

SOLICITATION, OFFER, AND AWARD			1. Caption			Page of Pages									
			Lottery Advertising Services			1	95								
2. Contract Number		3. Solicitation Number		4. Type of Solicitation		5. Date Issued		6. Type of Market							
		CFOPD-21-R-014		<input type="checkbox"/> Sealed Bid (IFB) <input checked="" type="checkbox"/> Sealed Proposals (RFP) <input type="checkbox"/> Sole Source <input type="checkbox"/> Emergency		1/12/2021		<input type="checkbox"/> Open <input checked="" type="checkbox"/> Set Aside <input type="checkbox"/> Open Market with Set-Aside SBE Designated Category:							
7. Issued By:				8. Address Offer to:											
Office of the Chief Financial Officer Office of Contracts and Procurement 1100 4th Street, SW, Room 610E Washington, DC 20024				Office of Chief Financial Officer Office of Contracts and Procurement 1100 4th Street, SW, Room 610E Washington, DC 20024											
NOTE: In sealed bid solicitations "offer" and offeror" means "bid" and "bidder"															
SOLICITATION															
9. Sealed offers in original and <u>redacted</u> copy for furnishing the supplies or services in the Schedule will be received by the point of contact on Page 1 of this solicitation															
via the Gateway portal, pursuant to Section L.12, until <u>2:00PM</u> local time <u>1/27/2021</u>															
(Hour) (Date)															
10. For Information Contact	A. Name			B. Telephone			C. E-mail Address								
	Carla Roane			(Area Code)	(Number)	(Ext)	carla.roane@dc.gov								
	202			442-6452											
11. Table of Contents															
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OFFER															
12. In compliance with the above, the undersigned agrees, if this offer is accepted within <u>120</u> calendar days from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified herein.															
13. Discount for Prompt Payment <input type="checkbox"/> 10 Calendar days % <input type="checkbox"/> 20 Calendar days % <input type="checkbox"/> 30 Calendar days % <input type="checkbox"/> Calendar days %															
14. Acknowledgement of Amendments (The offeror acknowledges receipt of amendments to the SOLICITATION):			Amendment Number		Date		Amendment Number		Date						
15A. Name and Address of Offeror			16. Name and Title of Person Authorized to Sign Offer/Contract												
15B. Telephone			15 C. Check if remittance address is different from above - Refer to Section G			17. Signature		18. Offer Date							
(Area Code)	(Number)	(Ext)													
AWARD (TO BE COMPLETED BY GOVERNMENT)															
19. Accepted as to Items Numbered			20. Amount			21. Accounting and Appropriation									
22. Name of Contracting Officer (Type or Print)			23. Signature of Contracting Officer (District of Columbia)			24. Award Date									
 Government of the District of Columbia			Office of the Chief Financial Officer												

SECTION B

CONTRACT TYPE, SUPPLIES OR SERVICES AND PRICE

B.1 GENERAL INFORMATION

The District of Columbia Office of the Chief Financial Officer, Office of Contracts (District), on behalf of the District of Columbia Office of Lottery and Gaming (Lottery) is seeking a qualified full-service agency to provide advertising and marketing services for the Lottery.

B.2 CONTRACT TYPE

The District contemplates the award of a Cost Reimbursement Contract with Requirements components.

B.3 DESIGNATION OF SOLICITATION FOR THE CERTIFIED BUSINESS ENTERPRISE (CBE) MARKET ONLY

This solicitation is designated only for certified business enterprise (CBE) offerors under the provisions of the “Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005”, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 et seq.), as amended. Offerors must be certified at the time of submittal. Contact the DC Department of Small and Local Business Development (DSLBD) at (202) 727-3900 for information on the certification process.

B.4 PRICING

B.4.1 All-Inclusive Pricing

1. The Contractor shall be compensated based on the Monthly Retainer Fee, Media Commission, and Cost Reimbursements as stated herein Section B.
2. Each component shall represent a Contract Line Item Number (CLIN) pricing and shall be fixed, inclusive of all of the Contractor’s direct cost, indirect cost, and profit.
3. The pricing shall include all cost associated with the services described in and required by the Contract.
4. The Total Estimated Price shall represent the not to exceed amount of the Contract.

B.4.2 Requirements Contract Component

1. The District will purchase its requirements of the services included herein from the Contractor.
2. The estimated quantities of Net Media Buy and months stated in the Pricing Schedule reflect the best estimates available. The estimates shall not be construed as a representation that the estimated quantities 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.4.3 Monthly Retainer Fee

1. The stated Monthly Retainer Fee shall be the price fixed, inclusive of all the Contractor's direct cost, indirect cost, and profit; including creative development, administrative duties, project management, consulting, media planning, travel, printouts, and file transfer.
2. The price shall include all cost associated with the services described in and required by the Contract, excluding Media Commission and Cost Reimbursements.

B.4.4 Media Commission

1. The Media Commission Rate shall be the fixed percentage rate to calculate the all-inclusive compensation payable to the Contractor for direct costs, indirect costs, and profits associated with the services required in the Contract for Media Buys.
2. A Media Buy, for the purposes of compensation, shall be defined herein as the Contractor's direct purchase cost of advertising placements from a media outlet such as a radio, television, digital, social media, print, transit signage, and billboards, as well as sponsorships and other advertising mediums approved by the Lottery; and excludes earned media or Contractor owned media not purchased.
3. The Media Commission Payments shall be calculated based on the Net Media Buy Value which shall be the Gross Media Buy Value less any applicable discounts as follows:
 - 1st: $\text{Gross Media Buy Value} - \text{Any Applicable Discounts} = \text{Net Media Buy}$
 - 2nd: $\text{Net Media Buy} \times \text{Media Commission Rate} = \text{Total Payable to the Contractor as Media Commission}$

B.4.5 Cost Reimbursements

1. Cost Reimbursements shall be the costs paid to the Contractor for actual costs incurred for Media Buys, Point of Sale (POS) items, merchandise, displays, consumer research, commercial production, local courier and delivery services, web and internet subcontracting services, translation services, and other marketing and event related services, approved in advance by the Lottery and not otherwise covered by the Monthly Retainer Fee.
2. Cost Reimbursements shall not exceed the Cost Reimbursement Ceiling pursuant to Section G.7.

B.5 PRICE SCHEDULE

B.5.1 Base Year

CLIN	Description	Estimated Quantity	Unit Price	Extended Price
001	Cost Reimbursements per Section B.4.5			\$12,000,000.00 (Ceiling Amount)
002	Media Commission	\$6,000,000.00 Net Media Buy	_____% Fixed Commission Rate	\$ _____
003	Retainer Fee	12 Months	\$ _____ Per Month (Fixed)	\$ _____
Base Period Not to Exceed Total				\$ _____

B.5.2 Option Year One

CLIN	Description	Estimated Quantity	Unit Price	Extended Price
004	Cost Reimbursements per Section B.4.5			\$12,000,000.00 (Ceiling Amount)
005	Media Commission	\$6,000,000.00 Net Media Buy	_____% Fixed Commission Rate	\$ _____
006	Retainer Fee	12 Months	\$ _____ Per Month (Fixed)	\$ _____
Option Year One Not to Exceed Total				\$ _____

B.5.3 Option Year Two

CLIN	Description	Estimated Quantity	Unit Price	Extended Price
007	Cost Reimbursements per Section B.4.5			\$12,000,000.00 (Ceiling Amount)
008	Media Commission	\$6,000,000.00 Net Media Buy	_____% Fixed Commission Rate	\$ _____
009	Retainer Fee	12 Months	\$ _____ Per Month (Fixed)	\$ _____
Option Year Two Not to Exceed Total				\$ _____

B.5.4 Option Year Three

CLIN	Description	Estimated Quantity	Unit Price	Extended Price
010	Cost Reimbursements per Section B.4.5			\$12,000,000.00 (Ceiling Amount)
011	Media Commission	\$6,000,000.00 Net Media Buy	_____% Fixed Commission Rate	\$ _____
012	Retainer Fee	12 Months	\$ _____ Per Month (Fixed)	\$ _____
Option Year Three Not to Exceed Total				\$ _____

B.5.5 Option Year Four

CLIN	Description	Estimated Quantity	Unit Price	Extended Price
013	Cost Reimbursements per Section B.4.5			\$12,000,000.00 (Ceiling Amount)
014	Media Commission	\$6,000,000.00 Net Media Buy	_____% Fixed Commission Rate	\$ _____
015	Retainer Fee	12 Months	\$ _____ Per Month (Fixed)	\$ _____
Option Year Four Not to Exceed Total				\$ _____

B.6 OPTIONAL SERVICES

- B.6.1 The Contractor may provide Optional Services offered by the Contractor that may be of interest to the Lottery related to advertising and marketing. Optional Services shall be any service not described in or required by the Contract.
- B.6.2 As part of the Optional Services offering, the Contractor should provide:
1. A description and approach to perform each Optional Service;
 2. A price schedule that addresses the price of the Optional Service, whether the Optional Service is purchased in the base period or any option period, if exercised; and
 3. A description of how the Optional Service will assist Lottery in achieving best value and furthering the Lottery’s mission.
- B.6.3 The Lottery may decide to exercise the option for purchasing Optional Services in the best interest of the Lottery through a bilateral modification to the Contract executed by the Contracting Officer and the Contractor.

SECTION C

DESCRIPTION/SPECIFICATIONS/WORK STATEMENT

C.1 **INTRODUCTION**

The District of Columbia Office of the Chief Financial Officer, Office of Contracts (District), on behalf of the Office of Lottery and Gaming (Lottery) is seeking to retain a full-service advertising agency to provide a full range of advertising and marketing services to support overall brand awareness and the sale of game tickets across the Lottery's existing portfolio of games of traditional lottery, iLottery and sports betting, as well as any new gaming categories and product offerings launched within the contract term.

C.2 **BACKGROUND**

C.2.1 The Lottery's mission is to provide revenue-generating entertainment through the sale of innovative lottery products and promotions that directly benefit the residents and the economic vitality of the District of Columbia. Since its inception in 1982, the Lottery's has contributed more than \$2.14 billion to the District's General Fund. The Lottery's annual transfer to the General Fund remains a vital component in aiding the city's economy, thereby benefiting all residents of the District of Columbia, as well as suburban commuters and tourists. The General Fund supports services such as education, recreation and parks, public safety, housing, and senior and child services.

C.2.2 Advertisement and marketing are essential to the Lottery achieving its mission. Lottery has launched its iLottery platform. This has allowed for DC residents to play DC Lottery on their computers, smartphones, and other internet devices. Lottery has been gaining new players daily and generating much needed revenue for the City since the launch. It has become apparent that customer retention across all Lottery product lines will be integral to the Lottery's continued success. See Attachment J.3, DC Lottery Facts Sheet for historical information, game performance, advertising guidelines and objectives, and full DC Lottery background details.

C.3 **REQUIREMENTS**

C.3.1 **General Requirements**

1. The Contractor shall provide effective advertising and marketing services that support the Lottery's mission, further establish the Lottery's brand identity, increase brand awareness in the District of Columbia and surrounding areas, increase contributions and transfer of profit to the General Fund, promote lottery games and promotions, and encourage trial to increase sales, all within the advertising guidelines and objectives of the Lottery.

C.3.2 Billing Oversight

C.3.2.1 Accounting

1. The Contractor shall provide timely and accurate reports and billing that meets Lottery specifications. The Contractor shall have experienced staff to support and implement proper accounting processes for the Contract.
2. The Contractor shall develop an Annual Budget for:
 1. Advertising expenditures,
 2. Media Production that includes fees and hard costs, and
 3. Other services required by the Contract.
3. The level of anticipated annual spending will be determined by Lottery. The Contractor shall develop a cost-efficient plan that is responsive to Lottery's advertising and marketing needs.
4. The initial budget shall be reviewed monthly and revised as required by Lottery. Subsequent budgets shall be incorporated in the Marketing and Advertising Plan and subject to Lottery approval.
5. The Contractor shall not make any commitments on behalf of Lottery without Lottery's prior written approval.
6. Monthly, the Contractor shall provide Lottery with a summary of all approved expenditures to date for the current fiscal year which runs October 1 through September 30. The summary shall indicate the current amount billed to Lottery during the fiscal year, the amount billed that has not yet been paid, and amounts committed that have not been billed. The Contractor shall implement a system to ensure all media is run or published according to any contracts or placement instructions.

C.3.2.2 Competitive Bidding

1. The Contractor shall make a good faith effort to obtain a minimum of three competitive bids on any non-media expenditure exceeding \$10,000. At least one bid must be from a certified business enterprise (CBE), as defined in D.C. Code §§2-218.31-39a, if possible. Documentation of the Contractor's good faith effort process shall accompany all applicable invoices for products or services supplied by non-CBEs. Any non-media expenditure conducted without three competitive bids shall be documented and provided to the Lottery. Only when given written approval by the Lottery can the Contractor be excused from obtaining three competitive bids.

C.3.2.3 Cost Savings

1. The Contractor shall recommend ways to generate cost savings wherever possible and provide quantitative and qualitative measurements that illustrate the return on investment (ROI) for each.

2. The Contractor shall make Lottery aware of any cost savings that might be achieved by the expedited payment of media or any other cost saving opportunities.

C.3.2.4 Estimates Required

1. The Contractor shall prepare an estimate for any expenditure and obtain the Contracting Officer's Technical Representative's (COTR) written approval before making any commitment on Lottery's behalf. Lottery will not be responsible for any expenditure for which prior written approval was not obtained.
2. All estimates shall be segregated by fiscal year and by budget category, as defined by Lottery (i.e. media, production, brand, communications, research, and sponsorships).
3. Estimates shall include a project start date and target completion date. Media estimates shall include flight dates. Lottery will not be responsible for expenditures exceeding the estimate.
4. The Contractor shall submit revised estimates for consideration if it appears that the costs of an estimate will exceed the originally approved amount.
5. All costs relating to research or other special projects shall be completely detailed in any estimate submitted for approval. The approval of any such estimate will be contingent upon the subsequent submission and approval of required documentation.
6. All estimates shall be uniquely numbered. The Contractor shall maintain a list of all approved estimates, including the amount and description of the expenditure, and provide Lottery with an updated list of all such estimates monthly. The estimate numbers shall appear on the invoice. No payment will be made without a signed estimate.

C.3.2.5 Invoices

1. The Contractor shall submit invoices for advertising and marketing activities to the Lottery on a timely basis upon completion of services approved in a specific estimate. Invoices shall include necessary backup documentation to substantiate charges. In general, activities will be closed 60 days after the date that the approved estimate was signed by Lottery, except for media buys made on a quarterly or annual basis.
2. Payment will be made only after the completion of services or delivery of products authorized in an approved invoice. Affidavits, tear sheets, and any other appropriate documentation to affirm proof of publication shall accompany any final invoices.

C.3.2.6 Media Buy Payments

1. Payment for media buys can be processed once authorized by Lottery and purchased by the Contractor and corresponding approved invoice. Affidavits, tear sheets, and any other appropriate documentation to affirm proof of placement shall accompany any final invoices.

2. The Contractor shall perform quarterly media impression reports to track unpaid and earned media.

C.3.3 Advertising Development

C.3.3.1 Alternative Solutions

1. The Contractor shall offer alternative campaigns, rather than only one creative solution to a game or promotion. At least three versions of TV storyboards, radio scripts, digital ads, and all other creative products must be offered when the Contractor makes a creative presentation to Lottery, unless otherwise approved by Lottery Director of Marketing and Communications or designee.
2. The Contractor shall present alternative outreach options to Lottery such as, but not limited to, bus posters, transit, or outdoor placements.

C.3.3.2 Approval

1. The Contractor shall obtain written approval from Lottery before producing any advertisement or related material. When producing any creative work, the Contractor shall not vary from approved scripts, storyboards, or print layouts without Lottery's written approval. Failure to adhere to approved scripts, storyboards, or layouts may void Lottery's approval of the estimate for the project. The Contractor shall be liable for all costs if advertisements or collateral materials are executed in a manner not consistent with Lottery's written approval.

C.3.3.3 Artwork Charges

1. The Contractor shall charge Lottery one time only for artwork that is used in multiple forms. The Contractor shall manage and provide trademark and copyright services on the Lottery's behalf, including, without limitation, searches and registrations.
2. The District shall own all artwork exclusive, perpetual rights to all original artwork. The Contractor shall deliver to the Lottery all art files for original artwork.
3. Artwork required for any print advertisements shall be billed as a one-time item on a separate invoice. Any duplication of charges for artwork will be rejected by Lottery.

C.3.3.4 Creative Services

1. Following approval by the Director or Marketing and Communications or designee, the Contractor shall be responsible for the execution, creation, and production of Lottery advertising materials, including but not limited to print, digital, broadcast advertisements, out of home advertising, social, point-of-sale (POS) items, and any other materials required by Lottery.
2. The Contractor shall develop multi-media campaigns in support of the brand, games, promotions, and initiatives identified by the Lottery.

3. The Contractor shall assist the Lottery in developing game names, instant ticket designs, game logos, trade characters, and art for other uses.
4. The Lottery shall own all exclusive, perpetual rights to anything created under this Contract.

C.3.3.5 Production

1. The Contractor will submit for Lottery approval all production estimates.
2. Estimates must clearly indicate any subcontractors or other parties who will be involved in the production work and where those parties are located.
3. The Contractor shall make good faith efforts towards having production work done within the District of Columbia. Any production work to be conducted at a location outside the District of Columbia must be specified, and the Contractor shall demonstrate to the Lottery's satisfaction that locations, facilities and resources within the District were not adequate for the production work required.

C.3.3.6 Campaign Reporting

1. The Contractor shall assemble reports, highlight key findings and make clear recommendations to Lottery in correlation with all campaigns. Reports shall examine campaigns in order to provide full visibility into the performance of each aspect of the campaign. This may require data extraction and assembly from various disparate reporting systems. Reports shall be customized as determined and approved by the Director of Marketing and Communications.

C.3.3.7 Meetings

1. The Contractor shall meet weekly, at a minimum, with the Lottery for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems that arise. The Contractor shall meet with Lottery upon request within two business day of contact to initiate services, requests, review materials, review progress, discuss problems, obtain advice and counsel. The Contractor shall be available for additional meetings held with certain Lottery personnel on an as-needed basis.

C.3.3.8 Timelines

1. The Contractor shall provide Lottery with a timely response to the Lottery's advertising and marketing needs within agreed upon timelines. The Contractor shall notify the Lottery no later than within 24 hours upon failure to meet a predetermined deadline if the delay is caused by the Contractor or any of the Contractor's subcontractors. The Contractor's notification shall include a written explanation for the project delay, the impact of the delay, the corrective action to be taken, and an updated project schedule.

Additional expenditures due to missed timelines by the Contractor shall be borne and the sole responsibility of the Contractor, unless approved in writing prior by the Lottery.

C.3.4 Advertising and Marketing Plan

C.3.4.1 Advertising and Marketing Plan Development

1. The Contractor shall develop an annual Advertising and Marketing Plan by November 15th of the following fiscal year that is consistent with and furthers sales goals and strategic initiatives. For example, Lottery's fiscal year ends September 30, 2021, the Contractor shall provide the Advertising and Marketing Plan by November 15, 2021 (for fiscal year 2022).
2. The Advertising and Marketing Plan shall support Lottery brand, games, promotions, and initiatives. The Advertising and Marketing Plan shall include the usage of minority and local community media sources. The Contractor, in collaboration with others third parties, may have input into the development of the Product and Promotion Plan; however, the Lottery shall have the sole authority for development and implementation of the Product and Promotion Plan.
3. The Advertising and Marketing Plan shall be submitted to Lottery for approval. The Advertising and Marketing Plan will be reviewed by Lottery at least once per quarter and shall be revised by the Contractor as required by changes in the Product and Promotion Plan, economic factors, other market conditions, or as desired by Lottery.
4. The Contractor shall submit a new Advertising and Marketing Plan in support of each new yearly Product and Promotion Plan adopted by Lottery.
5. The Advertising and Marketing Plan shall detail all campaigns planned during each fiscal year, including budget estimates. The Lottery recognizes that all plans are subject to change based on current market realities. The Advertising and Marketing Plan must also provide a breakdown of proposed spending by media type and proposed production costs.

C.3.4.2 Advertising Sensitivity

1. The Lottery is a subordinate agency of the District of Columbia's Office of the Chief Financial Officer (OCFO). As such, all advertising campaigns shall be in good taste and shall not make unsubstantiated promises. Lottery advertisements or promotions shall not be of a nature that unduly influences any person to purchase a Lottery ticket or number of tickets.
2. Specifically:
 1. There shall be sensitivity that some people may be inclined to spend more money than they should when gambling.

2. Advertising shall not encourage people to play excessively and shall adhere to Lottery regulation and policy in stating the prize amounts, odds of winning and disclaimers when applicable. No attempt shall be made to conceal or misrepresent those odds
3. Responsible gambling initiatives shall be considered in all modes of communication. The Contractor shall adhere to Lottery's adopted advertising guidelines when developing any marketing program for DC Lottery.

C.3.4.3 Collateral Material and Signage

1. The Contractor shall be responsible for the creative design and production of printed materials produced in support of the Lottery's advertising and marketing efforts and shall be pre-approved by the Lottery. This requirement includes, but is not limited to, such items as posters, displays, signage (interior and exterior) and other POS items intended for temporary use. The Contractor shall design and produce interior and exterior signage, which identifies retail locations as Lottery retailers upon request by the Lottery
2. The Contractor shall produce an Annual Report, retailer newsletter templates, or other printed items upon request by the Lottery. Lottery owns all original artwork, layout, design, and final product and can use as needed.

C.3.4.4 Printers

1. The Contractor shall obtain competitive bids on all print jobs, including for signage. The Contractor shall make good faith efforts to ensure opportunities to bid on the printing of Lottery materials are made available to a CBE.

C.3.4.5 Co-Promotions

1. The Contractor shall solicit and encourage joint advertising, sponsorships and promotional opportunities with other District of Columbia entities. Such ventures shall not be exclusive, unless a general solicitation has been made to all possible co-promoters offering comparable products, services, or opportunities. The Contractor shall indicate the potential benefits to the Lottery from any co-promotion the Contractor recommends.
2. When Lottery is contacted by a company offering media or promotional opportunities for the Lottery, the Lottery may direct the inquiring party to provide the information to the Contractor. The Contractor shall follow up with any company directed by the Lottery and advise the Lottery of the results of the follow up.
3. The Contractor shall have a written process in place to reply to each inquiring media party. This written process shall be available for review by Lottery upon request.

C.3.5 Media Planning and Buying

C.3.5.1 Bonus Commercials

1. The Contractor shall attempt to negotiate free bonus spots or additional promotional support from all radio and TV stations included in a Lottery buy.
2. Any bonus spots or additional promotional support provided by participating stations shall be identified in the summary of any media buy, and the value of the bonus spots or additional promotional support shall be calculated as an added value to the Lottery.

C.3.5.2 Negotiation and Placement

1. The Contractor shall be responsible for the negotiation, purchase, and instructions for the placement of all media time and space.
2. The Contractor shall not commit the Lottery to any such purchase without first obtaining the Lottery's written approval.
3. In negotiating media purchases, the Contractor shall make the Lottery aware of any savings that might be achieved through long-term commitments or other special programs. Any such commitments must be approved by the Lottery and any savings achieved shall be passed on to the Lottery.

C.3.5.3 Placement Verification

1. The Contractor shall notify the Lottery before approving any "make goods" for ads that did not run as scheduled. All such materials shall be maintained by the Contractor and shall be available for inspection by authorized Lottery representatives.

C.3.5.4 Post-Buy Analysis

1. No more than 30 days after completion of each media campaign, the Contractor shall provide Lottery an analysis of the media campaigns initial goals and metrics met, and a description of any issues experienced by the Contractor and resolutions, if any.
2. The post-buy analysis shall indicate whether the reach and frequency goals of each buy were achieved within budget. In addition, the post-buy analysis shall be provided for media buys that use new rating information for the buy period, when available.
3. Each analysis shall include a recommendation regarding proposed changes in media purchasing for future campaigns.

C.3.5.5 Media Services

1. The Contractor shall be responsible for developing and updating an annual Media Plans and campaign specific Media Plans, for negotiating and placing Lottery materials effectively and efficiently, and for verifying actual placement as required by Lottery for all Lottery products.

2. Media Plans shall take into consideration all media outlets in the District of Columbia. Media Plans shall include the process by which the Contractor determines where, when, and how often the Contractor will run an advertisement in order to maximize engagements and ROI. The Media Plans shall result in a set of advertising opportunities that target a specific audience and fit in with the Lottery's marketing budget.
3. If requested by Lottery, the Contractor shall develop a Media Plan that maximizes results, achieves specific objectives, and supports creative and other strategic direction to provide measurable results. The Media Plan shall include such elements as an identification of when and what type of media should be written and placed, time schedules for identifying and analyzing demographic market and delivering media coverage, and a means to determine the effectiveness of the media campaign.
4. The Contractor shall be responsible for the negotiation, purchase, instruction, and delivery of materials for the placement of media time and space.
5. The Contractor shall implement a system to ensure that all media was run or published according to any contracts or placement instructions.
6. The Contractor shall notify Lottery before approving any make goods for any ads that did not run as scheduled. All such materials shall be maintained by the Contractor and shall be available for inspection by Lottery or authorized Lottery representatives
7. Lottery may at any time cancel, at no cost, any space or time previously authorized for publication or broadcast provided the publisher or other owner of said space or time will accept such cancellation without financial penalty. Lottery may also cancel any space or other time previously authorized for which there is a cancellation penalty, but such penalty shall be paid by Lottery.

C.3.6 Digital Marketing

C.3.6.1 Digital Media Campaigns

1. The Contractor shall provide services to plan, create, procure, deploy, monitor and measure digital media campaigns for each project assigned by Lottery during the term of the Contract.

C.3.6.2 Strategic Consultation

1. The Contractor shall provide advertising objective consultation to develop strategies for conducting the digital advertising campaign to provide the best method for meeting Lottery's specified target audience and goals. The Contractor's tools to provide this service shall include:
 1. Use of third-party research tools.
 2. Define and articulate the specific target audience segments that Lottery wants to reach and acquire.

3. Developing top media candidates for consideration.
4. Develop a strategy for media mix, planning and execution.
5. Create a testing plan to continuously vet out new opportunities with both technology and media partner.

C.3.6.3 Project Tracking

1. In order to track project status, the Contractor shall use a tracker tool. This tool shall be used to input various creative projects which include details such as ad copy, creative direction, media channels, targeting, and media handoff.

C.3.6.4 Message Development

1. The Contractor shall develop advertising message and copy points and collateral to support defined objectives and present to the Lottery for approval.
2. The Contractor shall present a minimum of four message alternatives for consideration each campaign unless otherwise directed by the Lottery.
3. The Contractor shall fully develop two concepts when A/B campaign testing is requested by the Lottery.
4. The Contractor shall create a creative brief to ensure alignment for all parties on the primary objective, target audience, success metrics, must-have features, details of look, tone, delivery, and timing.

C.3.6.5 Creative Development

1. The Contractor shall develop art including but not limited to graphic design, animation, HTML5 assets that support paid media activities for online advertising to promote Lottery, iLottery, and Sports Betting. Online advertising creative, such as Facebook and Display ads, will need to be refreshed monthly, however, the Lottery may request updated creative more frequently based on performance of current creative assets. Lottery will occasionally reuse assets or refresh assets. All working files and final assets shall be made available to the Lottery upon request. This shall include access to any stock photos, video, audio, and music purchased for a campaign. The Contractor's creative development tasks shall include, but are not limited to:
 1. Developing conceptual design and layouts.
 2. Presenting a minimum of four creative alternatives for consideration with each campaign unless otherwise directed by the Lottery.
 3. Fully developing two concepts when A/B campaign testing is requested by the Lottery.
 4. Providing creative copywriting services for paid media materials.

5. Use target keyword or phrase in ad copy, to be as relevant as possible to the searcher.
6. Demonstrating value. Explain exactly what the product does, and how it's beneficial to the customer. Explaining the value and benefits efficiently will increase click-thru-rates and decrease average cost-per-click.
7. Creating a compelling call-to-action, that will drive the searcher to the conversion. For a user to actually click on an ad they need to be compelled with an offer, or a strong call to action.
8. Knowing the needs of the audience by understanding the industry, the competitors, and the pain points that the audience has that can be called out, then effectively promoted against them.
9. Standing out. Understand what the competitor's ad copy looks like, and how it's working or not working, and use that data to fuel inspiration for developing and testing new ideas that will draw more clicks than they competitors.
10. Creatively designing display ads, digital materials and landing pages for desktop, mobile and tablets.
11. Designing for time-based and animated media in advertising.
12. Purchasing custom or stock digital artwork to support creative development. Photos and stock artwork shall be available for infinite use throughout the Contract term, thus there shall be no expiration or end date on the Lottery's rights to use the content. All stock asset pricing will be included in project estimates.

C.3.6.6 Customer Relationship Management (CRM)

1. The Contractor shall create and execute integrated engagement strategies for all digital platforms that enhance the brand, attract and retain customers. This shall include coordinating efforts with DC Lottery staff, DC Lottery gaming system vendor and any other relevant third-party partners.
2. Development of Customer Relationship Management Banners: CRM Banners are creative assets that are designed to target a specific audience and segment based on where a customer is in their life cycle. The CRM banner message, creative and call to action (CTA) may differ based on where the customer is in their life cycle. The Contractor shall design CRM banners that align with overall strategy for major campaigns and other site banners as needed. The Contractor shall work with the Lottery's internal design team and will be provided style and brand guidelines to work and design against.

C.3.6.7 Digital Media Selection

1. The Contractor shall determine the best method for and conduct market research to identify the appropriate digital media vehicle in promoting Lottery's message. The Contractor's digital media selection tasks shall include, but are not limited to:
 1. Developing individual Media Plans for all individual digital media campaigns. Detailed rationale, measurable goals, time frames, and budgets shall be included to support all elements in each Media Plan.
 - 1.No later than two weeks prior to a media buy, the Contractor shall provide copies of the negotiated costs, including any value-added opportunities provided by media companies free of charge, to the Lottery for approval consideration. Once these Media Plans are reviewed and approved by Lottery, the Contractor will proceed with developing and implementing individual media buys based on the Media Plans. The Contractor shall submit these media buys to Lottery for review and approval.
 2. Providing in-depth evaluation of all digital media vehicles (paid search, display, etc.) and platforms (desktop, tablet and mobile) available to the Lottery. The Contractor's planning process shall include using historical performance, proactive on-going industry exploration, cross-client evaluation, competitor analysis, and ad hoc evaluations.
 3. Informing the Lottery of and evaluate any special or unique digital media placements and opportunities.
 4. Buying and negotiating digital advertising inventory used for digital advertising and promotions. Advertising inventory is the number of advertisements, or amount of ad space, a publisher has available to sell to an advertiser.
 5. Buying and negotiating all digital media in accordance with the specific guidelines established by the Lottery for each medium. Guidelines include, but are not limited to demographic parameters, programming restrictions, daypart goals, audience-delivery goals, and make-good procedures.
 6. Producing and managing marketing materials including, but not limited to display ads, paid social ads, paid search copy, audio ads, and landing pages.
 7. Monitoring performance and make real-time adjustments to live campaigns as needed. Monitor all reporting systems to ensure campaigns are running correctly and impressions bought are delivered. Evaluate performance optimization within and across channels and pacing.

8. Providing weekly, monthly, and ad hoc recaps as needed to the Lottery highlighting key metrics along with insights.
9. Implementing several ad-verification practices to ensure compliance with guidelines.

C.3.6.8 Digital Media Analysis

1. The Contractor shall develop and maintain reporting and analytics tools that provide the functionality for gathering and reporting data in real time. The tools must be able to create business goals that can be measured with data indicators, provide tracking and sharing, evaluate various segmentation groups and compare campaigns.
 1. Methodology shall follow Multi Touch Attribution (MTA) or similar approach approved by the Lottery.
 2. Ad tracking shall include well documented strategy which utilizes relevant methodologies industry best practices and can be adapted to function within the Lottery current tagging framework (i.e. Google Tag Manager).
3. Reporting tools and output expected shall be user friendly and easy to translate into business action.
4. Reporting capabilities shall include but are not limited to:
 1. Cost Per Acquisition
 2. Return on Ad Spend
 3. User Pathing
5. Reporting capabilities shall provide drill down functionality including but not limited to:
 1. Channel/Owner
 2. Objective
 3. Time Frame
6. Reporting capabilities shall be built within a Business Intelligence tool framework such as Tableau or Microsoft PowerBI to allow for user friendly analysis.
7. User level support and dedicated staff to aid in maintenance and analysis shall be available.

C.3.7 Social Media Marketing Services

1. The Contractor shall provide social strategy, promotion development, page creations, advertising support, and content development as needed. Work shall include content and promotions for both paid and organic social for the Lottery.
 1. Paid Advertising Support:
 1. The Contractor shall develop an approach for paid social support that not only drives engagement with fans and followers but compliments other marketing efforts on social media.
 2. Non-paid Social Media Strategy and Content Development:
 1. The Contractor shall coordinate with both the community and brand building side of social media. The Contractor shall develop an approach that leverages the Lottery's social platforms to drive both branding and engagement metrics along with revenue and acquisition goals.
 3. Social Media Community Management and Customer Support:
 1. The Contractor shall develop a strategy for content delivery, social posts, and player inquiry responses to maximize player convenience and satisfaction. The Contractor shall work with Lottery personnel to develop a cadence for social posts and content on a monthly basis. In addition, the Contractor shall monitor all social media platforms twenty-four hours a day, seven days a week and shall respond to inquiries using approved messaging and/or forward to the Lottery.
 4. The Contractor shall work with the Lottery to define key performance indicators (KPI's) and present scheduling suggestions and a response approach that support the objectives and actions desired from identified target audience segments.

C.3.8 Promotional Items

1. The Contractor shall be responsible for the design, production, and delivery of merchandising items approved by Lottery, such as t-shirts, key chains, hats, and a variety of other items that may be used as retailer or consumer premiums.
2. The Contractor shall present a minimum of three bids and recommend to Lottery a cost-effective program to make merchandising items available for promotions. The Contractor shall make good faith efforts to work with CBE suppliers.

C.3.9 Communications

1. In addition to the Advertising and Marketing Plan, the Contractor shall develop a Communication Plan for key products, promotion and initiatives; up to eight yearly.

The Communication Plan shall include tactics for engaging the media, customers and shall include contingency strategies and expected budget requirements.

2. The Contractor's communications tasks shall include but is not limited to:
 1. Consultation, advice, and recommendations for the Lottery.
 2. Coordination with Lottery and the Contractor personnel to ensure a good public relations focus during promotions and marketing events.
 3. Provision of support for publicity, special events, and public relations for programs in the Advertising and Marketing Plan and the Communication Plan. The Contractor shall assist the Lottery's communications team with public relations activities and communication for key program and products. This can include but is not limited to the creation collateral materials (i.e. handouts, FAQs, talking points, brochures), development of press releases, media relations, social media and other efforts to increase visibility of the program and/or product.
 4. Evaluation, recommendations, and implementation support for partnerships and additional consumer promotions.
 5. Development of corporate and community-based communication programs as described in the approved Advertising and Marketing Plan and the Communication Plan.

C.3.10 Public Service Announcements

1. The Contractor shall develop informational materials as required by the Lottery to be provided to media outlets as public service announcements to run at no charge to Lottery on an annual basis. The Contractor shall develop a plan to achieve media acceptance of these materials, propose low-cost production of these materials, and provide Lottery with a periodic report on the reported usage of such materials.

C.3.11 Research Services

1. The Contractor shall:
 1. Work with the Lottery Director of Marketing and Communications to identify advertising and marketing issues and to assist in formulating strategies, as needed;
 2. Conduct focus group testing of advertising concepts for major campaigns, brand positioning, product, or other marketing-related issues;
 3. Conduct other formal market research for concepts, as required by Lottery; and
 4. Schedule meetings quarterly, or as needed, with Lottery staff to share consumer feedback obtained through research fieldwork activity on products and programs.
2. The Lottery will own all research results, materials, and databases generated on behalf of the Lottery.

C.3.12 Retailer Visits

1. At the direction of the Lottery, the Contractor shall send personnel to visit Lottery retailers to review POS material and provide feedback on effectiveness and elicit retailer comments.

C.3.13 Retail Marketing Support

1. The Contractor shall:
 1. Develop and produce POS materials to complement advertising campaigns based on the approved Advertising and Marketing Plan.
 2. Assist Lottery staff to develop a comprehensive POS program, including developing a POS package for retailers.
 3. Assist in developing POS for use at events and other promotions as needed and directed by Lottery.
 4. Coordinate and support the development of materials at Lottery's direction.
 5. Develop brand and promotion and game enhancement POS as described in the approved Advertising and Marketing Plan.
 6. Develop a comprehensive POS program, including new elements for increased exposure on Lottery vending machines and other hardware enhancements.
 7. Assist in integrating Corporate Accounts specific POS needs into the general POS program as directed by Lottery.
 8. Provide coordination and logistical support in the development of sell-in materials for non-English speaking retailers as directed by Lottery.
 9. Assist in the development of retailer information sheets or other communication vehicles.
 10. Develop promotions and programs that are focused on increasing Lottery traffic in retail and event locations.

C.3.14 Strategic Planning

1. The Contractor shall:
 1. Develop strategic communications and comprehensive stakeholder plans:
 - 1) Short-term for 1 year and Biennium;
 - 2) Long-term for 3-5 years; and
 - 3) The plans shall include a process of defining the Lottery's strategy and direction, for making decisions on allocating resources to pursue the strategy and extend to control mechanisms for guiding the implementation of the strategy.
 2. Provide ongoing strategic counsel for Lottery's core products and corporate brand by providing direction on Lottery initiatives, marketing, communication, strategic frameworks and development issues.
 3. Assist in situation analysis and development of overall goals, objectives, and strategies.

4. Provide insight and counsel, as directed by Lottery, in further development of the use of software and hardware technology, social media, and mobile applications.

C.3.15 Staffing

C.3.15.1 Advertising and Marketing Team

1. The Lottery requires advertising and marketing projects and assignments to be completed in a timely, efficient, and creative manner, and that all essential services are fulfilled. The Contractor shall have a competent team at the appropriate staffing levels and with the qualifications to meet Lottery's needs based on the Contract. All Contractor personnel dedicated to the Contract, regardless of position, shall be knowledgeable about the Lottery business, the political environment within which the Lottery operates, and the products offered by the Lottery. Additionally, all Contractor Key Personnel dedicated to the Contract shall periodically visit Lottery retailers. Lottery will have the right to require the Contractor to remove staff assigned if the Lottery determine that the individual is not a good fit for the Lottery account.

C.3.15.2 Lottery Conventions and Special Events

1. The Contractor's Key Personnel shall attend various conventions, trade shows, special events, and meetings at the Contractor's sole expense and as directed by the Lottery.
2. At least one person of the Contractor's Key Personnel shall attend a minimum of two Lottery industry conferences on an annual basis. All travel-related expenses shall be the responsibility of the Contractor.
3. In addition, the Contractor's Key Personnel shall watch Lottery-related public hearings in order to better understand the goals and needs of Lottery.

C.3.15.3 Key Personnel

1. The Contractor's Key Personnel shall be directly responsible for the day-to-day operations of the services performed in conjunction with the Contract. Key Personnel shall be knowledgeable on the contractual requirements and respond to inquiries within 24 hours.
2. After Contract award, the Lottery shall have the right to recommend and approve in writing any initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, the Contractor shall notify the Lottery of the proposed assignment, introduce the individual to the COTR with a resume and any other information about the individual reasonably requested by the Lottery. The Lottery reserves the right to interview the individual before granting written approval. In the event the Lottery finds a proposed individual unacceptable, the Lottery will provide a written explanation including reasonable detail outlining the reasons for the rejection. The Lottery may require a 30-calendar day training period for replacement personnel.

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3. The Contractor shall have, at minimum, the following three positions filled by Key Personnel meeting the minimum qualifications of each position:

1. Account Executive

- 1) 10 years of advertising and marketing account experience
- 2) Experience managing and directing major advertising accounts
- 3) Senior level position such as a principal who reports to the CEO or President

2. Creative Director

1) 3 years' experience:

- a) planning the layout and visuals for print and digital publications, products and advertising
- b) creating and maintaining a vision for a company's products and branding
- c) overseeing a creative staff or team that produces art and designs to support that vision.

2) Senior level professional who reports directly to the chief creative professional

3. Media Director

4) 3 years' experience:

- a) in digital and traditional media buying
- b) in cross channel planning and execution of digital campaigns

5) Senior level position such as a principal who reports to the CEO or President

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.

SECTION E

INSPECTION, ACCEPTANCE AND WARRANTY OF SERVICES

E.1 INSPECTION

E.1.1 All supplies and services provided by the Contractor under this contract shall be subject to inspection by the Contracting Officer's Technical Representative ("COTR") identified in Section G.1 (b).

E.1.2 Inspection of Supplies

- (a) Definition. "Supplies," as used in this clause, includes, but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.
- (b) The Contractor shall be responsible for the materials or supplies covered by this contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notification of rejection. Upon the Contractor's failure to cure within ten (10) days after date of notification, the District may return the rejected materials or supplies to the Contractor at the Contractor's risk and expense.
- (c) The Contractor shall provide and maintain an inspection system acceptable to the District covering supplies under this contract and shall tender to the District for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Contractor to be in conformity with contract requirements. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the District during contract performance and for as long afterwards as the contract requires. The District may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under this contract.
- (d) The District has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The District will perform inspections and tests in a manner that will not unduly delay the work. The District assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in the contract.
- (e) If the District performs inspection or test on the premises of the Contractor or subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, the District will bear the expense of District inspections or tests made at other than Contractor's or subcontractor's premises; provided, that in case of rejection, the District will not be liable for any reduction in the value of inspection or test samples.
 - (1) When supplies are not ready at the time specified by the Contractor for

inspection or test, the Contracting Officer may charge to the Contractor the additional cost of inspection or test.

- (2) Contracting Officer may also charge the Contractor for any additional cost of inspection or test when prior rejection makes re-inspection or retest.
- (f) The District has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or otherwise not in conformity with contract requirements. The District may reject nonconforming supplies with or without disposition instructions.
 - (g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and when required, shall disclose the corrective action taken.
 - (h) If the Contractor fails to remove, replace, or correct rejected supplies that are required to be replaced or corrected within ten (10) days, the District may either (1) by contract or otherwise, remove, replace or correct the supplies and charge the cost to the Contractor or (2) terminate the contract for default. Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Contracting Officer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.
 - (i) If this contract provides for the performance of District quality assurance at source, and if requested by the District, the Contractor shall furnish advance notification of the time (i) when Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract, and (ii) when the supplies will be ready for District inspection.
 - (j) The District request shall specify the period and method of the advance notification and the District representative to whom it shall be furnished. Requests shall not require more than 2 business days of advance notification if the District representative is in residence in the Contractor's plant, nor more than 7 business days in other instances.
 - (k) The District will accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. District failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability upon the District, for non-conforming supplies.
 - (l) Inspections and tests by the District do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.
 - (m) If acceptance is not conclusive for any of the reasons in subparagraph (l) hereof, the District, in addition to any other rights and remedies provided by law, or under provisions of this contract, shall have the right to require the Contractor (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; provided, that the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Contractor of notice of defects or noncompliance, to repay such portion of the contract as is equitable

under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the District will have the right to return the rejected materials at Contractor's risk and expense or contract or otherwise to replace or correct such supplies and charge to the Contractor the cost occasioned the District thereby.

E.1.3 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

- E.3.1 The time period for this warranty provision is the life of the contract plus all active options and extensions.

E.3.2 Warranty Provision:

- (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 reperformance.
- (b) If the Contractor is required to correct or reperform, it shall be at no cost to the District, and any services corrected or reperformed 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 reperform, 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 reperformance, the Contracting Officer shall make an equitable adjustment in the contract price.

SECTION F

PERIOD OF PERFORMANCE AND DELIVERABLES

F.1 TERM OF CONTRACT

The term of the contract shall be for a period of one year from the Contract Effective Date.

F.2 OPTION TO EXTEND THE TERM OF THE CONTRACT

F.2.1 The District may extend the term of this contract for a period of four (4), one (1) year option periods, or successive fractions thereof, by written notice to the Contractor before the expiration of the contract; provided that the District will give the Contractor preliminary written notice of its intent to extend before the contract expires. The preliminary notice does not commit the District to an extension. The exercise of this option is subject to the availability of funds at the time of the exercise of this option.

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

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

F.3 DELIVERABLES

F.3.1 The Contractor shall perform the activities required to successfully complete the District's requirements and submit each deliverable to the COTR identified in Section G in accordance with Section C.

F.3.2 The Contractor shall submit to the District, as a deliverable, the report described in Section I.31 that is required by the 51% District Residents New Hires Requirements and First Source Employment Agreement. If the Contractor does not submit the report as part of the deliverables, final payment to the Contractor shall not be paid pursuant to Section G.6.

SECTION G

CONTRACT ADMINISTRATION

G.1 CONTRACT ADMINISTRATORS

(a) Contracting Officer

- i. The Contracting Officer (or “CO”) for this contract is:

Drakus Wiggins
Contracting Officer
1100 4th St. SW Suite E620
Washington, DC 20024
Telephone: (202) 442-7121
Fax: 202-442-6454
E-mail address: drakus.wiggins@dc.gov

- ii. The Contracting Officer is the only official authorized to legally bind the District and make changes to the requirements, terms and conditions of this contract. Only the Contracting Officer can increase, decrease, extend or terminate this contract. All other changes are unauthorized.
- iii. The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the Contracting Officer.
- iv. In the event the Contractor effects any change at the instruction or request of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

(b) Contracting Officer Technical Representative (COTR)

- i. The COTR for this contract is:

Nicole Jordan
Director of Marketing and Communications
2235 Shannon Place S.E. Washington, DC 20020
(202) 645-8968
E-mail address: Nicole.Jordan@dc.gov

- ii. The COTR is responsible for general administration of the contract and advising the Contracting Officer as to the Contractor’s compliance or noncompliance with the contract. The COTR has the responsibility of ensuring the work conforms to the requirements of the contract and such other responsibilities and authorities as may be specified in the contract. These include:

- a. Keeping the Contracting Officer fully informed of any technical or contractual difficulties encountered during the performance period and advising the Contracting Officer of any potential problem areas under the contract;
 - b. Coordinating site entry for Contractor personnel, if applicable;
 - c. Reviewing invoices for completed work and recommending approval by the Contracting Officer if the Contractor's costs are consistent with the negotiated amounts and progress is satisfactory and commensurate with the rate of expenditure;
 - d. Reviewing and approving invoices for deliverables to ensure receipt of goods and services.
 - e. Timely processing of invoices and vouchers in accordance with the District's payment provisions; and
 - f. Maintaining a file that includes all contract correspondence, modifications, records of inspections and invoice or vouchers.
- iii. The COTR does NOT have the authority to:
- a. Award, agree to, or sign any contract, delivery order or task order. Only the Contracting Officer shall make contractual agreements, commitments or modifications;
 - b. Grant deviations from or waive any of the terms and conditions of the contract;
 - c. Increase the dollar limit of the contract or authorize work beyond the dollar limit of the contract,
 - d. Authorize the expenditure of funds by the Contractor beyond the dollar limits of the contract;
 - e. Change the period of performance; or
 - f. Authorize the use of District property, except as specified under the contract.
- iv. The Contractor will be fully responsible for any changes not authorized in advance, in writing, by the Contracting Officer; may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.

G.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 30th day after receiving a proper invoice from the Contractor. The District reserves the right to conduct post payment reviews or audits.

G.2.3 Unless otherwise specified in this contract, and with presentation of a properly executed invoice:

- a) Payment will be made on completion and acceptance of each item for which the price is stated in the Pricing Schedule in Section B,
- b) Payment will be made on completion and acceptance of each percentage or milestone of work in accordance with the prices stated in the Pricing Schedule in Section B, or
- c) Payment may be made on partial deliveries of goods and services accepted by the District if the Contractor requests it and the amount due on the deliveries warrants it as determined by the District.

G.3 INVOICE SUBMITTAL

G.3.1 The Contractor shall create and submit payment requests in an electronic format through the DC Vendor Portal, <https://vendorportal.dc.gov>

G.3.2 The Contractor shall submit proper invoices on a monthly basis or as otherwise specified in Section G.4.

G.3.3 To constitute a proper invoice, the Contractor shall enter all required information into the Portal after selecting the applicable purchase order number which is listed on the Contractor's profile.

G.4 THE QUICK PAYMENT ACT

G.4.1 Interest 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.*, as amended, 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 at least 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 required payment date. The required payment date shall be:

G.4.1.1.1 The date on which payment is due under the terms of this contract;

G.4.1.1.2 Not later than 7 calendar days, excluding legal holidays, after the date of delivery of meat or meat food products;

G.4.1.1.3 Not later than 10 calendar days, excluding legal holidays, after the date of delivery of a perishable agricultural commodity; or

G.4.1.1.4 30 calendar days, excluding legal holidays, after receipt of a proper invoice for the amount of the payment due.

G.4.1.2 No interest penalty shall be due to the Contractor if payment for the completed delivery of goods or services is made on or before:

G.4.1.2.1 3rd day after the required payment date for meat or a meat product;

G.4.1.2.2 5th day after the required payment date for an agricultural commodity; or

G.4.1.2.3 15th day after any other required payment date.

G.4.1.3 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 seven (7) days of receipt of any amount paid to the Contractor by the District for work performed by any subcontractor under the contract:

G.4.2.1.1 Pay the subcontractor(s) for the proportionate share of the total payment received from the District that is attributable to the subcontractor(s) for work performed under the contract; or

G.4.2.1.2 Notify the CO and the subcontractor(s), 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 subcontractors or suppliers 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 at least 1% per month. No interest penalty shall be paid on the following if payment for the completed delivery of the item of property or service is made on or before the:

G.4.2.2.1 3rd day after the required payment date for meat or a meat product;

G.4.2.2.2 5th day after the required payment date for an agricultural commodity; or

G.4.2.2.3 15th day after any other required payment date.

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 is a party. The District may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

G.4.3 Subcontract requirements

- G.4.3.1 The Contractor shall include in each subcontract under this contract a provision requiring the subcontractor to include in its contract with any lower-tier subcontractor or supplier the payment and interest clauses required under paragraphs (1) and (2) of D.C. Official Code § 2-221.02(d).
- G.4.3.2 The Contractor shall include in each subcontract under this contract a provision that obligates the Contractor, at the election of the subcontractor, to participate in negotiation or mediation as an alternative to administrative or judicial resolution of a dispute between them.

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.

G.7 COST REIMBURSEMENT CEILING

- G.7.1 The cost reimbursement ceiling for the applicable contract component is set forth in Section B.5.
- G.7.2 The costs for performing this contract component shall not exceed the cost reimbursement ceiling specified in Section B.5.

- G.7.3 The Contractor agrees to use its best efforts to perform the work specified in this contract and to meet all obligations under this contract within the cost reimbursement ceiling.
- G.7.4 The Contractor must notify the CO, in writing, whenever it has reason to believe that the total cost for the performance of this contract will be either greater or substantially less than the cost reimbursement ceiling.
- G.7.5 As part of the notification, the Contractor must provide the CO a revised estimate of the total cost of performing this contract.
- G.7.6 The District is not obligated to reimburse the Contractor for costs incurred in excess of the cost reimbursement ceiling specified in Section B.5, and the Contractor is not obligated to continue performance under this contract (including actions under the Termination clauses of this contract), or otherwise incur costs in excess of the cost reimbursement ceiling specified in Section B.5, until the CO notifies the Contractor, in writing, that the estimated cost has been increased and provides revised cost reimbursement ceiling for performing this contract.
- G.7.7 No notice, communication, or representation in any form from any person other than the CO shall change the cost reimbursement ceiling. In the absence of the specified notice, the District is not obligated to reimburse the Contractor for any costs in excess of the costs reimbursement ceiling, whether such costs were incurred during the course of contract performance or as a result of termination.
- G.7.8 If any cost reimbursement ceiling specified in Section B.5 is increased, any costs the Contractor incurs before the increase that are in excess of the previous cost reimbursement ceiling shall be allowable to the same extent as if incurred afterward, unless the CO issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.
- G.7.9 A change order shall not be considered an authorization to exceed the applicable cost reimbursement ceiling specified in Section B.5, unless the change order specifically increases the cost reimbursement ceiling.
- G.7.10 Only those costs determined by the Contracting Officer to be reasonable, allowable, and allocable in accordance with Chapter 33 (Contract Cost Principles) of Title 27 of the DCMR will be reimbursable.

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 during a period when there is no COVID-19 emergency (as later defined in Section H.3.16(c)(3), 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. A certified business enterprise prime contractor that performs less than 35% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- (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. If the certified business enterprise member of the certified joint venture prime contractor performs less than 50% of the contracting effort, the certified joint venture shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- (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 to the Contracting Officer, project manager, and the Director of the Department of Small and Local Business Development (at compliance.enforcement@dc.gov) 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 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 (at compliance.enforcement@dc.gov), the Contracting Officer, and the project manager 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.

The Beneficiary shall go to <https://dslbd.dc.gov> → Scroll down to SBE Forms under the section ‘Stay in Compliance’ → Click on that link & select ‘District Agency Compliance’ in order to access the DSLBD forms for beneficiaries to use for reporting requirements. The Beneficiary may further contact DSLBD at (202) 727-3900 for instructions on SBE Forms.

- H.3.10 The Beneficiary shall meet on an annual basis with the Department of Small and Local Business Development, the Contracting Officer, and the project manager 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 to the point of contact on Page 1 of this solicitation, to the attention of the Contracting Officer detailing the reasons

justifying a waiver, including the Beneficiary's efforts to secure involvement by Certified Business Enterprises, no later than **January 15, 2021, at 2:00pm**. 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.3.16

- (a) Notwithstanding the requirements set forth in this Section H.3, D.C. Code §§ 2-218.01 – 2-218.82 or any other provision of District law or regulation, during the period of the COVID-19 emergency, any contract for a government-assisted project in excess of \$250,000 that is unrelated to the District's response to the COVID-19 emergency but entered into during the COVID-19 emergency, absent a waiver pursuant to D.C. Code § 2-218.51, shall provide that:
 - (1) At least 50% of the dollar volume of the contract be subcontracted to small business enterprises; or

- (2) If there are insufficient qualified small business enterprises to meet the requirement of paragraph (1) of this subsection, the subcontracting requirement may be satisfied by subcontracting 50% of the dollar volume ("CBE minimum expenditure") to any qualified certified business enterprises; provided, that best efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall subcontracting work.
- (b)
 - (1) For every dollar expended by a beneficiary with a resident-owned business, the beneficiary shall receive a credit for \$1.10 against the CBE minimum expenditure.
 - (2) For every dollar expended by a beneficiary with a disadvantaged business enterprise, the beneficiary shall receive a credit for \$1.25 against the CBE minimum expenditure.
 - (3) For every dollar expended by a beneficiary that uses a company designated as both a disadvantaged business enterprise under D.C. Code § 2-218.33 and as a resident-owned business under D.C. Code § 2-218.02(15), the beneficiary shall receive a maximum credit for \$1.30 against the CBE minimum expenditure.
- (c) For the purposes of this section, the term:
 - (1) "Beneficiary" has the same meaning as set forth in D.C. Code § 2-218.02(1B).
 - (2) "Best efforts" means that a beneficiary is obligated to make its best attempt to accomplish the agreed-to goal, even when there is uncertainty or difficulty.
 - (3) "COVID-19 emergency" means the emergencies declared in the Declaration of Public Emergency (Mayor's Order 2020-045) together with the Declaration of Public Health Emergency (Mayor's Order 2020-046), declared on March 11, 2020, including any extension of those declared emergencies.
 - (4) "Disadvantaged business enterprise" has the same meaning as set forth in D.C. Code § 2-218.33.
 - (5) "Government-assisted project" has the same meaning as set forth in D.C. Code § 2-218.02(9A).
 - (6) "Longtime resident business" has the same meaning as set forth in D.C. Code § 2-218.02(13).
 - (7) "Resident-owned business" has the same meaning as set forth in D.C. Code § 2-218.02(15).
 - (8) "Small Business Enterprises" has the same meaning as set forth in D.C. Code § 2-218.32.

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 Contract 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

The Contractor shall provide complete disclosure of any material civil or criminal litigation or indictment either threatened or pending involving the Contractor. The Contractor 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 response to a solicitation or

execution of a contract 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 affect 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 the Federal Bureau of Investigation (FBI), the Metropolitan Police Department (MPD) and other 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 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.

H.9 ADVISORY AND ASSISTANCE SERVICES

This contract is a “non-personal services contract”. The Contractor and the Contractor’s employees: (1) shall perform the services specified herein as independent contractors, not as employees of the government; (2) shall be responsible for their own management and administration of the work required and bear sole responsibility for complying with any and all technical, schedule, financial requirements or constraints attendant to the performance of this contract; (3) shall be free from supervision or control by any government employee with respect to the manner or method of performance of the service specified; but (4) shall, pursuant to the government’s right and obligation to inspect, accept or reject work, comply with such general direction of the CO, or the duly authorized representative of the CO as is necessary to ensure accomplishment of the contract objectives.

H.10 INTELLECTUAL PROPERTY RIGHTS

H.10.1 Definitions

1. The term “Intellectual Property Rights” means The worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method ,process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and knowhow; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
2. The term “Works” means any tangible or intangible items or things that have been or will be prepared, created, maintained, serviced or developed by a Contractor (or such third parties as the Contractor may be permitted to engage) at any time following the effective date of the Contract, for or on behalf of District under the Contract, including but not limited to any (i) works of authorship (such as literary works, musical works, dramatic works, choreographic works, pictorial, graphic and sculptural works, motion pictures and other audiovisual works, sound recordings and architectural works, which includes but is not limited to lottery games, game names, game designs, ticket format and layout, manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer software, scripts, object code, source code or other programming code, HTML code, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to District under the Contract, and (viii) all Intellectual Property Rights in any of the foregoing.

H.10.2 Intellectual Property Rights

1. Ownership. As between the Contractor and the District, the Works and Intellectual Property Rights in the Works are and shall be owned exclusively by the District, and not the Contractor. The Contractor specifically agrees that all Works shall be considered “works made for hire” and that the Works shall, upon creation, be owned exclusively by the District. To the extent that the Works, under applicable law, may not be considered works made for hire, the Contractor hereby agrees that the Contract transfers, grants, conveys, assigns, and relinquishes exclusively to the District all right, title and interest in and to the Works, and all Intellectual Property Rights in the Works, without the necessity of any further consideration, and the District shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Works, subject to any exceptions with respect to pre-existing or third party rights as set forth below.
2. Ownership of Prior Rights by the District. All property and tangible or intangible items, including the Intellectual Property Rights therein, that were created, developed or owned by the District prior to the solicitation for or execution of the Contract (e.g., copyrights, trademarks, etc.) shall continue to be exclusively owned by the District, and the Contractor shall have no ownership thereof, and no rights thereto, other than the limited, non-exclusive right to use such property or tangible and intangible items solely for the purposes set forth in the preceding solicitation or the Contract, if any, and only for the duration of such Contract.
3. Ownership of Prior Rights by the Contractor. All property and tangible or intangible items, including the Intellectual Property Rights therein, that were created, developed or owned by the Contractor prior to the issuance of the preceding solicitation shall continue to be exclusively owned by the Contractor, and the District shall have no ownership thereof, and no rights thereto, other than the limited, non-exclusive right to use such property or tangible or intangible items solely for the purposes set forth in the preceding solicitation or the Contract. All intellectual property relating to the goods and/or services set forth herein or under the Contract, including the Intellectual Property Rights in those goods and/or services, that was created, developed or licensed by the Contractor prior to the issuance of the preceding solicitation or the execution of the Contract, or during the term of the Contract, to the extent such intellectual property is not considered “works” as defined above, shall be, and is, licensed to the District on a non-exclusive, perpetual, irrevocable, royalty-free, worldwide basis, to allow the District or its designees to provide, and continue to provide, the goods and services set forth herein or under the Contract, including after the expiration or termination of the Contract.
4. Further Actions. The Contractor, upon request and without further consideration, shall perform any acts that may be deemed necessary or desirable by the District to evidence more fully the transfer of ownership of all Works to the District to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by the District. In the event the District shall be unable for any reason to obtain the Contractor’s signature on any document necessary for any purpose set forth in the foregoing sentence, the Contractor hereby irrevocably designates and appoints the District and its duly authorized officers and agents as the Contractor’s agent and the Contractor’s attorney-in-fact to act for and in the Contractor’s behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by the Contractor.

5. Waiver of Moral Rights. The Contractor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Works which the Contractor may now have or which may accrue to the Contractor's benefit under U.S. or foreign copyright laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Works and the right to object to any modification, translation or use of the Works, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.
6. Confidentiality. All Works and all materials forwarded to the Contractor by the District for use in and preparation of the Works, shall be deemed the confidential information of the District, and the Contractor shall not use, disclose, or permit any person to use or obtain the Works, or any portion thereof, in any manner without the prior written approval of the District.
7. Injunctive Relief. The preceding solicitation and the Contract are intended to protect the District's proprietary rights pertaining to the Works, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to the District's business. Therefore, the Contractor acknowledges and stipulates that a court of competent jurisdiction should immediately enjoin any material breach of the intellectual property, licensing, and confidentiality provisions of the preceding solicitation or Contract, upon a request by the District, without requiring proof of irreparable injury as same should be presumed.
8. Return of Works. Upon the request of the District, but in any event upon expiration or termination of the Contract, the Contractor shall surrender to the District all documents and things pertaining to the Works, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by the Contractor or furnished by the District to the Contractor, including all materials embodying the Works, any District confidential information, or Intellectual Property Rights, regardless of whether complete or incomplete. This section is intended to apply to all Works made or compiled by the Contractor, as well as to all documents and things furnished to the Contractor by the District or by anyone else that pertains to the Works.
9. Contractor's Name or Logo. The Contractor shall not affix its company name, label, logo, or any other similar identifying information to or on any products, equipment or any other goods provided under the Contract.

H.10.3 Pre-Existing And Third Party Rights

1. To the extent that any pre-existing rights and/or third party rights or limitations are embodied, contained, reserved or reflected in the Works, the Contractor shall either (a) grant to the District the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such pre-existing rights and any derivative works thereof in connection with the sale,

offering for sale, marketing, advertising, and promotion of the District's goods and services, and in all forms of media, media channels and/or publicity that may now exist or hereafter be created or developed, including but not limited to television, radio, print, Internet, and social media (e.g., Facebook, Twitter, YouTube, etc.) and (ii) authorize others to do any or all of the foregoing, or (b) where the obtaining of the aforementioned rights is not reasonably practical or feasible, provide written notice to the District of such pre-existing or third party rights or limitations, request the District's approval of such pre-existing or third party rights, obtain a limited right and license to use such pre-existing or third party rights on such terms as may be reasonably negotiated, and obtain the District's written approval of such pre-existing or third party rights and the limited use of same. The Contractor shall provide the District with documentation indicating a third party's written approval for the Contractor to use any pre-existing or third party rights that may be embodied, contained, reserved or reflected in the Works. The Contractor shall indemnify, defend and hold the District harmless from and against any and all claims, demands, regulatory proceedings and/or causes of action, and all losses, damages, and costs (including attorneys' fees and settlement costs) arising from or relating to, directly or indirectly, any claim or assertion by any third party that the Works infringe any third party rights. The foregoing indemnity obligation shall not apply to instances in which the District either (y) exceeded the scope of the limited license that was previously obtained by the Contractor and agreed to by the District, or (z) obtained information or materials, independent of the Contractor's involvement or creation, and provided such information or materials to the Contractor for inclusion in the Works, and such information or materials were included by the Contractor, in an unaltered and unmodified fashion, in the Works.

2. The Contractor agrees that it shall have and maintain, during performance of the Contract, written agreements with all employees, Subcontractors, or agents engaged by the Contractor in performance hereunder, granting the Contractor rights sufficient to support all performance and grants of rights by the Contractor. Copies of such agreements shall be provided to the District promptly upon request.

H.10.4 Remediation

1. If the Works or the Intellectual Property Rights therein become the subject of a lawsuit or claim of infringement, or the Contractor becomes aware that such items are likely to become the subject of a lawsuit or claim of infringement, the Contractor shall exercise one (1) of the following two (2) options in order to provide the District with continued and uninterrupted use of the Works and Intellectual Property Rights therein: (a) obtain for the District the right to continue the use of the alleged infringing Works at no additional cost to the District, or (b) obtain alternative, substitute or new Works for the allegedly infringing Works, which are of equivalent or superior quality to the allegedly infringing Works, at no additional cost to the District, and subject to the acceptance of the District in its sole discretion.

H.10.5 Intellectual Property Search

1. The Contractor, at its expense, shall conduct all appropriate intellectual property searches (e.g., full copyright, trademark or service mark or patent searches) for all proposed Works, to ensure that the proposed Works are protectable by the District and do not infringe the Intellectual Property Rights of any third person or entity. The Contractor holds the District harmless from

the infringement of such Works, as set forth above. The District retains the right and option to obtain or secure registration of the Works in its own name, and on its own behalf, without the substantive involvement of the Contractor. The District will withhold indemnified losses from payments to the Contractor, or, if no payments are made, the District will make demand of payment of indemnified losses. The Contractor must make payment within thirty (30) Days of the District's demand.

H.10.6 Personality Rights

1. The Contractor hereby warrants and represents to the District that individuals or characters appearing or depicted in any advertisement have provided their written consent for the use of their persona or personality rights, including name, biographical information, picture, portrait, likeness, performance, voice and/or identity ("Personality Rights"), and have been compensated for such Personality Rights, if appropriate. If such permission has been obtained for a limited time, the Contractor shall be responsible for any costs associated with claims resulting from the use of the Personality Rights after the expiration of those time limits. The Contractor agrees to hold the District harmless from any claims, including, without limitation, claims for invasion of privacy, infringement of the right of publicity, libel, unfair competition, false advertising, intentional or negligent infliction of emotional distress, copyright or trademark infringement, and/or claims for attorney's fees, resulting from use of the Personality Rights.

H.11 PURCHASE OF LOTTERY TICKETS OR WAGERING ON SPORTS

Contractor's personnel (including, but not limited to, partners, temporary employees, subcontractors and consultants) who are performing services directly under or related to the awarded Contract, including members of their households, are prohibited from purchasing any the DC Lottery tickets, playing any the DC Lottery games, claiming any the DC Lottery prize, engaging in any the DC Lottery promotions or wagering or sports in the District of Columbia during the term of the Contract and any extensions thereof. The Contractor shall ensure that this requirement is made known to all personnel involved with the performance of this Contract.

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."
- 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.
- H. Protecting Pregnant Workers Fairness Act of 2016, D.C. Official Code § 32-1231.01 et seq. (PPWF Act)
- I. Unemployed Anti-Discrimination Act of 2012, D.C. Official Code § 32-1361 et seq.
- J. Fair Criminal Record Screening Amendment Act of 2014, effective December 17, 2014 (D.C. Law 20-152)
- K. 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 current living wage rate, the Living Wage Act Fact Sheet which includes exemption information, and the Living Wage Act Poster may be found at <https://does.dc.gov/service/office-wage-hour-compliance-0> or contact the Department of Employment Services at (202) 724-7000.

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 this contract shall be resolved as provided herein.

- (a) **Claims by a 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 this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.
- (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 Contracting Officer 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

- (iv) The Contractor's request for relief or other action by the Contracting Officer.
- (2) The Contracting Officer may meet with the Contractor in a further attempt to resolve the claim by agreement.
- (3) The Contracting Officer 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 Contracting Officer'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 contracting officer'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 Contracting Officer 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 authorized by D.C. Official Code § 2-360.04.
- (6) If a Contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim. Liability 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, a Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.
- (b) **Claims by the District against a 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 this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

- (1) The Contracting Officer shall decide all claims by the District against a Contractor arising under or relating to a contract.
 - (2) The Contracting Officer shall send written notice of the claim to the Contractor. The Contracting Officer'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 Contracting Officer'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 Contracting Officer 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 Contracting Officer to settle, compromise, pay, or otherwise adjust any claim involving fraud.
- (c) Decisions of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor as authorized by D.C. Official Code §2-360.04.
 - (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 Contracting Officer.

I.8 CHANGES

- (a) The CO may, at any time, by written order, and without notice to the surety, if any, make changes in the contract within the general scope hereof. If such change causes an increase or decrease in the cost of performance of the contract, or in the time required for performance, an equitable adjustment shall be made. Any claim for adjustment for a change within the general scope must be asserted within ten (10) days from the date the change is ordered; provided, however, that the CO, if he or she determines that the facts justify such action, may receive, consider, and adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in **Section I.7 Disputes**.
- (b) The District shall not require the Contractor, and the Contractor shall not require a subcontractor, to undertake any work that is beyond the original scope of the contract or subcontract, including work under a District-issued change order, when the additional work increases the contract price beyond the not-to-exceed price or negotiated maximum price of the contract, unless the CO:
- (1) Agrees with the Contractor, and if applicable the subcontractor, on a price for the additional work;
 - (2) Obtains a certification of funding to pay for the additional work;
 - (3) Makes a written, binding commitment with the Contractor to pay for the additional work within thirty (30) days after the Contractor submits a proper invoice; and
 - (4) Provides the Contractor with written notice of the funding certification.
- (c) The Contractor shall include in its subcontracts a clause that requires the Contractor to:
- (1) Within five (5) business days of its receipt of notice of the approved additional funding, provide the subcontractor with notice of the amount to be paid to the subcontractor for the additional work to be performed by the subcontractor;
 - (2) Pay the subcontractor any undisputed amount to which the subcontractor is entitled for the additional work within ten (10) days of receipt of payment from the District; and
 - (3) Notify the subcontractor and CO in writing of the reason(s) the Contractor withholds any payment from a subcontractor for the additional work.
- (d) Neither the District, Contractor, nor any subcontractor may declare another party to be in default, or assess, claim, or pursue damages for delays until the parties agree on a price for the additional work.

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 subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.
- D. If this contract is terminated as provided in paragraph A., 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 terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the District's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
- (3) Terminate all contracts to the extent they relate to the work terminated.
- (4) Assign to the District, as directed by the Contracting Officer, all rights, title and interest of the Contractor under the subcontracts terminated, in which case the District will have the right to settle or pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts. The approval or ratification will be final for purposes of this clause.
- (6) As directed by the Contracting Officer, transfer title and deliver to the District (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other materials produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract has been completed, would be required to be furnished to the District.
- (7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the District has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (6) above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the District under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) After the expiration of ninety (90) days (or such longer period as may be agreed to) after receipt by the Contracting Officer of acceptable inventory schedules, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality of termination inventory not previously disposed of excluding items authorized for disposition by the Contracting Officer. The Contractor may request the District to remove those items or enter into an agreement for their storage. Within fifteen (15) days, the District will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within forty-five (45) days from submission of the list, and shall correct the list, as necessary, before final settlement.

(d) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this one-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after one year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due to the Contractor because of the termination and shall pay the amount determined.

(e) Subject to paragraph (d) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) below, exclusive of costs shown in subparagraph (f)(3) below, may not exceed the total contract price as reduced by (1) the amount of payment previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Contractor paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(f) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (e) above:

(1) The contract price for completed supplies or services accepted by the District (or sold or acquired under subparagraph (b)(9) above) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of :

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (f)(1) above;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (f)(1) above; and

(iii) A sum, as profit on subparagraph f(1) above, determined by the Contracting Officer to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subparagraph (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable cost of settlement of the work terminated, including-

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontractors (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(g) Except for normal spoilage, and except to the extent that the District expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (f) above, the fair value as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the District or to a buyer.

(h) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraphs (d), (f) or (j), except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) or (j), and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (d), (f) or (j), the District will pay the Contractor (1) the amount determined by the Contracting Officer if there

is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

(i) In arriving at the amount due the Contractor under this clause, there shall be deducted:

- (1) All unliquidated advances or other payments to the Contractor under the termination portion of the contract;
- (2) Any claim which the District has against the Contractor under this contract; and
- (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the District.

(j) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within ninety (90) days from the effective date of termination unless extended in writing by the Contracting Officer.

(k) (1) The District may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor shall be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the District upon demand together with interest computed at the rate of 10 percent (10%) per year. Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess payment is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

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

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 District of Columbia Procurement Practices Reform Act of 2010, (D.C. Law 18-371; D.C. Official Code §§ 2-351.01, et seq., 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 NON-DISCRIMINATION CLAUSE

- (a) The Contractor shall not discriminate in any manner against any employee or applicant for employment that would constitute a violation of the District of Columbia Human Rights Act, approved December 13, 1977, as amended (D.C. Law 2-38; D.C. Official Code §2-1402.11) (2001 Ed.) (“Act” as used in this Section). The Contractor shall include a similar clause in all subcontracts, except subcontracts for standard commercial

supplies or raw materials. In addition, Contractor agrees and any subcontractor shall agree to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause as provided in Section 251 of the Act.

- (b) Pursuant to rules of the Office of Human Rights, published on August 15, 1986 in the D.C. Register, Mayor's Order 2002-175 (10/23/02), 49 DCR 9883 and Mayor's Order 2006-151 (11/17/06), 52 DCR 9351, the following clauses apply to this contract:
- (1) The Contractor shall not discriminate against any employee or applicant for employment because of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, genetic information, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act.
 - (2) The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, genetic information, source of income, or place of residence or business.

The affirmative action shall include, but not be limited to the following:
 - (a) employment, upgrading or transfer;
 - (b) recruitment or recruitment advertising;
 - (c) demotion, layoff, or termination;
 - (d) rates of pay, or other forms of compensation; and
 - (e) selection for training and apprenticeship.
 - (3) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Agency, setting forth the provisions in subsections (b)(1) and (b)(2) concerning non-discrimination and affirmative action.
 - (4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in subsection (b)(2).

- (5) The Contractor agrees to send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the contracting agency, advising the said labor union or workers' representative of that contractor's commitments under this nondiscrimination clause and the Act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (6) The Contractor agrees to permit access to his books, records and accounts pertaining to its employment practices, by the Chief Procurement Officer or designee, or the Director of Human Rights or designee, for purposes of investigation to ascertain compliance with this chapter, and to require under 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. Definitions

1. "Products" - A deliverable under any contract that may include commodities, services and/or technology furnished by or through Contractor, including existing and custom Products, such as, but not limited to: a) recorded information, regardless of form or the media on which it may be recorded; b) document research; c) experimental, developmental, or engineering work; d) licensed software; e) components of the hardware environment; f) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings); g) third party software; h) modifications, customizations, custom programs, program listings, programming tools, data, modules, components; and i) any intellectual property embodied therein, whether in tangible or intangible form, including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, and object code.
2. "Existing Products" - Tangible Products and intangible licensed Products that exist prior to the commencement of work under the contract. Existing Products must be identified on the Product prior to commencement of work or else will be presumed to be Custom Products.
3. "Custom Products" - Products, preliminary, final or otherwise, which are created or developed by Contractor, its subcontractors, partners, employees, resellers or agents for the District under the contract.
4. "District" - The District of Columbia and its agencies.

B. Title to Project Deliverables

The Contractor acknowledges that it is commissioned by the District to perform services detailed in the contract. The District shall have ownership and rights for the duration set forth in the contract to use, copy, modify, distribute, or adapt Products as follows:

1. Existing Products: Title to all Existing Licensed Product(s), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall: (1) remain with Contractor or third party proprietary owner, who retains all rights, title and interest (including patent, trademark or copyrights). Effective upon payment, the District is granted an irrevocable, non-exclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, adapt (unless Contractor advises the District as part of Contractor's proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the District's satisfaction) and distribute Existing Product to District users up to the license capacity stated in the contract with all license rights necessary to fully effect the general business purpose(s) of the project or work plan or contract; and (2) be licensed in the name of the District. The District agrees to reproduce the copyright notice and any other legend of ownership on any copies authorized under this paragraph.

2. Custom Products: Effective upon Product creation, Contractor hereby conveys, assigns, and transfers to the District the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all patent, trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor.

C. Transfers or Assignments of Existing or Custom Products by the District

The District may transfer or assign Existing or Custom Products and the licenses thereunder to another District agency. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a project or work plan in the course of Contractor's business.

D. Subcontractor Rights

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

E. Source Code Escrow

1. For all computer software furnished to the District with the rights specified in section B.2, the Contractor shall furnish to the District, a copy of the source code with such rights of the scope as specified in section B.2 of this clause. For all computer software furnished to the District with the restricted rights specified in section B.1 of this clause, the District, if the Contractor either directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided the District under the contract or any paid-up maintenance agreement, or if the Contractor should be declared 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 current version of the source code supplied under the 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.

2. If the Contractor or Product manufacturer/developer of software furnished to the District with the rights specified in section B.1 of this clause offers the source code or source code escrow to any other commercial customers, the Contractor shall either: (1) provide the District with the source code for the Product; (2) place the source code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the District, and who shall be directed to release the deposited source code in accordance with a standard escrow arrangement acceptable to the District; or (3) will certify to the District that the Product manufacturer/ developer has named the District as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the District, and who shall be directed to release the deposited source code in accordance with the terms of escrow.

3. The Contractor shall update the source code, as well as any corrections or enhancements to the source code, for each new release of the Product in the same manner as provided above, and certify such updating of escrow to the District in writing.

F. Indemnification and Limitation of Liability

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

I.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 RESEVED

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 expenditures under the contract in excess of the encumbered budget authority are subject to appropriation or additional budget authority.

I.22 MULTIYEAR CONTRACT

If funds are not appropriated or otherwise made available for the continued performance in a subsequent year of a multiyear contract, the contract for the subsequent year shall be terminated, either automatically or in accordance with the termination clause of 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 RESERVED

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 CONTRACTS THAT CROSS FISCAL YEARS

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

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 RESERVED

I.30 INSURANCE

- A. GENERAL REQUIREMENTS. The Contractor at its sole expense 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- / VII or higher. The Contractor shall require all of its subcontractors to carry the same insurance required herein.

All required policies shall contain a waiver of subrogation provision in favor of the Government of the District of Columbia.

The Government of the District of Columbia shall be included in all policies required hereunder to be maintained by the Contractor and its subcontractors (except for workers’ compensation, professional liability and crime) as an additional insureds for claims against The Government of the District of Columbia relating to this contract, with the understanding that any affirmative

obligation imposed upon the insured Contractor or its subcontractors (including without limitation the liability to pay premiums) shall be the sole obligation of the Contractor or its subcontractors, and not the additional insured. The additional insured status under the Contractor's and its subcontractors' Commercial General Liability insurance policies shall be effected using the ISO Additional Insured Endorsement form CG 20 10 11 85 (or CG 20 10 07 04 **and** CG 20 37 07 04) or such other endorsement or combination of endorsements providing coverage at least as broad and approved by the CO in writing. The Contractor and its subcontractors' liability policies (except for workers' compensation, professional liability, and crime) shall be endorsed using ISO form CG 20 01 04 13 or its equivalent so as to indicate that such policies provide primary coverage (without any right of contribution by any other insurance, reinsurance or self-insurance, including any deductible or retention, maintained by an Additional Insured) for all claims against the additional insured arising out of the performance of this Statement of Work by the Contractor or its subcontractors, or anyone for whom the Contractor or its subcontractors may be liable. These policies shall include a separation of insureds clause applicable to the additional insured.

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.

1. Commercial General Liability Insurance ("CGL") - The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries a CGL policy, written on an occurrence (not claims-made) basis, on Insurance Services Office, Inc. ("ISO") form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by the CO in writing), covering liability for all ongoing and completed operations of the Contractor, including ongoing and completed operations under all subcontracts, and covering claims for bodily injury, including without limitation sickness, disease or death of any persons, injury to or destruction of property, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising out of an Insured Contract (including the tort liability of another assumed in a contract) and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than \$1,000,000 each occurrence, a \$2,000,000 general aggregate (including a per location or per project aggregate limit endorsement, if applicable) limit, a \$1,000,000 personal and advertising injury limit, and a \$2,000,000 products-completed operations aggregate limit.
2. Automobile Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of commercial (business) automobile liability insurance written on ISO form CA 00 01 10 13 (or another form with coverage at least as broad and approved by the CO in writing) including coverage for all owned, hired, borrowed and non-owned vehicles and equipment used by the Contractor, with minimum per accident limits equal to the greater of (i) the limits set forth in the Contractor's commercial automobile liability policy or (ii) \$1,000,000 per occurrence combined single limit for bodily injury and property damage.
3. i) Workers' Compensation Insurance - The Contractor shall provide evidence satisfactory to the CO of Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

- ii) Employer's Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of 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.
- iii) All insurance required by this paragraph 3 shall include a waiver of subrogation endorsement for the benefit of Government of the District of Columbia.
4. Crime Insurance (3rd Party Indemnity) - The Contractor shall provide a Crime policy including 3rd party fidelity to cover the dishonest acts of Contractor, its employees and/or volunteers which result in a loss to the District. The policy shall provide a limit of \$100,000 per occurrence.
5. Cyber Liability Insurance - The Contractor shall provide evidence satisfactory to the Contracting Officer of Cyber Liability Insurance, with limits not less than \$5,000,000 per occurrence or claim, \$5,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. This insurance requirement will be considered met if the general liability insurance includes an affirmative cyber endorsement for the required amounts and coverages. Shared limits with the Professional Liability coverage will be acceptable.
6. Employment Practices Liability - The Contractor shall provide evidence satisfactory to the Contracting Officer with respect to the operations performed to cover the defense of claims arising from employment related wrongful acts including but not limited to: Discrimination, Sexual Harassment, Wrongful Termination, or Workplace Torts, whether between employees of contractor or against third parties. Employment Practices Liability coverage must specifically state Third Party Liability coverage is included. Contractor will indemnify and defend the District of Columbia should it be named co-defendant or be subject to or party of any claim. Coverage shall also extend to Temporary Help Firms and Independent Contractors hired by Contractor. The policy shall provide limits of not less than \$1,000,000 for each wrongful act and \$2,000,000 annual aggregate for each wrongful act.
7. Installation Floater Insurance - For projects involving District property being installed, fabricated or erected by a contractor, the contractor shall provide an installation floater policy with a limit equal to the full contract value. The policy shall cover property while located at the project site, at temporary locations, or in transit; deductibles will be the sole responsibility of the contractor.
8. 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 \$5,000,000 per claim or per occurrence for each wrongful act and \$5,000,000 annual aggregate. The Contractor warrants that any applicable retroactive date precedes the date the Contractor first performed any professional services for the Government of the District of Columbia and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least ten years after the completion of the professional services. Shared limits with the Cyber Liability coverage will be acceptable.

9. Commercial Umbrella or Excess Liability - The Contractor shall provide evidence satisfactory to the CO of commercial umbrella or excess liability insurance with minimum limits equal to the greater of (i) the limits set forth in the Contractor's umbrella or excess liability policy or (ii) \$5,000,000 per occurrence and \$5,000,000 in the annual aggregate, following the form and in excess of all liability policies. **All** liability coverages must be scheduled under the umbrella and/or excess policy. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by the District and the "other insurance" provision must be amended in accordance with this requirement and principles of vertical exhaustion.

B. PRIMARY AND NONCONTRIBUTORY INSURANCE.

The insurance required herein shall be primary to and will not seek contribution from any other insurance, reinsurance or self-insurance including any deductible or retention, maintained by the Government of the District of Columbia.

- C. 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 ten years for construction projects following final acceptance of the work performed under this contract and two years for non-construction related contracts.
- D. 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.**
- E. 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.
- F. 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.
- G. 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 its insurance coverages renew during the contract.

- H. 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. Certificates of insurance must reference the corresponding contract number. Evidence of insurance shall be submitted to:

The Government of the District of Columbia

**And mailed to the attention of:
(Name of Contracting Officer/Agency)
(Address)
(Phone Number)
(E-mail Address)**

The CO may request and the Contractor shall promptly deliver updated certificates of insurance, endorsements indicating the required coverages, and/or other evidence of the insurance policies. If the insurance initially obtained by the Contractor expires prior to completion of the contract, renewal certificates of insurance and additional insured and other endorsements shall be furnished to the CO prior to the date of expiration of all such initial insurance. For all coverage required to be maintained after completion, an additional certificate of insurance evidencing such coverage shall be submitted to the CO on an annual basis as the coverage is renewed (or replaced).

- I. 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.
- J. CARRIER RATINGS. All Contractor's and its subcontractors' insurance required in connection with this contract shall be written by insurance companies with an A.M. Best Insurance Guide rating of at least A- VII (or the equivalent by any other rating agency) and licensed in the in the District.

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

- 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 Section I.7.
- I.31.10 The provisions of the First Source Act do not apply to nonprofit organizations which employ 50 employees or less.
- I.31.11 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 HEALTH AND SAFETY STANDARDS

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

I.34 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.35 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 of 2010, (D.C. Law 18-371; D.C. Official Code §§ 2-351.01, et seq. and D.C. MUN. REGS. tit. 27.

I.36 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) BAFO (in order of the most recent to earliest)
- (4) Contractor Proposal

SECTION J
ATTACHMENTS

The following Attachments are hereby incorporated:

- J.1 U.S. Department of Labor Wage Determination No. 2015-4281, Revision 16, Dated 4/23/2020
- J.2 Doing Business with Integrity
- J.3 DC Lottery Facts Sheet
- J.4 Bidder/Offeror Certification Form
- J.5 Past Performance Evaluation Form
- J.6 Subcontracting Plan Form
- J.7 Office of Local Business Development Equal Employment Opportunity Information Report and Mayor's Order 85-85
- J.8 Department of Employment Services First Source Employment Agreement and Plan

SECTION L

INSTRUCTIONS, CONDITIONS AND NOTICES TO CONTRACTORS

L.1 SOLICITATION CONDITIONS

- L.1.1 The District reserves the right to accept/reject any/all bids or proposal resulting from this solicitation.
- L.1.2 The District may reject as non-responsive any bid or proposal that fails to conform in any material respect to this solicitation.
- L.1.3 The Contracting Officer may waive minor informality or irregularity in bids received or provide limited exchanges to clarify or resolve ambiguities, apparent minor mistakes or irregularities in proposals received whenever it is determined that such action is in the best interest of the District.
- L.1.4 All bid or proposal documents will be retained by the District, and therefore will not be returned to the offeror.
- L.1.5 Offerors are expected to examine the Scope of Work and all instructions and attachments in this Solicitation. Failure to do so shall be at the sole risk of the Offeror.
- L.1.6 The District shall not be liable for any costs incurred by any Offeror associated with the preparation of a bid or proposal submitted in response to this Solicitation.
- L.1.7 The District will reject any bid or proposal that fails to include a subcontracting plan that is required by law, pursuant to Section H.3.

L.1.8 Anticipated Procurement Timeline

Procurement Milestones	Anticipated Dates
1) Solicitation Advertised	01/12/2021
2) Deadline for Receipt of Vendor Questions	01/15/2021, 2:00PM
3) Deadline for Waiver of Subcontracting Requirements per Section H.3.12	01/15/2021, 2:00PM
4) District Response to Vendor Questions Posted via Solicitation Amendment	01/19/2021
5) Proposals Due Date	01/27/2021, 2:00PM
6) Evaluation Phase (including, if any, BAFO and negotiations)	February 2021

Procurement Milestones	Anticipated Dates
7) D.C. Council Approval	March 2021
8) Anticipated Contract Award	March 2021

L.2 EXPLANATION TO PROSPECTIVE OFFERORS

L.2.1 If a prospective offeror has any questions, exceptions/alternatives it wishes to present to the District, or assumptions (referred to collectively herein as “inquiries”) relative to this solicitation, the prospective offeror shall email inquiries to the point of contact on Page 1 of this solicitation no later the dates specified in Section L.1.8. The District may not consider any inquiries received after the date specified. An amendment to the solicitation will be posted online on the Solicitation Gateway at <https://bit.ly/2GXc2r5> if that information is necessary in responding to the solicitation, or if the lack of its dissemination would be prejudicial to other prospective offerors. Oral explanations or instructions given before the award of the contract will not be binding on the District.

L.2.2 Upon the release of this Solicitation and during the selection process, there shall be no communication concerning this Solicitation between any prospective Offeror and/or its representatives, and employees of the Government of the District of Columbia, consultants or advisors to the Government of the District of Columbia; and elected or appointed officials of the Government of the District of Columbia or their staff, except as provided for in this Solicitation. Any violation of this provision by any prospective Offeror and/or its representatives may be grounds for immediate disqualification.

L.3 PREPARATION AND SUBMISSION OF PROPOSALS

L.3.1 An Offeror shall submit its proposal in two (2) parts: (1) a technical proposal, and (2) a price proposal. The offeror shall label each part respectively, i.e., “Technical Proposal” and “Price Proposal.” See Section L.12 for delivery details.

L.3.2 Technical Proposal

- 1) For the Technical Proposal, Offerors are directed to the specific proposal evaluation factors found in Section M, Evaluation of this solicitation. The Offeror shall respond to the technical evaluation factors in a way that will allow the District to evaluate the Offeror’s response against the factors. The Offeror shall submit information in a clear, concise, factual and logical manner providing a comprehensive description of program supplies and services and delivery thereof. The information requested for the technical proposal shall facilitate evaluation for all proposals. The technical proposal must contain sufficient detail to provide a clear and concise response fully reflecting the manner in which the Offeror proposes to fully meet the requirements in Section C.

- 2) Representations, Certifications and Acknowledgements: The Offeror shall submit the following forms and information:
 - A. Section K, Representations, Certifications and Other Statements of Offerors
 - B. Solicitation, Offer and Award form (cover page) of this solicitation
 - C. Acknowledgement of Amendments – signed cover page of any amendments to
- 3) The Offeror’s Technical Proposal shall be organized and presented in the following clearly marked separate sections:

I. Section: Technical Approach and Methodology

- a. Provide a description of the systems and processes, including onboarding process, for Billing Oversight the Offeror’s plans to use to ensure accurate Accounting, timely Invoices, and monitoring of media Estimates to work within the approved budget. The description should include the Offeror plan to generate Cost Savings and approach to develop quarterly media impression reports to track unpaid and earned Media Buys.
- b. Provide a description of the Offeror’s planned approach to demonstrate good faith efforts to obtain three competitive bids, secure CBE participation, and have production work conducted within the District to meet the requirements of Section C.
- c. Provide a description of the Offeror’s approach to Advertising Development that includes a description of the Offeror’s methodology for developing and offering Alternative Solutions and providing Creative Services while adhering to the Lottery’s Approval. The description should also include the Offeror’s approach to manage and provide trademark and copyright services, to meet Meetings and Timeline requirements, and to manage Co-promotions that benefits the Lottery.
- d. Provide a description of the Offeror’s approach to Media Planning and Buying that includes the Offeror’s methodology to Negotiate bonus spots, additional promotional support and purchase, and instructions for the placement of all media time and space and the Offeror’ approach to maintain “make goods”.
- e. Provide a description of the Offeror’s approach to Digital Marketing services that include the Offeror’s tools and plan to provide Strategic Consultation, Project Tracking, and Creative Development to promote Lottery, iLottery, and Sports Betting. Include in the Offeror’s approach to Customer Relationship Management (CRM) to create and execute integrated engagement strategies for all digital platforms that enhance the brand, attract and retain customers. The description should also include the approach and tools the Offeror plans to utilize for Digital Media Selection and Digital Media Analysis.
- f. Provide a description of the Offeror’s planned methodology to provide Social Media Marketing Services and Research Services to the Lottery and the Offeror’s approach to meet the Retail Visits and Retail Marketing Support requirements of Section C.

II. Section: Technical Expertise

- a. Provide a description of the Offeror’s expertise and capacity to provide the required services, as referenced in Section C. This description should include:
 - i. Any industry awards or achievements the Offeror received during the past three (3) years.

- ii. The Offeror's understanding of DC Lottery products and brands.
 - iii. The Offeror's expertise in current industry trends and on specific categories of advertising and marketing to the benefit of DC Lottery, particularly in the digital space.
 - iv. The Offeror's resources, excluding the Offeror's personnel and subcontractors, which adds to the Offeror's capacity to provide the required services
- b. Provide a description or resumes that demonstrate the qualifications of the Offeror's key staff and key subcontractors. The key staff must include the Key Personnel required per Section C, the Offeror's key staff to support Billing Oversight, and any other staff that will be dedicated or otherwise made available to perform work in conjunction with the resultant contract. The qualifications should identify the roles and responsibilities and present the level of experience and proficiency of the key staff and key subcontractors in providing the required services, as referenced in Section C.

III. Section: Past Performance

- a. The Offeror shall provide a reference list of contracts or subcontracts the Offeror has satisfactorily performed within the past five (5) years that are similar in size and scope. Similar in size and scope refers to a diverse range of advertising and marketing services that includes digital campaigns, traditional campaigns, public relations and communications and purchasing media placements on traditional and non-traditional platforms as the required services described in Section C. The Offeror's list shall include the following information for each contract or subcontract:
- i. Contract Title
 - ii. Contract number
 - iii. Contract duration (or Period)
 - iv. Contact Person name, phone, and e-mail address
 - v. Total contract value, including media buys
 - vi. Whether the Offeror was the prime contractor or a subcontractor
 - vii. Description of work performed, to include:
 1. Range of advertising and marketing services provided
 2. Number of communication initiatives deployed
 3. Performance statistics directly due to the efforts of the Offeror
 4. Total dollar billings, excluding media buys billings, for the last two (2) calendar years
 5. percentage of billings in each of the following areas: television, digital and social media, radio, print, out of home, collateral, email, and other, during for the last two (2) calendar years

The District may contact listed references.

- b. Provide at least three (3) client completed Attachment J.5, Past Performance Evaluation Forms from the list of references identified in response to Item (a) above.

IV. Section: Case Studies and Samples

- a. Provide narrative Case Studies that succinctly state the objective, strategies, and outcomes associated with the respective campaign and provide illustrative Samples in response to the Case Studies and Samples Listing below. Offerors should have one response for each Listings. Offeror should not duplicate Case Studies responses and Samples responses to the Listings.
- b. Case Studies and Samples must be work that is ongoing or was completed by the Offeror within the past five (5) years.
- c. Each Case Study should include:
 - i. Project Title and Dates
 - ii. Client and contact info
 - iii. Whether the Offeror was the prime contractor or subcontractor
 - iv. Offeror's Team members directly involved
 - v. What was to be solved and the solution
 - vi. The results, including expected KPIs
 - vii. Visual Samples – any Sample required from the Listing that is being provided as a Visual Sample for a Case Study must be clearly identified as such.
- d. A URL link must be provided for the District to download or web view all Case Studies and Samples.
- e. Case Studies and Samples Listing:
 - i. Case Study 1: Provide a narrative case study about the best campaign of the Offeror that increased awareness of the brand and mission.
 - ii. Case Study 2: Provide a narrative case study about the campaign where the objective was to increase sales of a declining product(s) at retail stores, and the Offeror most measurably shifted the needle and increased sales.
 - iii. Case Study 3: Provide a narrative case study about the Offeror's most successful digital campaign where the objective was to attract and drive consumers to a digital platform (web or mobile) and convert the visit to the sale of a product or service.
 - iv. Sample 1: Provide a sample of a detailed Annual Budget for Advertising expenditures, Media Production that includes fees and hard costs, and other related services required.
 - v. Sample 2: Provide a sample of a detailed Campaign Report that highlight key findings and clear recommendations in correlation with a campaign.
 - vi. Sample 3: Provide a sample of a detailed Advertising and Marketing Plan that support brand identity, promotions, and initiatives and demonstrate Advertising Sensitivity.
 - vii. Sample 4: Provide a sample of Collateral Material and Signage such as posters, displays, other POS items, and interior and exterior signage.
 - viii. Sample 5: Provide a sample of a detailed Post-Buy Analysis of initial media campaign goals, metrics met, and issues and resolutions.
 - ix. Sample 6: Provide a sample of a Digital Marketing Campaign, Creative Development, and CRM Banner.

- x. Sample 7: Provide a sample of a detailed Communication Plan with tactics for engaging media and customers.
- xi. Sample 8: Provide a sample of a detailed Strategic Plan demonstrating comprehensiveness and thorough situational analysis.

L.3.3 Price Proposal

The Offeror's Price Proposal shall be submitted as follows:

1. Cover page narrative that describes the budget methodology and detail cost factors
2. Completed Section B, Pricing Schedule
3. Attachment J.4 Bidder/Offeror Certification Form
4. Attachment J.6 Subcontracting Plan (if applicable per Section H.3.2, see Section H.3.4)
5. Attachment J.7 Office of Local Business Development Equal Employment Opportunity Information Report and Mayor's Order 85-85
6. Attachment J.8 Department of Employment Services First Source Employment Agreement and Plan
7. The Offeror's Dun & Bradstreet (D&B) D-U-N-S Number, recent financial statement prepared in accordance with Generally Accepted Auditing Standards (GAAS) by a certified public accountant, or a copy of the Offeror's most recently submitted IRS tax filing

L.4 SIGNING BIDS, PROPOSALS, AND CERTIFICATIONS

Each bid or proposal must show a full business address and telephone number and email address of the Offeror and be **SIGNED BY A PERSON OR PERSONS LEGALLY AUTHORIZED TO BIND THE ENTITY TO THE TERMS AND CONDITIONS OF THE CONTRACT**. All correspondence concerning the bid or proposal or resulting contract will be mailed to the address shown on the bid or proposal in the absence of written instructions from the Offeror or contractor to the contrary. Any bid or proposal submitted by a partnership must be signed with the partnership name by a general partner with authority to bind the

partnership. Any bid or proposal submitted by a corporation must be signed with the name of the corporation, followed by the signature and title of the person having authority to sign for the corporation. Upon request, an Offeror shall provide to the District satisfactory evidence of authority of the person signing on behalf of the corporation. If an agent signs a bid or proposal, the Offeror shall submit to the Contracting Officer evidence satisfactory to the Contracting Officer of the agent's authority to bind the Offeror. The Offeror shall complete and sign all Representations, Certifications and Acknowledgements in this solicitation. Failure to do so may result in a bid or proposal being rejected.

L.5 ERRORS IN BIDS OR PROPOSALS

Offerors shall thoroughly familiarize themselves with the terms and conditions of this Solicitation, acquainting themselves with all available information regarding difficulties that may be encountered and the conditions under which the work is to be accomplished. Offerors will not be relieved from assuming all responsibility for properly estimating the difficulties and

the cost of performing the services required herein due to their failure to investigate the conditions or to become acquainted with all information, schedules and liability concerning the services to be performed. In event of a discrepancy between a unit price and a total price, the unit price shall govern.

L.6 BIDS OR PROPOSALS FOR ALL OR PART

Unless otherwise specified in the solicitation, the Contracting Officer may make award either on all items or on any of the items according to the best interests of the District. Unless prohibited by the solicitation, an Offeror may specify that the Offeror will accept award based on all of the items required.

L.7 WITHDRAWAL OR MODIFICATION OF BIDS OR PROPOSALS

An Offeror may modify or withdraw its bid or proposal upon written notice or facsimile transmission, or via email if received in the location designated in the solicitation for submission of bids or proposals, but not later than the exact time set for opening of bids or due date for proposals.

L.8 LATE BIDS OR PROPOSALS, LATE MODIFICATIONS, AND LATE WITHDRAWALS

- L.8.1 Any bid or proposal or modification to any bid or proposal received at the location designated in the solicitation after the time and date set for receipt of bids or proposals shall be considered "late" unless it was received prior to the contract award and any of the following applies:
- (a) It was sent by registered or certified mail not later than five (5) calendar days before the date and time specified for receipt of offers;
 - (b) It was sent by mail and the contracting officer determines that the late receipt was due solely to mishandling by the District after receipt at the location specified in the solicitation;
 - (c) Section L.12 requires electronic delivery and it was sent electronically by the offeror prior to the time and date specified and there is objective evidence in electronic form confirming that the offer was received prior to the date and time specified for receipt; or
 - (d) It was the only proposal received.
- L.8.2 Any request for withdrawal or request for modification of an offer received after the time and date set for receipt of bids or proposals is late.
- L.8.3 A late bid or proposal, late request for modification, or late request for withdrawal shall not be considered, except as provided in this section.
- L.8.4 A late modification of a successful bid or proposal which makes its terms more favorable to the District shall be considered at any time it is received and may be accepted.

- L.8.5 A late bid or proposal, late modification of offer, or late withdrawal of offer that is not considered shall be held unopened, unless opened for identification, until after award and then retained with unsuccessful offers.
- L.8.6 If any information received electronically is unreadable, the contracting officer immediately shall notify the offeror and permit the offeror to resubmit the unreadable portion of the information. The method and time for resubmission shall be prescribed by the contracting officer after consultation with the offeror, and documented in the contract file. The resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness, provided the offeror complies with the time and format requirements for resubmission prescribed by the contracting officer.

L.9 CONTRACT AWARD

If the District awards a contract as a result of this solicitation, the District will send to the successful offeror one copy of the contract electronically and notice to unsuccessful offeror.

L.10 ACKNOWLEDGEMENT OF AMENDMENTS

The Offeror shall acknowledge receipt of any amendments to this solicitation (a) by signing and returning the amendment; or (b) by identifying the amendment number and date in the space for amendment(s) on the Offeror's submitted Solicitation, Offer and Award Form, page 1 of the solicitation. The District must receive the acknowledgement by the date and time specified for receipt of bids or proposals. The Offeror's failure to acknowledge an amendment may result in rejection of bid or proposal.

L.11 ACCEPTANCE PERIOD

The Offerors agrees that its bid or proposal remains valid for the period specified in Box #12 of the Solicitation, Offer and Award Form (page 1 of this solicitation).

L.11 ACCEPTANCE PERIOD

The Offerors agrees that its bid or proposal remains valid for the period specified in Box #12 of the Solicitation, Offer and Award Form (page 1 of this solicitation).

L.12 GATEWAY UPLOAD OF PROPOSALS

- L.12.1 The Offeror shall submit its proposal in Zip folders or individual files uploaded to the Gateway portal in parts as:
1. the Technical Proposal Zip folder or file with content per Section L.3.2,
 2. the Price Proposal Zip folder or file with content per Section L.3.3, and
 3. a Redacted Proposal Copy Zip folder or file pursuant to Section L.12.6.
- L.12.2 The Offeror shall not include pricing information in its technical proposal, nor must technical information be in the pricing proposal.

L.12.3 All documents should be in a .pdf file. The District will not be responsible for corruption of any file submitted. All Zip folders or files should be conspicuously named with the company name, solicitation number, and content description. See the format below:

“ABCCo.CFOPD-20-R-000 Technical Proposal”

“ABCCo.CFOPD-20-R-000 Price Proposal”

“ABCCo.CFOPD-20-R-000 Redacted Proposal”

L.12.4 To upload to the Gateway portal:

1. Login,
2. Click “View” on the Public Solicitation
3. Click “Register as a Respondent”
4. Click “Solicitations” tab, “My Solicitations”
5. Click “View” on the solicitation
6. Under the Response Status section, complete “Indicate your organization's response status”, then click “Submit”
7. Upload solicitation response in the My File section—**Note: Uploads cannot be deleted or replaced, and each file size should not be larger than 1GB**

L.12.5 If you do not already have a Gateway Login Account, complete a Vendor Registration Form and W-9 form at <https://dc.cobblestonesystems.com/gateway/> in the Document Library tab and send it to OCFOvendorhelp@dc.gov to receive credentials within two (2) business days to Login to the Gateway. **The response due date will not be changed while an offeror receives Gateway Login credentials.**

L.12.6 Redacted Proposal Copy: In addition to other proposal submission requirements, the offeror must submit a copy of its proposal, redacted in accordance with any applicable exemptions from disclosure in D.C. Official Code §2-534, in order for the District to comply with §2-536(b) that requires the District to make available electronically copies of records that must be made public. The District’s policy is to release documents relating to District proposals following award of the contract, subject to applicable Freedom of Information Act (FOIA) exemption under §2-534(a)(1).

L.13 PROCUREMENT PROTESTS

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

L.14 STANDARDS OF RESPONSIBILITY

L.14.1 The prospective contractor must demonstrate to the satisfaction of the District the capability in all respects to perform fully the contract requirements, therefore, the prospective contractor must submit evidence, upon request by the District, of the following:

- (a) Financial resources adequate to perform the contract or the ability to obtain them;
- (b) Ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
- (c) A satisfactory performance record;
- (d) A satisfactory record of integrity and business ethics;
- (e) The necessary organization, experience, accounting and operational controls, and technical skills or the ability to obtain them;
- (f) Compliance with the applicable District licensing and tax laws and regulations;
- (g) The necessary production, construction, and technical equipment and facilities or the ability to obtain them;
- (h) not exhibited a pattern of overcharging the District;
- (i) the prospective contractor does not have an outstanding debt with the District or Federal government in delinquent status of more than the greater of \$1,000 or 1% of the contract value, up to \$25,000; and
- (j) the prospective contractor is otherwise qualified and is eligible to receive an award under applicable laws and rules.

L.14.2 If the prospective contractor fails to supply the information requested, the Contracting Officer shall make the determination of responsibility or non-responsibility based upon available information. If the available information is insufficient to make a determination of responsibility, the Contracting Officer shall determine the prospective contractor to be non-responsible.

L.15 RESTRICTION ON DISCLOSURE AND USE OF DATA

L.15.1 Offerors who include in their bid or proposal data that they do not want disclosed to the public or used by the District except for use in the procurement process shall mark the title page with the following legend:

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

If, however, a contract is awarded to this offeror as a result of or in connection with the submission of this data, the District will have the right to duplicate, use, or disclose the data to the extent consistent with the District's needs in the procurement process. This restriction does not limit the District's rights to use, without restriction, information

contained in this proposal if it is obtained from another source. The data subject to this restriction are contained in sheets (insert page numbers or other identification of sheets).”

L.15.2 Mark each sheet of data it wishes to restrict with the following legend:

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

L.16 INITIAL OFFERS

The CO reserves the right to reject any or all bids or proposals determined to be inadequate or unacceptable. The District may award contracts on the basis of initial offers received, without discussion. Therefore, each initial offer should contain the Offeror’s best terms from a standpoint of price, technical and any other factors of award.

SECTION M

EVALUATION OF PROPOSALS

M.1 EVALUATION FOR AWARD

M.1.1 The District intends to award a single contract to the responsive, responsible Offeror whose offer is most advantageous to the District, based upon the evaluation factors specified below. Thus, while the points in the evaluation factors indicate their relative importance, the total scores will not necessarily be determinative of the award. Rather, the total scores will guide the District in making an intelligent award decision based upon the evaluation factors that consists of a combination of experience and qualifications, pricing, and ability to meet the needs of the District.

M.1.2 The District may award a contract on the basis of initial offers received, without further discussion. Therefore, each initial offer must contain the Contractor’s best terms from a standpoint of price, technical standards, and other factors.

M.1.3 The District reserves the right to request discussions/oral presentations from Offerors and will use the information derived from these discussions/oral presentations, if any, in its evaluation.

M.1.4 Selection of Negotiation Process

In accordance with 27 DCMR § 1632, after evaluation of the proposals using only the factors stated in the RFP and in accordance with weightings provided in the RFP, the CO may elect to proceed with any method of negotiations, discussions or award of the contract without negotiations, which is set forth in subsections (a), (b), (c), or (d) of 27 DCMR § 1632.1.

M.2 TECHNICAL RATING

M.2.1 The technical rating scale and guidelines for each technical evaluation factor identified in the solicitation is as follows:

Rating	Score as a Percentage of Total Available Points for Factors	Guidelines
Excellent	90-100%	The response to the factor is complete and well defined, providing relevant supporting details and examples. The response to this factor indicates a high prospect for outstanding performance on the resulting contract. The expectations for this factor are clearly met or exceeded.
Good	70-89%	The response to the factor is generally complete and well defined, providing reasonably well-developed responses with a good amount of relevant supporting details and examples. The response to this factor indicates a moderate to high prospect for good performance on the resulting contract. Most of the expectations are met for this factor.

Rating	Score as a Percentage of Total Available Points for Factors	Guidelines
Fair	50-69%	The response to the factor is fairly complete, but lacking some definition or clarity. The response is not well developed to address the factor and provides limited supporting details and examples. The response to this factor indicates a prospect of achieving satisfactory performance on the resulting contract, but there may also be some risk. Few of the expectations are demonstrated to be met for this factor.
Poor	49% or below	The response to the factor is not complete or provides minimal information, lacking sufficient details and examples. The response to this factor indicates a moderate to high risk of not achieving satisfactory performance on the resulting contract. Does not demonstrate ability to meet expectations for this factor.

M.2.2 The technical rating is a guideline that will be applied to the point value for each technical evaluation factor or sub-factor to determine the offeror’s score for each factor. For example, if an evaluation factor has a maximum point value of 40, using the technical rating guidelines above, if the District evaluates the offeror’s response as “Good,” then the score for that evaluation factor would fall between 28 to 35 (70% to 89% x 40). The offeror’s total technical score will be determined by adding the offeror’s score in each technical evaluation factor or sub-factor.

M.3 EVALUATION FACTORS

Proposals will be evaluated based on the following evaluation factors. The Technical Proposal shall be worth **80** points and the Price Proposal shall be worth **20** points, for a total of 100. If preference points are applicable, the maximum attainable total shall be 112.

M.3.1 Technical Evaluation Factors (80 Points Maximum)

The technical evaluation will be subjective. The technical proposal will be scored up to the maximum possible points based on the rating guidelines. The technical proposal will be evaluated based on the following subfactors:

1. Technical Approach and Methodology (20 Points Maximum)

This factor evaluates how complete and well defined is the Offeror’s approach and methodology to demonstrate that the Offeror has standard, agile processes and technologies in place to effectively develop products, communicate with customers, and to provide the requirements of Section C based on Offeror’s information in response to Section L.3.2.3.I.

2. Technical Expertise (15 Points Maximum)

This factor evaluates the Offeror’s level of technical expertise and capacity and the qualifications of the Offeror’s key staff and key subcontractors in understanding the DC Lottery products and brands, achievements in the advertising and marketing industry, and forward-looking proficiency to provide outstanding performance of the required services in Section C based on Offeror’s information in response to Section L.3.2.3.II.

3. Past Performance (20 Points Maximum)

This factor evaluates the Offeror’s relevant experience in services “similar in size and scope” that indicates a prospect for similar performance on the resulting contract based on Offeror’s information in response to Section L.3.2.3.III.

4. Case Studies and Samples (25 Points Maximum)

This factor evaluates how the Offeror’s case studies and samples provide relevant supporting details of particular work performance and examples of work product to indicate a high prospect for satisfactory performance of the required services in Section C based on Offeror’s information in response to Section L.3.2.3.IV.

M.3.2 Price Evaluation Factor (20 Points Maximum)

The price evaluation will be objective. Price evaluation will include the base period and option periods and will exclude Optional Services. Evaluation of option periods shall not obligate the District to exercise them. The offeror with the lowest price will receive the maximum price points. All other proposals will receive a proportionately lower total score. The following formula will be used to determine each offeror's evaluated price score:

$$\frac{\text{Lowest price proposal}}{\text{Price of proposal being evaluated}} \times \text{weight} = \text{Evaluated price score}$$

M.4 PREFERENCES FOR CERTIFIED BUSINESS ENTERPRISES

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

M.4.1 Application of Preferences

For evaluation purposes, the allowable preferences for Certified Business Enterprises under the Act for are as follows:

- M.4.1.1 Three percent reduction in the bid price in the case of an Invitation for Bids (IFB) or the addition of three points on a 100-point scale in the case of a Request for Proposals (RFP) for a small business enterprise (SBE) certified by the Department of Small and Local Business Development (DSLBD), as applicable;
- M.4.1.2 Five percent reduction in the bid price in the case of an IFB or the addition of five points on a 100-point scale in the case of an RFP for a resident-owned business enterprise (ROB) certified by the DSLBD, as applicable;
- M.4.1.3 Ten percent reduction in the bid price in the case of an IFB or the addition of five points on a 100-point scale in the case of an RFP for a longtime resident business (LRB) certified by the DSLBD, as applicable;
- M.4.1.4 Two percent reduction in the bid price in the case of an IFB or the addition of two points on a 100-point scale in the case of an RFP for a local business enterprise (LBE) certified by the DSLBD, as applicable;
- M.4.1.5 Two percent reduction in the bid price in the case of an IFB or the addition of two points on a 100-point scale in the case of an RFP for a local business enterprise with its principal office located in an enterprise zone (DZE) and certified by the DSLBD, as applicable;
- M.4.1.6 Two percent reduction in the bid price in the case of an IFB or the addition of two points on a 100-point scale in the case of an RFP for a disadvantaged business enterprise (DBE) certified by the DSLBD, as applicable;
- M.4.1.7 Two percent reduction in the bid price in the case of an IFB or the addition of two points on a 100-point scale in the case of an RFP for veteran-owned business enterprise (VOB) certified by the DSLBD, as applicable; and
- M.4.1.8 Two percent reduction in the bid price in the case of an IFB or the addition of two points on a 100-point scale in the case of an RFP for local manufacturing business enterprise (LME) certified by the DSLBD, as applicable.

M.4.2 Maximum Preference Awarded

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

M.4.3 RESERVED

M.4.4 Offeror's Submission for Preferences

- M.4.4.1 Any Offeror seeking to receive preferences on this solicitation must submit at the time of, and as part of its bid or proposal, the following documentation, as applicable to the preference being sought:
- M.4.4.1.1 Evidence of the contractor's certification by the DSLBD as a CBE, to include a copy of the certification from the DSLBD.
- M.4.4.2 Any contractor seeking certification in order to receive preferences under this solicitation must contact the:
- DC Department of Small and Local Business Development
ATTN: CBE Certification Program
441 Fourth Street, N.W., Suite 850N
Washington, DC 20001
- M.4.4.3 All contractors are encouraged to contact the DSLBD at (202) 727-3900 if additional information is required on certification procedures and requirements.