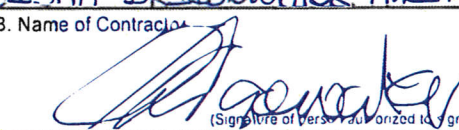
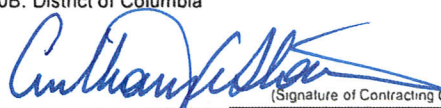


<b>AWARD/CONTRACT</b>		1. Solicitation Number <b>CFOPD-18-R-045</b>		Page of Pages 1      50			
2. Contract Number <b>CFOPD-19-C-022</b>		3. Effective Date		4. Requisition/Purchase Request/Project No.			
5. Issued By Office of the Chief Financial Officer Office of Contracts 1100 - 4th Street, SW., Suite E610 Washington, DC 20024		Code		6. Administered By (If other than line 5)			
7. Name and Address of Contractor (No. Street, city, country, state and ZIP Code) <b>Bert Smith &amp; Co.</b> 1090 Vermont Avenue, NW, Suite 920 Washington, DC 20005 Attn: Keisha Bridgewater <b>kbridgewater@bertsmithco.com</b>			8. Delivery <input checked="" type="checkbox"/> FOB Destination <input type="checkbox"/> Other (See Schedule Section F)				
			9. Discount for prompt payment				
			10. Submit Invoices in accordance with Section G.3		Item		
Code			Facility		of the Contract.		
11. Ship to/Mark For Office of the Chief Financial Officer Office of Finance and Treasury 1101 4th Street, SW, Suite W850 Washington, DC 20024			Code				
			12. Payment will be made by Office of the Chief Financial Officer Office of Management and Administration Financial Operations/Accounts Payable 1100 4th Street, SW Suite E600 Washington, DC 20024				
13. Contract Type: Requirements with Firm Fixed Price Components			14. Accounting and Appropriation Data				
15A. Item	15B. Supplies/Services		15C. Qty	15D. Unit	15E. Unit Price	15F. Amount	
1	Collateral Bond Auditing Services					\$156,450.00	
Total Amount of Contract						\$156,450.00	
16. Table of Contents							
(X)	Section	Description	Pages	(X)	Section	Description	Pages
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
x	A	Solicitation/Contract Form	1	x	I	Contract Clauses	23
x	B	Supplies or Services and Price/Cost	2	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS			
x	C	Description/Specifications/Work Statement	4	x	J	List of Attachments	50
x	D	Packaging and Marking	8	PART IV - REPRESENTATIONS AND INSTRUCTIONS			
x	E	Inspection and Acceptance	9	K	Representations, Certifications and Other Statements of Offerors		N/A
x	F	Deliveries or Performance	11		Instructions, conditions & notices to offerors		N/A
x	G	Contract Administration Data	12	L	Evaluation factors for award		N/A
x	H	Special Contract Requirements	15	M			
Contracting Officer will Complete Item 17 or 18 as Applicable							
17 <input checked="" type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return <u>1 pdf</u> copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)				18 <input type="checkbox"/> AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number _____ including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.			
19A. Name and Title of Signer (Type or print) <b>KEISHA BRIDGEWATER, AUDIT DIRECTOR</b>				20A. Name of Contracting Officer Anthony A. Stover, CPPO			
19B. Name of Contractor		19C. Date Signed		20B. District of Columbia		20C. Date Signed	
		03-01-19				3-7-19	
<small>(Signature of Person Authorized to Sign)</small>				<small>(Signature of Contracting Officer)</small>			

**SECTION B****PRICE SCHEDULE****B.1 GENERAL INFORMATION**

The District of Columbia, Office of the Chief Financial Officer, Office of Contracts (District), on behalf of the Office of Finance and Treasury (OFT) requires the services of a Certified Public Accounting firm to provide collateral bonds auditing and related services.

**B.2 CONTRACT TYPE**

This a Requirements contract with Firm Fixed Unit prices and a Firm Fixed Price component.

**B.3 PRICING**

B.3.1 The District will purchase its requirements of the services included herein from the Contractor. The estimated quantities stated in the Pricing Schedule reflect the best estimates available. The estimate shall not be construed as a representation that the estimated quantity will be required or that conditions affecting requirements will be stable. The estimated quantities shall not be construed to limit the quantities which may be required from the Contractor by the District or to relieve the Contractor of its obligation to fill all such requirements

B.3.2 The stated fixed unit price for each Contract Line Item Number (CLIN) shall be inclusive of all the Contractor's direct cost, indirect cost, and profit including travel, material, and delivery. The price shall include all cost associated with the services described in and required by the Contract.

**B.3.3 Price Schedule****B.3.3.1 Base Year**

CLIN	Item Description	Firm Fixed Price
001	Task A: Collateral Bonds Audit and Related Services (Section C.3.1)	\$83,000
002	Task B: Assistance with Operational Process Development and Documentation (Section C.3.2)	\$38,350

CLIN	Item Description	Estimated Quantity/Unit	Unit Price	Extended Price
003	Ongoing Quarterly Reviews (Section C.4)	3 Reviews	\$11,700	\$35,100

Base Year Total (CLINS 001-003)	\$156,450
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B.3.3.2 Option Year One

CLIN	Item Description	Quantity/Unit	Unit Price	Extended Price
101	Ongoing Quarterly Reviews (Section C.4)	4 Reviews	\$11,400	\$45,600

B.3.3.3 Option Year Two

CLIN	Item Description	Quantity/Unit	Unit Price	Extended Price
201	Ongoing Quarterly Reviews (Section C.4)	4 Reviews	\$11,400	\$45,600

B.3.3.4 Option Year Three

CLIN	Item Description	Quantity/Unit	Unit Price	Extended Price
301	Ongoing Quarterly Reviews (Section C.4)	4 Reviews	\$11,400	\$45,600

B.3.3.5 Option Year Four

CLIN	Item Description	Quantity/Unit	Unit Price	Extended Price
401	Ongoing Quarterly Reviews (Section C.4)	4 Reviews	\$11,400	\$45,600

*[End of Section B]*

**SECTION C****STATEMENT OF WORK****C.1 PURPOSE/OBJECTIVE**

The District of Columbia, Office of the Chief Financial Officer, Office of Contracts (District), on behalf of the Office of Finance and Treasury (OFT) requires the services of a Certified Public Accounting firm to provide collateral bonds auditing and related services.

**C.2 BACKGROUND**

- C.2.1 The District of Columbia Office of Finance and Treasury (OFT), Payment Operations Center (POC), plans to assume the overall management and administration of Collateral Deposits from the DC Department of Transportation (DOT), Public Space Maintenance Administration. Collateral Deposits are estimates of the costs of guaranteeing restoration of the public space, water, and sewage facilities that may be damaged due to proposed adjacent construction. Collateral deposits can take the form of Letters of Credit, bonding from insurance companies, certificates of deposit, and other forms as agreed to between the parties. The DOT currently performs complete management and administration of Collateral Deposits that are received, pursuant to construction activities. In the near future, the entire administration and management of the Collateral Deposit Program will be transferred to POC.
- C.2.2 The Collateral Deposit Program is governed by Title 24 of the District of Columbia Municipal Regulations Section 3405 (24 DCMR §3405), which establishes contract permit deposit regulations for excavation in public space. Excavating organizations are required to restore water systems, sewage, pathways, and other District infrastructure damaged by construction. Commercial and private organizations obtaining permits to excavate in the District of Columbia are required to deposit bonds with the DC Government, to ensure that resources are reserved to fund restoration projects. The DOT Public Space Maintenance Administration oversees the Program.
- C.2.3 The DC Public Space Maintenance Administration's Director authorizes the receipt and release of collateral deposits. Below (Sections B.4 – B.10), we have summarized the Public Space Maintenance functions, and Contractor rules. The Contractor seeking to undertake construction activities is referred to as "the Permittee".
- C.2.4 Under the DOT current operating practices, the Public Space Maintenance Administration's Director authorizes the receipt of collateral, through a signed memorandum. This memorandum is provided to the safe keeper of the collateral, currently the DOT. DOT maintains a copy of the memorandum and a copy of the collateral, on behalf of the Public Space Maintenance Administration.
- C.2.5 Deductions from Deposit: Under current regulations, the Director may make deductions from the balance of a Permittee's Deposit(s) to recover all costs and penalties resulting from contractors' damaging public space.

- C.2.6 Retention of Deposit for Two (2) Years: The District is required to retain each Deposit made, for a period of two (2) years after the satisfactory permanent restoration of an excavated area, to secure the obligations in the Permit.
- C.2.7 Return of Deposit: Upon expiration of two (2) years after the satisfactory permanent restoration of an area excavated; a Permittee's Deposit(s), less the deductions made, may be claimed by the Permittee or its assigns.
- C.2.8 Stop Work Order: (Permit Modification, and Permit Revocation). Upon notice from the Director that work on any excavation is being performed contrary to the provisions of governing regulations, the Permit conditions, the Standard Specifications, or in an unsafe and dangerous manner; the excavation site shall be posted with a stop work order, and such work shall be immediately stopped until the situation is corrected. The Director may also impose new conditions upon the issuance of a Permit or suspend or revoke a Permit.
- C.2.9 Unclaimed Deposits: If a Permittee or its assigns does not claim a Deposit within 30 days after the expiration of the two (2) year period, the Director shall notify the Permittee or its assigns, at the Permittee's or assigns' last known address of record, of the unclaimed deposit. If the Permittee has not claimed the deposit within one year after the date of the Director's notice, the Director shall deposit the unclaimed deposit into the Department of Transportation's Unified Fund, in accordance with section 9c(c)(9) of the Department of Transportation Establishment Act of 2002, effective October 20, 2005 (D.C. Law 16-33; D.C. Official.
- C.2.10 The full regulation (24 DCMR §3405) can be viewed at the following site:  
<http://www.dcregs.dc.gov/Gateway/RuleHome.aspx?RuleNumber=24-3405>.

### **C.3 REQUIREMENTS**

#### **C.3.1 Task A: Audit and Related Services**

- C.3.1.1 In order to facilitate the smooth and comprehensive transition of the Collateral Deposit Program from the DOT Public Space Maintenance Administration, to the Office of Finance and Treasury (OFT); the District of Columbia, OFT is seeking the services of a Certified Public Accounting firm to provide auditing and related services. These services are designed to provide OFT with assurance as to the completeness and accuracy of a collateral deposits, as identified in the supporting ledgers maintained by DOT. The Contractor shall do the following:
- a. Validate all collateral deposits, identified by DOT in its inventory listing as of a date certain.
  - b. Identify and determine the nature/type of the collateral currently held by DOT.
  - c. Validate/confirm the current status of such collateral as of a date certain. This shall include obtaining evidence to establish whether the collateral is negotiable, and

whether there are any defaults. Also, determining whether OFT need legal documentation to take possession of the collateral bond.

- d. Confirm with the custodial bank or other party holding the collateral; the nature, amount, and any restrictions and other particulars, relating to each collateral deposit.
- e. Review collateral deposits to determine the party to whom rights are conveyed, if there is default. This information shall be provided to OFT, for every collateral deposit.
- f. In order to establish the completeness and accuracy, the Contractor shall test a sample of collateral deposits, at their origination and release. This shall include verifying open projects against collateral files, for compliance with all significant requirements relating the statutory requirements for the administration of collateral deposits.
- g. As part of its verification process, the Contractor shall conduct validation procedures related to defaults and determine whether the disposition of the collateral deposits was in compliance with the statutory requirements.
- h. The Contractor shall test collateral deposits, against the statutory periods for their retention and release.
- i. Identify and obtain the originals of all supporting documents that were generated at the initiation of collateral deposits, during their administration, up to the date of this engagement. The originals of these documents will be transferred to OFT, to be retained as its permanent record supporting each collateral deposit.

C.3.1.2 The deliverables for this task shall include a comprehensive report which validates, as adjusted, the collateral deposits as represented by DOT, as of a date certain. The Contractor shall provide a listing of all documents that are required for the successful administration of the Collateral Deposit Program, by OFT. Additionally, the Contractor shall assess the supporting documentation; and provide OFT with all documentary evidence to support whether the collateral deposits are negotiable, if there is default by the contractor; since OFT wants to have the “Original” bond, and documentation that conveys rights to OFT, if there is default.

**C.3.2 Task B: Assistance with Operational Process Development and Documentation**

C.3.2.1 OFT is also seeking assistance from the CPA firm, in establishing operating policies and procedures for the managing and safeguarding of the collateral deposits. As part of this process, the Contractor shall conduct meetings with OFT and DOT personnel, to gain an understanding of the existing business processes, and to assess the extent to which existing business processes at DOT are transferrable to OFT. OFT has deemed this process to be critical, because it wants to utilize as much as possible, the existing best practices undertaken by DOT. This process shall include:

- a. Developing and presenting a broad outline to OFT, as to how the collateral deposits’ business processes should be executed;



- b. Assessing DOT's electronic system for tracking and maintaining records of the collateral to determine whether there is a cost-benefit to OFT for leveraging and adopting DOT's technology to execute its new function to safeguard the collateral deposits;
- c. Identifying and integrating critical internal controls for safeguarding and administering collateral deposits;
- d. Incorporating critical deposit safeguards;
- e. Clearly defining the business processes between DOT and OFT;
- f. Clearly defining the business processes between Public Space Maintenance Administration and OFT;
- g. Identifying periodic reporting requirements;
- h. Identifying periodic oversight requirements;
- i. Identifying performance metrics to evaluate the efficiency and effectiveness of the new safeguarding process; and
- j. Using flowcharts and narratives, as appropriate, to document the business processes.

C.3.2.2 The deliverables for this task shall include process documentation, detailing the complete business processes for the administration of Collateral Deposit Program. This documentation shall reflect and incorporate the OFT and DOT business process.

#### **C.4 ADDITIONAL TASKS**

The Contractor shall perform ongoing quarterly reviews of the finalized policies and procedures for security oversight and to ensure internal controls and proper oversight.

#### **C.5 EXPERIENCE AND QUALIFICATIONS**

The Contractor shall demonstrate its experience in providing collateral bond auditing services as set forth in Section C.

*[End of Section C]*

**SECTION D****PACKAGING AND MARKING****D.1 PACKAGING**

All reports and deliverables that are in “hard copy” and physically transported through the U.S. mail or private courier services are to be securely packaged using the Contractor’s best practices.

**D.2 MARKING**

- D.2.1 Unless otherwise specified herein, all reports and deliverables delivered under this contract must be plainly marked, stating the Contractor’s name, contract number and addressed to the recipient, including the name of the office or floor, and the recipient’s office telephone number as noted in the contract.
- D.2.2 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.
- D.2.3 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.

*[End of Section D]*



**SECTION E****INSPECTION, ACCEPTANCE AND WARRANTY OF SERVICES****E.1 INSPECTION**

Inspection of all goods and services provided by the Contractor under this contract shall be performed by the Contracting Officer's Technical Representative ("COTR") identified in Section G.1 (b).

**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.
- (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. 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.

**E.2 ACCEPTANCE**

Acceptance of all products and services provided under this contract shall be performed by the COTR. Acceptance means approval by the COTR of specific services as partial or complete performance of the contract.

**E.3 WARRANTY OF SERVICES****THE TIME PERIOD FOR THIS WARRANTY IS THE LIFE OF THE CONTRACT PLUS ALL ACTIVE OPTIONS AND EXTENSIONS.**

- (a) Notwithstanding inspection and acceptance by the District or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Contracting Officer shall give written notice of any defect or nonconformance to the Contractor *within 30 days from the date of discovery*. This notice shall state either:
- (1) That the Contractor shall correct or re-perform any defective or nonconforming services; or
  - (2) That the District does not require correction or re-performance.
- (b) If the Contractor is required to correct or re-perform, it shall be at no cost to the District, and any services corrected or re-performed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or re-perform, the Contracting Officer may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the District thereby, or make an equitable adjustment in the contract price.
- (c) If the District does not require correction or re-performance, the Contracting Officer shall make an equitable adjustment in the contract price.

*[End of Section E]*

**SECTION F****DELIVERABLES/PERFORMANCE****F.1 CONTRACT PERIOD*****F.1.1 Base Paid Period***

The base paid period shall begin on date the date of the Contracting Officer's signature and end one year thereafter.

***F.1.2 Options to Extend***

The District may extend the term of this contract for four (4) one-year option periods or fractions thereof. The District may exercise an option by written notice to the Contractor before expiration of the contract. The preliminary notice does not commit the District to an extension.

**F.2 DELIVERABLES**

**F.2.1** The expected deliverables shall be submitted in accordance with the statement of work in Section C.

**F.2.2** Reports that are required are to be submitted to the District as a deliverable(s) shall be delivered in accordance with the Statement of Work contained in Section C. If the report(s) is not submitted as part of the deliverables, final payment to the Contractor shall not be paid.

*[End of Section F]*

**SECTION G****CONTRACT ADMINISTRATION DATA****G.1 CONTRACT ADMINISTRATION****(a) Contracting Officer**

The Contracting Officer for this contract is:

Mr. Anthony A. Stover, CPPO  
Contracting Officer  
Office of the Chief Financial Officer  
Office of Contracts  
1100 4<sup>th</sup> Street SW Suite 610 East  
Washington, DC 20024  
Phone: 202-442-7122  
Email: [Anthony.Stover@dc.gov](mailto:Anthony.Stover@dc.gov)

**The Contracting Officer is the ONLY official authorized to legally bind the District or make changes to the terms and conditions of this contract. Only he or his designee can increase, decrease, extend or terminate this agreement. All other changes are unauthorized.**

**(b) Contracting Officer Technical Representative (COTR)**

The COTR for this contract will maintain a close relationship with the Contractor and will ensure that the Contractor's work conforms to the day-to-day technical requirements of the contract. **It is understood and agreed that the COTR shall not have authority to make changes in the scope or terms and conditions of the contract.** The COTR is:

Ms. Mia R. Newman  
Management Analyst  
Office of the Chief Financial Officer  
Office of Finance and Treasury  
1101 4<sup>th</sup> Street SW, Suite W850  
Washington, DC 20024  
Phone: (202) 727-3829  
Email: [mia.newman@dc.gov](mailto:mia.newman@dc.gov)

**G.2 INVOICE PAYMENT**

G.2.1 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.2.2 The District will pay the Contractor on or before the 30<sup>th</sup> day after receiving a proper invoice from the Contractor. The District reserves the right to conduct post payment reviews or audits.

### **G.3 INVOICE SUBMITTAL**

- G.3.1 The Contractor shall submit proper invoices on a monthly basis or as otherwise specified in the contract.
- G.3.2 The Contractor shall submit payment requests in electronic format through the DC Vendor Portal <https://vendorportal.dc.gov> by selecting the applicable purchase order number which is listed on the Contractor's profile.
- G.3.3 To constitute a proper invoice, the Contractor shall attach to all payment requests the invoice and all supporting documentation or information.

### **G.4 THE QUICK PAYMENT PROVISIONS**

#### **G.4.1 INTEREST AND PENALTIES TO CONTRACTORS**

- G.4.1.1 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 the 15th day after the required payment date for any other item.
- G.4.1.2 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.4.2 PAYMENTS TO SUBCONTRACTORS**

- G.4.2.1 The Contractor shall take one of the following actions within 7 days of receipt of any amount paid to the Contractor by the District for work performed by any subcontractor under a contract:
- 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.4.2.2 The Contractor shall 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 if payment for the completed delivery of the item of property or service is made on or before the 15th day after the required payment date for any other item.

- G.4.2.3 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.4.2.4 A dispute between the Contractor and subcontractor relating to the amounts or entitlement of a subcontractor to a payment or a late payment interest penalty under the Quick Payment Act does not constitute a dispute to which the District of Columbia is a party. The District of Columbia may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

## **G.5 ASSIGNMENT OF CONTRACT PAYMENTS**

- G.5.1 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 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT**

- G.6.1 For contracts subject to the 51% District Residents New Hires Requirement and First Source Employment Agreement, final requests for payment shall be accompanied by the report or a waiver of compliance pursuant to Section I.31.
- G.6.2 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 Requirement and First Source Employment Agreement requirements.

*[End of Section G]*

**SECTION H****SPECIAL CONTRACT REQUIREMENTS****H.1 STAFFING**

The Contractor shall not employ or permit the employment of any unfit or unqualified person or persons not skilled in the tasks assigned to them by the contractor. The Contractor shall at all times employ sufficient labor to carry out functions and services in the manner and time prescribed by the Contract. The Contractor shall be responsible to the District for all acts and omissions of the Contractor's employees, agents and subcontractors and the Contractor shall enforce strict discipline among the Contractor's employees, agents and subcontractors performing the services under the Contract. Any person employed by the Contractor shall, at the written request of the District, and within the District's sole discretion, be removed immediately by the Contractor from work relating to the Contract.

**H.2 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 in consultation with the COTR. 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, including any work conducted by a subcontractor.

**H.3 CERTIFIED BUSINESS ENTERPRISE SUBCONTRACTING REQUIREMENTS**

H.3.1 Beneficiaries of all non-construction contracts for government-assisted projects in excess of \$250,000, unless a waiver has been approved by the Director of the Department of Small and Local Business Development in accordance with D.C. Code §2-218.51, are required to:

- (a) Subcontract at least 35% of the dollar volume to small business enterprises, as defined in D.C. Code §2-218.32; or
- (b) If there are insufficient qualified small business enterprises to completely fulfill the requirement set forth in H.3.1(a), then the subcontracting requirement may be satisfied by subcontracting 35% of the dollar volume to any qualified certified business enterprises, as defined in D.C. Code §§2-218.31-39a; provided, that all reasonable efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall subcontracting work.
- (c) For each government-assisted project for which a certified business enterprise is utilized to meet the subcontracting requirements set forth above in H.3.1(a) or H.3.1(b), the certified business enterprise shall perform at least 35% of the contracting effort with its own organization and resources.



- (d) Beneficiaries certified as a small business enterprise, local business enterprise, or disadvantaged business enterprise shall not have to comply with Sections H.3.1(a) or H.3.1(b).

### H.3.2

- (a) For each government-assisted project for which a certified business enterprise is selected as a Beneficiary and is granted points or a price reduction pursuant to D.C. Code §2-218.43 or is selected through a set-aside program, the certified business enterprise shall perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracted effort shall be with certified business enterprises.
- (b) For each government-assisted project for which a certified joint venture is selected as a Beneficiary and is granted points or a price reduction pursuant to D.C. Code §2-218.43 or is selected through a set-aside program, the certified business enterprise shall perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracted effort shall be with certified business enterprises.
- (c) For each government-assisted project of \$1 million or less for which a certified business enterprise is selected as a Beneficiary and is granted points or a price reduction pursuant to D.C. Code §2-218.43 or is selected through a set-aside program, the certified business enterprise shall perform at least 50% of the on-site work with its own workforce.

- H.3.3 Bids or proposals responding to a solicitation, including an open market solicitation, shall be deemed nonresponsive and shall be rejected if a subcontracting plan is required by law and the Beneficiary fails to submit a subcontracting plan as part of its bid or proposal. The subcontracting plan required shall be provided before the District accepts the submission of the bid or proposal.

- H.3.4 A Beneficiary's subcontracting plan shall specify all of the following:

- (a) The name and address of the subcontractor;
- (b) A current certification number of the small or certified business enterprise;
- (c) The scope of work to be performed by the subcontractor; and
- (d) The price to be paid by the Beneficiary to the subcontractor.

- H.3.5 No Beneficiary shall be allowed to amend the subcontracting plan filed as part of its bid or proposal except with the consent of the Director of the Department of Small and Local Business Development. Any reduction in the dollar volume of the subcontracted portion resulting from such amendment of the plan shall inure to the benefit of the District.

- H.3.6 No multiyear contracts or extended contracts, which are not in compliance with D.C. Code §2-218.46 or this Section H.3 at the time of the contemplated exercise of the option or extension, shall be renewed or extended, and any such option or extension shall be void.

- H.3.7 A Beneficiary shall submit within 15 days of contract award, to the Contracting Officer, project manager, District of Columbia Auditor and the Director of the Department of Small and Local Business Development copies of the executed contracts with the subcontracts identified in the subcontracting plan. Failure to submit copies of the executed contracts shall render the underlying contract voidable by the District.
- H.3.8 The Beneficiary shall provide written notice to the Department of Small and Local Business Development and District of Columbia Auditor upon the initiation and completion of a project.
- H.3.9 Within 15 days after the end of each quarter, the Beneficiary shall provide a quarterly report to the Department of Small and Local Business Development, the Contracting Officer, project manager and the District of Columbia Auditor which shall include a list of each subcontractor identified in the subcontracting plan and for each subcontract:
- (a) The price to be paid by the contractor to the subcontractor;
  - (b) A description of the goods procured or the services contracted for;
  - (c) The amount paid by the contractor to the subcontractor under the subcontract; and
  - (d) A copy of the fully executed subcontract, if it was not provided in a prior quarterly report. If not included, the Beneficiary shall not receive credit toward the subcontracting requirements of this section for that subcontract.
- H.3.10 The Beneficiary shall meet on an annual basis with the Department of Small and Local Business Development, the Contracting Officer, project manager and the District of Columbia Auditor to provide an update of the subcontracting plan for utilization of small business enterprises and certified business enterprises. The Department of Small and Local Business development shall provide the Beneficiary with a 30-day written notice of the meeting.
- H.3.11 A Beneficiary and/or certified business enterprise subject to this section, that fails to meet the requirements of this section shall be subject to penalties set forth in D.C. Code §2-218.63.
- H.3.12 Waiver of Subcontracting Requirements
- (a) The Director of the Department of Small and Local Business Development may waive the subcontracting requirements only if there is insufficient market capacity for the goods and services that comprise the project and such lack of capacity leaves the contractor commercially incapable of achieving the subcontracting requirements.
  - (b) Prior to submission of bids or proposals, the Beneficiary may request a waiver of the subcontracting requirements by timely filing a written request with the Contracting Officer detailing the reasons justifying a waiver, including the Beneficiary's efforts to secure involvement by Certified Business Enterprises. The Contracting Officer will, in turn, use the Beneficiary's information to submit a waiver request to the Director of the Department of Small and Local Business Development.

- (c) The Contracting Officer will provide written notice of the waiver determination to the Beneficiary prior to the acceptance of bids or proposals and upon a decision of the waiver by the Director of the Department of Small and Local Business Development.
- (d) The Beneficiary should provide the following information in its waiver request to the Contracting Officer to demonstrate the Beneficiary's good faith efforts to secure involvement by a Certified Business Enterprise:
  - i. Whether the Beneficiary advertised in general circulation, trade association, or other media outlets concerning the subcontracting opportunity;
  - ii. Whether the Beneficiary provided written notice to a reasonable number of certified business enterprises that their interest in the subcontracting opportunity was being solicited;
  - iii. Whether the Beneficiary conducted any pre-solicitation or pre-bid conferences to inform certified business enterprises of the subcontracting opportunity;
  - iv. Whether the Beneficiary provided sufficient time to allow certified business enterprises to participate effectively in its efforts to secure involvement by a certified business enterprise;
  - v. Whether the Beneficiary followed up responses of interest by conducting negotiations with certified business enterprises;
  - vi. Whether rejections by the Beneficiary of certified business enterprises as being unqualified were based on sound reasoning and thorough investigation of their capabilities;
  - vii. Whether the Beneficiary made efforts to assist interested certified business enterprises in obtaining bonding, lines of credit, or insurance required by the Beneficiary;
  - viii. Whether the Beneficiary effectively used the services of the Department of Small and Local Business Development, (202) 727-3900 and <http://dslbd.dc.gov>, in recruiting qualified certified business enterprises; and
  - ix. Whether bids submitted by certified business enterprises were excessive or noncompetitive based upon a review of prevailing market conditions.
- (e) While the information described in (d) above will assist the Director of the Department of Small and Local Business Development in reviewing the waiver request, it does not guarantee that a waiver will, in fact, be approved. Additional factors may be considered and additional information may be requested from the Beneficiary to support the waiver request.

H.3.13 In addition to the information provided by the Beneficiary, the Contracting Officer will include the following information in its written request for a waiver:

- (a) The number of certified business enterprises, if any, qualified to perform the elements of the work that comprise the project;
- (b) A summary of the market research or outreach conducted to analyze the relevant market; and
- (c) The consideration given to alternate methods for acquiring the work to be subcontracted in order to make the work more amenable to being performed by certified business enterprises.

H.3.14 For purposes of this Section H.3, the term:

- (a) “Beneficiary” means a business enterprise that is the prime contractor or developer on a government-assisted project.
- (b) “Government-assisted project” means:
  - i. A contract executed by an agency on behalf of the District or pursuant to statutory authority that involves District funds or, to the extent not prohibited by federal law, funds that the District administers in accordance with a federal grant or otherwise;
  - ii. A project funded in whole or in part by District funds;
  - iii. A project that receives a loan or grant from a District agency;
  - iv. A project that receives bonds or notes or the proceeds thereof issued by a District agency, including tax increment financing or payment in lieu of tax bonds and notes, or industrial revenue bonds;
  - v. A project that receives District tax exemptions or abatements that are specific to the project and not to the nature of the entity undertaking the project, such as a religious institution or nonprofit corporation; or
  - vi. A development project conducted pursuant to a disposition under section 1 of An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801).

H.3.15 Notwithstanding the requirements set forth in this Section H.3, a Beneficiary, and any other certified business enterprise subject to this section, shall fully comply with the requirements set forth in D.C. Code §§ 2-218.46, 2-218.51. If there is a conflict between the requirements set forth in this Section H.3 and D.C. Code §§ 2-218.46, 2-218.51, the requirements set forth in D.C. Code §§ 2-218.46, 2-218.51 shall govern.

#### **H.4 WARRANTIES**

- H.4.1 The Contractor warrants and agrees that it is lawfully organized and constituted under all federal, state and local laws, ordinances and other authorities of its domicile and is otherwise in full compliance with all legal requirements of its domicile.
- H.4.2 The Contractor warrants and agrees that it is of legal authority and capacity to enter into and perform under the Contract, and that it has the financial ability to perform its obligations under such Contract.
- H.4.3 The Contractor warrants and agrees that it has been duly authorized to operate and do business in all places where it will be required to do business under the Contract that it

has obtained or will obtain all necessary licenses and permits required in connection with such Contract; and that it will fully comply with all laws, decrees, labor standards and regulations of its domicile and wherever performance occurs during the term of such Contract.

- H.4.4 The Contractor warrants and agrees that it has no present interest and shall not acquire any interest which would conflict in any manner with its duties and obligations under the Contract.
- H.4.5 The Contractor warrants and agrees that all systems analysis, systems design and programming pursuant to the Contract or for use in its performance there under has been and shall be prepared or done in a high quality, professional and competent manner using only qualified personnel.
- H.4.6 The Contractor further represents and warrants that all programs implemented in its performance under the contract shall meet the performance standards required there under and shall correctly and accurately perform their intended functions on the equipment supplied by the District or Contractor.
- H.4.7 The Contractor warrants and agrees that all services provided by it under the Contract shall be performed in a prompt, high quality, professional and competent manner using only qualified personnel.
- H.4.8 The Contractor warrants and agrees that it will not take any action inconsistent with any of the terms, conditions, agreements, or covenants set forth in this RFP without the express written consent of the District.
- H.4.9 The Contractor warrants and agrees that it shall keep all equipment in good condition and repair, and shall not permit anything to be done that may materially impair the value thereof. The Contractor shall use such equipment only in the ordinary course of its performance under the Contract and shall not permit such equipment to be used in violation of any applicable law, regulation or policy of insurance. The Contractor agrees to develop a maintenance and replacement schedule subject to approval by the District and agrees to comply with that schedule.
- H.4.10 The Contractor warrants and agrees that it shall not sell, assign, lease, transfer, pledge, hypothecate, or otherwise dispose of any component of any goods, system proposed in the Contract or any interest therein, or permit any of it to become a fixture or accession to other goods or property without the prior written consent of the District.

## **H.5 DISCLOSURE OF LITIGATION**

Each Offeror shall include in its proposal a complete disclosure of any material civil or criminal litigation or indictment either threatened or pending involving the Offeror. The Offeror shall also disclose any material litigation threatened or pending for subcontractors, consultants, and/or lobbyists. For purposes of this section, material refers to any action or pending action that a reasonable person knowledgeable in the industry would consider relevant or any development such a person would want to be aware of in order to stay fully apprised of the total mix of information relevant to the industry and its

operations. This is a continuing disclosure requirement; any litigation commencing after submission of a Proposal shall be disclosed in a written statement within fifteen (15) days of its occurrence. The Contractor shall be required to file with the District comprehensive monthly reports regarding all threatened or pending litigation involving the Contractor's District of Columbia operations and all threatened or pending litigation that may be considered material to the overall operations of the Contractor.

## **H.6 CONTINUITY OF SERVICES**

The Contractor recognizes that the services provided under this contract are vital to the District of Columbia and must be continued without interruption and that, upon contract expiration or termination, a successor, either the District Government or another Contractor, at the District's option, may continue to provide these services. If another Contractor is awarded a future contract for performance of the required services, the original Contractor shall cooperate fully with the District and the new Contractor in any transition activities that the Contracting Officer deems necessary during the term of the contract. To that end, the Contractor agrees to exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

## **H.7 BACKGROUND INVESTIGATIONS AND OTHER INTEGRITY REQUIREMENTS**

- H.7.1 The District may initiate investigations into the backgrounds of any of the Contractor's officers, principals, investors, owners, employees, vendors, subcontractors, or subcontractors' officers, principals, owners, employees or vendors, or any other associates of the Contractor(s) it deems appropriate. Such background investigations may include the completion of certain documents, and fingerprint identification by appropriate law enforcement agencies.
- H.7.2 The Contractor agrees that, during the term of the Contract and any renewal thereof, it shall be obligated to provide such information about its officers, directors, employees and owners, as well as all information about its subcontractors' officers, directors, employees and owners, as the District may prescribe. The Contractor also agrees that the District may conduct background investigations of such persons.
- H.7.3 The District may also require that contractors (1) fully cooperate with official inquiries by responding to questions truthfully and under oath when required, whether orally or in writing, (2) provide documents and other information of official interest, and (3) attend integrity training.

## **H.8 USUFRUCT**

If, for any reason other than breach of Contract by the District, a Contractor shall lose its ability to provide service against the Contract, the District shall acquire a usufruct in all contractual items owned by the Contractor in conjunction with the Contract and which are necessary to provide such services. Said usufruct shall be limited to the right of the District to possess and make use of such contractual items solely for the use and benefit of the District in operating, maintaining, altering, replacing and improving the programs

and systems being used by the District under the Contract. Such usufruct shall be limited in time to the duration of the Contract and any extension thereof, and in scope for programs, systems and other items being used by the District under the Contract. In the event that the District determines that assumption of operations by the District may be pending, the Contractor shall not unreasonably withhold access and shall reasonably comply with any District request for training in the operations of the System.

#### **H.8 DIVERSION, REASSIGNMENT AND REPLACEMENT OF KEY PERSONNEL**

The key personnel specified in the contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified key personnel for any reason, the Contractor shall notify the CO at least thirty (30) calendar days in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact upon the contract. The Contractor shall obtain written approval of the CO for any proposed substitution of key personnel.

*[End of Section H]*



**SECTION I****CONTRACT CLAUSES****I.1 LAWS AND REGULATIONS INCORPORATED BY REFERENCE**

To the extent applicable, the provisions of the following acts, together with the provisions of applicable regulations made pursuant to said acts are hereby incorporated by reference into this contract; together with the laws and regulations of the District of Columbia:

- A. Contract Work Standards Act of August 13, 1962, also known as the Contract Work Hours and Safety Standards Act of 1962, 76 Stat. 357-360.
- B. Buy American Act, Act of March 3, 1983, c.212, Title III, 47 Stat. 1520, as amended.
- C. Walsh-Healy Public Contracts Act, Act of June 30, 1936, c.881, 49 Stat. 2036, as amended. (Applies only when contract is \$10,000 or more).
- D. Mayor's Order 85-85, dated June 10, 1985, as amended, entitled: "Compliance with Equal Opportunity Obligations in Contracts." All required forms are available on the Office of Contracting and Procurement website at [www.ocp.dc.gov](http://www.ocp.dc.gov) (See Solicitation Attachments).
- E. Public Law 93-112, Rehabilitation Act of 1973, Section 504, as amended.
- F. Mayor's Order 83-265, dated November 9, 1983 entitled: Employment Agreement Goals and Objectives for all District of Columbia Projects."
- G. D.C. Law 5-93, dated May 9, 1984, the First Source Employment Agreement Act of 1984.

**I.2 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.

**I.3 INDEMNIFICATION**

- I.3.1 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.

- I.3.2 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.

#### **I.4 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.

#### **I.5 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 – 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.”

#### **I.6 OFFICIALS NOT TO BENEFIT**

- I.6.1 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. (Procurement Practices Reform Act of 2010, D.C. Law 18-0371, D.C. Official Code, section 2-359.10, and Chapter 18 of the DC Personnel Regulations)

- I.6.2 The Contractor represents and covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants not to employ any person having such known interests in the performance of the contract.

## **I.7 DISPUTES**

All disputes arising under or relating to the contract shall be resolved as provided herein.

(a) **Claims by the Contractor against the District:** Claim, as used in paragraph (a) 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 the 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

- (1) 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 CO for a decision. The Contractor's claim shall contain at least the following:
  - (i) A description of the claim and the amount in dispute;
  - (ii) Data or other information in support of the claim;
  - (iii) A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and
  - (iii) The Contractor's request for relief or other action by the CO.
- (2) The CO may meet with the Contractor in a further attempt to resolve the claim by agreement.
- (3) The CO shall issue a decision on any claim within 120 calendar days after receipt of the claim. Whenever possible, the CO 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.
- (4) The CO's written decision shall do the following:
  - (i) Provide a description of the claim or dispute;
  - (ii) Refer to the pertinent contract terms;
  - (iii) State the factual areas of agreement and disagreement;

- (iv) 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;
  - (v) 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;
  - (vi) Indicate that the written document is the CO's final decision; and
  - (vii) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.
- (5) Failure by the CO to issue a decision on a contract claim within 120 days of receipt of the claim will be deemed to be a denial of the claim and will authorize the commencement of an appeal to the Contract Appeals Board as provided by D.C. Official Code § 2-360.04.
- (6) If a contractor is unable to support any part of its 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. Liability under this paragraph (a)(6) shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.
- (7) 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 CO.
- (b) Claims by the District against the Contractor:** Claim as used in paragraph (b) 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 the 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.
- (1) The CO shall decide all claims by the District against a contractor arising under or relating to a contract.
- (2) The CO shall send written notice of the claim to the contractor. The CO's written decision shall do the following:
- (i) Provide a description of the claim or dispute;
  - (ii) Refer to the pertinent contract terms;
  - (iii) State the factual areas of agreement and disagreement;
  - (iv) 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;

- (v) 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;
  - (vi) Indicate that the written document is the CO's final decision; and
  - (vii) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.
- (3) The CO shall support the decision by reasons and shall inform the Contractor of its rights as provided herein.
- (4) Before or after issuing the decision, the CO may meet with the Contractor to attempt to resolve the claim by agreement.
- (5) The authority contained in this paragraph (b) 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.
- (6) This paragraph shall not authorize the CO to settle, compromise, pay, or otherwise adjust any claim involving fraud.
- (c) Decisions of the CO shall be final and not subject to review unless the Contractor timely commences an administrative appeal for review of the decision, by filing a complaint with the Contract Appeals Board, as authorized by D.C. Official Code § 2-360.04.
- (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 CO.

## **I.8 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 changes cause 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 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 failure to agree shall be considered a dispute. Nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

## **I.9 TERMINATION FOR 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: (i) If the Contractor fails to make delivery of the

supplies or to perform the services within the time specified within the project work plan or any extension thereof; or (ii) 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 part as provided in paragraph A. above, 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 provisions of this clause. The Contractor shall work with any subsequent contractor to ensure a smooth transfer of information for a period of sixty (60) days.
- 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 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 the 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 contractor 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., above, 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, (ii) such partially completed supplies and materials, information, and contract rights (herein after called "manufacturing materials") as the Contractor has specifically produced or specifically produced or specifically acquired for the performance being 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 shall be at the contract price. Payment for manufacturing materials delivered to and agreed upon by the Contractor and Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact. The District may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sums as the Contracting Office 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 provision 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 a termination for convenience be the same as if the notice of termination had been issued pursuant to such clause. Section I.10 "Termination for Convenience."
- F. The rights and remedies of the District provided in this clause shall not be exclusive and are in addition to any rights and remedies provided by law or under this contract.
- G. As used in paragraph C., above, the terms "subcontractor" and "subcontractors" means subcontractor(s) at any tier.

#### **I.10 TERMINATION FOR CONVENIENCE**

- A. The District may, at any time, terminate performance of work under this contract in whole or 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. 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: (i) Stop work as specified in the notice; (ii) 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; (iii) Terminate all contracts to the extent they relate to the work terminated; (iv) 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 shall have the right to settle or pay any termination settlement proposal arising out of those terminations; (v) 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; (vi) As directed by the Contracting Officer, transfer title and deliver to the District: (a) the fabricated and unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and (b) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the District; (vii) Complete performance of the work not terminated; (viii) 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 have acquired an interest; (ix) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in the subparagraph (vi) above; provided, however, that the Contractor is not required to extend credit to any purchase, and 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.

- B. 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.
- C. After termination, the Contractor shall submit a final 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 not later than six (6) months from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 6-month period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after six (6) months or any extension.
- D. 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 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, or paragraph F., below, exclusive of costs shown in subparagraph F (iii) below, may not exceed the total contract price as reduced by: (a) the amount of payments previously made, and (b) 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 of 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: (i) The contract price for completed supplies or services accepted by the District (or sold or acquired under subparagraph A(ix), above, not previously paid for, adjusted for any saving of freight and other charges. (ii) The total of—

- (a) 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(i), above;
  - (b) 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(i) above; and
  - (c) A sum, as profit on subparagraph F. (i) 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 (c) and shall reduce the settlement to reflect the indicated rate of loss. (iii) The reasonable cost of settlement of the work terminated, including (a) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data; (b) The termination and settlement of subcontracts (excluding the amounts of such settlement); and (c) 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 E., 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 paragraph C., E. or I., of this clause except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph C. or I., 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 C., E. or I., the District shall pay the Contractor:
- (a) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (b) the amount finally determined on an appeal. In arriving at the amount due the Contractor under this clause, there shall be deducted: (i) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract; (ii) Any claim which the District has against the Contractor under this contract; and (iii) 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.
- I. 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 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

- J. The District may, under the terms and conditions it prescribes, make any 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. 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 ten 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 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.
- K. 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 three (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.

#### **I.11 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 made under this contract.
  - (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: (i) May be paid only the actual costs of the work performed to the date of termination, plus termination costs, if any; and (ii) shall refund all profits or fixed fees realized under the contract.
- C. The rights and remedies contained in this Clause are in addition to any other rights or remedies provided by law, and the exercise of any of them is not a waiver of any other right or remedy provided by law.

**I.12 EXAMINATION OF THE BOOKS**

- I.12.1 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.
- I.12.2 The Contracting Officer, the DC Inspector General, OCFO, and the District of Columbia Auditor, and/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.

**I.13 NONDISCRIMINATION 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.
- (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 9251, 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 the terms of any subcontractor agreement each subcontractor to permit access of such subcontractor's 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 Contractor as a result of such direction by the Contracting Officer, the Contractor may request the District to enter into such litigation to protect the interest of the District.

#### **I.14 SERVICE CONTRACT ACT OF 1965**

Definitions:

“Act”, as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351- 358). “Contractor” as used in this clause, means the prime Contractor or any subcontractor at any tier. “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 Government contract nor 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.

- A. **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 (29CFR 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, 29 CFR 4.
- B. **Compensation:** (i) The Contractor shall pay not less than the minimum wage and shall furnish fringe benefits to each service employee under this contract in accordance with wages and benefits determined by the Secretary of Labor or the Secretary’s authorized representative, as specified in any attachments to this contract; (ii) If there is an attachment, the Contractor shall classify any class of service employees not listed in it, but to be employed under this contract. The classification shall provide a reasonable relationship to those listed in the attachment. The Contractor shall pay that class wages and fringe benefits determined by agreement of the interested parties: The contracting agency, the Contractor, and the employees who will perform the contract or their representatives. If the interested parties do not agree, the Contracting Officer

shall submit the question, with a recommendation for final determination to the Office of Government Contract Wage Standards, Wage and Hour Division Employment Standards Administration (ESA), and the Department of Labor. Failure to pay such employees the compensation agreed upon by the interested parties or finally determined by ESA is a contract violation. (iii) If the term of this contract is more than one (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 two (2) years under wage determinations issued by ESA.

- C. **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 obligations to pay a higher wage to any employee.
- D. **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 - (i) Determines that the agreement under the predecessor was not the result of arms-length negotiations, or (ii) 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.
- E. **Notification to Employees.** The Contractor shall notify each service employee commencing work on this contract of the 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 work site, using such poster as may be provided by the Department of Labor.
- F. **Safe and sanitary working conditions.** The Contractor shall not permit services called for by this contract to be performed in building 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.
- G. **Records.** The Contractor shall maintain for three (3) years from the completion of the work, and make available for inspection and transcription by authorized ESA representatives, a record of the following:



- (i) 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;
  - (c) Rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;
  - (d) Daily and weekly hours worked; and
  - (e) Any deductions, rebates, or refunds from total daily and weekly compensation.
- (ii) 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 (B)(iii) of this clause. A copy of the report required by paragraph (D) of this clause will fulfill this requirement.

- H. **Withholding of Payments and Termination of Contract:** The Contracting Officer shall withhold from the prime contractor under this or any other government 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. Additionally, any failure to comply with the requirements of this clause may be grounds for termination for default.
- I. **Contractor's Report:** (i) 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. (ii) If wages to be paid or fringe benefits to be furnished any service employee(s) under the contract are covered in collective bargaining agreement effective at any time when the contract is being performed, the prime 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 prime 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.
- J. **Variations, tolerances, and exemptions involving employment:** Notwithstanding any of the provisions in this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions authorized by the Secretary of Labor: (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, and student learners, disabled persons, or disabled clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of minimum wages, but without changing requirements concerning fringe benefits for 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; and (iv) an employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips credited by the employer against the minimum wage required by section 2(a)(1) of the Act 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.

#### **I.15 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.

#### **I.16 NON-DISCLOSURE AGREEMENT**

- A. The Contractor shall maintain as confidential and shall not disclose to third parties without the District's prior written consent, any District information including, but not limited to, the District's business activities, practices, systems, conditions, products, services, public information and education plans and related materials, and game and marketing plans.
- B. The Contractor 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.
- C. No information regarding the Contractor's performance of the contract shall be disclosed by the Contractor to anyone other than District Government officials unless written approval is obtained in advance from the Contracting Officer.
- D. The District shall ensure that its personnel do not disclose to any non-District person or organization information concerning the process the Contractor uses to provide services under the awarded contract.

**I.17 GOVERNMENT PROPERTY**

Contractor use of Government property shall be governed by Chapter 41 of Title 27 of the D.C. Municipal Regulations.

**I.18 RIGHTS IN DATA**

- A. All data first produced in the performance of this contract shall be the sole property of the District. Contractor hereby acknowledges that all data including, without limitation, computer program codes produced by the 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 at 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. The District shall not unreasonably withhold consent to the Contractor's request to publish or reproduce data in professional publications.
- B. The District shall have restricted rights in data, including computer software and all accompanying documentation, and manuals and instructional materials, listed or described in a license or agreement made a part of the 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) Use the data at any District installation. If the data is software, use the 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 have been transferred by the District; (ii) 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; (iii) Copy computer programs for safekeeping (archives) or backup purposes; and (iv) modify all the data, including 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. The restricted rights set forth in Paragraph B 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. CFOPD-19-C-022 with (Bert Smith & Co.).**

- 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 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 for 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.
  
- C. In addition to the rights granted in Paragraph B above, the Contractor hereby grants to the District a nonexclusive, paid up license throughout the world, of the same scope as the restricted rights set forth in Paragraph B above, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the District under the 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 the contract any works of authorship in which the 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.
  
- D. Whenever any data, including computer software, is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause 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.
  
- E. For all computer software furnished to the District with the rights specified in Paragraph A., the Contractor shall furnish to the District a copy of the source code with such rights of the scope specified in Paragraph A. For all computer software furnished to the District with the restricted rights specified in Paragraph B the District, if the Contractor, either directly or through a successor or affiliate shall cease to provide the maintenance or warranty service 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.
  
- F. 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 the 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 libelous or other unlawful matter

contained in such data.

- G. 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 granted to the District under any patent. Paragraphs B, C, D, F, and G, 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.19 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 use in the performance of this contract, including their use by the District, unless otherwise specifically stipulated in this contract.

#### **I.20 RESPONSIBILITY FOR SUPPLIES TENDERED**

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 failure to do so within ten days after notification, the District may return the rejected materials or supplies to the Contractor at the Contractor's risk and expense.

#### **I.21 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 payment of any money shall not arise unless and until such monies shall have been provided. The District's obligation to pay under this contract is subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1351; (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08 (2001); (iii) D.C. Official Code § 47-105 (2001); and (iv) D.C. Official Code § 1-204.46 (2001), as the foregoing statutes may be amended from time to time. Any expenditure under the contract in excess of the encumbered budget authority is subject to appropriation or additional budget authority.

#### **I.22 MULTIYEAR CONTRACT**

If funds are not 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 this contract. Unless otherwise provided for in this contract, the effect of termination is to discharge both the District and the Contractor from future performance of the Contract, but not from their existing obligations. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred, but not amortized in the price of the supplies or services delivered under the Contract.

**I.23 EXPIRATION OR CANCELLATION**

In the event this contract is cancelled because of non-availability of funds or non-appropriation of funds for any subsequent fiscal year, there shall be a cancellation ceiling of zero dollars representing reasonable pre-production and non-recurring cost, which would be applicable to the items of the life of the contract. If the contract is canceled due to unavailability of funds, the Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies delivered or services performed under the contract.

**I.24 CONTRACTS IN EXCESS OF \$1 MILLION DOLLARS**

Any contract in excess of one million dollars (\$1,000,000) within a 12-month period shall not be binding or give rise to any claim or demand against the District unless first approved by the Council of the District of Columbia and signed by the Contracting Officer.

**I.25 LIVING WAGE ACT OF 2006 REQUIREMENTS**

Contractor shall comply with the provisions of 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") which applies to all contracts for services in the amount \$100,000 or more in a 12-month period.

The Living Wage Act of 2006 requires a contractor to:

- a. Pay its employees and subcontractors who perform services under the contract no less than the current living wage;
- b. Include in any subcontract for \$15,000.00 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;
- c. Provide a copy of the Living Wage Act Fact Sheet to each employee and Subcontractor who performs services under the contract;
- d. Post the Living Wage Act Notice in a conspicuous place in its place of business;
- e. Include in any subcontract for \$15,000.00 or more a provision requiring the subcontractor to post the Living Wage Act Notice in a conspicuous place in its place of business;
- f. 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

- g. Require its subcontractors with subcontracts for \$15,000.00 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.
- h. The Current Living Wage Rate (effective January 1, 2019) is \$14.50.

The Living Wage Act Fact Sheet may be found at <https://sites.google.com/a/dc.gov/ocfo-procurements/> under the title: Living Wage Act Fact Sheet and is provided in accordance with the provisions of the above referenced DC statutes.

## **I.26 RESERVED**

## **I.27 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.

## **I.28 FREEDOM OF INFORMATION ACT (“FOIA”)**

The District of Columbia’s 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.1 who will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by the Contractor pursuant to the contract, the COTR will forward a copy to the Contractor. In either event, the Contractor is required by law to provide all responsive records to the COTR within the timeframe designated by the COTR. The FOIA Officer for the agency with programmatic responsibility will determine the releasability of the records. The District will reimburse the Contractor for the costs of searching and copying the records in accordance with D.C. Official Code § 2-532 and Chapter 4 of Title 1 of the *D.C. Municipal Regulations*.

## **I.29 PROPRIETARY REQUIREMENTS**

Trade secrets or similar proprietary data, which the Contractor or the District does not wish disclosed to other than personnel involved in the evaluation or contract administration will be kept confidential to the extent permitted. The District and the Contractor shall identify and mark all proprietary materials.

## **I.30 INSURANCE**

- I.30.1 GENERAL REQUIREMENTS. The Contractor shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below.

The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the CO giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A-VIII or higher. The Contractor shall require all of its subcontractors to carry the same insurance required herein. The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event the stated limit in the declarations page of the policy is reduced via endorsement or the policy is canceled prior to the expiration date shown on the certificate. The Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium.

- I.30.2 All required policies shall include the Government of the District of Columbia as an additional insured, shall be primary and non-contributory with any other insurance maintained by the Government of the District of Columbia, and shall contain a waiver of subrogation.
- I.30.3 If the Contractor and/or its subcontractors maintain broader coverage and/or higher limits than the minimums shown below, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Grantee and subcontractors. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the District.
1. Commercial General Liability Insurance. The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries \$1,000,000 per occurrence limits; \$2,000,000 aggregate; Bodily Injury and Property Damage including, but not limited to: premises-operations; broad form property damage; Products and Completed Operations; Personal and Advertising Injury; contractual liability and independent contractors. The policy coverage shall include the District of Columbia as an additional insured, shall be primary and non-contributory with any other insurance maintained by the District of Columbia, and shall contain a waiver of subrogation. The Contractor shall maintain Completed Operations coverage for five (5) years following final acceptance of the work performed under this contract.
  2. Automobile Liability Insurance. The Contractor shall provide automobile liability insurance to cover all owned, hired or non-owned motor vehicles used in conjunction with the performance of this contract. The policy shall provide a \$1,000,000 per occurrence combined single limit for bodily injury and property damage.
  3. Workers' Compensation Insurance. The Contractor shall provide Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.
  4. Employer's Liability Insurance. The Contractor shall provide employer's liability insurance as follows: \$500,000 per accident for injury; \$500,000 per employee for disease; and \$500,000 for policy disease limit.



5. Professional Liability Insurance (Errors & Omissions) - The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of \$500,000 per occurrence for each wrongful act and \$500,000 annual aggregate.

- I.30.4 **PRIMARY AND NONCONTRIBUTORY INSURANCE.** This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:
1. The additional insured is a Named Insured under such other insurance; and
  2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.
- I.30.5 **DURATION.** The Contractor shall carry all required insurance until all contract work is accepted by the District of Columbia, and shall carry listed coverages for five (5) years following final acceptance of the work performed under this contract.
- I.30.6 **LIABILITY.** These are the required minimum insurance requirements established by the District of Columbia. **HOWEVER, THE REQUIRED MINIMUM INSURANCE REQUIREMENTS PROVIDED ABOVE WILL NOT IN ANY WAY LIMIT THE CONTRACTOR'S LIABILITY UNDER THIS CONTRACT.**
- I.30.7 **CONTRACTOR'S PROPERTY.** Contractor and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia.
- I.30.8 **MEASURE OF PAYMENT.** The District shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price
- I.30.9 **NOTIFICATION.** The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event of coverage and / or limit changes or if the policy is canceled prior to the expiration date shown on the certificate. The Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium. The Contractor will also provide the CO with an updated Certificate of Insurance should his insurance coverages renew during the contract.
- I.30.10 **CERTIFICATES OF INSURANCE.** The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Evidence of insurance shall be submitted to:

**The Government of the District of Columbia**

**And mailed to the attention of:**

Mr. Anthony A. Stover, CPPO  
Contracting Officer  
Office of the Chief Financial Officer  
Office of Contracts  
1100 4<sup>th</sup> Street SW Suite 610 East  
Washington, DC 20024  
Phone: 202-442-7122  
Email: [Anthony.Stover@dc.gov](mailto:Anthony.Stover@dc.gov)

I.30.11 **DISCLOSURE OF INFORMATION.** The Contractor agrees that the District may disclose the name and contact information of its insurers to any third party which presents a claim against the District for any damages or claims resulting from or arising out of work performed by the Contractor, its agents, employees, servants or subcontractors in the performance of this contract.

**I.31 FIRST SOURCE EMPLOYMENT AGREEMENT AND 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS**

I.31.1 For contracts for services in the amount of \$300,000 or more, 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).

I.31.2 The Contractor shall enter into and maintain during the term of the contract, a First Source Employment Agreement (Employment Agreement) with the District of Columbia Department of Employment Service's (DOES), in which the Contractor shall agree that:

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

I.31.3 The Contractor shall not begin performance of the contract until its Employment Agreement has been accepted by DOES. Once approved, the Employment Agreement shall not be amended except with the approval of DOES.

I.31.4 The Contractor agrees that at least 51% of the new employees hired to perform the contract shall be District residents.

I.31.5 The Contractor's hiring and reporting requirements under the First Source Act and any rules promulgated thereunder shall continue for the term of the contract.

I.31.6 The CO may impose penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract, for a willful breach of the Employment Agreement, failure to submit the required hiring compliance reports, or deliberate submission of falsified data.

I.31.7 If the Contractor does not receive a good faith waiver, the CO may also impose an additional penalty equal to 1/8 of 1% of the total amount of the direct and indirect labor

costs of the contract for each percentage by which the Contractor fails to meet its hiring requirements.

- I.31.8 Any contractor which violates, more than once within a 10-year timeframe, the hiring or reporting requirements of the First Source Act shall be referred for debarment for not more than five (5) years.
- I.31.9 The contractor may appeal any decision of the CO pursuant to this clause to the D.C. Contract Appeals Board as provided in clause I.7, Disputes.
- I.31.10 The provisions of the First Source Act do not apply to nonprofit organizations which employ 50 employees or less.

### **I.32 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.

### **I.33 RESERVED**

### **I.34 AUDITS AND RECORDS**

- I.34.1 As used in this clause, “records” includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- I.34.2 **Examination of Costs.** If the award is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer and the COTR, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor’s plants or offices, or parts of them, engaged in performing the contract.
- I.34.3 **Cost or pricing data.** If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to the contract or task orders issued there under, the Contracting Officer and the COTR, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor’s records, including computations and projections, related to:

- a. The bid for the contract, subcontract, modification, or task order;
- b. The discussions conducted on the bid(s), including those related to negotiating;
- c. Pricing of the contract, subcontract, modification, or task order; or
- d. Performance of the contract, subcontracts, modification, or task order.

#### I.34.4 **Office of the Inspector General**

I.34.4.1 The Office of the Inspector General, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract there under.

I.34.4.2 This paragraph may not be construed to require the Contractor or any subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

I.34.5 **Reports.** If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer and the COTR shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating:

- a. The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and
- b. The data reported.

I.34.6 **Availability.** The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in clauses I.34.1 through I.34.5, for examination, audit, or reproduction, until three (3) years after final payment under the contract or for any shorter period specified in this Solicitation, or for any longer period required by statute or by other clauses of the contract. In addition:

- a. If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until three (3) years after any resulting final termination settlement; and
- b. The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

I.34.7 The Contractor shall insert a clause containing all the terms of this clause, including this section I.34.7, in all subcontracts under this contract that exceed the small purchase threshold of \$100,000, and:

- a. That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
- b. For which cost or pricing data are required; or
- c. That requires the subcontractor to furnish reports described in I.34.5 of this clause.

**I.35 FORCE MAJEURE**

Neither the Contractor nor the District shall be deemed in default or otherwise liable hereunder due to either party's inability to perform by reason of any fire, earthquake, flood, epidemic, accident, explosion, casualty, strike, lockout, labor controversy, riot, civil disturbance, act of public enemy, embargo, war, act of God, or any municipal, county, state or national ordinance or law, or any executive, administrative or judicial orders (which judicial orders are not the result of any act or omission to act which would constitute a default hereunder), or any failure or delay of any transportation, power or other essential thing required, or similar causes beyond the parties control.

**I.36 GOVERNING LAW**

This contract shall be governed by, and construed in accordance with, the laws of the District of Columbia, including, but not limited to, the District of Columbia Procurement Practices Reform Act and D.C. MUN. REGS. tit. 27.

**I.37 ORDER OF PRECEDENCE**

A conflict in language shall be resolved by giving precedence to the document in the highest order of priority that contains language addressing the issue in question. The following documents are incorporated into the contract by reference and made a part of the contract in the following order of precedence:

- (1) Contract
- (2) Contract attachments
- (3) RFP, as amended
- (4) BAFOs (in order of most recent to earliest)
- (5) Proposal

*[End of Section I]*

**SECTION J**  
**ATTACHMENTS**

The following attachments are hereby incorporated:

<b>Attachment Number</b>	<b>Document</b>
J.1	Office of Contracts Bidder/Offeror Certification Form
J.2	Department of Labor Wage Determination No. 2015-4281, Revision No. 12, dated December 26, 2018
J.3	Doing Business with Integrity
J.4	PSRA Owner's Instrument Report

*[End of Section J]*