

SOLICITATION, OFFER, AND AWARD		1. Caption Home Energy Rating Services		Page of Pages 1 42	
2. Contract Number	3. Solicitation Number DCKG-2008-B-0015	4. Type of Solicitation <input checked="" type="checkbox"/> Sealed Bid (IFB) <input type="checkbox"/> Sealed Proposals (RFP) <input type="checkbox"/> Sole Source <input type="checkbox"/> Human Care Agreements <input type="checkbox"/> Emergency	5. Date Issued 5/12/2008	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: Office of Contracting and Procurement Human Care Supplies and Services Group 441 4th Street, NW, Suite 700 South Washington, DC 20001			8. Address Offer to: Office of Contracting and Procurement 441-4th Street,NW, Suite 703 South, Bid Room Washington, DC 20001		

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

SOLICITATION

9. Sealed offers in original and 4 copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if hand carried to the bid counter located at 441 4th Street,NW, Suite 703S, Bid Room, Washington, DC 20001 until 10:00 AM local time 13-Jun-08
(Hour) (Date)

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

10. For Information Contact	A. Name George D. Wheeler	B. Telephone			C. E-mail Address george.wheeler@dc.gov
	(Area Code) 202	(Number) 724-5267	(Ext)		

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OFFER

12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified herein.

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

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

15A. Name and Address of Offeror	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 <input type="checkbox"/>	17. Signature
			18. Offer Date

AWARD (TO BE COMPLETED BY GOVERNMENT)

SECTION B: SUPPLIES OR SERVICES AND PRICE

- B.1** The Government of the District of Columbia, Office of Contracting and Procurement, on behalf of the District Department of the Environment – Energy Office are seeking contractors to provide Home Energy Ratings services with the ability to generate REM/Rate reports, user friendly analyses and pictures of recommended weatherization measures to District residents in single family homes:
- B.2** The District contemplates award of fixed priced, IDIQ type contract with payment based on fixed unit prices.
- B.3 IDIQ CONTRACT**

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

- a.) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering Clause, G.10. The Contractor shall furnish to the District, when and if ordered, the supplies or services specified in the Schedule up to and including the maximum quantity of 1,000 Home Energy Assessment Audits of Single Family Homes for CLIN 0001 and 1,000 reports for both the customer and for the District Department of Environment for CLIN 0002. The District will order at least the minimum quantity of *150 for* Home Energy Assessment Audits of Single family homes and 150 reports for both customer and the District Department of Environment.
- b.) There is no limit on the number of orders that may be issued. The District may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- c.) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and District's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the contractor shall not be required to make any deliveries under this contract after contract award.

B.4 BASE PERIOD

Contract Line Item No. (CLIN)	Item Description (Provide summary description of Supplies/Services)	Price Per Single Family Home (Shall not exceed 4,000 Square Ft)	Quantity Minimum	Minimum Total Price	Quantity Maximum	Maximum Total Price
CLIN 0001	Home Energy Rating utilizing RESNET guidelines, customer follow ups/responds (See Section C.)	\$__per Single Family Home	150	\$_____	1,000	\$_____
CLIN 0002	Reports for both clients and to the District Department of Environment (see Section C.)	\$__per Single Family Home	150	\$_____	1,000	\$_____
Grand Total						\$_____

B.5 FIRST OPTION PERIOD

Contract Line Item No. (CLIN)	Item Description (Provide summary description of Supplies/Services)	Price Per Single Family Home (Shall not exceed 4,000 Square Ft)	Quantity Minimum	Minimum Total Price	Quantity Maximum	Maximum Total Price
CLIN 1001	Home Energy Rating utilizing RESNET guidelines, customer follow ups/responds (See Section C.)	\$__per Single Family Home	150	\$_____	1,000	\$_____
CLIN 1002	Reports for both clients and to the District Department of Environment (see Section C.)	\$__per Single Family Home	150	\$_____	1,000	\$_____
Grand Total						\$_____

B.6 SECOND OPTION PERIOD

Contract Line Item No. (CLIN)	Item Description (Provide summary description of Supplies/Services)	Price Per Single Family Home (Shall not exceed 4,000 Square Ft)	Quantity Minimum	Minimum Total Price	Quantity Maximum	Maximum Total Price
CLIN 2001	Home Energy Rating utilizing RESNET guidelines, customer follow ups/responds (See Section C.)	\$__per Single Family Home	150	\$_____	1,000	\$_____
CLIN 2002	Reports for both clients and to the District Department of Environment (see Section C.)	\$__per Single Family Home	150	\$_____	1,000	\$_____
Grand Total						\$_____

B.7 THIRD OPTION PERIOD

Contract Line Item No. (CLIN)	Item Description (Provide summary description of Supplies/Services)	Price Per Single Family Home (Shall not exceed 4,000 Square Ft)	Quantity Minimum	Minimum Total Price	Quantity Maximum	Maximum Total Price
CLIN 3001	Home Energy Rating utilizing RESNET guidelines, customer follow ups/responds (See Section C.)	\$__per Single Family Home	150	\$_____	1,000	\$_____
CLIN 3002	Reports for both clients and to the District Department of Environment (see Section C.)	\$__per Single Family Home	150	\$_____	1,000	\$_____
Grand Total						\$_____

B.8 FOURTH OPTION PERIOD

Contract Line Item No. (CLIN)	Item Description (Provide summary description of Supplies/Services)	Price Per Single Family Home (Shall not exceed 4,000 Square Ft)	Quantity Minimum	Minimum Total Price	Quantity Maximum	Maximum Total Price
CLIN 4001	Home Energy Rating utilizing RESNET guidelines, customer follow ups/responds (See Section C.)	\$__per Single Family Home	150	\$_____	1,000	\$_____
CLIN 4002	Reports for both clients and to the District Department of Environment (see Section C.)	\$__per Single Family Home	150	\$_____	1,000	\$_____
Grand Total						\$_____

SECTION C: SPECIFICATIONS/WORK STATEMENT

C.1 SCOPE:

The District of Columbia Office of Contracting and Procurement (OCP), on behalf of the District Department of the Environment (DDOE) – Energy Office, seek RESNET-accredited contractor(s) to provide the following services:

- C.1.1.** The Bidder shall provide Energy Assessments Audits. Conduct comprehensive energy assessments of single family homes in the District of Columbia residential dwellings by a RESNET certified rater. These energy assessments must meet the Home Energy Rating System (HERS) standards and only an accredited HERS rater by the Residential Energy Services Network (RESNET) can conduct the assessments.
- C.1.2.** The Bidder shall schedule customers for energy assessments utilizing the DDOE – Energy Office waiting list supplied at contract award and during the life of the contract.
- C.1.3.** The Bidder shall develop and complete Energy Assessment Reports of single family homes referred from the Department of Environment. This user friendly (layman term) report shall provide detailed, easy-to understand information relating to the energy assessments to customer.
- C.1.4.** The Bidder shall provide DDOE – Energy Office with the RESNET approved REM/Rate report, pictures of recommended weatherization measures and a copy of the user friendly (layman term) reports generated for the customer.
- C.1.5.** The Bidder shall also respond or have a consultation follow-up with any customers who seeks additional information or clarification about the energy assessment audit received.
- C.1.6.** The Bidder shall have the capacity to complete all energy assessment audits to include scheduling assessments, reporting, and follow-up consultation within ninety (90) days of notification from the District Department of Environment.
- C.1.7.** The Bidder shall disburse energy efficient informational bags to customers at the beginning of the assessment and have customer sign utility information release form and submit it to DDOE- Energy Office.

C.1.1 APPLICABLE DOCUMENTS

Item No.	Title	Date
1.	RESNET GUIDELINES Http://www.resnet.us/standards/default.htm	Current
2.	Reliable Energy Trust Fund (RETF) PSC Order No. 13475, Formal Case No. 945 http://www.dcpsec.org/commorders/commorder.asp	May 20, 2005
3.	Mortgage Industry, National Home Energy Rating Standards	November 7, 2005
4.	RETF PSC Order No. 14689 http://www.dcpsec.org/commorders/commorder.asp	September 28, 2007

C.1.2 DENFINITIONS AND ACRONYMS

The following definitions are applicable to this solicitation and resulting contract.

C.1.2.1 Confirmed ratings – Ratings completed using data gathered from an on-site inspection, which could include performance testing of the home.

C.1.2.2 Customer – homeowner or occupant living in a single family home in the District of Columbia

C.1.2.3 Home Energy Rating System- is a standard measurement of a home’s energy efficiency. An energy rating allows the customer/homeowner to compare the energy cost for the selected home or residence. Consumers can use these ratings for both new and existing homes. In new homes, ratings often verify energy performance for the ENERGY STAR program, energy efficient mortgages, and energy code compliance. Homeowners who want to upgrade the home’s energy efficiency can use the energy rating to evaluate and pinpoint specific, cost-effective improvements.

C.1.2.4 Projected ratings – Ratings performed prior to the construction of a home or prior to the installation of energy improvements to an existing home

C.1.2.5 RESNET – Residential Energy Services Network in April 1995, the National Association of State Energy Officials and Energy Rated Homes of America founded the Residential Energy Services Network (RESNET) to develop a national market for home energy rating systems and energy efficient mortgages. RESNET's activities are guided by a mortgage industry steering committee composed of the leading national mortgage executives

C.2 BACKGROUND

The District Department of Environment oversees the services from the Home Energy Rating System Program which is administered by the Conservation Services Division. Funding for HERS is provided and governed by the District of Columbia Public Service Commission. Therefore, Public Service Commission Order No. 13475 (see Section C.1.1) governing Reliable Energy Trust Funds (RETF) dated May 20, 2005 directs the District to provide energy programs that can assist homeowners to reduce their energy costs as well provide in-house energy-efficient workshops and informational services to District residents. A primary function of the District Department of Environment is to assist District residents in coping with rising energy costs. Confirmed ratings involve an on-site inspection of a home by a residential energy efficiency professional (a home energy rater). Home energy raters are trained and certified by a RESNET accredited home energy rater training provider.

The home energy rater reviews the home to identify its energy characteristics, such as insulation levels, window efficiency, wall-to-window ratios, the heating and cooling system efficiency, the solar orientation of the home, and the water heating system. Performance testing, such as a blower door test for air leakage and duct leakage, is usually a part of the rating.

The data gathered by the home energy rater are entered into a RESNET accredited computer program, REM/Rate, and translated into rating score. The home receives a score between 1 and 100, depending on its relative efficiency. An estimate of the home's energy costs should be included in the report. The home's energy rating is then equated to a STAR rating ranging from one (1) star for a very inefficient home to five (5) stars for a highly efficient home.

Unlike other energy surveys or a weatherization assessments, a HERS assessment is a recognized tool in the mortgage industry. Home energy ratings can be used in a variety of ways in the housing industry. The star and the rating score provide an easily understandable means to compare more efficient homes by their relative energy efficiency, since a rating quantifies the energy performance of a home.

A homeowner who wants to upgrade the home's energy efficiency can use the energy rating to evaluate and pinpoint specific cost-effective improvement. The Bidder is not to complete or refer the customer to another contractor to install cost-effective improvements.

Along with the rating sheet, homeowners receive a report listing cost-effective options for improving the home's energy rating.

C.3 REQUIREMENTS

C.3.1 Background Checks. The Bidder shall perform background checks (criminal and employment history) on all auditors who enter District homes scheduled for energy rating. These backgrounds checks shall be completed prior to the auditor entering any District residence for the purpose of conducting a HERS assessment. The Bidder shall not allow the employment of any auditor who has been convicted of a misdemeanor and/or felony.

- C.3.2** Applicable Industry Standards. The Bidder shall provide energy rating services consistent with the procedures established by RESNET in the “Mortgage Industry National Home Energy Rating Standards”, dated November 7, 2005.
- C.3.3** Customer Service. The Bidder shall provide detailed, easy-to-understand reports of the energy assessments to customers. The report format must be pre-approved before award of the contract. The Bidder shall provide the customer with a copy of the easy-to-understand (layman term) report 5 to10 business days after audit and provide DDOE – Energy Office with a copy of the REM/Rate energy assessment, pictures of recommended weatherization energy measures and layman term report within five (5) to10 business days of the assessment. The Utility release Forms can be submitted to DDOE-Energy Office on a weekly basis by United States Postal Mail, Courier or FedEx.

SECTION D: PACKAGING AND MARKING

The packaging and marking requirements for the resultant contract shall be governed by clause number (2), Shipping Instructions-Consignment, of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated November, 2004.

SECTION E: INSPECTION AND ACCEPTANCE

The inspection and acceptance requirements for the resultant contract shall be governed by clause number six *(6), Inspection of Services, of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated March 2007.

SECTION F: DELIVERIES OR PERFORMANCE

F.1 TERM OF CONTRACT

The term of the contract shall be from date of award specified on the cover page of the contract through twelve months thereafter.

F.2 OPTION TO EXTEND THE TERM OF THE CONTRACT

F.2.1 The District may extend the term of this contract for a period of twelve months or any parts by written notice to the Contractor before the expiration of the contract; provided that the District will give the Contractor a preliminary written notice of its intent to extend at least thirty (30) days before the contract expires. The preliminary notice does not commit the District to an extension. The exercise of this option is subject to the availability of funds at the time of the exercise of this option. The Contractor may waive the thirty (30) day preliminary notice requirement by providing a written waiver to the Contracting Officer prior to expiration of the contract.

F.2.2 If the District exercises this option, the extended contract shall be considered to include this option provision.

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

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

F.3 TYPE OF CONTRACT

F.3.1 This is an IDIQ contract with fixed unit prices with a one year base period commencing on the date of award with four one-year option periods with payment base on firm fixed unit prices

F.3.2 Evaluation of Option Years

The Bidder shall include option year prices in its bid. A bid may be determined to be unacceptable if it fails to include option year pricing. The District will evaluate bids for award purposes by evaluating the total price for all options as well as the base period. Evaluation of options shall not obligate the government to exercise the option.

F.4 DELIVERABLES

CLIN	Deliverable	Est. Quantities	Format/Method of Delivery	Due Date	To Whom
0001	Home Energy Assessments(See Section C.1)	1,000	In-Home Inspection of Client Homes/Flash Drive	Within ninety days of notification from DDOE or Before September 30,2008	Customer/Ho meowner
0002	Energy Assessments Audit Report – REM/Rate report, Layman term report and pictures of recommended weatherization measure (See Section C.1.3)	1,000	Hard Copy/Flash Drive/United States Postal Service, FedEx or Courier	Within 5-10 working days after assessment Completed by September 30,2008	One copy for both Customer/Ho meowner and DDOE Energy Office
0003	Energy Assessments Audit Reports – REM/Rate report, layman term report and pictures of recommended weatherization measure (See Section C.1.4)	1,000	Hard Copy/United States Postal Service, FedEx or Courier/Flash Drive	Within 5-10 working days after assessment Completed by September 30,2008	DDOE – Energy Office
0004	Home Energy Efficient Bag (See Section C.1.7)	1,000	Hand delivery	Weekly Completed by September 30,2008	Homeowner/ Customer
0005	Signed Utility release form (See Section C.1.7)	1,000	Hand Delivery Form Submitted to Homeowner/ Customer	Weekly	DDOE Energy Office
0006	Status Report of Completed Assessments/Audits	Month ly	Hard Copy/ Flash Drive	Monthly - By the 10 th of the Month	DDOE Energy Office
0007	Home-Owner Certification and Evaluation Form(See Section C.1.7)	1,000	Questionnaires	Weekly	DDOE Energy Office

F.5 The Contractor shall submit to the District, as a deliverable, the report described in section H.3.5 of this contract that is required by the 51% District Residents New Hires Requirements and First Source Employment Agreement. If the Contractor does not submit the report as part of the deliverables, final payment to the Contractor may not be paid.

SECTION G : CONTRACT ADMINISTRATION DATA

G.1 INVOICE PAYMENT

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

G.2 INVOICE SUBMITTAL

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

**Stephanie Perry
DPW-CFO
2000 14th Street NW
Washington, DC 20009
Phone (202)-673-6896**

- G.2.2** To constitute a proper invoice, the Contractor shall submit the following information on the invoice:
- G.2.2.1** Contractor's name, Federal tax ID and invoice date (Contractors shall date invoices on the date of mailing or transmittal);
- G.2.2.2** Contract number and invoice number;
- G.2.2.3** Description, price, quantity and the date(s) that the supplies or services were delivered or performed.
- G.2.2.4** Other supporting documentation or information, as required by the Contracting Officer;
- G.2.2.5** Name, title, telephone number and complete mailing address of the responsible official to whom payment is to be sent;
- G.2.2.6** Name, title, phone number of person preparing the invoice;
- G.2.2.7** Name, title, phone number and mailing address of person (if different from the person identified in G.2.2.6 above) to be notified in the event of a defective invoice; and
- G.2.2.8** Authorized signature.

G.3 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT

G.3.1 For contracts subject to the 51% District Residents New Hires Requirements and First Source Employment Agreement requirements, final request for payment must be accompanied by the report or a waiver of compliance discussed in section H.3.5.

G.3.2 No final payment shall be made to the Contractor until the CFO has received the Contracting Officer's final determination or approval of waiver of the Contractor's compliance with 51% District Residents New Hires Requirements and First Source Employment Agreement requirements.

G.4 PAYMENT

G.4.1 Payment shall be made 30 days from invoice due date

G.4.2 PAYMENTS ON PARTIAL DELIVERIES OF SERVICES

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

- a. The amount due on the services warrants it; or
- b. The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

G.5 ASSIGNMENT OF CONTRACT PAYMENTS

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

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

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

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

G.6 THE QUICK PAYMENT CLAUSE

G.6.1 Interest Penalties to Contractors

G.6.1.1 The District will pay interest penalties on amounts due to the Contractor under the Quick Payment Act, D.C. Official Code §2-221.01 et seq., for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before:

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

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

G.6.2 Payments to Subcontractors

G.6.2.1 The Bidder must take one of the following actions within 7 days of receipt of any amount paid to the Bidder by the District for work performed by any subcontractor under a contract:

- a) Pay the subcontractor for the proportionate share of the total payment received from the District that is attributable to the subcontractor for work performed under the contract; or
- b) Notify the District and the subcontractor, in writing, of the Contractor's intention to withhold all or part of the subcontractor's payment and state the reason for the nonpayment.

G.6.2.2 The Bidder must pay any lower-tier subcontractor or supplier interest penalties on amounts due to the subcontractor or supplier beginning on the day after the payment is due and ending on the date on which the payment is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid on the following if payment for the completed delivery of the item of property or service is made on or before:

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

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

G.6.2.4 A dispute between the Bidder 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.7 CONTRACTING OFFICER (CO)

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

**Rotimi Osunsan, CPPB, CPM
Contracting Officer
Office of Contracting and Procurement
441 4th Street, NW, Suite 700S
Washington, DC 20001
Office No. 202 724-5248
Facsimile No. 202 727-0245**

G.8 AUTHORIZED CHANGES BY THE CONTRACTING OFFICER

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

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

- G.9.1** The COTR is responsible for general administration of the contract and advising the Contracting Officer as to the Contractor's compliance or noncompliance with the contract. In addition, the COTR is responsible for the day-to-day monitoring and supervision of the contract, of ensuring that the work conforms to the requirements of this contract and such other responsibilities and authorities as may be specified in the contract. The COTR for this contract is:

LaKeisha Estep
Energy Program Specialist
District Department of the Environment
2000 14th Street, NW
Suite 300E
Washington, D.C. 20009
Phone (202) 673-6733
Fax No. (202) 673-6725

G.9.2 The COTR shall not have authority to make any changes in the specifications or scope of work or terms and conditions of the contract.

G.9.3 The Bidder may be held fully responsible for any changes not authorized in advance, in writing, by the Contracting Officer; may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.

G.10 ORDERING CLAUSE

G.10.1 Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the Contracting Officer. Such orders may be issued during the term of this contract.

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

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

SECTION H: SPECIAL CONTRACT REQUIREMENTS

H.1 PUBLICITY

The Bidder shall at all times obtain the prior written approval from the Contracting Officer 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.2 FREEDOM OF INFORMATION ACT

The District of Columbia Freedom of Information Act, at D.C. Official Code § 2-532 (a-3), requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If the Contractor receives a request for such information, the Contractor shall immediately send the request to the COTR designated in subsection G.9 who will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by the Contractor pursuant to the contract, the COTR will forward a copy to the Contractor. In either event, the Contractor is required by law to provide all responsive records to the COTR within the timeframe designated by the COTR. The FOIA Officer for the agency with programmatic responsibility will determine the reliability of the records. The District will reimburse the Contractor for the costs of searching and copying the records in accordance with D.C. Official Code § 2-532 and Chapter 4 of Title 1 of the *D.C. Municipal Regulations*.

H.3 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT

Comment [LRC1]: Mr. Wheeler is this an item that can be deleted because there are few if any certified raters that are District residents.

H.3.1 The Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code, § 2-219.01 et seq. (“First Source Act”).

H.3.2 The Contractor shall enter into and maintain, during the term of the contract, a First Source Employment Agreement, (Section J.2.4) in which the Contractor shall agree that:

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

H.3.3 The Contractor shall submit to DOES, no later than the 10th each month following execution of the contract, a First Source Agreement Contract Compliance Report (“contract compliance report”) verifies its compliance with the First Source Agreement for the preceding month. The contract compliance report for the contract shall include the:

- (1) Number of employees needed;
- (2) Number of current employees transferred;

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

H.3.4 If the contract amount is equal to or greater than \$100,000, the Contractor agrees that 51% of the new employees hired for the contract shall be District residents.

H.3.5 With the submission of the Contractor's final request for payment from the District, the Contractor shall:

- (1) Document in a report to the Contracting Officer its compliance with the section H.3.4 of this clause; or
- (2) Submit a request to the Contracting Officer for a waiver of compliance with section H.3.4 and include the following documentation:
 - (a) Material supporting a good faith effort to comply;
 - (b) Referrals provided by DOES and other referral sources;
 - (c) Advertisement of job openings listed with DOES and other referral sources; and
 - (d) Any documentation supporting the waiver request pursuant to section H.3.6.

H.3.6 The Contracting Officer may waive the provisions of section H.3.4 if the Contracting Officer finds that:

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

H.3.7 Upon receipt of the contractor's final payment request and related documentation pursuant to sections H.3.5 and H.3.6, the Contracting Officer shall determine whether the Contractor is in compliance with section H.3.4 or whether a waiver of compliance pursuant to section H.3.6 is justified. If the Contracting Officer determines that the Contractor is in compliance, or that

a waiver of compliance is justified, the Contracting Officer shall, within two business days of making the determination forward a copy of the determination to the Agency Chief Financial Officer and the COTR.

H.3.8 Willful breach of the First Source Employment Agreement, or failure to submit the report pursuant to section H.3.5, or deliberate submission of falsified data, may be enforced by the Contracting Officer through imposition of penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract. The Contractor shall make payment to DOES. The Contractor may appeal to the D.C. Contract Appeals Board as provided in the contract any decision of the Contracting Officer pursuant to this section H.3.8.

H.3.9 The provisions of sections H.3.4 through H.3.8 do not apply to nonprofit organizations.

H.4 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES

H.4.1 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.4.1.1 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.4.2 The Contractor shall negotiate an Employment Agreement with the DOES for jobs created as a result of this contract. The DOES shall be the Contractor's first source of referral for qualified apprentices and trainees in the implementation of employment goals contained in this clause.

H.5 PROTECTION OF PROPERTY:

The Contractor shall be responsible for any damage to the building, interior, or their approaches in delivering equipment covered by this contract.

H.6 AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)

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

H.7 SECTION 504 OF THE REHABILITATION ACT OF 1973, as amended.

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

H.8 CONTRACTOR RESPONSIBILITIES

The Bidder shall schedule clients to receive a Home Energy Assessment based on the waiting list given to them from DDOE-Energy Office and provide its employees with photo identification that must be presented to home owners prior to entry and inspection of the homes. Bidder shall only provide the assessments to District homeowners or renters. No Assessment shall be completed on condominiums or multi-family unit dwellings. Upon arrival to client home Bidder shall disburse energy efficient bag and have homeowner sign and date the utility release form. After completion of the Assessment contractor shall provide DDOE – Energy Office with the signed original utility release form, generated REM/Rate report, copy of user friendly (layman term) report and pictures of recommended weatherization energy efficient measures. The bidder shall provide user friendly (layman term) report of the energy assessment to customer. All reports must be submitted to DDOE - Energy Office and customer 5-10 business days after assessment. The report format must be pre-approved before award of the contract. The utility release forms can be submitted to DDOE-Energy Office on a weekly basis by United States Postal Mail, Courier or FedEx.

H.9 DISTRICT RESPONSIBILITIES

The District shall supply to the selected bidder(s) a list of names and addresses of homeowners/customers or occupants that have requested a home energy assessment audit of their residences or home.

The District shall provide to the bidder(s) information packages containing energy efficient programs and resources.

The District shall approve the layman's report that will be submitted to the homeowner/customer and the REM /Rate Report that will be submitted for the District Department of Environment.

H.10 DEPARTMENT OF LABOR WAGE DETERMINATIONS

The Contractor shall be bound by the Wage Determination No. 1994-2103, Revision No. 4, dated 7/05/2007. issued by the U.S. Department of Labor in accordance with the Service Contract Act (41 U.S.C. §351 et seq.) and incorporated herein as Section J.1.1 of this solicitation. The Bidder shall be bound by the wage rates for the term of the Contract. If an option is exercised, the Bidder shall be bound by the applicable wage rate at the time of the option. If the option is exercised and the Contracting Officer 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.11 OWNERSHIP

The District's supplied materials and any proofs, plates, and all such materials produced by the Selected Bidder for this contract are and shall remain the property of the District, and all such material must be forwarded to the Contracting Officer's Technical Representative upon completion of the contract..

SECTION I: CONTRACT CLAUSES

I.1 APPLICABILITY OF STANDARD CONTRACT PROVISIONS

The Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts dated March 2007 (“SCP”) are incorporated as part of the contract resulting from this solicitation. To obtain a copy of the SCP go to www.ocp.dc.gov, click on OCP Policies under the heading “Information”, then click on “Standard Contract Provisions – Supplies and Services Contracts”.

I.2 CONTRACTS THAT CROSS FISCAL YEARS

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

I.3 CONFIDENTIALITY OF INFORMATION

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

I.4 TIME

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

I.5 RIGHTS IN DATA

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

I.5.2 The term “Technical Data”, as used herein, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work, or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.

- I.5.3** The term “Computer Software”, as used herein means computer programs and computer databases. “Computer Programs”, as used herein means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. "Computer Programs" include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort merge programs, and automated data processing equipment maintenance diagnostic programs, as well as applications programs such as payroll, inventory control and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general purpose in nature or designed to satisfy the requirements of a particular user.
- I.5.4** The term "computer databases", as used herein, means a collection of data in a form capable of being processed and operated on by a computer.
- I.5.5** All data first produced in the performance of this Contract shall be the sole property of the District. The Contractor hereby acknowledges that all data, including, without limitation, computer program codes, produced by Contractor for the District under this Contract, are works made for hire and are the sole property of the District; but, to the extent any such data may not, by operation of law, be works made for hire, Contractor hereby transfers and assigns to the District the ownership of copyright in such works, whether published or unpublished. The Contractor agrees to give the District all assistance reasonably necessary to perfect such rights including, but not limited to, the works and supporting documentation and the execution of any instrument required to register copyrights. The Contractor agrees not to assert any rights in common law or in equity in such data. The Contractor shall not publish or reproduce such data in whole or in part or in any manner or form, or authorize others to do so, without written consent of the District until such time as the District may have released such data to the public.
- I.5.6** The District will have restricted rights in data, including computer software and all accompanying documentation, manuals and instructional materials, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, provided however, notwithstanding any contrary provision in any such license or agreement, such restricted rights shall include, as a minimum the right to:
- I.5.6.1** Use the computer software and all accompanying documentation and manuals or instructional materials with the computer for which or with which it was acquired, including use at any District installation to which the computer may be transferred by the District;
- I.5.6.2** Use the computer software and all accompanying documentation and manuals or instructional materials with a backup computer if the computer for which or with which it was acquired is inoperative;
- I.5.6.3** Copy computer programs for safekeeping (archives) or backup purposes; and modify the computer software and all accompanying documentation and manuals or instructional materials, or combine it with other software, subject to the provision that the modified portions shall remain subject to these restrictions.
- I.5.7** The restricted rights set forth in section I.5.6 are of no effect unless

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

RESTRICTED RIGHTS LEGEND

Use, duplication, or disclosure is subject to restrictions stated in Contract No. _____
With _____ (Contractor's Name); and

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

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

I.5.9 Whenever any data, including computer software, are to be obtained from a subcontractor under this contract, the Contractor shall use this clause, I.5, Rights in Data, in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the District's or the Contractor's rights in that subcontractor data or computer software which is required for the District.

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

I.5.11 The Contractor shall indemnify and save and hold harmless the District, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy,

arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or (ii) based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.

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

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

I.6 OTHER CONTRACTORS

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

I.7 SUBCONTRACTS

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

I.8 INSURANCE

I.8.1 Contractor shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall submit a certificate of insurance giving evidence of the required coverages prior to commencing work. All insurance shall be written with responsible companies licensed by the District of Columbia's Department of Insurance, Securities and Banking. The Contractor shall require all subcontractors to carry the insurance required herein, or Contractor may, at its option, provide the coverage for any or all subcontractors, and if so, the evidence of insurance submitted shall so stipulate. All insurance provided by the Contractor as required by this section, except comprehensive automobile liability insurance, shall set forth the District as an additional named insured. In no event shall work be performed until the required certificates of insurance have been furnished. The insurance shall provide for 30 days' prior written notice to be given to the District in the event coverage is substantially changed, canceled or non-renewed. If the insurance provided is not in compliance with all the requirements herein, the District maintains the right to stop work until proper evidence is provided.

Liability Insurance. The Contractor shall procure and maintain a General Liability Insurance and Professional Liability Insurance during the period of performance for services under the resulting Purchase Order.

Professional Services and Public Safety:

- I.8.1 Commercial General Liability Insurance**, \$1,000,000 limits per occurrence, District added as an additional insured.
- I.8.2 Automobile Liability Insurance**, \$1,000,000 per occurrence combined single limit.
- I.8.3 Worker's Compensation Insurance** according to the statutes of the District of Columbia, including Employer's Liability, \$100,000 per accident for injury, \$100,000 per employee for disease, \$500,000 policy limit disease.
- I.8.4 Umbrella/ Excess Liability Insurance**, \$5,000,000 limits per occurrence.
- I.8.5 Professional Liability Insurance**, \$1,000,000 limits per claim (note: such insurance is typically called medical malpractice insurance for doctors, professional liability insurance for lawyers and nurses, and errors and omissions liability insurance for all other "professions" with a professional liability exposure).
- I.8.6** For asbestos removal or lead abatement services, Contractor's Pollution Liability Insurance, \$1,000,000 limits per occurrence.
- I.8.7** If the contractor has custody of District funds, Crime Insurance with limits sufficient to cover the maximum amount at risk.

I.9 EQUAL EMPLOYMENT OPPORTUNITY

In accordance with the District of Columbia Administrative Issuance System, Mayor's Order 85-85 dated June 10, 1985, the forms for completion of the Equal Employment Opportunity Information Report are incorporated herein as Section J.2.2. An award cannot be made to any bidder who has not satisfied the equal employment requirements.

I.10 ORDER OF PRECEDENCE

Any inconsistency in this solicitation shall be resolved by giving precedence in the following order:

- a. Supplies or Services and Price/Cost Section (Section B);
- b. Specifications/Scope of Work Statement (Section C);
- c. Special Contract Requirements (Section H);
- d. Contract Clauses (Section I);
- e. Delivery/Performance (Section F);
- f. Contract Administration (Section G)
- h. Attachments (Section J), and the Standard Contract Provisions.

I.11 CONTRACTS IN EXCESS OF ONE MILLION DOLLARS

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

SECTION J - LIST OF ATTACHMENTS

J.1 Government of the District of Columbia Standard Contract Provisions for Use with the Supply and Service Contracts, dated March 2007

J.1.1 U. S Department of Labor Wage Determination No. 94-2103, Revision No. 4 dated July 5, 2007 Wage Determination No.2005-2103

J.1.2 Living Wage Fact Sheet

J.1.3 Past Performance Evaluation Form

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

J.2.1 E.E.O. Information and Mayor's Order 85-85

J.2.2 Tax Certification Affidavit

J.2.3 First Source Employment Agreement

SECTION K: REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF BIDDERS

K.1 TYPE OF BUSINESS ORGANIZATION

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

(a) It operates as:

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

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

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

K.2 CERTIFICATION AS TO COMPLIANCE WITH EQUAL OPPORTUNITY OBLIGATIONS

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

Bidder _____ Date _____

Name _____ Title _____

Signature _____

Bidder ____ has ____ has not participated in a previous contract or subcontract subject to the Mayor's Order 85-85. Bidder ____ has ____ has not filed all required compliance reports, and representations indicating submission of required reports signed by proposed sub-bidders. (The above representations need not be submitted in connection with contracts or subcontracts which are exempt from the Mayor's Order.)

K.3 BUY AMERICAN CERTIFICATION

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

_____ EXCLUDED END PRODUCTS
_____ COUNTRY OF ORIGIN

K.4 DISTRICT EMPLOYEES NOT TO BENEFIT CERTIFICATION

Each Bidder shall check one of the following:

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

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

K.5 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

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

- 1) The prices in this contract have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any bidder or competitor relating to:
 - (i) those prices
 - (ii) the intention to submit a contract, or
 - (iii) the methods or factors used to calculate the prices in the contract.
- 2) The prices in this Contract have not been and will not be knowingly disclosed by the Bidder, directly or indirectly, to any other Bidder or competitor before Contract opening unless otherwise required by law; and
- 3) No attempt has been made or will be made by the bidder to induce any other concern to submit or not to submit a contract for the purpose of restricting competition.

(b) Each signature on the bid is considered to be a certification by the signatory that the signatory:

- 1) Is the person in the bidder's organization responsible for determining the prices being offered in this contract, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
- 2) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above:

(insert full name of person(s) in the organization responsible for determining the prices offered in this contract and the title of his or her position in the bidder's organization);

- (i) As an authorized agent, does certify that the principals named in subdivision (b)(2) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and
 - (ii) As an agent, has not participated, and will not participate, in any action contrary to subparagraphs (a) (1) through (a) (3) above.
- (c) If the bidder deletes or modifies subparagraph (a) (2) above, the bidder must furnish with its bid a signed statement setting forth in detail the circumstances of the disclosure.

K.7 TAX CERTIFICATION

Each bidder must submit with its bid, a sworn Tax Certification Affidavit, incorporated herein as Section J.2.3.

K.8 METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS RIDER CLAUSE

**USE OF CONTRACT(S) BY MEMBERS COMPRISING THE
METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS
PURCHASING OFFICERS' COMMITTEE.**

If authorized by the bidder's(s) resultant contract(s) will be extended to any or all of the listed members as designated by the bidder to purchase at contract prices in accordance with contract terms.

- A. Any member utilizing such contract(s) will place its own order(s) with the successful contractor. There shall be no obligation on the part of any participating member to utilize the contract(s).
- B. A negative reply will not adversely affect consideration of your bid.
- C. It is the awarded vendor's responsibility to notify the members shown below of the availability of the bidder(s).

- D. Each participating jurisdiction has the option of executing a separate contract with the awardees. Contracts entered into with a participating jurisdiction may contain general terms and conditions unique to that jurisdiction including, by way of illustration and not limitation, clauses covering minority participation, non-discrimination, indemnification, naming the jurisdiction as an additional insured under any required Comprehensive General Liability policies, and venue. If, when preparing such a contract, the general terms and conditions of a jurisdiction are unacceptable to the awardee(s), the awardee(s) may withdraw its extension of the award to that jurisdiction.

- E. The issuing jurisdiction shall not be held liable for any costs or damages incurred by another jurisdiction as a result of any award extended to that jurisdiction by the awardees.

In pricing section of contract:

BIDDER'S AUTHORIZATION TO EXTEND CONTRACT:

<u>YES</u>	<u>NO</u>	<u>JURISDICTION</u>	<u>YES</u>	<u>NO</u>	<u>JURISDICTION</u>
___	___	Alexandria, Virginia	___	___	Met. Wash. Airports Authority
___	___	Alexandria Public School	___	___	Met. Wash. Council of Government
___	___	Arlington County, Virginia	___	___	Montgomery College
___	___	Arlington County Public School	___	___	Montgomery County, Maryland
___	___	Bowie, Maryland	___	___	Mont. County Public Schools
___	___	Charles County Public Schools			
___	___	College Park, Maryland	___	___	Prince George's County, Maryland
___	___	Culpeper County, Virginia	___	___	Prince George's Public Schools
___	___	District of Columbia	___	___	Prince William County, Virginia
___	___	District of Columbia Courts			
___	___	District of Columbia Public Schools	___	___	Prince William Public Schools
___	___	D.C. Water & Sewer Authority.	___	___	Prince William County Service Authority
___	___	Fairfax, Virginia	___	___	Rockville, Maryland
			___	___	Spotsylvania County Schools
___	___	Fairfax County, Virginia	___	___	Stafford County, Virginia
___	___	Fairfax County Water Authority	___	___	Takoma Park, Maryland
___	___	Falls Church, Virginia	___	___	Vienna, Virginia
___	___	Fauquier City. Sch. & Govt., VA	___	___	Wash. Metro. Area Transit Authority
___	___	Frederick County, Maryland	___	___	Wash. Suburban Sanitary Comm. ___
___	___	Manassas Public Schools	___	___	Winchester Public Schools
___	___	Gaithersburg, Maryland	___	___	Herndon, Virginia
___	___	Greenbelt, Maryland	___	___	Loudoun County, Virginia
___	___	Manassas, Virginia			
___	___	MD-Nat. Cap. Park & Plng. Comm.			

Vendor Name

SECTION L: INSTRUCTIONS, CONDITIONS AND NOTICES TO BIDDERS

L.1 METHOD OF AWARD

- L.1.1** The District reserves the right to accept/reject any/all bids resulting from this solicitation. The Contracting Officer may reject all bids or waive any minor informality or irregularity in bids received whenever it is determined that such action is in the best interest of the District.
- L.1.2** The District intends, but is not obligated, to award *multiple* contract(s) resulting from this solicitation to the responsive and responsible bidder(s) who has/have the lowest bid(s).

L.2 PREPARATION AND SUBMISSION OF BIDS

- L.2.1** Bidders shall submit a signed original and *four (4) copies*. The District will not accept a facsimile copy of a bid as an original bid. All items accepted by the District, all pages of the Invitation for Bids (IFB), all attachments and all documents containing the bidder's offer shall constitute the formal contract. **Each bid shall be submitted in a sealed envelope conspicuously marked: "Bid in Response to Solicitation No. DCKG-2008-B-0015 Home Energy Rating Services" as specified in Section A.3)**
- L.2.2** The original bid shall govern if there is a variance between the original bid and the copy submitted by the bidder. Each bidder shall return the complete solicitation as its bid.
- L.2.3** The District may reject as non-responsive any bid that fails to conform in any material respect to the Invitation for Bids.
- L.2.4** The District may also reject as non-responsive any bids submitted on forms not included in or required by the solicitation. Bidders shall make no changes to the requirements set forth in the solicitation.

L.3 FAMILIARIZATION WITH CONDITIONS (SERVICES)

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

L.4 BID SUBMISSION DATE AND TIME

Bids must be submitted no later than **10:00 A.M. as specified in Section A.9) eastern** time on **June 13, 2008 as specified in Section A.9)**.

L.5 WITHDRAWAL OR MODIFICATION OF BIDS

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

L.6 LATE SUBMISSIONS, LATE MODIFICATIONS, AND LATE WITHDRAWALS

L.6.1 Bids, modifications to bids, or requests for withdrawals that are received in the designated District office after the exact local time specified above, are "late" and shall be considered only if they are received before the award is made and one (1) or more of the following circumstances apply:

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

L.6.2 Postmarks

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

L.6.3 Late Submissions

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

L.6.4 Late Modifications

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

L.6.5 Late Bids

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

L.7 HAND DELIVERY OR MAILING OF BIDS

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

L.8 ERRORS IN BIDS

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

L.9 QUESTIONS ABOUT THE SOLICITATION

If a prospective bidder has any questions relative to this solicitation, the prospective bidder shall submit the questions in writing to the Contracting Officer. The prospective bidder shall submit questions no later than May 30, 2008, *ten (10)* days prior to the closing date and time indicated for this solicitation. The District will not consider any questions received less than ten (10) days before the date set for submission of bids. The District will furnish responses promptly to all other prospective bidders. An amendment to the solicitation will be issued, if that information is necessary in submitting bids, or if the lack of it would be prejudicial to any other prospective bidders. Oral explanations or instructions given before the award of the contract will not be binding.

L.10 FAILURE TO SUBMIT BIDS

Recipients of this solicitation not responding with a bid should not return this solicitation. Instead, they should advise the Contracting Officer, Office of Contracting and Procurement, 441 4th St., NW, Suite 700, Washington, D.C. 2001, by letter or postcard whether they want to receive future solicitations for similar requirements. It is also requested that such recipients advise the Contracting Officer, Office of Contracting and Procurement, of the reason for not submitting a bid in response to this solicitation. If a recipient does not submit a bid and does not notify the Contracting Officer, Office of Contracting and Procurement, that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

L.11 BID PROTESTS

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

L.12 SIGNING OF BIDS

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

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

L.13 ACKNOWLEDGMENT OF AMENDMENTS

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

L.14 BIDS WITH OPTION YEARS

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

L.15 LEGAL STATUS OF BIDDER

Each bid must provide the following information:

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

L.15.2 A copy of each District of Columbia license, registration or certification that the bidder is required by law to obtain. This mandate also requires the bidder to provide a copy of the executed "Clean Hands Certification" that is referenced in D.C. Official Code §47-2862 (2001), if the bidder is required by law to make such certification. If the bidder is a corporation or partnership and does not provide a copy of its license, registration or certification to transact business in the District of Columbia, the bid shall certify its intent to obtain the necessary license, registration or certification prior to contract award or its exemption from such requirements; and

L.15.3 If the bidder is a partnership or joint venture, the names and addresses of the general partners or individual members of the joint venture, and copies of any joint venture or teaming agreements.

L.16 STANDARDS OF RESPONSIBILITY

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

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

L.16.2 Evidence of the ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.

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

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

L.16.5 Evidence of a satisfactory performance record, record of integrity and business ethics.

L.16.6 Furnish evidence of the necessary production, construction and technical equipment and facilities or the ability to obtain them.

L.16.7 Evidence of other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations

L.16.8 If the prospective contractor fails to supply the information requested, the Contracting Officer shall make the determination of responsibility or non-responsibility based upon available information. If the available information is insufficient to make a determination of responsibility, the Contracting Officer shall determine the prospective contractor to be non-responsible.

L.17 REQUIREMENT FOR DESCRIPTIVE LITERATURE

L.17.1 Descriptive literature must be furnished as a part of a bid and must be received before the time set for opening bids. The literature furnished must be identified to show the items in the bid to which it pertains. The descriptive literature is required to establish, for the purpose of bid evaluation and award, details of the products the bidder proposes to furnish as to design, material, quality, construction and performance characteristics.

L.17.2 Failure of descriptive literature to show that the product offered conforms to the specifications and other requirements of this invitation for bids may require rejection of the bid. Failure to furnish the descriptive literature by the time and date set for receipt of bids will require rejection of the bid, except that if the materials are transmitted by mail and received late, it may be considered under the provision for considering late bids, as set forth elsewhere in this invitation for bids. The Contracting Officer may waive the requirement for furnishing descriptive literature if either of the following occurs:

- A. Bidder states in the bid that the product being offered is the same as a product previously or currently being furnished to the District; or
- B. The Contracting Officer, on advice of technical personnel determines that the product offered by the bidder complies with the specification requirements of the current invitation for bids.

SECTION M: EVALUATION FACTORS

M.1 Preferences for Local Businesses, Disadvantaged Businesses, Resident-owned Businesses, Small Businesses, Longtime Resident Businesses, or Local Businesses with Principal Offices Located in an Enterprise Zone

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

M.1.1 General Preferences

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

- M.1.1.1** Three percent reduction in the bid price or the addition of three points on a 100-point scale for a small business enterprise (SBE) certified by the Small and Local Business Opportunity Commission (SLBOC) or the Department of Small and Local Business Development (DSLBD), as applicable;
- M.1.1.2** Three percent reduction in the bid price or the addition of three points on a 100-point scale for a resident-owned business enterprise (ROB) certified by the SLBOC or the DSLBD, as applicable;
- M.1.1.3** Ten percent reduction in the bid price or the addition of ten points on a 100-point scale for a longtime resident business (LRB) certified by the SLBOC or the DSLBD, as applicable;
- M.1.1.4** Two percent reduction in the bid price or the addition of two points on a 100-point scale for a local business enterprise (LBE) certified by the SLBOC or the DSLBD, as applicable;
- M.1.1.5** Two percent reduction in the bid price or the addition of two points on a 100-point scale for a local business enterprise with its principal office located in an enterprise zone (DZE) and certified by the SLBOC or the DSLBD, as applicable; and
- M.1.1.6** Two percent reduction in the bid price or the addition of two points on a 100-point scale for a disadvantaged business enterprise (DBE) certified by the SLBOC or the DSLBD, as applicable.

M.1.2 Application of Preferences

The preferences shall be applicable to prime contractors as follows:

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

M.1.3 Maximum Preference Awarded

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

M.1.4 Preferences for Certified Joint Ventures

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

M.1.5. Vendor Submission for Preferences

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

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

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

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

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

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

M.2 EVALUATION OF OPTION YEARS

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

M.3 EVALUATION STANDARDS

Factor: Capabilities

Description: This factor considers the Bidder's demonstrated ability to comply with the required level of service; experience and technical skills, or the ability to obtain them.

This standard is met when:

- a.) The Bidder provides documentation that details the experience and specialized skills necessary to accomplish the services outlined in Section C. Specifically, the Bidder shall have, at least, two (2) years of proven documentation showing their ability and knowledge of performing the services listed in Section C of this solicitation. Bidder should include with his bid: 1.) RESNET Accreditation

Factor: Past Performance

Description: This factor considers the Bidder’s past performance in performing services similar to the required services as described in Section C of the Solicitation. This factor includes an examination of the quality of services provided, timeliness in services delivery, business practices, and overall satisfaction with the Bidder’s performance.

This standard is met when:

- a.) The Bidder provide three (3) letters of reference from a minimum of three (3) employers or other contracts in which the Bidder has performed similar work in the past two (2) years. Work is similar, if the function, responsibilities, and duties of the Bidder are essentially the same as the required services described in C. ; and
- b) The Bidder provide a list of two (2) previous or current clients for which the Bidder provided identical or similar work within the last five year other that those clients who are providing reference letters as requested above. Include the Name of Company, Title and Description of the Project. Contract Number, Dollar Amount and Period of Performance. Name of the Contact Person and Title, and Telephone Number and email address and a copy of the performance evaluation See Attachment J.1.3 for the contractor to complete on your behalf to be submitted with your bid

M.4 EVALUATION FOR AWARD

The contract will be awarded to the responsible Bidder(s) whose bids are most advantageous to the District, based upon the evaluation criteria specified below:

Price:

The Bid Price must be included in Section B 100 Points

M.5 Preference Points 12 Points
Total Points 112 Points

RE: _____ Page 1 of 2
(Contractor's name)

PAST PERFORMANCE EVALUATION FORM
(Check appropriate box)

Performance Elements	Excellent	Good	Acceptable	Poor	Unacceptable
Quality of Services/ Work					
Timeliness of Performance					
Cost Control					
Business Relations					
Customer Satisfaction					

1. Name & Title of Evaluator: _____
2. Signature of Evaluator: _____
3. Name of Organization: _____
4. Telephone/Fax/Email Number of Evaluator: _____
5. State type of service received: _____
6. State Contract Number, Amount and period of Performance _____

7. Remarks on Excellent Performance: Provide data supporting this observation. Continue on separate sheet if needed)
8. Remarks on unacceptable performance: Provide data supporting this observation. (Continue on separate sheet if needed)

RATING GUIDELINES

Summarize Contractor performance in each of the rating areas. Assign each area a rating of 0 (Unacceptable), 1 (Poor), 2 (Acceptable), 3 (Good), 4(Excellent), or ++ (Plus). Use the following instructions a guidance in making these evaluations.

	Quality Product/Service	Cost Control	Timeless of Performance	Business Relations
	<ul style="list-style-type: none"> -Compliance with contract requirements -Accuracy of reports -Appropriateness of personnel -Technical excellence 	<ul style="list-style-type: none"> -Within budget (over/ under target costs) -Current, accurate, and complete billings -Relationship of negated costs to actual -Cost efficiencies -Change order issue 	<ul style="list-style-type: none"> -Meet Interim milestones -Reliable -Responsive to technical directions -Completed on time, including wrap-up and contract administration -No liquidated damages assessed 	<ul style="list-style-type: none"> -Effective management -Businesslike correspondence -Responsive to contract requirements -Prompt notification of contract problems -Reasonable/cooperative -Flexible -Pro-active -effective contractor recommended solutions -Effective snail/small disadvantaged business Subcontracting program
0. Zero	Nonconformances are comprises the achievement of contract requirements, despite use of Agency resources	Cost issues are comprising performance of contract requirements.	Delays are comprising the achievement of contract requirements, Despite use of Agency resources.	Response to inquiries, technical/ service/administrative issues is not effective and responsive.
1, Unacceptable	Nonconformances require major Agency resources to ensure achievement of contract requirements.	Cost issues require major Agency resources to ensure achievement of contract requirements.	Delays require major Agency resources to ensure achievement of contract requirements.	response to inquiries, technical/ service/administrative issues is marginally effective and responsive.
2. Poor	Nonconformances require minor Agency resources to ensure achievement of contract requirements.	Costs issues require minor Agency resources to ensure achievement of contract requirements.	Delays require minor Agency resources to ensure achievement of contract requirements.	Responses to inquiries, technical/ service/administrative issues is somewhat effective and responsive.
3. Acceptable	Nonconformances do not impact achievement of contract requirements.	Cost issues do not impact achievement of contract requirements.	Delays do not impact achievement of contract requirements.	Responses to inquires, technical/ service/administrative issues is usually effective and responsive.
4. Good	There are no quality problems.	There are no cost issues.	There are not delays.	Responses to inquiries, technical/ service/administrative issues is effective and responsive,
5. Excellent	The contractor has demonstrated an exceptional performance level in some or all of the above categories.			



“LIVING WAGE ACT OF 2006”

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.*), as amended, (“Living Wage Act of 2006”) applies to all contracts for services in the amount of \$100,000 or more in a 12-month period.

The Living Wage Act of 2006 requires a contractor to:

1. pay its employees and subcontractors who perform services under the contract no less than the current living wage rate;
2. 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;
3. provide a copy of the Living Wage Act Fact Sheet to each employee and subcontractor who performs services under the contract;
4. post the Living Wage Act Notice in a conspicuous place in its place of business;
5. include in any subcontract for \$15,000 or more a provision requiring the subcontractor to post the Living Wage Act Notice in a conspicuous place in its place of business;
6. 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
7. require its subcontractors with subcontracts for \$15,000 or more under the contract to 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.

EFFECTIVE JANUARY 1, 2008, THE CURRENT LIVING WAGE RATE IS \$12.10.

Starting in 2008, the Department of Employment Services may adjust the living wage annually. The OCP will publish the current living wage rate on its website at www.ocp.dc.gov.

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.*

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 (i.e., if a contract is subject to the Service Contract Act and certain wage rates are lower than the District's current living wage, the contractor must pay the higher of the two rates);
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 eminent 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); and
- (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.

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 Act.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

STANDARD CONTRACT PROVISIONS

FOR USE WITH

**DISTRICT OF COLUMBIA GOVERNMENT
SUPPLIES AND SERVICES CONTRACTS**

March 2007

**OFFICE OF CONTRACTING AND PROCUREMENT
SUITE 700 SOUTH
441 4th STREET, NW
WASHINGTON, DC 20001**

STANDARD CONTRACT PROVISIONS
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1. Covenant Against Contingent Fees:

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

2. Shipping Instructions – Consignment:

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

3. Patents:

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

4. Quality:

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

5. Inspection Of Supplies:

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

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

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

- (i) If this contract provides for the performance of District quality assurance at source, and if requested by the District, the Contractor shall furnish advance notification of the time (i) when Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract, and (ii) when the supplies will be ready for District inspection.
- (j) The District request shall specify the period and method of the advance notification and the District representative to whom it shall be furnished. Requests shall not require more than 2 business days of advance notification if the District representative is in residence in the Contractor's plant, nor more than 7 business days in other instances.
- (k) The District will accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. District failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability upon the District, for non-conforming supplies.
- (l) Inspections and tests by the District do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.
- (m) If acceptance is not conclusive for any of the reasons in subparagraph (l) hereof, the District, in addition to any other rights and remedies provided by law, or under provisions of this contract, shall have the right to require the Contractor (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; provided, that the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Contractor of notice of defects or noncompliance, to repay such portion of the contract as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the District will have the right to return the rejected materials at Contractor's risk and expense or contract or otherwise to replace or correct such supplies and charge to the Contractor the cost occasioned the District thereby.

6. Inspection Of Services:

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

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

7. Waiver:

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

8. Default:

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

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

9. Indemnification:

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

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

10. Transfer:

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

11. Taxes:

(a) The Government of the District of Columbia is exempt from and will not pay Federal Excise Tax, Transportation Tax, and the District of Columbia Sales and Use Taxes.

(b) Tax exemption certificates are no longer issued by the District for Federal Excise Tax. The following statement may be used by the supplier when claiming tax deductions for Federal Excise Tax exempt items sold to the District.

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

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

a) Deliveries to Glenn Dale Hospital – Exemption No. 4647

b) Deliveries to Children’s Center – Exemption No. 4648

c) Deliveries to other District Departments or Agencies – Exemption No. 09339

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

12. Appointment of Attorney:

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

13. District Employees Not To Benefit:

Unless a determination is made as provided herein, no officer or employee of the District will be admitted to any share or part of this contract or to any benefit that may arise therefrom, and any contract made by the Contracting Officer or any District employee authorized to execute contracts in which they or an employee of the District will be personally interested shall be void, and no payment shall be made thereon by the District or any officer thereof, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit. A District employee shall not be a party to a contract with the District and will not knowingly cause or allow a business concern or other organization owned or substantially owned or controlled by the employee to be a party to such a contract, unless a written determination has been made by the head of the procuring agency that there is a compelling reason for contracting with the employee, such as when the District's needs cannot reasonably otherwise be met. (DC Procurement Practices Act of 1985, D.C. Law 6-85, D.C. Official Code, section 2-310.01, and Chapter 18 of the DC Personnel Regulations)

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

14. Disputes:

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

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

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

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

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

C. Claims by the District against a Contractor

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

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

15. Changes:

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

16. Termination For Convenience Of The District:

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

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

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

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

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

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

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

17. Recovery Of Debts Owed The District:

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

18. Retention and Examination Of Records:

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

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

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

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

19. Non-Discrimination Clause:

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

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

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

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

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

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

20. Definitions:

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

21. Health And Safety Standards:

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

22. Appropriation Of Funds:

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

23. Buy American Act:

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

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

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

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

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

24. Service Contract Act of 1965:

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

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

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

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

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

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

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

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

- (k) Subcontracts: The Contractor agrees to insert this clause in all subcontracts.
- (l) Contractor's report:
 - (1) If there is a wage determination attachment to this contract and any classes of service employees not listed on it are to be employed under the contract, the Contractor shall report promptly to the Contracting Officer the wages to be paid and the fringe benefits to be provided each of these classes, when determined under paragraph (c) of this clause.
 - (2) If wages to be paid or fringe benefits to be furnished any service employees under the contract are covered in a collective bargaining agreement effective at any time when the contract is being performed, the Contractor shall provide to the Contracting Officer a copy of the agreement and full information on the application and accrual of wages and benefits (including any prospective increases) to service employees working on the contract. The Contractor shall report when contract performance begins, in the case of agreements then in effect, and shall report subsequently effective agreements, provisions, or amendments promptly after they are negotiated.
- (m) Contractor's Certification: By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded District contracts by virtue of the sanctions imposed under section 5 of the Act. No part of this contract shall be subcontracted to any person or firm ineligible for award of a District contract under section 5 of the Act. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. §1001.
- (n) Variations, tolerances, and exemptions involving employment: Notwithstanding any of the provisions in paragraphs (c) through (l) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions authorized by the Secretary of Labor.
 - (1)(i) In accordance with regulations issued under Section 14 of the Fair Labor Standards Act of 1938 by the Administrator of the Wage and Hour Division, ESA (29 CFR 520, 521, 524, and 525), apprentices, student learners, and workers whose earning capacity is impaired by age or by physical or mental deficiency or injury, may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1)

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

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

25. Cost and Pricing Data:

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

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

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

26. Multiyear Contract:

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

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

27. Termination Of Contracts For Certain Crimes And Violations:

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

WD 05-2103 (Rev.-4) was first posted on www.wdol.gov on 07/10/2007

REGISTER OF WAGE DETERMINATIONS UNDER
 THE SERVICE CONTRACT ACT
 By direction of the Secretary of Labor

U.S. DEPARTMENT OF LABOR
 EMPLOYMENT STANDARDS ADMINISTRATION
 WAGE AND HOUR DIVISION
 WASHINGTON D.C. 20210

William W. Gross Division of
 Director Wage Determinations

Wage Determination No.: 2005-2103
 Revision No.: 4
 Date Of Revision: 07/05/2007

States: District of Columbia, Maryland, Virginia

Area: District of Columbia Statewide
 Maryland Counties of Calvert, Charles, Frederick, Montgomery, Prince George's, St Mary's
 Virginia Counties of Alexandria, Arlington, Fairfax, Falls Church, Fauquier, King George, Loudoun, Prince William, Stafford

****Fringe Benefits Required Follow the Occupational Listing****

OCCUPATION CODE -- TITLE	MINIMUM WAGE RATE
01000 - Administrative Support And Clerical Occupations	
01011 - Accounting Clerk I	13.79
01012 - Accounting Clerk II	15.49
01013 - Accounting Clerk III	18.43
01020 - Administrative Assistant	23.59
01040 - Court Reporter	18.43
01051 - Data Entry Operator I	12.67
01052 - Data Entry Operator II	13.82
01060 - Dispatcher, Motor Vehicle	16.50
01070 - Document Preparation Clerk	13.29
01090 - Duplicating Machine Operator	13.29
01111 - General Clerk I	13.72
01112 - General Clerk II	15.32
01113 - General Clerk III	18.74
01120 - Housing Referral Assistant	21.66
01141 - Messenger Courier	10.23
01191 - Order Clerk I	14.74
01192 - Order Clerk II	16.29
01261 - Personnel Assistant (Employment) I	15.60
01262 - Personnel Assistant (Employment) II	18.43
01263 - Personnel Assistant (Employment) III	21.66
01270 - Production Control Clerk	21.29
01280 - Receptionist	12.72
01290 - Rental Clerk	15.60
01300 - Scheduler, Maintenance	15.60
01311 - Secretary I	17.03
01312 - Secretary II	18.39
01313 - Secretary III	21.66
01320 - Service Order Dispatcher	15.82
01410 - Supply Technician	23.59
01420 - Survey Worker	18.43
01531 - Travel Clerk I	12.07
01532 - Travel Clerk II	13.01

12100 - Medical Assistant	14.23
12130 - Medical Laboratory Technician	18.04
12160 - Medical Record Clerk	14.96
12190 - Medical Record Technician	16.67
12195 - Medical Transcriptionist	16.46
12210 - Nuclear Medicine Technologist	28.93
12221 - Nursing Assistant I	9.75
12222 - Nursing Assistant II	10.96
12223 - Nursing Assistant III	12.99
12224 - Nursing Assistant IV	14.58
12235 - Optical Dispenser	16.67
12236 - Optical Technician	14.41
12250 - Pharmacy Technician	15.75
12280 - Phlebotomist	14.58
12305 - Radiologic Technologist	27.61
12311 - Registered Nurse I	24.92
12312 - Registered Nurse II	31.22
12313 - Registered Nurse II, Specialist	31.22
12314 - Registered Nurse III	37.77
12315 - Registered Nurse III, Anesthetist	37.77
12316 - Registered Nurse IV	45.28
12317 - Scheduler (Drug and Alcohol Testing)	18.04
13000 - Information And Arts Occupations	
13011 - Exhibits Specialist I	18.55
13012 - Exhibits Specialist II	23.33
13013 - Exhibits Specialist III	28.11
13041 - Illustrator I	18.73
13042 - Illustrator II	23.42
13043 - Illustrator III	28.82
13047 - Librarian	25.45
13050 - Library Aide/Clerk	12.52
13054 - Library Information Technology Systems Administrator	22.99
13058 - Library Technician	17.88
13061 - Media Specialist I	16.58
13062 - Media Specialist II	18.55
13063 - Media Specialist III	20.68
13071 - Photographer I	14.67
13072 - Photographer II	17.18
13073 - Photographer III	21.52
13074 - Photographer IV	26.05
13075 - Photographer V	29.15
13110 - Video Teleconference Technician	16.58
14000 - Information Technology Occupations	
14041 - Computer Operator I	16.72
14042 - Computer Operator II	18.71
14043 - Computer Operator III	20.86
14044 - Computer Operator IV	23.18
14045 - Computer Operator V	25.66
14071 - Computer Programmer I (1)	21.60
14072 - Computer Programmer II (1)	26.37
14073 - Computer Programmer III (1)	27.62
14074 - Computer Programmer IV (1)	27.62
14101 - Computer Systems Analyst I (1)	27.62
14102 - Computer Systems Analyst II (1)	27.62
14103 - Computer Systems Analyst III (1)	27.62
14150 - Peripheral Equipment Operator	16.72
14160 - Personal Computer Support Technician	23.18
15000 - Instructional Occupations	
15010 - Aircrew Training Devices Instructor (Non-Rated)	34.39
15020 - Aircrew Training Devices Instructor (Rated)	42.72

15030 - Air Crew Training Devices Instructor (Pilot)	50.66
15050 - Computer Based Training Specialist / Instructor	31.26
15060 - Educational Technologist	29.09
15070 - Flight Instructor (Pilot)	50.66
15080 - Graphic Artist	24.95
15090 - Technical Instructor	23.87
15095 - Technical Instructor/Course Developer	29.19
15110 - Test Proctor	19.04
15120 - Tutor	19.04
16000 - Laundry, Dry-Cleaning, Pressing And Related Occupations	
16010 - Assembler	8.95
16030 - Counter Attendant	8.95
16040 - Dry Cleaner	12.21
16070 - Finisher, Flatwork, Machine	8.95
16090 - Presser, Hand	8.95
16110 - Presser, Machine, Drycleaning	8.95
16130 - Presser, Machine, Shirts	8.95
16160 - Presser, Machine, Wearing Apparel, Laundry	8.95
16190 - Sewing Machine Operator	12.30
16220 - Tailor	13.01
16250 - Washer, Machine	9.81
19000 - Machine Tool Operation And Repair Occupations	
19010 - Machine-Tool Operator (Tool Room)	18.95
19040 - Tool And Die Maker	23.05
21000 - Materials Handling And Packing Occupations	
21020 - Forklift Operator	17.26
21030 - Material Coordinator	21.29
21040 - Material Expediter	21.29
21050 - Material Handling Laborer	12.65
21071 - Order Filler	13.21
21080 - Production Line Worker (Food Processing)	17.28
21110 - Shipping Packer	14.46
21130 - Shipping/Receiving Clerk	14.46
21140 - Store Worker I	10.44
21150 - Stock Clerk	14.35
21210 - Tools And Parts Attendant	17.26
21410 - Warehouse Specialist	17.26
23000 - Mechanics And Maintenance And Repair Occupations	
23010 - Aerospace Structural Welder	25.68
23021 - Aircraft Mechanic I	24.46
23022 - Aircraft Mechanic II	25.68
23023 - Aircraft Mechanic III	26.97
23040 - Aircraft Mechanic Helper	16.61
23050 - Aircraft, Painter	23.42
23060 - Aircraft Servicer	18.71
23080 - Aircraft Worker	19.90
23110 - Appliance Mechanic	20.60
23120 - Bicycle Repairer	14.43
23125 - Cable Splicer	24.98
23130 - Carpenter, Maintenance	20.36
23140 - Carpet Layer	18.70
23160 - Electrician, Maintenance	25.37
23181 - Electronics Technician Maintenance I	22.08
23182 - Electronics Technician Maintenance II	23.44
23183 - Electronics Technician Maintenance III	24.70
23260 - Fabric Worker	17.90
23290 - Fire Alarm System Mechanic	21.46
23310 - Fire Extinguisher Repairer	16.50
23311 - Fuel Distribution System Mechanic	22.81
23312 - Fuel Distribution System Operator	19.38

27102 - Guard II	17.66
27131 - Police Officer I	23.94
27132 - Police Officer II	26.60
28000 - Recreation Occupations	
28041 - Carnival Equipment Operator	12.35
28042 - Carnival Equipment Repairer	13.30
28043 - Carnival Equipment Worker	8.40
28210 - Gate Attendant/Gate Tender	13.01
28310 - Lifeguard	11.59
28350 - Park Attendant (Aide)	14.56
28510 - Recreation Aide/Health Facility Attendant	10.62
28515 - Recreation Specialist	18.04
28630 - Sports Official	11.59
28690 - Swimming Pool Operator	16.85
29000 - Stevedoring/Longshoremen Occupational Services	
29010 - Blocker And Bracer	20.55
29020 - Hatch Tender	20.55
29030 - Line Handler	20.55
29041 - Stevedore I	19.18
29042 - Stevedore II	21.64
30000 - Technical Occupations	
30010 - Air Traffic Control Specialist, Center (HFO) (2)	34.71
30011 - Air Traffic Control Specialist, Station (HFO) (2)	23.94
30012 - Air Traffic Control Specialist, Terminal (HFO) (2)	26.36
30021 - Archeological Technician I	17.06
30022 - Archeological Technician II	19.03
30023 - Archeological Technician III	23.76
30030 - Cartographic Technician	24.85
30040 - Civil Engineering Technician	22.19
30061 - Drafter/CAD Operator I	17.92
30062 - Drafter/CAD Operator II	20.06
30063 - Drafter/CAD Operator III	22.36
30064 - Drafter/CAD Operator IV	27.51
30081 - Engineering Technician I	20.19
30082 - Engineering Technician II	22.67
30083 - Engineering Technician III	25.37
30084 - Engineering Technician IV	31.43
30085 - Engineering Technician V	38.44
30086 - Engineering Technician VI	46.51
30090 - Environmental Technician	21.36
30210 - Laboratory Technician	22.36
30240 - Mathematical Technician	26.31
30361 - Paralegal/Legal Assistant I	20.03
30362 - Paralegal/Legal Assistant II	24.82
30363 - Paralegal/Legal Assistant III	30.35
30364 - Paralegal/Legal Assistant IV	36.73
30390 - Photo-Optics Technician	24.85
30461 - Technical Writer I	20.69
30462 - Technical Writer II	25.30
30463 - Technical Writer III	30.61
30491 - Unexploded Ordnance (UXO) Technician I	22.06
30492 - Unexploded Ordnance (UXO) Technician II	26.69
30493 - Unexploded Ordnance (UXO) Technician III	31.99
30494 - Unexploded (UXO) Safety Escort	22.06
30495 - Unexploded (UXO) Sweep Personnel	22.06
30620 - Weather Observer, Combined Upper Air Or Surface Programs (2)	22.14
30621 - Weather Observer, Senior (2)	23.98
31000 - Transportation/Mobile Equipment Operation Occupations	
31020 - Bus Aide	11.99
31030 - Bus Driver	17.54

31043 - Driver Courier	12.71
31260 - Parking and Lot Attendant	9.06
31290 - Shuttle Bus Driver	13.89
31310 - Taxi Driver	13.98
31361 - Truckdriver, Light	13.89
31362 - Truckdriver, Medium	17.09
31363 - Truckdriver, Heavy	18.40
31364 - Truckdriver, Tractor-Trailer	18.40
99000 - Miscellaneous Occupations	
99030 - Cashier	10.03
99050 - Desk Clerk	10.45
99095 - Embalmer	21.77
99251 - Laboratory Animal Caretaker I	10.47
99252 - Laboratory Animal Caretaker II	10.85
99310 - Mortician	27.25
99410 - Pest Controller	14.54
99510 - Photofinishing Worker	11.59
99710 - Recycling Laborer	15.73
99711 - Recycling Specialist	18.72
99730 - Refuse Collector	14.01
99810 - Sales Clerk	11.87
99820 - School Crossing Guard	11.37
99830 - Survey Party Chief	19.76
99831 - Surveying Aide	12.28
99832 - Surveying Technician	18.78
99840 - Vending Machine Attendant	12.61
99841 - Vending Machine Repairer	16.37
99842 - Vending Machine Repairer Helper	12.61

ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$3.16 per hour or \$126.40 per week or \$547.73 per month

VACATION: 2 weeks paid vacation after 1 year of service with a contractor or successor; 3 weeks after 5 years, and 4 weeks after 15 years. Length of service includes the whole span of continuous service with the present contractor or successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (Reg. 29 CFR 4.173)

HOLIDAYS: A minimum of ten paid holidays per year, New Year's Day, Martin Luther King Jr's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.) (See 29 CFR 4174)

THE OCCUPATIONS WHICH HAVE PARENTHESES AFTER THEM RECEIVE THE FOLLOWING BENEFITS (as numbered):

- 1) Does not apply to employees employed in a bona fide executive, administrative, or professional capacity as defined and delineated in 29 CFR 541. (See CFR 4.156)
- 2) AIR TRAFFIC CONTROLLERS AND WEATHER OBSERVERS - NIGHT PAY & SUNDAY PAY: If you work at night as part of a regular tour of duty, you will earn a night differential and receive an additional 10% of basic pay for any hours worked between 6pm and 6am. If you are a full-time employed (40 hours a week) and Sunday is part of your

regularly scheduled workweek, you are paid at your rate of basic pay plus a Sunday premium of 25% of your basic rate for each hour of Sunday work which is not overtime (i.e. occasional work on Sunday outside the normal tour of duty is considered overtime work).

HAZARDOUS PAY DIFFERENTIAL: An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordnance, explosives, and incendiary materials. This includes work such as screening, blending, dying, mixing, and pressing of sensitive ordnance, explosives, and pyrotechnic compositions such as lead azide, black powder and photoflash powder. All dry-house activities involving propellants or explosives. Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive ordnance, explosives and incendiary materials. All operations involving regrading and cleaning of artillery ranges.

A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard when working with, or in close proximity to ordnance, (or employees possibly adjacent to) explosives and incendiary materials which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation, irritation of the skin, minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used. All operations involving, unloading, storage, and hauling of ordnance, explosive, and incendiary ordnance material other than small arms ammunition. These differentials are only applicable to work that has been specifically designated by the agency for ordnance, explosives, and incendiary material differential pay.

**** UNIFORM ALLOWANCE ****

If employees are required to wear uniforms in the performance of this contract (either by the terms of the Government contract, by the employer, by the state or local law, etc.), the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) such uniforms is an expense that may not be borne by an employee where such cost reduces the hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost), reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However, in those instances where the uniforms furnished are made of "wash and wear" materials, may be routinely washed and dried with other personal garments, and do not require any special treatment such as dry cleaning, daily washing, or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

The duties of employees under job titles listed are those described in the "Service Contract Act Directory of Occupations", Fifth Edition, April 2006, unless otherwise indicated. Copies of the Directory are available on the Internet. A link to the Directory may be found on the WHD home page at <http://www.dol.gov/esa/whd/> or through the Wage Determinations On-Line (WDOL) Web site at <http://wdol.gov/>.

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE {Standard Form

1444 (SF 1444)}

Conformance Process:

The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed classes of employees shall be paid the monetary wages and furnished the fringe benefits as are determined. Such conforming process shall be initiated by the contractor prior to the performance of contract work by such unlisted class(es) of employees. The conformed classification, wage rate, and/or fringe benefits shall be retroactive to the commencement date of the contract. {See Section 4.6 (C) (vi)} When multiple wage determinations are included in a contract, a separate SF 1444 should be prepared for each wage determination to which a class(es) is to be conformed.

The process for preparing a conformance request is as follows:

- 1) When preparing the bid, the contractor identifies the need for a conformed occupation) and computes a proposed rate).
- 2) After contract award, the contractor prepares a written report listing in order proposed classification title), a Federal grade equivalency (FGE) for each proposed classification), job description), and rationale for proposed wage rate), including information regarding the agreement or disagreement of the authorized representative of the employees involved, or where there is no authorized representative, the employees themselves. This report should be submitted to the contracting officer no later than 30 days after such unlisted class(es) of employees performs any contract work.
- 3) The contracting officer reviews the proposed action and promptly submits a report of the action, together with the agency's recommendations and pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. (See section 4.6(b) (2) of Regulations 29 CFR Part 4).
- 4) Within 30 days of receipt, the Wage and Hour Division approves, modifies, or disapproves the action via transmittal to the agency contracting officer, or notifies the contracting officer that additional time will be required to process the request.
- 5) The contracting officer transmits the Wage and Hour decision to the contractor.
- 6) The contractor informs the affected employees.

Information required by the Regulations must be submitted on SF 1444 or bond paper.

When preparing a conformance request, the "Service Contract Act Directory of Occupations" (the Directory) should be used to compare job definitions to insure that duties requested are not performed by a classification already listed in the wage determination. Remember, it is not the job title, but the required tasks that determine whether a class is included in an established wage determination. Conformances may not be used to artificially split, combine, or subdivide classifications listed in the wage determination.