other benefits, if such amounts are required by the collective bargaining agreement or employment contract, applicable to the classes of labor employed on the work; plus (iii) 15 percent overhead and profit on the sum of the above items.

Non-Construction Labor: The cost of labor for non-construction-related Work, whether provided by the Contractor or a Subcontractor, will equal the sum of the following: (i) Actual wages (i.e., the base wage paid to the employee exclusive of any fringe benefits); plus (ii) an overhead based on the audited Federal Acquisition Regulation (FAR) field rates not to exceed 145 percent, or if a company has no FAR rate, an overhead of 145 percent. Contractor will also be paid for profit on non-construction labor of 10 percent of labor costs plus overhead.

G.10.2.7.3 Material Costs

Materials: Payment for cost of required materials will be Freight On Board to the job Site with an allowance of up to 15 percent to cover overhead and profit. For landscape plantings, up to 25 percent will be allowed to cover overhead and profit.

Rented Equipment: The current edition of the *Rental Rate Blue Book for Construction Equipment* published by Data Quest shall be used to determine the equipment rental rates.

Contractor's Equipment: Payment for required equipment owned by the Contractor or an affiliate of the Contractor will be based solely on an hourly rate derived by dividing the current appropriate monthly rate from the *Rental Rate Blue Book for Construction Equipment* published by Data Quest by 176 hours. No payment will be made under any circumstance for repair cost, freight and fuel, lubricants, insurance, any other costs and expenses, or overhead and profit. Payment for such equipment made idle by delays attributable to the District will be based on one-half the derived hourly rate under this subsection. Approved transportation charges will be paid (one way) from the nearest source if the equipment is brought up to the Project specifically for use on the Change Order work and is not to be used on any other Work.

Liability Insurance: When additional liability insurance is required, the payment for the additional insurance will be based on the additional premiums, to which up to 5 percent of additional premium will be allotted to cover handling.

G.10.2.7.4 Permit Fees

The Contractor will be reimbursed for the cost of any additional permit fees payable as the result of a change in the Work requiring additional permit fees. Backup documentation supporting each cost item for this category shall be provided by the Contractor and Approved by the District prior to any payment authorization being granted.

G.10.2.7.5 Subcontracted Work

For administration and all overhead costs in connection with Subcontract Work, the Contractor will receive an amount equal to 3 percent of the cost of the Subcontracted Work, notwithstanding the actual number of intervening Subcontractors, provided that the Contractor may allocate all or any part of such administration and overhead costs among intervening Subcontractors. This shall fully compensate the Contractor (and all Subcontractors) for administration, general superintendence, overhead, profit and expenses not otherwise recoverable with respect to subcontracted Work. This shall not apply to: (i) Subcontracts with Affiliates; or (ii) Subcontracts with Suppliers.

G.10.2.7.6 Overhead and Profit

Items included in Overhead and Profit: Unless otherwise indicated in this Section G, any overhead and profit and labor surcharges under this Section G are full and complete compensation for all indirect costs of the added or changed Work, as well as for profit thereon. The Contractor's overhead and profit percentages and labor surcharges under this Section G shall be considered to include, among other costs, salary and expenses of executive officers, supervising officers or supervising employees, clerical employees, charges for minor equipment, such as small tools, and other miscellaneous supplies and services, incidental job burdens, bonuses not otherwise covered, field, jobsite and general home office expenses of all types (including timekeepers, bookkeepers, and other general office help), supervisory expenses of all types (excluding only direct supervision of force account work) and all other overhead, general condition and indirect costs and expenses, and profit. With respect to non-construction related labor costs, overhead is included as part of the labor surcharge calculated in accordance with this Section G and includes accessories such as Computer-Assisted Drafting and Design systems, computers, facsimile transmission machines, scanners, and plotters.

Payment of Overhead and Profit: The foregoing overhead and profit and labor surcharges will be paid to the Contractor only for Work it performs; in the case of Work

that is subcontracted, the additional payment for Subcontract administration will be allowed to the Contractor as described in this Section G, and all other overhead and profit and labor surcharges will be allowed to the Subcontractor who actually performs the Work.

Materials and Equipment: No overhead, profit, or other surcharges will be paid to the Contractor for any materials or equipment furnished by the District.

Credit Items: Where the Contractor's or any Subcontractor's portion of a change involves credit items, or the proposed change is a net deductive change, the Contractor shall include all Contractor's and Subcontractor's overhead and profit in computing the value of the credit.

G.10.2.8 Differing Site Conditions

G.10.2.8.1 Responsibilities of the District

Upon the Contractor's fulfillment of all applicable requirements of attachment J.3 and this Section, and subject to the limitations contained therein, the District shall be responsible for, and agrees to Approve Change Orders to: (i) compensate the Contractor for additional costs directly attributable to changes in the Work arising from Differing Site Conditions; and (ii) extend the Completion Dates as the result of any delay in the Critical Path affecting the Completion Dates caused by any such conditions.

G.10.2.8.2 Burden of Proof

The Contractor shall bear the burden of proving that a Differing Site Condition exists and that it could not reasonably have worked around the Differing Site Condition so as to avoid additional cost. Each request for a Change Order relating to a Differing Site Condition shall be accompanied by a statement signed by a qualified professional setting forth all relevant assumptions made by the Contractor with respect to the condition of the Site, justifying the basis for such assumptions, explaining exactly how the existing conditions are eligible for a Change Order under the terms of this DBC, and stating the efforts undertaken by the Contractor to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs.

G.10.2.9 Removal and Disposal of Contaminated Soils and Materials

G.10.2.9.1 Contaminated Soils and Materials

Except as expressly provided in this Section, the cost of all Activities to be performed by Contractor involving Contaminated Soils and Materials, and as described in attachment J.3, including investigating, monitoring, characterizing, and testing soils and materials, are included in the Contract Price and are not entitled to additional payment pursuant to this Section.

G.10.2.9.2 Hazardous Waste Soils and Materials

The District has determined that the Project Site contains contaminated soils and other materials with Hazardous Substances that rise to the levels required to be disposed of as hazardous wastes. Removal and disposal of these materials are to be included in the Contract Price, and the Contractor is not entitled to additional payment for their disposal pursuant to this Section. The contractor will generate an estimated quantity of hazardous materials to be removed and associated costs for the legal disposal of same and document these values in Attachment J.17.

As Approved by DDOT, Contractor shall be entitled to payment for removal and disposal for up to 20 percent of additional hazardous wastes (above and beyond the base quantity determined above in cubic yards) that was anticipated pursuant to the previous paragraph to require disposal on a Unit Price basis as mutually agreed for the base quantity unit price.

For any amount of soils and other materials that contain Hazardous Substances that rise to the levels required to be disposed of as hazardous wastes over and above the original estimate plus 20 percent over the original estimate (120 percent cap) for which the Contractor can demonstrate they could not have reasonably anticipated, the Unit Price submitted by the Contractor shall be subject to a Change Order.

G.10.2.9.3 Limitations on Change Orders

All Change Orders authorized by this Section shall be subject to the restrictions, limitations and procedures set forth in this Section. Allowable costs shall be limited to the incremental costs associated with the fact that Hazardous Substances subject to removal and disposal and compensable under this Section are present. The Contractor shall take all reasonable steps to minimize any such costs. In addition, compensation for removal and disposal compensable under this Section will not be allowed unless the Contractor demonstrates to the District's satisfaction that: (i) the removal and disposal could not have been avoided by reasonable design modifications or construction techniques; and (ii) the Contractor's plan for removal and disposal represents the approach most beneficial to the Project and the District. The Contractor shall provide the District with such information, analyses and certificates as may be requested by the District in order to enable a determination regarding eligibility for payment.

G.10.2.10 Material Errors in Right-of-Way Drawings

Upon the Contractor's fulfillment of all applicable requirements of this Section, and subject to the limitations contained therein, the District shall be responsible for, and agrees to issue Change Orders: (i) to compensate the Contractor for additional costs directly attributable to material errors in the ROW limits indicated in the ROW Drawings;

and (ii) to extend the Completion Dates as the result of any delay in the Critical Path affecting the Completion Dates caused by any such errors. The Contractor shall provide written notice to the District immediately upon discovery of any such material error. The District, in the District's sole discretion, shall have the right to cure any such error, such as by acquiring additional property.

G.10.2.11 Waiver

The Contractor hereby expressly waives all rights to assert any and all claims based on any change in the work, delay, or acceleration (including any change, delay, suspension or acceleration which, but for the express terms of the contract documents, could be inferred or implied at law) for which the Contractor failed to provide proper and timely notice or failed to provide a timely RCO, and agrees that the Contractor shall be entitled to no compensation or damages whatsoever in connection with the work except to the extent that the Contract documents expressly specify that the Contractor is entitled to a change order or other compensation or damages.

G.10.2.12 Disputes

If the District and the Contractor agree that a request to increase the Contract Price and/or extend any Completion Date by the Contractor has merit, but are unable to agree as to the amount of such price increase and/or time extension, the District agrees to mark up the Change Order request or Change Order form, as applicable, provided by the Contractor to reduce the amount of the price increase and/or time extension as deemed appropriate by the District. In such event, the District will execute and deliver the marked-up Change Order to the Contractor within a reasonable period, and thereafter will make payment and/or grant a time extension based on such marked-up Change Order. The failure of the District and the Contractor to agree to any Change Order under this Section (including agreement as to the amount of compensation allowed under a Force Account Change Order and the disputed amount of the increase in the Contract Price and/or extension of a Completion Date in connection with a Change Order as described above) shall be a Dispute to be resolved pursuant to this section. Except as otherwise specified in the Change Order, execution of a Change Order by both parties shall be deemed accord and satisfaction of all Claims by the Contractor of any nature arising from or relating to the Work covered by the Change Order. The Contractor's Claim and any award by the resolver of the Dispute shall be limited to the incremental costs incurred by the Contractor with respect to the disputed matter (crediting the District for any corresponding reduction in the Contractor's other costs) and shall in no event exceed the amounts allowed by this Section with respect thereto.

G.10.2.13 No Release or Waiver

G.10.2.13.1 Extension of Time for Performance

No extension of time granted hereunder shall release the Contractor's Surety from its obligations. The District shall not be deemed to have waived any rights under the Contract (including its right to abrogate the Contract for abandonment or for failure to complete within the time specified, or to impose and deduct damages as may be provided herein) as the result of any grant of an extension of time beyond the date fixed for the completion of any part of the Work, any acceptance of performance of any part of the Work after a Completion Date, or the making of any payments to the Contractor after such date.

G.10.2.13.2 No Change Order Based on Course of Conduct or Order by Unauthorized Person

Neither course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no Claim that the District has been unjustly enriched shall be the basis for any Claim, request for additional compensation or extension of a Completion Date. Further, the Contractor shall undertake, at its risk, work included in any written or oral request, order or other authorization issued by a person in excess of that person's authority as provided herein. The Contractor shall be deemed to have performed such work as a volunteer and at its sole cost. In addition, the District may require the Contractor to remove or otherwise undo any such work, at the Contractor's sole cost.

SECTION H: SPECIAL CONTRACT REQUIREMENTS

H.1 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES

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

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

H.2 DEPARTMENT OF LABOR WAGE DETERMINATIONS

H.2.1 The Contractor shall be bound by the General Wage Decision No. 130001, Modification No.13, dated 08/01/2014 issued by the U.S. Department of Labor in accordance with Davis Bacon Act of 1931, and incorporated herein as Attachment J.2. The Contractor shall be bound by the wage rates (**HEAVY CONSTRUCTION RATES AND PAVING AND INCIDENTAL GRADING RATES**) for the term of the Contract, subject to revision as stated herein. If an option is exercised, the Contractor shall be bound by the applicable wage rates at the time of the option. If the option is exercised and the CO obtains a revised wage determination, the revised wage determination is applicable for the option periods and the Contractor may be entitled to an equitable adjustment.

H.2.2 The Contractor shall be bound by the Wage Determination No. 2005-2103., Modification No. 14 dated 07/25/2014. Issued by the U.S. Department of Labor in accordance with the Service Contract Act, 41 U.S.C. §351 *et seq.*, and incorporated herein as Attachment J.2. The Contractor shall be bound by the wage rates for the term of the Contract subject to revision as stated herein. If an option is exercised, the Contractor shall be bound by the applicable wage rates at the time of the option. If the option is exercised and the CO obtains a revised wage determination, the revised wage determination is applicable for the option periods and the Contractor may be entitled to an equitable adjustment.

H.3 PUBLICITY

The Contractor shall at all times obtain the prior written approval from the CO before it, any of its officers, agents, employees or Subcontractors, either during or after expiration or termination of the Contract, make any statement, or issue any material, for publication through any medium of communication, bearing on the work performed or data collected under this Contract.

H.4 FREEDOM OF INFORMATION ACT

The District of Columbia Freedom of Information Act (FOIA), 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, who will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the District of Columbia FOIA. 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 CO. 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 DCMR.

H.5 FIRST SOURCE EMPLOYMENT AGREEMENT

The Contractor shall comply with all requirements of the First Source Employment Act of 1984, as amended, D.C. Official Code §2-219.01 et seq. (“First Source Act”), applicable to a construction project that receives at least \$5 million in District funds, including but not limited to the requirements stated below.

H.5.1 Offerors shall include an initial employment plan outlining the offeror's strategy to meet the First Source Act hiring requirements (“Employment Plan”) in performance of Work, which shall include:

H.5.1.1 Descriptions of the health and retirement benefits provided to employees who worked on any of the Offeror's past 3 completed projects or contracts;

H.5.1.2 A description of the offeror's efforts to provide District residents with ongoing employment and training opportunities after they complete work on the jobs for which they were initially hired; and

H.5.1.3 A disclosure of past compliance with the Workforce Act and the Davis-Bacon Act of 1931, approved March 3, 1931 (46 Stat. 1494; 40 U.S.C. § 3141 et seq.) (“Davis-Bacon Act”), where applicable, on projects or contracts completed within the last 2 years.

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

H.5.2.1 The first source for finding employees to fill all jobs created in order to perform the Work shall be the First Source Register; and

H.5.2.2 The first source for finding employees to fill any vacancy occurring in all jobs covered by the Employment Agreement shall be the First Source Register.

H.5.3 Prior to beginning performance of Work, the Contractor shall submit a revised Employment Plan to DOES. The Employment Plan shall include the following:

H.5.3.1 Projections of the total number of hours of in the following categories:

H.5.3.1.1 By trade;

H.5.3.1.2 Journey worker hours, by trade;

H.5.3.1.3 Journey worker hours, by trade, by District residents;

H.5.3.1.4 Apprentice hours, by trade;

H.5.3.1.5 Apprentice hours, by trade, by District residents;

H.5.3.1.6 Skilled laborer hours, by trade;

H.5.3.1.7 Skilled laborer hours, by trade, by District residents;

H.5.3.1.8 Common laborer hours;

H.5.3.1.9 Common laborer hours by District residents;

H.5.3.2 A timetable outlining the total hours of Work by trade and an associated hiring schedule;

H.5.3.3 Descriptions of the skill requirements by job title or position, including industry-recognized certifications required for the different positions;

H.5.3.4 A strategy to fill the hours required to be worked by District residents under the First Source Act, including:

H.5.3.4.1 A component on communicating these requirements to subcontractors;

H.5.3.4.2 A component on potential community outreach partnerships with the University of the District of Columbia, the University of the District of Columbia Community College, the Department of Employment Services, Jointly Funded Apprenticeship Programs, or other District-approved, community-based job training providers;

H.5.3.5 A remediation strategy to ameliorate any problems associated with meeting the First Source Act hiring requirements, including any problems encountered with subcontractors;

- H.5.3.6** The designation of a senior official from the general contractor who will be responsible for implementing the hiring and reporting requirements;
- H.5.3.7** Descriptions of the health and retirement benefits that will be provided to District residents hired to perform Work;
- H.5.3.8** A strategy to ensure that District residents hired to perform Work receive ongoing employment and training opportunities after they complete performances on the jobs for which they were initially hired;
- H.5.3.9** A review of Contractor’s past practices in continuing to employ District residents from one project or contract to the next;
- H.5.3.10** A strategy to hire graduates of District of Columbia Public Schools, District of Columbia public charter schools, and community-based job training providers, and hard-to-employ residents; and
- H.5.3.11** A disclosure of past compliance with the Workforce Act and the Davis-Bacon Act, where applicable, and the offeror's general District-resident hiring practices on projects or contracts completed within the last 2 years.
- H.5.3.12** Whether all First Source Act residency work requirements shall be:
 - H.5.3.12.11** Cumulative of all hours worked, including those hours worked by subcontractors at any tier who perform Work; or
 - H.5.3.12.12** Met by Contractor and each individual subcontractor at any tier who performs Work.

H.5.3 Contractor shall not begin Work until its Employment Plan has been accepted by DOES. Upon acceptance by DOES, the Employment Plan shall be the Employment Agreement The Employment Agreement shall not be amended except with the written approval of DOES.

H.5.4 Until the Contractor has completed performance under the Contract and a final certificate of occupancy has been issued, the Contractor shall hire District residents to perform Work, with the following minimum requirements:

- H.5.4.1** 20% of journey worker hours by trade;
- H. 5.4.2** 60% of apprentice hours by trade;
- H.5.4.3** 51% of the skilled laborer hours by trade; and
- H.5.4.4** 70% of common laborer hours..

H.5.5 Until the Contractor has completed Work under the contract and a final certificate of occupancy has been issued, on the 15th of each month basis, the Contractor shall submit to DOES copies of its monthly and cumulative certified payrolls, monthly and cumulative certified payrolls from all subcontractors performing Work, as well as a report of the total monthly direct and indirect labor costs associated with the Contract. Contractor shall submit this report on a form approved by DOES.

H.5.6 With the submission of the final request for payment from the District, Contractor shall:

H.5.6.1 Document in a report to DOES its compliance with First Source Act obligations (“First Source Report”); or

H.5.6.2 Submit a request to DOES for a waiver of compliance with First Source Act obligations, which shall include the following documentation:

H.5.6.2.1 Material supporting a good-faith effort to comply;

H.5.6.2.2 Referrals provided by the Department of Employment Services and other referral sources; and

H.5.6.2.3 Advertisement of job openings listed with DOES and other referral sources.

H.5.7 A Contractor that willfully breaches the Employment Agreement, fails to submit the First Source Report, or deliberately submits falsified data regarding First Source obligations, shall be liable for a monetary fine in the amount of five percent (5%) of the total amount of the direct and indirect labor costs of the Contract, in addition to other penalties provided by law.

H.5.8 The CO may impose penalties, including monetary fines of 5 percent of the total amount of the direct and indirect labor costs of the Contract, for a willful breach of the Employment Agreement, failure to submit the required hiring compliance reports, or deliberate submission of falsified data.

H.5.9 If the Contractor does not receive a good faith waiver, the CO may also impose an additional penalty equal to 1/8 of 1 percent of the total amount of the direct and indirect labor costs of the Contract for each percentage by which the Contractor fails to meet its hiring requirements.

H.6 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 programs and activities. See 29 U.S.C. § 794 *et seq.*

H.7 AMERICANS WITH DISABILITIES ACT OF 1990

RFP – Design Build Services for St. Elizabeths East Campus Stage 1 Infrastructure Improvements Project

During the performance of this Contract, the Contractor and any of its Subcontractors shall comply with the Americans with Disabilities Act of 1990 (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.8 WAY TO WORK AMENDMENT ACT OF 2006

- H.8.1** Except as described in Section H.8.8, 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.8.2** 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.8.3** 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.8.4** The DOES 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.8.5** The Contractor shall provide a copy of the Living Wage Fact Sheet (Attachment J.7) to each employee and Subcontractor who performs services under the Contract. The Contractor shall also post the Living Wage Notice (Attachment J.7) 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 Living Wage Notice in a conspicuous place in its place of business.
- H.8.6** 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.8.7** 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.8.8 The requirements of the Living Wage Act of 2006 do not apply to:**
1. Contracts or other agreements that are subject to higher wage level determinations required by federal law
 2. Existing and future collective bargaining agreements, provided, that the future collective bargaining agreement results in the employee being paid no less than the established living wage
 3. Contracts for electricity, telephone, water, sewer or other services provided by a regulated utility

4. Contracts for services needed immediately to prevent or respond to a disaster or imminent threat to public health or safety declared by the Mayor
5. Contracts or other agreements that provide trainees with additional services including, but not limited to, case management and job readiness services; provided that the trainees do not replace employees subject to the Living Wage Act of 2006
6. An employee under 22 years of age employed during a school vacation period, or enrolled as a full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than 25 hours per week; provided that he or she does not replace employees subject to the Living Wage Act of 2006
7. Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia; provided, that the tenant or retail establishment did not receive direct government assistance from the District
8. Employees of nonprofit organizations that employ not more than 50 individuals and qualify for taxation exemption pursuant to section 501(c)(3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3))
9. Medicaid provider agreements for direct care services to Medicaid recipients, provided that the direct care service is not provided through a home care agency, a community residence facility, or a group home for mentally retarded persons as those terms are defined in Section 2 of the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501)
10. Contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services

H.8.9 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.

H.9 SUBCONTRACTING REQUIREMENTS

H.9.1 Mandatory Subcontracting Requirements

H.9.1.1 For District contracts in excess of \$250,000, at least 35% of the dollar volume shall be subcontracted to certified small business enterprises; provided, however, that the costs of materials, goods, and supplies shall not be counted towards the 35% subcontracting requirement unless such materials, goods and supplies are purchased from certified small business enterprises.

H.9.1.2 If there are insufficient qualified small business enterprises to completely fulfill the requirement of paragraph H.9.1.1, then the subcontracting may be satisfied by
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subcontracting 35% of the dollar volume to any certified business enterprises; provided, however, that all reasonable efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall subcontracting work.

- H.9.1.3** A prime Contractor which is certified as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of sections H.9.1.1 and H.9.1.2.

H.9.2 Subcontracting Plan

If the prime Contractor is required by law to subcontract under this Contract, it must subcontract at least 35% of the dollar volume of this Contract in accordance with the provisions of section H.9.1. The prime contractor responding to this solicitation which is required to Subcontract shall be required to submit with its Proposal, a notarized statement detailing its Subcontracting plan. Proposals responding to this RFP shall be deemed nonresponsive and shall be rejected if the Offeror is required to Subcontract, but fails to submit a Subcontracting plan with its proposal. Once the plan is approved by the CO, changes to the plan will only occur with the prior written approval of the CO and the Director of DSLBD. Each Subcontracting plan shall include the following:

- H.9.2.1** A description of the goods and services to be provided by SBEs or, if insufficient qualified SBEs are available, by any certified business enterprises;
- H.9.2.2** A statement of the dollar value of the bid that pertains to the Subcontracts to be performed by the SBEs or, if insufficient qualified SBEs are available, by any certified business enterprises;
- H.9.2.3** The names and addresses of all proposed Subcontractors who are SBEs or, if insufficient SBEs are available, who are certified business enterprises;
- H.9.2.4** The name of the individual employed by the prime contractor who will administer the Subcontracting plan, and a description of the duties of the individual;
- H.9.2.5** A description of the efforts the prime contractor will make to ensure that SBEs, or, if insufficient SBEs are available, that certified business enterprises will have an equitable opportunity to compete for Subcontracts;
- H.9.2.6** In all Subcontracts that offer further subcontracting opportunities, assurances that the prime contractor shall 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.9.2.7** Assurances that the prime Contractor will cooperate in any studies or surveys that may be required by the contracting officer, and submit periodic reports, as

requested by the contracting officer, to allow the District to determine the extent of compliance by the prime Contractor with the Subcontracting plan;

H.9.2.8 A list of the type of records the prime Contractor will maintain to demonstrate procedures adopted to comply with the requirements set forth in the Subcontracting plan, and assurances that the prime Contractor will make such records available for review upon the District's request; and

H.9.2.9 A description of the prime contractor's recent effort to locate SBEs or, if insufficient SBEs are available, certified business enterprises, and to award Subcontracts to them.

H.9.3 Subcontracting Plan Compliance Reporting. If the Contractor has an approved Subcontracting plan required by law under this Contract, the Contractor shall submit to the CO and the Director of DSLBD, no later than the 21st of each month following execution of the Contract, a Subcontracting Plan Compliance Report to verify its compliance with the subcontracting requirements for the preceding month. The monthly Subcontracting plan compliance report shall include the following information:

H.9.3.1 The dollar amount of the Contract or procurement;

H.9.3.2 A brief description of the goods procured or the services contracted for;

H.9.3.3 The name of the business enterprise from which the goods were procured or services contracted;

H.9.3.4 Whether the Subcontractors to the Contract are currently certified business enterprises;

H.9.3.5 The dollar percentage of the Contract awarded to SBEs, or if insufficient SBEs, to other certified business enterprises;

H.9.3.6 A description of the activities the Contractor engaged in, in order to achieve the subcontracting requirements set forth in its plan; and

H.9.3.7 A description of any changes to the activities the Contractor intends to make by the next month to achieve the requirements set forth in its plan.

H.9.4 Subcontractor Standards

H.9.4.1 A prime Contractor shall ensure that Subcontractors meet the criteria for responsibility described in D.C. Official Code § 2-353.01.

H.9.5 Enforcement and Penalties for Breach of Subcontracting Plan

H.9.5.1 If during the performance of this Contract, the Contractor fails to comply with its approved Subcontracting plan, and the CO determines the Contractor's failure to be a material breach of the Contract, the CO shall have cause to terminate the Contract under the default clause of the Standard Contract Provisions.

H.9.5.2 There shall be a rebuttable presumption that a Contractor willfully breached its approved Subcontracting plan if the Contractor (i) fails to submit any required monitoring or compliance report; or (ii) submits a monitoring or compliance report with the intent to defraud.

H.9.5.3 A Contractor that is found to have willfully breached its approved Subcontracting plan for utilization of certified business enterprises in the performance of a Contract shall be subject to the imposition of penalties, including monetary fines of \$15,000 or 5% of the total amount of the work that the Contractor was to subcontract to certified business enterprises, whichever is greater, for each such breach.

H.10 Rules of Contact

Starting on the date this RFP is issued, and ending on the earliest of (1) execution and delivery of the Contract, (2) rejection of all Proposals by the District, or (3) cancellation of the RFP, the rules of contact set forth below shall apply. The rules are designed to promote a fair and unbiased procurement process. Contact includes face-to-face, telephone, facsimile, e-mail, social media, instant messages, texts, or formal written communication.

The specific rules of contact are as follows:

1. Offeror nor any of its team members may communicate with another Offeror or its team members with regard to the RFP or either team's Proposal, except that (i) Subcontractors that are shared between two or more Offeror teams may communicate with their respective team members so long as those Offerors establish a protocol to ensure that the Subcontractor will not act as a conduit of information between the teams and (ii) this prohibition does not apply to public discussions regarding the RFP at any DDOT-sponsored informational meetings.
2. Each Offeror shall designate one representative to be responsible for all communications between the Offeror and DDOT, and such designated representative shall correspond with DDOT regarding the RFP only through DDOT's Authorized Representative (except communications with DDOT's COTR).
3. No Offeror or representative thereof shall have any ex-parte communications regarding the RFP or the procurement described herein with any member of the city Council of the District of Columbia ("Council"), Stakeholder, or with any DDOT staff, advisors, contractors, or consultants involved with the procurement or the Project, except for communications with DDOT consultants who have completed their services for the Project and been released by DDOT, communications expressly permitted by the RFP or except as approved in advance by the Authorized Representative or the COTR, in his/her sole discretion. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFP or participation in public meetings of the Council or any public

or Offeror workshop related to the RFP. Any Offeror engaging in such prohibited communications may be disqualified at the sole discretion of DDOT.

4. Offerors shall not contact any of the Stakeholders regarding the Project, including employees, representatives, members, and consultants of the Stakeholders, except as specifically approved in advance by DDOT in writing or as set forth in this Section H.10. Notwithstanding the foregoing:
 - a. Each Offeror may set up meetings with the utility companies—in their respective roles as Utility providers and only to the extent that their role as Utility provider may be relevant for the Project—for the sole purpose of discussing Utility issues in connection with the Project; provided that the Offeror shall provide written notice to DDOT of the date, time, location, and anticipated attendees of such meetings no later than 3 Business Days in advance of each such meeting—provided, however, that the Offeror shall not discuss other Offerors or their Proposals, negotiate exclusive arrangements to the detriment of other Offerors, or otherwise seek an unfair competitive advantage.
5. Any communications determined by DDOT, in its sole discretion, to be improper may result in disqualification.
6. Any official information regarding the Project will be disseminated from DDOT’s office on Department letterhead, on the RFP Web site or on the Project Web site. Any official correspondence will be in writing, on DDOT letterhead.
7. DDOT will not be responsible for any oral exchange or any other information or exchange that occurs outside the official process specified herein.

The Offeror shall note that no correspondence or information from DDOT or anyone representing DDOT regarding the RFP or the Proposal process in general shall have any effect unless it is in compliance with this Section H.10.

H.11 DIVERSION, REASSIGNMENT, AND REPLACEMENT OF KEY PERSONNEL

The Key Personnel, specified below, are considered to be essential to the performance of Work .

1. Project Manager
2. Design Manager
3. Construction Manager
4. Quality Control Manager
5. Lead Utility Engineer

Before diverting any of the specified Key Personnel for any reason, the Contractor shall notify the CO by writing at least thirty (30) calendar days in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact upon the Contract.

The Contractor shall not make changes to any Key Personnel without the prior written approval of the CO.

SECTION I: CONTRACT CLAUSES

I.1 APPLICABILITY OF STANDARD CONTRACT PROVISIONS

The Standard Contract Provisions for use with the Government of the District of Columbia Department of Transportation, Standard Specifications for Highways & Structures, 2013 edition and referenced specifications detailed in Section C.5.11 of Attachment J.3 Technical Requirements and are incorporated as part of the solicitation.

I.2 CONTRACTS THAT CROSS FISCAL YEARS

Not used.

I.3 CONFIDENTIALITY OF INFORMATION

The Contractor shall keep all non-public information relating to any employee, customer, vendor, or agent of the District in absolute confidence and shall not use the information in connection with any matter other than as required by the performance of this Contract; nor shall it disclose any such information except as required by law.

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

1. 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

2. 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 CO 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 SUBCONTRACTS

The Contractor hereunder shall not subcontract any of the Contractor's Work to any Subcontractor without the prior written consent of the CO. Any Work so subcontracted shall be performed pursuant to a Subcontract agreement, which the District will have the right to review and approve prior to its execution by the Contractor. Any such Subcontract shall specify that the Contractor and the Subcontractor shall be subject to every provision of this Contract.

Notwithstanding any such Subcontract approved by the District, the Contractor shall remain liable to the District for all Work.

I.8 INSURANCE

A. Evidence of Insurance

The Contractor shall provide evidence of insurance as proof of compliance for all insurance requirements contained in this Section. These insurance requirements are applicable to the Contractor only. The Contractor shall require its Subcontractors to obtain insurance in amounts deemed appropriate by Contractor.

The Contractor's insurance shall cover all of the Work under this Contract, whether the Work is performed by the Contractor or its Subcontractors. The Contractor's insurance shall cover the entire Project. The Contractor has the option of either providing evidence of the insurance

required in Section below either: (a) as part of its existing insurance, or (b) as Project- specific insurance. If the Contractor provides insurance as part of its existing insurance, its insurance premiums shall be included as part of its Proposal Price without any reimbursement from the District. If the Contractor purchases Project-specific insurance, it shall be reimbursed for the insurance premiums as provided in this Section, and such premiums shall be included in the Contractor’s Proposal Price.

The evidence of Contractor’s insurance shall provide for 10 Days’ written notice of cancellation for nonpayment of premiums, or 45 Days’ written notice of cancellation for any other reason, including non-renewal. The Contractor shall delete the phrase “will “endeavor to” preceding all references to provisions of notice by the insurance company in the evidence of insurance. A Certificate of Insurance indicating certain specified amendments and attachments shall be acceptable, but the District reserves the right to request a complete certified copy of the policy, at the District’s sole discretion. No Work will start until proof of insurance has been submitted to the District. If the insurance required by this Section becomes no longer commercially reasonable, as determined by the District, the District will work with the Contractor to find commercially reasonable alternatives to the required coverages that are acceptable to the District.

B. A.M. Best Rating

All insurance companies providing policies obtained to satisfy the insurance requirements must have an A.M. Best rating of A- or better.

C. Full Force and Effect

The commercial general liability, excess (umbrella) liability, Contractor’s pollution liability and professional liability insurance coverage requirements will remain in full force and effect until 3 years following Project Acceptance, at which time the Contractor shall maintain completed operations insurance throughout the term of all warranties or as otherwise required by the Contract Documents, whichever is greater.

D. No Recourse

There shall be no recourse against the District for payment of premiums or other amounts with respect to the insurance provided by the Contractor, or for deductibles under these policies. This provision does not affect any rights the Contractor is entitled to pursuant to this Section.

E. Indemnification

The insurance coverage provided hereunder shall support, but is not intended to limit, the Contractor’s indemnification obligations.

I.9 Contractor Provided Insurance

The Contractor shall procure, at its own expense, insurance acceptable to the District, as described herein, and shall maintain such insurance, as specified herein, in accordance with the RFP – Design Build Services for St. Elizabeths East Campus Stage 1 Infrastructure Improvements Project

requirements stated in this Section, or as otherwise Approved by the District at its sole discretion.

A. Workers' Compensation and Employer's Liability Coverage

The Contractor shall furnish evidence to the District that, with respect to the Work, the Contractor carries workers' compensation insurance according to the statutes of the District of Columbia, including Employer's Liability in the amount of \$1,000,000, \$1,000,000 for employee disease, with a policy disease limit of \$1,000,000.

B. Commercial General Liability Insurance

The Contractor shall provide commercial general liability broad form coverage for bodily injury, property damage, personal injury and advertising liability written on an occurrence form that shall be no less comprehensive or more restrictive than the coverage provided by Insurance Services Office (ISO) Form CG 00 01 10 01.

1. Limits of liability. General liability:
 - \$2,000,000 - each occurrence.
 - \$4,000,000 - per aggregate.
 - \$2,000,000 - products/completed operations liability.
2. Such insurance shall include, by its terms or appropriate endorsements, bodily injury, property damage, legal liability, personal injury, blanket contractual, independent contractors, premises, operations and products and completed operations. Such insurance shall also include blanket coverage for explosion, collapse, and underground (XCU) hazards.
3. The District shall be an additional insured with respect to liability arising out of acts or omissions of the Contractor or its Subcontractors, whether on or off the Site.

C. Automobile Liability Insurance

The Contractor shall provide occurrence-based commercial automobile liability insurance covering all owned/leased, non-owned and hired vehicles used in the Work, both on and off the Site, including loading and unloading.

The following limits of liability and other requirements shall apply:

1. \$2,000,000 combined single limit for bodily injury and property damage liability.
2. Coverage shall be provided on Insurance Services Office ISO Form number CA 00 01 10 01 or equivalent.
3. The policy shall be endorsed to include Motor Carrier Act endorsement – Hazardous Materials Cleanup (Motor Carrier Safety [MCS]-90), if applicable.

D. Excess (Umbrella) Liability Insurance

The Contractor shall provide umbrella or excess liability insurance with limits of not less than \$5,000,000 per occurrence for each wrongful act that which will provide bodily injury, personal injury and property damage liability at least as broad as the primary coverages set forth above, including employer’s liability, commercial general liability, and commercial automobile liability, as set forth in Sections A, B, and C.

E. Contractor’s Pollution Legal Liability Coverage

The Contractor shall provide pollution legal liability coverage for the Project. The limit of liability per occurrence shall be \$2,000,000 and the total Project aggregate shall be \$5,000,000.

F. Additional Insureds

Each policy of commercial general liability insurance, commercial auto liability, and excess liability (umbrella) insurance shall name the District and the District’s members, agents, employees, and consultants as additional insureds. The insurance afforded by the Contractor shall be primary insurance.

G. Navigable Waters Insurance Protection

Not applicable.

H. Professional Liability Insurance

The Major Participant in the Contractor that will perform the design function (i.e., the engineer in charge or “Designer”), shall maintain professional liability insurance appropriate to the consultant’s profession, endorsed to include contractual liability, with provisions at least as follows:

1. The policy shall protect against any negligent act, error, or omission arising out of design or engineering activities of the Designer.
2. The policy shall have a retroactive date of no later than the date the first design or engineering activities have been conducted by the Designer.
3. The policy shall be required to cover up to \$1,000,000 per Claim and \$3,000,000 per aggregate for each wrongful act.

The Contractor shall ensure that the policy covers Claims arising out of acts, errors, or omissions that occur and are reported for a period of five 5 years after Final Acceptance.

I. Railroad Protective Insurance

The Contractor shall be responsible for all Railroad insurance for construction adjacent to the Congress Heights Metro station and the Green Line tunnel and facilities.

J. Builder’s Risk

The Contractor shall be responsible for all builders’ risk claims on a replacement cost basis.

K. Crime Insurance

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The Contractor shall be responsible for crime insurance in the amount of \$1,000,000 for each wrongful act and \$2,000,000 aggregate for each wrongful act.

L. Certificates of Insurance.

The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Evidence of insurance shall be submitted to:

Courtney B. Lattimore, Contracting Officer
55 M Street, SE, Suite 700,
Washington, DC 20003
(202) 671-2270
Courtney.lattimore@dc.gov

M. Disclosure of Information.

The Contractor agrees that the District may disclose the name and contact information of its insurers to any third party which presents a claim against the District for any damages or claims resulting from or arising out of Work performed by the Contractor, its agents, employees, servants or Subcontractors in the performance of this Contract.

I.10 EQUAL EMPLOYMENT OPPORTUNITY

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

I.11 PRIORITY OF CONTRACT DOCUMENTS

Each of the Contract Documents is an essential part of the agreement between the Parties, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to describe and provide for a complete agreement. In the event of any conflict among the Contract Documents, the order of precedence shall be as set forth below.

1. The contract between and signed by the District and the Contractor, Contract Number --- awarded in response to Solicitation Number DCKA-2014-R-0063, exclusive of attachments.
2. Definitions, Attachment J.4
3. The Technical Requirements, Attachment J.3.
4. The Government of the District of Columbia Department of Transportation, Standard Specifications for Highways & Structures, 2013 edition, Attachment J.1
5. Attachments other than those above
6. Modifications and Change Orders

7. RFP, as amended
8. Offeror's BAFOs (in order of most recent to earliest)
9. Offeror's Proposal

In determining whether a conflict exists between Contract Documents, to the extent that a Contract Document can reasonably be interpreted as requiring Contractor to provide higher quality items than otherwise required by other Contract Documents or to perform services in addition to those otherwise required by other Contract Documents, or otherwise contains terms which DDOT considers to be more advantageous than the requirements of the other Contract Documents, there shall not be considered a conflict between or among Contract Documents, and Contractor's obligations hereunder shall include compliance with all such statements and terms.

Additional details and more stringent requirements contained in a lower priority document will control unless the requirements of the lower priority document present an actual conflict with the requirements of the higher level document (i.e. it is not possible to comply with both requirements). Notwithstanding the order of precedence among Contract Documents set forth in this Section, in the event of a conflict among any standard or specification applicable to the Project, DDOT shall have the right to determine, in its sole discretion, which provision applies regardless of the order of precedence of the documents in which such standards are referenced. Contractor shall request in writing DDOT's determination respecting the order of precedence involving the referenced standards promptly upon becoming aware of any such conflict.

I.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 CO.

I.13 GOVERNING LAW

This Contract shall be governed by, and construed in accordance with, the laws of the District of Columbia. The Contractor agrees and consents to the exclusive jurisdiction of the courts of the District of Columbia for all purposes regarding this Contract and further agrees and consents that venue of any action brought hereunder shall be exclusively in the District of Columbia.

I.14 NON-COLLUSION

Neither Offeror nor any of its team members shall undertake any of the prohibited activities identified in the Non-Collusion Affidavit (Attachment J.15).

1.15 ORGANIZATIONAL CONFLICTS OF INTEREST

The provisions of Title 27 District of Columbia Municipal Regulations 4 § 2220 and § 2221 (1987 as amended) regarding organizational conflicts of interest apply to this Project. Offerors are

RFP – Design Build Services for St. Elizabeths East Campus Stage 1 Infrastructure Improvements Project

advised that these provisions may preclude certain firms and their subsidiaries and affiliates from participating on an Offeror's team.

By submitting its Proposal, each Offeror agrees that, if an organizational conflict of interest (as defined in the Rules) is thereafter discovered, the Offeror must make an immediate and full written disclosure to DDOT that includes a description of the action that the Offeror has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, DDOT may, at its sole discretion, cancel the procurement, disqualify the Offeror with a conflict or take other action as necessary to mitigate the conflict. If the Offeror was aware of an organizational conflict of interest prior to the award of the DBC and did not disclose the conflict to DDOT, DDOT may pursue remedies under the DBC, including termination of the DBC, if applicable, for default.

SECTION J: ATTACHMENTS

The following attachments are incorporated into this solicitation by reference.

Attachment Number	Document
J.1	Government of the District of Columbia Department of Transportation Standard Specifications for Highways and Structures, 2013 edition
J.2	U.S. Department of Labor Wage Determination No. 2005-2103, Revision #13, dated 6/19/2013 U.S. Department of Labor General Wage Decision No. DC20130001, dated 01/31/2014.
J.3	Technical Requirements
J.4	Abbreviations, Acronyms and Definitions
J.5	Reserved
J.6	Department of Employment Services First Source Employment Agreement Available at www.ocp.dc.gov click on "Required Solicitation Documents"
J.7	Way to Work Amendment Act of 2006 - Living Wage Notice Available at www.ocp.dc.gov , click on "Required Solicitation Documents"
J.8	Tax Certification Affidavit Available at www.ocp.dc.gov click on "Required Solicitation Documents"
J.9	Bidder/Offeror Certifications Available at www.ocp.dc.gov click on "Required Solicitation Documents"
J.10	Office of Local Business Development Equal Employment Opportunity Information Report and Mayor's Order 85-85 Available at www.ocp.dc.gov click on "Required Solicitation Documents"
J.11	Form of Proposal Bond
J.12	Completion Schedule
J.13	Reference Information Documents Listing
J.14	Form of Payment for Work Product Agreement
J.15	Non-Collusion Affidavit
J.16	Past Performance Evaluation Form
J.17	Design-Build Price Breakdown
J.18	Contractor Draws/Cash Flow Table

Attachment Number	Document
J.19	Lead Contractor Work History Form
J.20	Lead Designer Work History Form
J.21	Key Personnel Resume Form

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

K.1 See Attachment J.9.

SECTION L: INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS

L.1 CONTRACT AWARD

- L.1.1** The District intends to award a Contract resulting from this solicitation to the responsible Offeror whose offer conforms to the solicitation and that will be most advantageous to the District, in terms of cost or price, technical and other factors, specified elsewhere in this solicitation.
- L.1.2** Initial Offers. The District may award a Contract on the basis of initial offers received, without discussion. Therefore, each initial offer should contain the Offeror's best terms from a standpoint of price, schedule, technical, and other factors.

L.2 PROPOSAL FORM, ORGANIZATION, AND CONTENT

Proposal submissions shall be 8.5- by 11-inch format and typewritten with the type font size being no smaller than 12 point, other than in tables and figures, which may be prepared using 10-point font size type; 11- by 17-inch format is acceptable for drawings. Support letters provided from parties outside the United States may be submitted in A4 format, and design drawings may be submitted on roll plots not to exceed 34 inches wide (such design drawings shall also be submitted on CD or DVD in PDF format and in Bentley MicroStation V8 format). Printed lines may be single-spaced. Each 11- by 17-inch foldout will be considered one page.

Offerors will be required to submit separately from the technical portion of their respective proposals (a) a copy of their pricing portion of their proposal and (b) responses to the Special Standards of Responsibility defined in Section L.20. The technical portion of the proposal consists of everything other than an Offeror's responses to (a) the pricing portion, and (b) Special Standards of Responsibility.

Offerors shall submit one (1) original and eight (8) copies of the proposals in a sealed envelope or package conspicuously marked "Response to Solicitation No.: DCKA-2014-R-0063 – Design-Build Services – St Elizabeths East Campus – Stage 1 Infrastructure Improvements Project." The Offeror shall separate the proposal response into in four (4) parts; titled and grouped as follows:

- 1) Letter of Submittal and required documents (see L.2.1.1) shall be submitted in individual binders conspicuously marked: "Letter of Submittal in response to Solicitation No. DCKA-2014-R-0063 – Design-Build Services-St. Elizabeths East Campus – Stage 1 Infrastructure Improvements Project."**
- 2) Responses to Special Standards of Responsibility (see L.20) shall be provided in individual binders conspicuously marked: "Special Standards of Responsibility in response to Solicitation No. DCKA-2014-R-0063 – Design-Build Services-St. Elizabeths East Campus – Stage 1 Infrastructure Improvements Project".**
- 3) Technical Proposals (see L.2.1.2) shall be submitted in individual binders conspicuously marked: "Technical Proposal" in Response to Solicitation No. DCKA-2014-R-0063 –**

Design-Build Services-St. Elizabeths East Campus – Stage 1 Infrastructure Improvements Project.

- 4) Price Proposals (see L.2.1.3) shall be submitted in individual binders conspicuously marked: **"Price Proposal" in Response to Solicitation No. DCKA-2014-R-0063 – Design-Build Services-St. Elizabeths East Campus – Stage 1 Infrastructure Improvements Project.**
- 5) Two (2) electronic copies of items 1, 2, 3 and 4 noted above shall be provided and clearly labeled the same as the hard copies of items 1, 2, 3 and 4.

Offerors are directed to the specific Proposal evaluation criteria found in Section M. The Offeror shall respond to each factor in a way that will allow the District to evaluate the Offeror's response. Proposal documents shall contain concise written material and drawings, enabling a clear understanding and evaluation of the capabilities of Offeror and the characteristics and benefits of the Proposal. Legibility, clarity, and completeness, in all Proposal documents, are essential.

L.2.1 Proposal Instructions

Offerors should submit with their proposal an Offer Letter on the Offeror's letterhead that includes the following information and documentation. **If the District determines that an Offeror has not submitted the information and documentation as stated in this section, the District will deem that an Offeror's proposal is nonresponsive.**

L.2.1.1 Letter of Submittal

- L.2.1.1.1** The individual who will serve as the Offeror's Point of Contact (POC), including the POC's title, address, phone number and email address.
- L.2.1.1.2** The signature of an authorized representative of the Offeror's organization. All signatures shall be original and in ink.
- L.2.1.1.3** Identification of the Offeror's structure as a corporation, LLC, general partnership, joint venture, or other form of organization. Identify the team members who will undertake the financial responsibility for the Project and describe any liability limitations. For example, identify any entities that will have joint and several liabilities if Offeror is a joint venture or partnership, or that will provide a guaranty that is consistent with the requirements of the Contract. If the Offeror is an LLC, partnership or joint venture, describe the bonding approach that will be used and the members of such organization who will have joint and several liability for the performance of the work required for the Project. Any co-surety relationship shall be set forth in a single 100% performance bond and a single 50% payment bond.
- L.2.1.1.4** Offerors must provide the following required documentation:

1. Subcontracting Plan (ocp.dc.gov; Required Solicitation Attachments)
2. Bidder/Offeror Certification Form (Attachment J.9)
3. Tax Certification Affidavit (Attachment J.8)
4. First Source Agreement (ocp.dc.gov; Required Solicitation Attachments)
5. Initial Employment Plan (Attachment J.6)

L.2.1.2 Technical Proposals Instructions

The Technical Proposal shall not exceed a page limitation of sixty (60) pages. No page limit applies to appendices and exhibits. In addition to requirements stated elsewhere, Offerors must submit the following completed documentation with their Technical Proposal submission. The evaluation factors for the Technical Proposal are as follows:

1. Project Understanding/Risk Assessment
2. Design Approach/Technical Approach/Quality Management Plan
3. Management/Key Personnel
4. Past Performance/Experience
5. Initial Employment Plan

L.2.1.2.1 Project Understanding/Risk Assessment (25 points)

This factor considers the Offerors overall understanding of the project and assessment of risk. Offerors should address the following in this section of the proposal response:

- A. Discuss the tasks involved in the Project and demonstrate an understanding of context of the entire project concept as it relates to the Master Plan which may be reviewed at stelizabethseast.com as well as the overall goals and objectives of the proposed project.
- B. Illustrate clearly and concisely the technical and institutional elements that must be addressed by the Offeror to achieve successful completion of the Project.
- C. Offerors should provide sufficient information to enable DDOT to understand and evaluate the Offeror's understanding of the Project's risks. Offerors should also identify and discuss three critical risks for this Project, focusing on what the Offeror's team considers the most relevant and critical to the success of this Project. The discussion of identified risk should be in the format detailed. A narrative that describes why the risk is critical, indicates the impact the risk will have on the Project and discusses the mitigation strategies the Offeror's proposes to address these risks. Describe the role the Offeror expects DDOT or other agencies may have in addressing these project risks.

D. Provide a Project Baseline Schedule that outlines proposed activities and planning of work from NTP through Substantial completion, as per Offeror's understanding.

L.2.1.2.2 Design Approach/Technical Solutions/Quality Management Plan (30 points)

Offerors will be evaluated on the proposed design and quality management plans, as well as innovative solutions to be employed on this project. Offerors should:

1. Discuss how the Offeror's design approach for this Project takes the Master Plan and other related plans into consideration. Identify critical design features and discuss approaches to ensuring the delivery of a constructible design which includes innovative solutions.
2. Discuss Offeror's approach to the minimization of disruption of ongoing traffic and general disruption to ongoing activities of the public. Identify any major traffic control issues and outline the approach for addressing to ensure adherence to project schedule.
3. Provide a plan for efficient and coordinated design and installation of utilities. Discuss an approach for working with DMPED, Utility partners (PEPCO, DC WASA, Verizon, etc.) to complete work in coordination with other ongoing District projects at the St. Elizabeths site.
4. Describe the techniques, processes and testing procedures that constitute the Offeror's Quality Management Plan (QMP). Discuss how the QMP will achieve the desired outcome.

L.2.1.2.3 Management Plan/Key Personnel (25 Points)

The Offeror should:

1. Discuss Offeror's plan to effectively manage all aspects of the project from NTP through Project Close-out.
2. Provide sufficient information to enable DDOT to understand and evaluate the Offeror's Team. Describe in detail the organizational structure of the project team. Provide a description of the "chain of command"; identify major functions to be performed and team member's reporting relationships in managing, designing, and constructing the project. Include a narrative describing the functional relationships and communication among team members. Pre-approved Utility subcontractors shall be identified in this chart.
3. Identify and provide qualifications about the Key Personnel, using the Key Personnel Resume Form attached hereto as Attachment J.21. Resumes for individuals who are

not identified as Key Personnel should not be included in the proposal submission. Key Personnel are identified as follows:

- A. **Design-Build Project Manager** – This individual will be responsible for the overall Project design, construction, quality, contract administration, and delivery of the Project. This person is responsible for ensuring personnel and other resources are made available for the Project. Identify any other projects this person will be involved in concurrently and time committed to each project.
 - State this person’s position and authority within the design-build firm. Discuss previous similar projects for which this person has performed a comparable function within the last five years or other similar function. Identify this person’s experience working with DDOT, local agencies and regulatory agencies in a similar capacity. Discuss relevant experience, professional registrations, education and other components of qualifications applicable to the Project

- B. **Design Manager** – This individual will actively manage the design of the Project. Identify other projects this person will be involved with concurrently and time committed to each project. List similar projects for which this person has performed a comparable function with the last five years. Discuss relevant experience, professional registrations, education and other components of qualifications applicable to the Project. Identify that person’s experience working with DDOT, local agencies, and regulatory agencies in a similar capacity.

- C. **Construction Manager** – This individual will actively manage the construction of the Project. Identify any other projects this person will be involved with concurrently and time committed to each project. List similar projects for which this person has performed a comparable function within the last five years. Discuss relevant experience, professional registrations, education and other components of qualifications applicable to the Project. Identify this person’s experience working with DDOT, local agencies, and regulatory agencies in a similar capacity.

- D. **Quality Control Manager** – This individual will actively manage the Quality Control Program of the Project. Identify other projects this person will be involved with concurrently and time committed to each project. List similar projects for which this person has performed a comparable function within the last five years. Discuss relevant experience, professional registrations, education and other components of qualifications applicable to the Project. Identify that person’s experience working with DDOT, local agencies, and regulatory agencies in a similar capacity.

- E. **Lead Utility Engineer** - This individual will be responsible for utility design of in-plan utilities and the coordination of all utility relocations. The Lead Utility Engineer shall

be available to review designs and to verify and modify designs, if necessary, based on field conditions and construction activities. Identify other projects this person will be involved with concurrently and time committed to each project. List similar projects for which this person has performed a comparable function within the last five years. Discuss relevant experience, professional registrations, education and other components of qualifications applicable to the Project. Identify that person's experience working with DDOT, local agencies, and regulatory agencies in a similar capacity.

L.2.1.2.4 Past Performance/Experience (10 Points)

The Offeror should provide sufficient information to enable DDOT to understand and evaluate the experience of the Offeror's team on projects of similar scope and complexity. The following will be used for evaluation:

1. Lead Contractor Work History – Use the Lead Contractor Related Work Experience Form, Attachment J.19, to identify and discuss three relevant projects by the lead contractor and the specific role performed on each project. Focus on what the Offeror considers being most relevant in demonstrating its qualifications to serve as the lead contractor for this Project. To the extent possible, list only projects similar in nature to this Project and which involve team members proposed for the Project. Describe total project costs and the total value of change orders and claims for each project. Describe any permit violations or environmental regulation violations. A narrative description should be included on the Related Work Experience Form for each project. The narrative should be limited to one page per project. For any referenced design-build project not jointly performed by the lead contractor and lead designer, identify the design professional with whom it contracted. Include a contact name, current address, telephone number, and fax number for each project listed.
2. Lead Designer Work History – Use the Lead Designer Related Work Experience Form, Attachment J.20, to identify and discuss three relevant projects by the lead designer and the specific role performed on each project. Focus on what the Offeror considers being most relevant in demonstrating its qualifications to serve as the lead designer for this Project. A narrative description should be included on the Related Work Experience Form for each project. The narrative should be limited to one page per project. For any referenced design-build project not jointly performed by the lead contractor and lead designer, identify the construction entity with whom it contracted. Include a contact name, current address, telephone number, and fax number for each project listed.

L.2.1.2.5 Initial Employment Plan (10 points)

The Offeror’s proposals shall be in accordance with the Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011. Offerors shall provide the following with their proposal:

1. Descriptions of health and retirement benefits provided to employees who worked on any of the offeror’s past three (3) completed projects or contracts.
2. A description of the offeror’s efforts to provide District residents with ongoing employment and training opportunities after they complete work on the job for which they are initial hired.
3. A disclosure of past compliance with the Workforce Act and the Davis-Bacon Act of 1931, approved March 3, 1931 (46 Stat. 1494, 40 U.S.C. Section 3141 et seq (Davis Bacon Act), where applicable on projects or contracts completed within the last two (2) years.

L.2.1.3 Price Proposal

The Price Proposal shall be broken out as follows:

Offerors shall submit:

1. Completed Attachment J.17
2. Completed Price Breakdown Table

**Price Breakdown
St. Elizabeth East Campus Stage 1 Infrastructure Improvements**

ITEM / LINE NO.	DESCRIPTION	ITEM TOTAL (US Dollars)
A	Professional Services and Permitting	
1	Project Management and Community Outreach	
2	Design, Design Survey, and Landscape Design	
3	Environmental Permitting Activities and Compliance	
4	Utility Coordination, Utility Survey, Utility Design (Wet and Dry) and Demolition Design	
5	Quality Control	
6	Miscellaneous Professional Services and Permitting not covered by Lines 1-5	
7	Subtotal Professional Services (Sum Lines 1 through 6) Subtotal	\$_____
B	Construction	
9	Construction Management	
10	Mobilization	
11	Traffic Control During Construction	
12	Site Demolition including Utilities and Roadways	

Price Breakdown
St. Elizabeth East Campus Stage 1 Infrastructure Improvements

ITEM / LINE NO.	DESCRIPTION	ITEM TOTAL (US Dollars)
13	Building Demolitions including disposal	
14	Earthwork	
15	Subbase and Base Course	
16	Pavement	
17	Complete Wet Utility Systems excluding drainage and LID	
18	Complete Dry Utility Systems excluding Washington Gas	
19	Security Fencing, Access Control and Guard Booth During Construction, including St Elizabeths Hospital Guard Booth and Related Construction	
20	Drainage including SWM and DDOE Permits	
21	Lighting	
22	Traffic Signals	
23	Signing	
24	Pavement Markings	
25	Aesthetics	
26	Landscaping	
27	Environmental Mitigation not covered elsewhere	
28	Removal of Contaminated Soils and Other Materials with Hazardous Substances (Contractor Estimated __ Cubic Yards)	
29	Intelligent Transportation Systems	
30	Bond Premiums	
31	Insurance Premiums	
32	Subtotal Construction (Sum Lines 9 through 31) Subtotal	\$_____
33	Total Lump Sum Price (Line 7 + Line 32) TOTAL	\$_____

CONTRACTOR DRAWS/CASH FLOW TABLE**St. Elizabeths East Campus Stage 1 Infrastructure Improvement Project****CASH FLOW ADJUSTMENT TABLE/PAYMENT CURVE****(All figures are in U.S. dollars, nominal)**

Months after NTP 1	(A) Anticipated Draw / Cash Flow	(B) Cumulative Draw / Cash Flow	Cash Flow Percentage of Cumulative Draw (A / B)	Cumulative Cash Flow Percentage of Maximum Draw (B / Maximum Payment)
1	\$0	\$0	0.0%	0.0%
2	\$0	\$0	0.0%	0.0%
3	\$0	\$0	0.0%	0.0%
4	\$0	\$0	0.0%	0.0%
5	\$0	\$0	0.0%	0.0%
6	\$0	\$0	0.0%	0.0%
7	\$0	\$0	0.0%	0.0%
8	\$0	\$0	0.0%	0.0%
9	\$0	\$0	0.0%	0.0%
10	\$0	\$0	0.0%	0.0%
11	\$0	\$0	0.0%	0.0%
12	\$0	\$0	0.0%	0.0%
13	\$0	\$0	0.0%	0.0%
14	\$0	\$0	0.0%	0.0%
15	\$0	\$0	0.0%	0.0%
16	\$0	\$0	0.0%	0.0%
17	\$0	\$0	0.0%	0.0%
18	\$0	\$0	0.0%	0.0%
19	\$0	\$0	0.0%	0.0%
20	\$0	\$0	0.0%	0.0%
21	\$0	\$0	0.0%	0.0%
22	\$0	\$0	0.0%	0.0%
23	\$0	\$0	0.0%	0.0%
24	\$0	\$0	0.0%	0.0%
25	\$0	\$0	0.0%	0.0%
26	\$0	\$0	0.0%	0.0%

27	\$0	\$0	0.0%	0.0%
28	\$0	\$0	0.0%	0.0%
29	\$0	\$0	0.0%	0.0%
30	\$0	\$0	0.0%	0.0%
31	\$0	\$0	0.0%	0.0%
32	\$0	\$0	0.0%	0.0%
33	\$0	\$0	0.0%	0.0%
34	\$0	\$0	0.0%	0.0%
35	\$0	\$0	0.0%	0.0%
36	\$0	\$0	0.0%	0.0%

TOTALS

\$0

Nominal Development Payments

Design-Build Price

MAXIMUM PAYMENT

\$0

3. Completed Draws/Cash Flow Table (Attachment J.18)
4. The Offeror must submit a statement affirming that as of the date of submission of its Proposal (1) there has been no material adverse change in its financial condition evidenced by its 2014 financial statements, and (2) the Offeror has the financial capacity to develop, design, and construct a project of the nature and scope of the Project..
5. If the District determines that an Offeror has insufficient financial capacity, the District has the discretion to offer an Offeror the opportunity to meet the financial requirement through one or more guarantors acceptable to DDOT.

L.3 PROPOSAL SUBMISSION DATE AND TIME, AND LATE SUBMISSIONS, LATE MODIFICATIONS, WITHDRAWAL OR MODIFICATION OF PROPOSALS AND LATE PROPOSALS

L.3.1 Proposal Submission

Proposals must be submitted no later than 2:00 p.m., on October 2, 2014 to the specific designated location. Proposals, modifications to Proposals, or requests for withdrawals that are received in the designated District office after the exact local time specified above, are "late" and

shall be considered only if they are received before the Award is made and one or more of the following circumstances apply:

1. The Proposal or modification was sent by registered or certified mail not later than the fifth (5th) day before the date specified for receipt of proposals.
2. The Proposal or modification was sent by mail and it is determined by the CO that the late receipt at the location specified in the solicitation was caused by mishandling by the District.
3. The Proposal is the only proposal received.

L.3.2 Withdrawal or Modification of Proposals

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

L.3.3 Postmarks

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

L.3.4 Late Modifications

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

L.3.5 Late Proposals

The Offeror assumes the sole responsibility for timely delivery of its Proposal, regardless of the method of delivery. A late proposal, late modification, or late request for withdrawal of a Proposal that is not considered shall be held unopened, unless opened for identification, until after Award and then retained with unsuccessful Proposals resulting from this solicitation.

L.4 EXPLANATION TO PROSPECTIVE OFFERORS

DDOT will hold a Pre-Proposal Conference on the date set forth in Section C.5.2. The location and time of this event will be posted on the website listed in Section C.4.1.1.

DDOT will provide Offerors with procurement information through the OCP website. Each Offeror is encouraged to check the OCP website regularly for Addenda to this RFP and for other procurement-related information.

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If a prospective Offeror has any questions relating to this solicitation, the prospective Offeror shall submit the question in writing to the contact person, identified on page 1, Section 10.A. The prospective Offeror shall submit questions no later than 30 Days prior to the closing date and time indicated for this solicitation. The District will not consider any questions received after the deadline date listed in Section C.5.2, unless DDOT determines it to be in the best interest of DDOT to do so. The District will furnish responses promptly to all prospective Offerors. An amendment to the solicitation will be issued if the CO decides that information is necessary in submitting offers, or if the lack of it would be prejudicial to any prospective Offeror. Oral explanations or instructions given by District officials before the Award of the Contract will not be binding.

L.5 FAILURE TO SUBMIT OFFERS

Recipients of this solicitation not responding with an offer should not return this solicitation. Instead, they should advise the CO, Courtney B. Lattimore, Contracting Officer, 55 M Street, SE, Suite 700S, Washington, DC 20003, Telephone No.: 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 CO of the reason for not submitting a Proposal in response to this solicitation. If a recipient does not submit an offer and does not notify the CO that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

L.6 RESTRICTION ON DISCLOSURE AND USE OF DATA

L.6.1 PROPRIETARY INFORMATION

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

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

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

L.6.2 PROPRIETARY INFORMATION DELINEATION

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

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

L.7 PROPOSALS WITH OPTION YEARS

Not applicable.

L.8 PROPOSAL PROTESTS

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

L.9 SIGNING OF OFFERS

The Offeror shall sign the offer and print or type its name on the Solicitation, Offer and Award form of this solicitation (Page 1, A17). Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the Contracting Officer.

L.10 UNNECESSARILY ELABORATE PROPOSALS

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

L.11 RETENTION OF PROPOSALS AND ESCROW OF CONTRACTOR'S PROPOSAL

All Proposal documents will be the property of the District and retained by the District, and therefore will not be returned to the Offerors. Within 7 days of Award, the Contractor shall enter into a Documents Escrow Agreement with a bank, mutually agreed upon by Contractor and the District, for the purpose of appointing the bank as an escrow agent to hold Contractor's Proposal. The District and Contractor shall deliver and deposit the Contractor's Proposal into the escrow account. The Contractor shall not access the Proposal without the presence of the District. The escrow account shall remain open until the latest expiration period of a warranty covered by the Contract. The Contractor shall be responsible for payment?

L.12 PAYMENTS TO UNSUCCESSFUL OFFERORS

Each qualified Offeror that submits a responsive, but unsuccessful, Proposal and that has timely executed and delivered to DDOT a Payment for Work Product Agreement (PWPA) in the form attached hereto as Attachment J.14 shall be entitled to receive payment from DDOT for work product that is not returned to Offeror, on the terms and conditions described herein and in the PWPA,. No Offeror shall be entitled to reimbursement for any of its costs in connection with the RFP except as specified in this Section L.12.

The stipulated payment for work product per Offeror for the procurement will be \$50,000, except that the amount of the payment may not exceed the value of the work product provided in the Proposal that can, as determined by DDOT, be used by DDOT in the performance of its functions.

In the event the procurement is terminated after submission of Proposals and before execution of the contract, DDOT will pay each Offeror a partial amount of \$50,000, subject to the Offeror's compliance with this Section L.12. The invoice may be submitted no earlier than 45 days after notice of final Award, including execution of the contract, is posted on the Project Web site, or, if final Award is not made, not earlier than 30 days after cancellation of the procurement or expiration of the time period for Award stated in the RFP (as such time period may be extended by mutual agreement of the apparent best-value Offeror and DDOT), as applicable.

Upon the Offeror's receipt of payment hereunder, this right shall extend to allow DDOT to use such work product in the performance of its functions. The use of any of the work product by DDOT is at the sole risk and discretion of DDOT and shall in no way be deemed to confer liability on the unsuccessful Offeror.

In no event shall any Offeror that is selected for Award but fails to satisfy the Award conditions or that fails to timely execute and deliver the Payment for Work Product Agreement (Attachment J.14) be entitled to receive a payment for work product under this Section L.12.

L.13 ELECTRONIC COPY OF PROPOSALS FOR FREEDOM OF INFORMATION ACT (FOIA) REQUESTS

In addition to other Proposal submission requirements, the Offeror must submit an electronic copy of its proposal, redacted in accordance with any applicable exemptions from disclosure in D.C. Official Code §2-534, in order for the District to comply with §2-536(b), which requires the District to make available electronically copies of records that must be made public. The District's policy is to release documents relating to District proposals following award of the Contract, subject to applicable FOIA exemption under §2-534(a) (1).

L.14 CERTIFICATES OF INSURANCE

Refer to Section I.8.A.

L.15 ACKNOWLEDGMENT OF AMENDMENTS

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

L.16 BEST AND FINAL OFFERS

If, subsequent to receiving original Proposals, negotiations are conducted, all Offerors within the competitive range will be so notified and will be provided an opportunity to submit written best and final offers at the designated date and time. Best and final offers will be subject to the Late Submissions, Late Modifications and Late Withdrawals of Proposals provisions of the solicitation. After receipt of best and final offers, no discussions will be reopened unless the CO determines that it is clearly in the District's best interest to do so, e.g., it is clear that information available at that time is inadequate to reasonably justify selection and award based on the best and final offers received. If discussions are reopened, the CO shall issue an additional request for best and final offers to all Offerors still within the competitive range.

L.17 LEGAL STATUS OF OFFEROR

Each Proposal must provide the following information:

- L.17.1** Name, address, telephone number and federal tax identification number of Offeror
- L.17.2** A copy of each District of Columbia license, registration, or certification that the Offeror is required by law to obtain. This mandate also requires the Offeror to provide a copy of the executed "Clean Hands Certification" that is referenced in D.C. Official Code §47-2862, if the Offeror is required by law to make such certification. If the Offeror is a corporation or partnership and does not provide a copy of its license, registration, or certification to transact business in the District of Columbia, the offer shall certify its intent to obtain the necessary license, registration, or certification prior to Contract Award or its exemption from such requirements.
- L.17.3** If the Offeror is a partnership or joint venture, the names and addresses of the general partners or individual members of the joint venture, and copies of any joint venture or teaming agreements

L.18 FAMILIARIZATION WITH CONDITIONS

Offerors shall thoroughly familiarize themselves with the terms and conditions of this solicitation, acquainting themselves with all available information regarding difficulties that may be encountered, and the conditions under which the Work is to be accomplished. The Contractor will not be relieved from assuming all responsibility for properly estimating the difficulties and the cost of performing the services required herein due to its failure to investigate the conditions

or to become acquainted with all information, schedules, and liability concerning the services to be performed.

L.19 GENERAL STANDARDS OF RESPONSIBILITY

The Offeror must demonstrate to the satisfaction of the District that it is responsible in accordance with the requirements of 27 DCMR § 2200. Therefore, the Offeror must submit the documentation listed below, within five (5) days of the request by the District. If the Offeror fails to supply the information requested, the CO shall make the determination of responsibility or non-responsibility based on available information. **If the available information is insufficient to make a determination of responsibility, the CO shall designate the Offeror as non-responsible.**

- L.19.1** Evidence of adequate financial resources, credit, or the ability to obtain such resources as required during the performance of the Contract
- L.19.2** 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.19.3** Evidence of the necessary organization, experience, accounting and operational control, technical skills or the ability to obtain them
- L.19.4** Evidence of compliance with the applicable District licensing and tax laws and regulations
- L.19.5** Evidence of a satisfactory performance record, record of integrity, and business ethics
- L.19.6** Evidence of the necessary production, construction, and technical equipment and facilities or the ability to obtain them
- L.19.7** Evidence of other qualifications and eligibility criteria necessary to receive an Award under applicable laws and regulations

L.20 SPECIAL STANDARDS OF RESPONSIBILITY

L.20.1 As an initial matter, the District will evaluate whether the Offeror has demonstrated with clear and convincing evidence that the Offeror meets the Special Standards of Responsibility as defined below, as of the date of submission of its initial Proposal. **If the District determines that an Offeror does not meet the Special Standards, the District will deem that an Offeror's proposal is nonresponsive and the proposal shall not be evaluated.**

- L.20.1.1 Offeror is a legal entity authorized and registered to perform design and infrastructure construction business in the District.
- L.20.1.2 Offeror has experience as the **Lead Contractor** on three design-build projects within the past ten years. The amount of the contract for two of the projects was over ten million dollars (\$10,000,000.). The amount of the contract for one of the projects was over thirty million (\$30,000,000.). At least two (2) of the referenced

contracts should include infrastructure work. For each contract, Offeror must submit at a minimum the following evidence:

- Three completed copies of the Lead Contractor Work History Form completed and signed by Offeror, providing descriptions of the three sample projects. Attachment J.19
- A copy of a contract for one of the projects referenced in the completed work forms. Offeror may omit contract attachments.
- A contemporaneous final evaluation of Offeror by the project owner for each of the referenced projects. If the project owner did not produce a contemporaneous evaluation, then the District at its discretion may accept for consideration a Past Performance Form completed and signed by the project owner, Attachment J.16

L.20.1.3 Offeror has experience as the **Lead Designer** on three design-build projects within the past ten years is Offeror's proposed lead designer for the Project. The amount of the contract for two of the projects was over ten million dollars (\$10,000,000.). The amount of the contract for one of the projects was over thirty million (\$30,000,000.). At least one (1) of the projects should include infrastructure work. For each contract, Offeror must submit at a minimum the following evidence:

- Three completed copies of the Lead Contractor Work History Form completed and signed by Offeror, providing descriptions of the three sample projects. Attachment J.19
- A copy of a contract for one of the projects referenced in the completed work forms. Offeror may omit contract attachments.
- A contemporaneous final evaluation of Offeror by the project owner for each of the referenced projects. If the project owner did not produce a contemporaneous evaluation, then the District at its discretion may accept for consideration a Past Performance Form completed and signed by the project owner, Attachment J.16

L.20.1.4 A person who held the position of **Design Build Project Manager** for three design-build projects within the past ten years is Offeror's proposed project manager for the Project. The amount of the contract for two of the projects was over ten million dollars (\$10,000,000.). The amount of the contract for one of the projects was over thirty million (\$30,000,000.). At least two (2) of the projects should include infrastructure work. For each contract, Offeror must submit at a minimum the following evidence:

- a. Offeror’s evidence must include a copy of a contemporaneous final evaluation of the project manager’s work. If there is no contemporaneous evaluation, then the District it its discretion may accept for consideration a Key Personnel Resume Form completed and signed by the project manager’s past project employer, Attachment J.21
 - b. An agreement between Offeror and the proposed project manager that the proposed project manager will work for Offeror as the Project manager if the District awards Offeror the Contract.
- L.20.1.5 A person who held the position of **Design Manager** for three design-build projects within the past ten years is Offeror’s proposed design manager for the Project. The amount of the contract for two of the projects was over ten million dollars (\$10,000,000.). The amount of the contract for one of the projects was over thirty million (\$30,000,000.). At least one (1) of the projects should include infrastructure work. For each contract, Offeror must submit at a minimum the following evidence:
 - a. Offeror’s evidence must include a copy of a contemporaneous final evaluation of the design manager’s work. If there is no contemporaneous evaluation, then the District it its discretion may accept for consideration a Key Personnel Resume Form completed and signed by the design manager’s past project employer, Attachment J.21
 - b. An agreement between Offeror and the proposed design manager that the proposed project manager will work for Offeror as the Project manager if the District awards Offeror the Contract.
- L.20.1.6 A person who held the position of **Construction Manager** for three (3) design-build projects within the past ten years is Offeror’s proposed construction manager for the Project. The amount of the contract for two of the projects was over ten million dollars (\$10,000,000.). The amount of the contract for one of the projects was over thirty million (\$30,000,000.). At least two (2) of the projects should include infrastructure work. For each contract, Offeror must submit at a minimum the following evidence:
 - a. Offeror’s evidence must include a copy of a contemporaneous final evaluation of the construction manager’s work. If there is no contemporaneous evaluation, then the District it its discretion may accept for consideration a Key Personnel Resume Form completed and signed by the construction manager’s past project employer, Attachment J.21

- b. An agreement between Offeror and the proposed construction manager that the proposed construction manager will work for Offeror as the Project construction manager if the District awards Offeror the Contract.
- L.20.1.7 A person who held the position of **Quality Control Manager** for x design-build projects within the past five years is Offeror's proposed quality control manager for the Project. At least two (2) of the projects should include infrastructure work. For each contract, Offeror must submit at a minimum the following evidence:
 - a. Offeror's evidence must include a copy of a contemporaneous final evaluation of the quality manager's work. If there is no contemporaneous evaluation, then the District in its discretion may accept for consideration a Key Personnel Resume Form completed and signed by the quality control manager's past project employer, Attachment J.21
 - b. An agreement between Offeror and the proposed quality control manager that the proposed quality control manager will work for Offeror as the Project quality control manager if the District awards Offeror the Contract.
- L.20.1.8 A person who held the position of **Lead Utility Engineer** for x design-build projects within the past five years is Offeror's proposed lead utility engineer for the Project. At least two (2) of the projects included infrastructure work. For each contract, Offeror must submit at a minimum the following evidence:
 - a. Offeror's evidence must include a copy of a contemporaneous final evaluation of the lead utility engineer's work. If there is no contemporaneous evaluation, then the District in its discretion may accept for consideration a Key Personnel Resume Form completed and signed by the lead utility engineer's past project employer, Attachment J.21
 - b. An agreement between Offeror and the proposed lead utility engineer that the proposed quality control manager will work for Offeror as the Project manager if the District awards Offeror the Contract.
- L.20.1.9 Three (3) references from a city, county or state for which Offeror as either a prime contractor or subcontractor completed a design build infrastructure project.
- L.20.1.10 A letter from a surety stating that the surety will issue the Offeror a single performance bond and at most two payment bonds for the amount of the Offeror's Proposal and that the bonds will cover all claims arising as a result of breach of any warranty covered by the Contract Documents.

SECTION M: EVALUATION FACTORS

M.1 EVALUATION FOR AWARD

For those Offerors which the District determines meet the Special Standards of Responsibility and the Letter of Submittal requirements, the District will evaluate their respective technical and price portions of their proposals in accordance with **this section**. Each proposal will be scored on a scale of 1 to 100 points based on Technical Proposal Evaluation Factors (40 points) and Price Factor (60 points). In addition, Offerors will be eligible to receive up to 12 preference points as described in **Section H.9** of this RFP for participation by Local, Small or Disadvantaged Business Enterprises. Thus, the maximum number of points possible is 112.

While the points in the evaluation criteria indicate their relative importance, the total scores will not necessarily be determinative of the Award. Rather, the total scores will guide the District in making an intelligent Award decision based upon the evaluation criteria

M.2 Technical Rating

M.2.1 The Technical Rating Scale is as follows:

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

M.2.2 The technical rating is a weighting mechanism that will be applied to the point value for each evaluation factor to determine the offeror's score for each factor. The offeror's total technical

score will be determined by adding the offeror's score in each evaluation factor. For example, if an evaluation factor has a point value range of zero (0) to forty (40) points, using the Technical Rating Scale above, if the District evaluates the offeror's response as "Good," then the score for that evaluation factor is 4/5 of 40 or 32.

If subfactors are applied, the offeror's total technical score will be determined by adding the offeror's score for each subfactor. For example, if an evaluation factor has a point value range of zero (0) to forty (40) points, with two subfactors of twenty (20) points each, using the Technical Rating Scale above, if the District evaluates the offeror's response as "Good" for the first subfactor and "Poor" for the second subfactor, then the total score for that evaluation factor is 4/5 of 20 or 16 for the first subfactor plus 1/5 of 20 or 4 for the second subfactor, for a total of 20 for the entire factor.

M.3 EVALUATION CRITERIA

M.3.1 Technical Proposal Evaluation Factors (40 Points Maximum)

The total "raw score" points available for the Technical Proposal are 100. The District will apply a 40% weight factor to an Offeror's total raw score. The total available maximum weighted score for the Technical Proposal will be 40 points (40% of 100 points).

The evaluation factors for the Technical Proposal are as follows:

- M.3.1.1 Project Understanding/Risk Assessment (25 points)
- M.3.1.2 Design Approach/Technical Approach/Quality Management (30 points)
- M.3.1.3 Management Plan/Key Personnel (25 points)
- M.3.1.4 Past Performance/ Experience (10 points)
- M.3.1.5 Initial Employment Plan (10 points)

M.3.1.1 Project Understanding/Risk Assessment

- A. Offeror has provided a robust discussion which demonstrated a clear understanding of the tasks related to the Master Plan and project goals.
- B. Offeror has provided a detailed discussion of the technical aspects and institutional elements which demonstrate clear understanding and planning towards completing project on schedule and within budget.
- C. Proposal submission provides a sound assessment of no less than three (3) critical risks. Offeror has demonstrated understanding of the impact of the identified risks and has proposed strategies for successfully addressing risk. Offeror's discussion of project risks includes anticipated role of DDOT and/or other involved agencies.

- D. Offeror has included an acceptable Baseline Schedule

M.3.1.2 Design Approach/Technical Approach/Quality Management

- A. Offeror’s design plan includes elements of the Master Plan as required. Proposal submission identifies critical design features and offers an approach that should result in a sufficient and constructible design. The Offeror has included innovative solutions that can be considered “new” and/or “ground-breaking” to the industry.
- B. Offeror’s proposed traffic management plan provides a realistic approach for minimization of traffic disruption to the public and project delays. Offeror has identified major traffic control issues and discussed its plans for addressing and mitigating identified issues.
- C. The Offeror has provided a sound coordination plan for installation of utilities which included timely and efficient coordination with DMPED and the other utility partners.
- D. Offeror has outlined its proposed QMP plan in detail. Proposed plan provides a measurable and a realistic approach to project monitoring and inspection.

M.3.1.3 Management Plan/Key Personnel

- A. Offeror has provided a clear organizational structure which incorporates all members of the proposed team, including Key Personnel, subcontractors and key subconsultants. “Chain of Command”, reporting relationships and major functions are outlined. Pre-approved subcontractors are clearly identified.
- B. Offeror has provided resumes of all proposed Key Personnel on Resume Form, as required. Qualifications and experience for proposed Key Personnel are acceptable.

M.3.1.4 Past Performance/Experience

- A. Offeror has provided three (3) examples of previous experience as Lead Contractor on projects of similar size, scope and complexity. The examples provided demonstrate an acceptable level of experience.
- B. Offeror has provided three (3) examples of previous experience as Lead Designer on projects of similar size, scope and complexity. The examples provided demonstrate an acceptable level of experience.

M.3.1.5 Initial Employment Plan

- A. Offeror has provided a completed Initial Employment plan, inclusive of the required elements set forth in L.2.1.2.

M.4 PRICE PROPOSAL (60 Points Maximum)

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

$$\frac{\text{Lowest Price Proposal}}{\text{Price of Proposal being evaluated}} \times 60 = \text{Price Proposal Score}$$

M.4.3 PREFERENCE POINTS AWARDED PURSUANT TO SECTION M.6 (12 Points Maximum)

M.4.4 CALCULATION OF BEST VALUE

The calculation of the Best Value Proposal will be the sum of the Offeror’s Technical Score (maximum 40 points) plus Price Proposal Score (maximum 60 points) plus Preference Points (maximum 12 points)

Example:

- Technical Proposal Score = 40 points (maximum weighted score)
- Price Proposal Score = 60 points (maximum score for lowest price)
- Preference Points = 12 points
- TOTAL POSSIBLE SCORE=112 points

M.5 EVALUATION OF OPTION YEARS

Not applicable.

M.6 PREFERENCES FOR CERTIFIED BUSINESS ENTERPRISES

Under the provisions of the “Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005,” as amended, D.C. Official Code § 2-218.01 *et seq.* (the Act), the District shall apply preferences in evaluating proposals from businesses that are small, local, disadvantaged, resident-owned, longtime resident, veteran-owned, local manufacturing, or local with a principal office located in an enterprise zone of the District of Columbia.

M.6.1 Application of Preferences

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

- M.6.1.1** Any prime contractor that is a small business enterprise (SBE) certified by the Department of Small and Local Business Development (DSLBD) will receive the addition of three points on a 100-point scale added to the overall score for proposals submitted by the SBE in response to this Request for Proposals (RFP).
- M.6.1.2** Any prime contractor that is a resident-owned business (ROB) certified by DSLBD will receive the addition of five points on a 100-point scale added to the overall score for proposals submitted by the ROB in response to this RFP.
- M.6.1.3** Any prime contractor that is a longtime resident business (LRB) certified by DSLBD will receive the addition of five points on a 100-point scale added to the overall score for proposals submitted by the LRB in response to this RFP.
- M.6.1.4** Any prime contractor that is a local business enterprise (LBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the LBE in response to this RFP.
- M.6.1.5** Any prime contractor that is a local business enterprise with its principal offices located in an enterprise zone (DZE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the DZE in response to this RFP.
- M.6.1.6** Any prime contractor that is a disadvantaged business enterprise (DBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the DBE in response to this RFP.
- M.6.1.7** Any prime contractor that is a veteran-owned business (VOB) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the VOB in response to this RFP.
- M.6.1.8** Any prime contractor that is a local manufacturing business enterprise (LMBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the LMBE in response to this RFP.

M.6.2 Maximum Preference Awarded

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

M.6.3 Preferences for Certified Joint Ventures

When DSLBD 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.6.4 Verification of Offeror's Certification as a Certified Business Enterprise

M.6.4.1 Any vendor seeking to receive preferences on this solicitation must be certified at the time of submission of its Proposal. The contracting officer will verify the Offeror's certification with DSLBD, and the Offeror should not submit with its Proposal any documentation regarding its certification as a certified business enterprise.

M.6.4.2 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: CBE Certification Program
441 Fourth Street, NW, Suite 970N
Washington DC 20001

M.6.4.3 All vendors are encouraged to contact DSLBD at (202) 727-3900 if additional information is required on certification procedures and requirements.

M.7 EVALUATION OF PROMPT PAYMENT DISCOUNT

Prompt payment discounts shall not be considered in the evaluation of offers.