



GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Chief Financial Officer
Blanket Purchase Agreement No. CFOPD-14-A-017
For Financial Advisory Services
With
Acacia Financial Group, Inc.

The District of Columbia Office of the Chief Financial Officer (District), Office of Contracts, hereby issues a Blanket Purchase Agreement (BPA) No: CFOPD-14-A-017 between the District and Acacia Financial Group, Inc (Contractor). This BPA is issued in accordance with District of Columbia procurement regulations contained in Title 27 DCMR Section 1802 and is subject to the terms and conditions contained herein.

1. Minimum Requirement

1.1 The Contractor shall provide financial advisory services for the District in the following category as required in Attachment A, Scope of Work.

Category	Description
1	Debt Obligation

1.2 The Contractor shall, at minimum, perform financial advisory services for the District in accordance with the Contractor's approach stated in Attachment B, Technical Approach.

2. Price Schedule

2.1 The Contractor's pricing to provide financial advisory services required herein for the District shall be stated in Attachment C, Pricing Schedule.

2.2 All pricing shall be stated as fixed hourly rates that include wages, overhead, general and administrative expenses, travel expenses, profit, and materials required at cost.

3. Period of Performance

3.1 **Base Period.** The base period shall begin effective February 1, 2014 and end one (1) year thereafter.

- 3.2 The District may extend the period of performance of this BPA by exercising a maximum of four (4), one (1) year option periods at the prices listed in Attachment C, Pricing Schedule of this BPA.
- 3.3 Option periods may consist of a year, a fraction thereof, or multiple successive fraction of a year at the prices in the BPA. The District shall provide the Contractor written notice from the District's intent to renew an option period prior to the expiration of this BPA.

4. Limitation of this Agreement

- 4.1 This BPA is not a contract, does not obligate any funds or purchases, and does not state or imply that the District will procure goods or services from the Contractor.
- 4.2 No individual task order **shall exceed \$100,000**, unless specifically authorized by the Contracting Officer in writing.
- 4.3 The aggregate total of task orders **shall not exceed \$900,000 per annual period of performance**, unless specifically authorized by the Contracting Officer in writing.

5. District's Obligation

- 5.1 The District is obligated only to the extent of authorized purchases actually made in accordance with this BPA. Authorized purchases are defined as purchases involving a executed task order.

6. Ordering Procedures

- 6.1 The Contracting Officer is the only authorized District representative to execute task orders against this BPA. Task orders will be in the form of a task order document or purchase order. Each task order shall include a not-to-exceeded amount.
- 6.2 Ordering of goods and/or services against this BPA must correspond to an executed task order. Orders are considered placed once issued via fax or email by the District.
- 6.3 The District may purchase its requirements of the services included herein from the Contractor. The District has no estimated quantity of services to be ordered under this BPA. As such, this BPA shall not be construed as a representation that a quantity of services will be required or ordered, or that conditions affecting requirements will be stable. This BPA shall not be construed to limit the quantities which may be ordered from the Contractor by the District or to relieve the Contractor of its obligation to fill all placed orders.
- 6.4 Any order issued during the effective period of this BPA and not completed within that period shall be completed by the Contractor within the time specified in the order. The BPA shall govern the Contractor's and District's rights and obligations with respect to that order to the same extent as if the order were completed during the BPA's effective period.

7. Payment

- 7.1 The District will pay the Contractor for satisfactory delivery of the good(s)/service(s) in accordance with the price schedule herein. However, no payment of a task order will surpass the not-to-exceeded amount.
- 7.2 The Contractor warrants that the prices for the good(s)/service(s) shall be as low as or lower than prices charged to the supplier's most favored customer from comparable quantities under similar terms and conditions.

8. Contracting Officer

- 8.1 The Contracting Officer is the only District official authorized to contractually bind the District, for this BPA is as follows:

Drakus Wiggins, Contracting Officer
Office of Chief Information Officer
Office of Contracts
1100 4th Street, SW, Suite E610
Washington, DC 20024
(202) 442-7012 (voice) (202) 442-6454 (facsimile)

9. Contracting Officer's Technical Representative (COTR)

- 9.1 The Contracting Officer's Technical Representative (COTR) is responsible for general administration of the BPA including:
- a. Records of orders placed;
 - b. Total dollar value of orders;
 - c. Records of invoices received;
 - d. Approved day-to-day operations of the BPA; and
 - e. Advising the Contracting Officer as to the Contractor's compliance or noncompliance with the terms and conditions of the BPA.
- 9.2 The COTR will determine when goods and/or services are needed. Also, the COTR shall verify invoices and certify payment of the invoices.

The COTR for this BPA is as follows:

Debra S. Taylor, Debt Manager
Office of Finance & Treasury
1101 4th Street, SW, Suite 850
Washington, DC 20024
(202) 727-0774 (Voice)

10. Invoicing

10.1 All rendered services or deliveries under the BPA shall be accompanied by invoice which contains the following minimum information:

1. The name of the supplier;
2. The BPA number;
3. The date of purchase;
4. The task order or purchase order number;
5. An itemized list of goods or services furnished;
6. The quantity, unit price, and extension of each item, less applicable discounts;
and
7. The date of delivery or shipment.

11. General Terms and Conditions

11.1 The terms and conditions included in this BPA shall apply to all purchases made pursuant to the BPA. In the event of an inconsistency between the provisions of this BPA and the Contractor's invoice, the provisions of this BPA will take precedence.

12. Applicability of Standard Contract Provisions

12.1 Attachment D, Standard Contract Provisions are incorporated as part of the BPA.

13. Insurance

13.1 The Contractor shall secure, pay the premiums for and keep in force until the expiration of this BPA and any renewal thereof, adequate insurance as necessary and all applicable licenses and industry certification necessary to perform the requirement.

13.2 If automobile equipment is used in the operation, the Contractor shall carry comprehensive automobile insurance applicable to owned and hired vehicles against liability for bodily injury and property damage and in the amount not less than required by the District's Compulsory/No Fault Vehicle Insurance Act, as amended and 27 DCMR 2712.

14. Attachments

1. Attachment A, Scope of Work
2. Attachment B, Contractor's Technical Approach, dated January 10, 2014
3. Attachment C, Pricing Schedule, dated January 10, 2014
4. Attachment D, Standard Contract Provisions

Blanket Purchase Agreement No. CFOPD-14-A-017
Financial Advisory Services

AGREED TO BY:

AGREED TO BY:

Acacia Financial Group, Inc
13000 Lincoln Drive West, Suite 206
Marlton, NJ 08053



Noreen White
Co-President

Office of the Chief Financial Officer
Office of Contracts
1100 4th Street, SW, Suite E610
Washington, DC 20024



Drakus Wiggins, CPPB, CPPO
Contracting Officer

Date 1/10/14

Date 1/23/14

Attachment A
SCOPE OF WORK

1 PURPOSE

- 1.1 The District of Columbia Office of the Chief Financial Officer, Office of Contracts on behalf of the Office of Finance and Treasury (the “District”) will solicit to prequalified contractors for future procurements to provide financial advisory services.
- 1.2 The District anticipates a future need from the Contractor for financial advisory services for the following categories of financings:

Category	Future Financings
1	Debt Obligations

2 BACKGROUND

- 2.1 The District was created in 1791 and has served as the capital of the United States since 1800. Since January 2, 1975, it has been governed in accordance with the District Home Rule Act, approved December 24, 1973 (Pub. L. 93-198; 67 Stat. 774; District Code Sec. 1-201 et sec, as amended). The District is governed by an elected Mayor and an elected Council pursuant to broad powers delegated by Congress in the Home Rule Act, although Congress retains legislative authority over the nation's capital granted by Article 1, Section 8, Clause 17 of the Constitution of the United States.
- 2.2 The District is a unique entity, combining state, county and city characteristics. Functions performed by the District government include public safety and justice, courts, police, fire, corrections, regulatory affairs, public works (highways, streets, traffic control and sanitation) human services (health, welfare and employment assistance), libraries, education (public schools) and general administration. The District also operates a university, a hospital, a stadium and armory complex, a convention center and a lottery.
- 2.3 The District has typically borrowed annually on a long-term basis through the issuance of General Obligation bonds (GO Bonds) or Income Tax Secured Revenue bonds (IT Bonds) to meet most of its capital project financing requirements and to refund outstanding debt. The District also typically borrows annually on a short-term basis through the issuance of Tax Revenue Anticipation Notes (TRANS) to meet operational cash flow needs. TRANS must be repaid by the end of the fiscal year in which they are issued. GO Bonds and IT Bonds are typically amortized over 25 years. The District has issued Certificates of Participation (COPs) to finance certain capital needs. In accordance with the applicable lease agreements, the District makes lease payments which are expected to be sufficient to pay the principal and interest on the COPs. The District expects to issue IT and/or GO Bonds and TRANS in fiscal year 2014 and in subsequent fiscal years.

2.4 In addition, the District has established several initiatives to encourage economic development within the District. Among them are Tax Incremental Financings ("TIF"), Payments in Lieu of Taxes (PILOT) financings and the Industrial Revenue Bond Program. TIF bonds are payable from incremental increases in certain dedicated real property and sales tax revenues. PILOT notes are payable from a PILOT payment from certain property owners in the District equivalent to what would otherwise be paid in real property taxes for those properties. Industrial Revenue Bonds are conduit debt issues payable solely from the resources of the private entity that utilized the District's revenue program to borrow funds in the capital marketplace.

3 REQUIREMENTS

3.1 Debt Obligations (Category 1)

3.1.1 The Contractor shall provide financial advisory services for the District's debt obligations, such as, but not limited to:

1. New money and refunding of income tax secured revenue bonds or general obligation bonds
2. General Obligation notes
3. Revenue bonds and notes
4. Asset-backed bonds and notes
5. Certificates of participation
6. Other authorized obligations

3.1.2 The Contractor shall perform the following services, as determined by the assignment of orders to the Contractor by the District, for the District's debt obligations:

1. For any specified bond or note issue, the Contractor shall develop a financing plan including any relevant financial and quantitative analyses. The Contractor shall advise the District with respect to the timing and size of the sale of its bonds and notes, and the execution of related bond financing agreements. The Contractor shall assist the District in all offerings of its bonds and notes at private sale, public sale and competitive bidding. If bonds are sold at negotiated sale, the Contractor may be required to assist in selecting an underwriter or underwriters with whom it would be advantageous to negotiate, and participate in negotiations and evaluate proposals for the negotiated sale of bonds to underwriter(s). If required, the Contractor shall assist in identifying, analyzing and procuring short-term lines of credit, as well as letters of credit, bond insurance policies, liquidity facilities, remarketing agents, auction agents, offers for direct purchase of the District's bonds, interest rate swap agreements, and/or other alternative financing structures if applicable.
2. The Contractor shall review outstanding debt of the District to ascertain the savings potential and/or other benefits of refunding and/or restructuring.

3. The Contractor shall provide advice and assistance in connection with the issuance and sale of bonds, notes and other obligations and the preparation of the notices of sale, including advice concerning the maturities of bonds, provisions for redemption prior to maturity, pledge of revenues, rate covenants, tests for the issuance of additional bonds, reserve funds, accurately calculating net annual principal and interest costs, and similar matters that, in the judgment of the Contractor and the District or its bond counsel, are in the best interest of the District.
4. The Contractor shall advise and assist the District, its disclosure counsel, bond counsel and/or the District's other third-party consultants in the preparation of its public disclosure documents, including Official Statements. If requested, the Contractor shall review the form and content of such Official Statements and advise the District as to their consistency with standards and guidelines promulgated by the Government Finance Officers Association, Municipal Securities Rulemaking Board, National Association of Securities Dealers, Inc., Securities and Exchange Commission and other authoritative organizations. If requested by the District, the Contractor shall negotiate on behalf of the District with financial printers concerning printing fees for printing Official Statements and the required legal documentation. The Contractor shall coordinate printing and mailing of Official Statements and other documents to a comprehensive list of underwriters, institutions and investors, as required.
5. The Contractor shall undertake best efforts to stimulate bidding interest in competitive sale of bonds and notes and in doing so shall contact leading underwriters, investors, financial publications and investment services and be available for questions related to the financing. The Contractor shall further advise the District as to the desirability of informational meetings prior to such public offerings of the bonds and notes in principal financial centers and/or conference calls, and shall arrange and conduct such meetings as required.
6. The Contractor shall prepare presentations to rating agencies as required in a continuing effort to secure the highest possible credit ratings, and where possible and desirable, engage in preliminary consultation with the rating agencies to ascertain any changes or developments that may influence the form and structuring, and therefore the rating, of any prospective financing. The Contractor shall advise the District concerning actions that should be taken to improve its bond ratings with regard to a particular issuance and/or with regard to outstanding bonds.
7. The Contractor shall provide assistance to the District in negotiations with commercial banks or other qualified institutions interested in acting as trustee, as the District deems appropriate, and assisting the District in obtaining competent and high quality trustee services. If requested, the Contractor shall advise and assist the District in the selection of trustees, escrow agents, paying agents and/or registrars.
8. The Contractor shall participate in the public opening of all proposals submitted for the purchase of bonds and notes and advise the District on the award to the lowest

bidder or rejection of all bids; evaluating a bid or bids by one or more groups of underwriters and comparing such bids with other recent relevant bond or note sales. The Contractor shall obtain from underwriters a complete detailed analysis of the distribution of its securities and the sales performance of syndicate members.

9. The Contractor shall participate in all pricing discussions. The Contractor shall provide data on market comparables and indices and provide a cost/benefit analysis of different structuring and pricing options. As requested, the Contractor shall provide independent price guidance for each maturity across a range of couponing alternatives using option adjusted spread analyses. The Contractor shall analyze and recommend fair pricing levels based on the issuers' historical pricings and the pricing of comparable credits in the then current municipal bond market.
10. The Contractor shall advise the District with respect to marketing strategy and the marketing plans proposed by lead underwriters for negotiated sales. The Contractor shall contribute to investor outreach including preparation and review of investor materials.
11. The Contractor shall coordinate, advise, and assist the District and its internal and outside counsel in connection with the preparation, execution and delivery of closing documents.
12. If requested, the Contractor shall provide a detailed report to be delivered to the District following the closing of any financing transaction. Such report shall include an opinion on the fairness of any negotiated pricing, as well as a summary of the critical elements and results of the transaction. Information regarding underwriting negotiation, detailed costs of issuance, participants in the transaction and their roles, relevant pricing comparisons, security features, and other relevant information shall be included; and provide any necessary follow-up subsequent to closing of any financing transaction in a timely and diligent manner.
13. If requested, the Contractor shall develop and maintain a post-pricing database summarizing how the District's bonds price relative to market indices and benchmarks, other comparables, orders and allotments and any goals established prior to the sale. The Contractor shall monitor and report on post-sale trading activity, volume and spreads.
14. If requested, the Contractor shall review and comment on leases, engineering studies, insurance policies, construction bid documents and other matters directly or indirectly related to proposed financings, as and to the extent that they relate to the issuance and/or payment of bonds, notes, certificates of participation or other obligations of the District.
15. As requested, the Contractor shall identify new strategies and initiatives to enhance debt performance and lower costs. The Contractor shall identify new ideas and products in the marketplace, including derivatives, liquidity/credit enhancement,

and report on strategies of other issuers that may be relevant to the Districts. The Contractor shall monitor market movements and developments and keep the District informed of these developments.

RESPONSE TO
REQUEST FOR QUOTE
SOLICITATION No.: CFOPD-14-Q-017
CAPTION: **FINANCIAL ADVISORY SERVICES**
DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER



Submitted: January 10, 2014



1441 Broadway, 5th Floor
Suite 5028
New York, NY 10018
t: 212-432-4020
f: 212-432-4021

Four Greentree Centre, Suite 206
13000 Lincoln Drive West
Marlton, NJ 08053
t: 856-234-2266
f: 856-234-6697

www.acaciafin.com



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Section 1: Transmittal Letter



1441 Broadway, 5th Floor
Suite 5028
New York, NY 10018
(212) 432-4020 Phone
(212) 432-4021 Fax
(856) 234-6697 Fax

VIA ELECTRONIC DELIVERY

January 10, 2014

Office of the Chief Financial Officer
Office of Contracts
Attention: Carla Roane
1100 4th Street SW, Suite E610
Washington, DC 20024

Dear Ms. Roane:

Acacia Financial Group, Inc. ("Acacia") is pleased to respond to the District of Columbia's (the "District") Request for Quote (RFQ) No. CFOPD-14-Q-01 for Financial Advisory services. As directed, included herein you will find: 1) an executed Blanket Purchase Agreement signed by an authorized representative of Acacia, 2) a detailed Technical Approach and 3) the proposed Price Schedule.

Thank you for pre-qualifying Acacia to provide financial advisory services to the District of Columbia (the "District") under the Debt Obligation category. We appreciate the confidence you have placed in our firm and look forward to the opportunity to work with the District in the near future. If you should have any questions regarding the attached information please do not hesitate to contact us.

Sincerely,

Noreen P. White
Co-President

Kim M. Wheian
Co-President



Section 2: Technical Approach

3. REQUIREMENTS

3.1 DEBT OBLIGATIONS (CATEGORY 21)

3.1.1 *The Contractor shall provide financial advisory services for the District's debt obligations, such as, but not limited to:*

1. *New money and refunding of income tax secured revenue bonds or general obligation bonds*
2. *General Obligation notes*
3. *Revenue bonds and notes*
4. *Asset-backed bonds and notes*
5. *Certificates of participation*
6. *Other authorized obligations*

3.1.2 *The Contractor shall perform the following services, as determined by the assignment of orders to the Contractor by the District, for the District's debt obligations:*

1. For any specified bond or note issue, the Contractor shall develop a financing plan including any relevant financial and quantitative analyses. The Contractor shall advise the District with respect to the timing and size of the sale of its bonds and notes, and the execution of related bond financing agreements. The contractor shall assist the District in all offerings of its bonds and notes at private sale, public sale and competitive bidding. If bonds are sold at negotiated sale, the Contractor may be required to assist in selecting an underwriter or underwriters with whom it would be advantageous to negotiate, and participate in negotiations and evaluate proposals for the negotiated sale of bonds to underwriter(s). If required, the Contractor shall assist in identifying, analyzing and procuring short-term lines of credit, as well as letters of credit, bond insurance policies, liquidity facilities, remarketing agents, auction agents, offers for direct purchase of the District's bonds, interest rate swap agreements, and/or other alternative financing structures if applicable.

The Acacia Team will assume the role of "quarterback" on any transaction, taking the lead on the development of plans of finance and preparing detailed financing timetables and meeting/conference call agendas to ensure a timely and successful completion to any financing. From the "Kick-off" meeting to the provision of post-sale services, Acacia's approach is comprehensive, professional and skilled.

Our professionals take an active approach in the preparation of all financial analysis, the financing schedule, distribution lists, meeting agendas, preliminary and final official statements, rating and investor presentations and other legal documents related to the marketing and issuance of bonds. In today's market, timely and thorough disclosure can greatly increase the marketability, participation and ultimately the financing costs of any transaction. Acacia takes the lead to assure that financing documents and presentation materials are well vetted and composed to accurately and positively portray the credit and security structure.

Method of Sale and Structuring: The Acacia Team is highly experienced in the execution of both competitive and negotiated sale transactions. Negotiated sales can offer a variety of benefits that can help to lower the overall cost of a financing. These benefits include the ability to offer bonds to retail, tailor couponing to specific investor interests and the flexibility on the sale date to respond to changing market conditions. In conjunction with the senior managing underwriter, we will run all bond sizings and provide sensitivity analysis on various structuring options such as call provisions, couponing variations and final maturity,

balancing yield with call flexibility, along with preparing detailed cash-flows and verifying all final numbers prepared by the underwriter. For competitive transactions, we will run all bond sizings and provide advice on the appropriate bid parameters in order to receive the best bids based on then prevailing market conditions. We will research the appropriate purchase price and coupon limitations and call provisions and advise on the timing of sale.

Underwriter Selection: The first step in measuring and assuring underwriter performance is the proper selection of the underwriting team. Acacia is well equipped to assist the District with the selection of underwriters, negotiation of compensation, management fees, review of expenses, designation policies and other matters. The firm has routinely evaluated proposals and qualifications for underwriters and is familiar with all major and regional investment banks (and the respective bankers). Acacia is knowledgeable of the strengths and weaknesses of the firms and is able to advise clients in these subjective evaluations in addition to the objective review.

The single most important factor in assembling an underwriting team is to match the banking talents and marketing capabilities of the member firms with the credit that is being sold. For example, the use of retail oriented firms on a lower rated credit would not produce optimum results because the credit may be suitable only for sophisticated investors. Conversely, when appropriate, including local investment banking firms with retail offices in the State in either the management team or selling group can augment retail efforts and participation. There has also been a trend among issuers to try to involve the managers in various aspects of the transaction, such as management of the credit rating process or investor presentation. These efforts have been met with mixed results primarily because of the difficulty in coordinating all the team members to avoid a duplication of efforts. Our team can assist the District in making sure each member of the syndicate has been selected for a specific purpose and is assigned a role in which their efforts can be maximized to produce the best results for the issuer.

Other Procurements: Acacia's professionals have extensive experience in the procurement, negotiation and execution of various liquidity facilities and other products related to short-term and/or floating rate debt obligations, *having recently provided these services to such entities as Chicago Public Schools, City of Philadelphia, City of Chicago, the State of Connecticut, the Delaware River Port Authority, University of Massachusetts Building Authority and Wayne County (MI) among others.* Our experience includes a broad selection of issuer credits ranging from AA through BBB for projects involving variable rate demand bonds, commercial paper programs, lines of credit and direct loans. Acacia's experience advising a wide variety of issuers on letter of credit procurements combined with our knowledge of the regulatory environment affecting the cost and availability of credit facilities make us uniquely qualified to assist the District in this respect. Below please find a brief outline of certain of the services provided by Acacia.

- Initial advice and guidance on the process including a review of the availability of credit facilities
- Identifying qualified credit providers and engaging in discussions in order to gauge level of interest
- Coordination of the bidding process in accordance with good business practice and legal requirements
- Development of the request for proposal and supporting documentation and schedules
- Preparation of detailed evaluation
 - ✓ Includes cost/benefit analysis
 - ✓ Evaluation of not only upfront and ongoing fees, but also additional, potentially restrictive, covenants or other requirements
- Negotiating final terms and documents with selected bank
- Facilitating execution of final documents and assisting finance team with closing process

2. The Contractor shall review outstanding debt of the District to ascertain the savings potential and/or other benefits of refunding and/or restructuring.

As illustrated in our proposal, Acacia has already taken the necessary steps to model the District's debt portfolio. The firm is positioned to review any potential refunding opportunities and provide debt capacity analysis and advice as it relates to the District's future capital needs across its various credit structures. Acacia has extensive experience in providing custom built pro-forma models which allow our clients to quickly analyze the implications of various financing alternatives. Acacia's approach to evaluating refunding opportunities involves analyzing an issuer's outstanding bonds to determine which issues can be refunded based on current market conditions, call provisions, use of proceeds and tax law restrictions. When the optimal mix of refunding candidates across all series of an issuer's bonds is identified, Acacia develops the most beneficial repayment and savings structure for the refunding bonds while analyzing other important components such as investment options, call features, credit enhancement, rating(s), and issuance costs, along with consideration of operational, rate setting and budget concerns.

Our professionals consistently update refunding screens to ensure that our clients take advantage of any refinancing opportunities. Our detailed models evaluate bonds on a maturity-by-maturity basis taking into consideration present value savings and efficiency ratios as they relate to negative arbitrage and the opportunity cost of future refunding transactions. In the current interest rate environment it is particularly important that issuers evaluate their refunding opportunities with consideration for negative arbitrage. While the refunding of outstanding bonds may produce significant savings, an issuer must be cognizant of the future benefit forgone through the implementation of an advance refunding. Acacia takes a holistic approach to addressing negative arbitrage. Acacia has developed multiple models and analyses to evaluate refunding candidates, not only with respect to absolute present value savings, but also in consideration of the negative arbitrage in the resulting refunding escrow. However the same analytics are not always applicable to every issuer. For instance a frequent market participant should view negative arbitrage with a stricter lense, as they are less likely to be impacted by issuance costs and market timing than a infrequent issuer.

Acacia would also recommend implementing the "Opportunity Cost Index" savings methodology. In evaluating the value of a refunding Acacia also considers the potential savings a refunding candidate would otherwise generate if refunded at a later date. To that end, Acacia has developed an Opportunity Cost Index (OCI) model which compares, on a maturity by maturity basis, the present value savings percentage if completed as an advance refunding versus a current refunding. In our base analysis it is assumed that the yield curve remains unchanged, however the applicable arbitrage yield is lower because the refunding bonds would have a shorter maturity. Acacia provides its clients with sufficient information to make a reasoned decision regarding the refunding of any specific bond. Acacia believes this methodology is superior to a flat percent present value savings threshold.

3. The Contractor shall provide advice and assistance in connection with the issuance and sale of bonds, notes and other obligations and the preparation of the notices of sale, including advice concerning the maturities of bonds, provisions for redemption prior to maturity, pledge of revenues, rate covenants, tests for the issuance of additional bonds, reserve funds, accurately calculating net annual principal and interest costs, and similar matters that, in the judgment of the Contractor and the District or its bond counsel, are in the best interest of the district.

As described in our response to #1 above, Acacia takes a comprehensive approach to providing financial advisory services on any engagement. With respect to competitive bonds sales, Acacia runs all bond sizings and provides advice on the appropriate bid parameters in order to receive the best bids based on then prevailing market conditions. We undertake research to determine the appropriate purchase prices and

coupon limitations, call provisions, recommend the timing of sale and verify and award the bid based on the parameters established in the Notice of Sale. We have found that thorough and early disclosure can be one of the most important aspects of a successful competitive sale. Equally as important is the establishment of the bid parameters for the Notice of Sale. Issuers who have made the policy decision to issue their bonds on a competitive basis will need to explore the impacts of various restraints on the bidding terms. These terms include the maximum and minimum purchase price, call options, coupon restrictions, M/WBE requirements and term bond allowance.

Regardless of the method of sale or type of transaction, Acacia will prepare independent analysis and provide advice and guidance with respect to the structure and terms of any debt issue. All recommendations will be provided within the context of the District's policy and goal objectives as well as the requirements of the existing legal and financial covenants (i.e rate covenants, ABTs, etc). An entity's ability to issue debt is often driven by its ability to maintain and project favorable coverage ratios. These ratios can be legal covenants from authorizing documentation, formal and informal debt management policies or rating agency criteria but regardless of the derivation, Acacia has the knowledge and experience to advise its clients on the evaluation of debt capacity and the implementation of the appropriate financing tools to manage its portfolio. Acacia's professionals will work closely with District staff to provide conservative forecasting for new projects and the financial ratios that drive future debt capacity and ratings.

4. The Contractor shall advise and assist the District, its disclosure counsel, bond counsel and/or the District's other third-party consultants in the preparation of its public disclosure documents, including Official Statements. If requested, the Contractor shall review the form and content of such Official Statements and advise the District as to their consistency with standards and guidelines promulgated by the Government Finance Officers Association, Municipal Securities Rulemaking board, National Association of Securities Dealers, Inc., Securities and Exchange Commission and other authoritative organizations. If requested by the District, the Contractor shall negotiate on behalf of the District with financial printers concerning printing fees for printing Official Statements and the required legal documentation. The Contractor shall coordinate printing and mailing of Official Statements and other documents to a comprehensive list of underwriters, institutions and investors, as required.

Acacia's Co-President, Noreen White, is a member of the Municipal Securities Rulemaking Board ("MSRB"), representing the municipal advisor community. Noreen's involvement in this role assures that Acacia's professionals are always current on the trends, regulations and disclosure and compliance issues shaping our industry.

As Financial Advisor, Acacia assists its clients through the drafting or updating of bond compliance documentation. Our professionals take an active approach in the preparation of the preliminary and final official statements, notice of sale and other legal documents related to the marketing and issuance of bonds. In today's market, timely and thorough disclosure can greatly increase the marketability, participation and ultimately the financing costs of any transaction. Acacia takes the lead to assure that financing documents and presentation materials are well vetted and composed to accurately and positively portray the credit, security structure and other relevant information in accordance with industry standards.

5. The Contractor shall undertake best efforts to stimulate bidding interest in competitive sale of bonds and notes and in doing so shall contact leading underwriters, investors, financial publications and investment services and be available for questions related to the financing. The Contractor shall further advise the District as to the desirability of informational meetings prior to such public offerings of the bonds and notes in principal financial centers and/or conference calls, and shall arrange and conduct such meetings as required.

When offering a transaction competitively Acacia would recommend that the District adopt a marketing philosophy that includes the normal efforts along with additional activities to further promote the successful sale of the District's borrowings. Acacia maintains an extensive, up-to-date database of potential bidders for competitive transactions and the primary marketing technique would include direct outreach (phone and email) to these firms to ensure interest and participation in the bid. In addition, in recent years we have advised certain issuers to record investor roadshows and also to have information sessions to in order to give the investor community the ability to learn more about the transaction and engage in an open dialogue with the issuer. Acacia would coordinate all of these activities. Below is an outline of our comprehensive approach to competitive sales designed to generate investor interest and achieve the lowest cost of borrowing:

- **Early publication of the POS/NOS** – To facilitate the effectiveness of some of the below described activities, it would be beneficial for the POS/NOS to be posted at least two weeks prior to the sale date.
- **Publication/Advertisement** – All of the traditional mediums (Bond Buyer, posting on State websites, regional newspapers) should be utilized to promote the visibility of the transaction to the maximum extent possible.
- **Investor Net Roadshow** – This should include the traditional information typically contained these types of presentations (e.g. summary of State information, description of security, deal structure, sale date, links to POS/NOS and other State information).
- **Direct discussions with the major and mid-major underwriting desks** – The lead underwriters at the respective institutions should be directly contacted so that a dialogue may ensue regarding the transaction and any questions or clarifications, for the benefits of themselves and their traders and salespersons, can be fully addressed in advance of the bid date.
- **Direct discussions with the public finance departments** – While the public finance bankers for the primary banks expected to bid on this transaction will not normally focus on a competitive transaction, these individuals should be contacted regarding the transaction so that they may encourage their underwriting counterparts as to the importance and expectations of the Commonwealth with respect to this transaction.
- **Direct discussions with likely significant buyers** – Some of the likely buyers (e.g. recent purchasers of other District debt) could be contacted to inform them of the coming transaction and address any technical questions that they may have. If the District desired, one-on-one calls could be established between the District and certain of these accounts to further discuss the overall financial position of the District.

6. The Contractor shall prepare presentations to rating agencies as required in a continuing effort to secure the highest possible credit ratings, and where possible and desirable, engage in preliminary consultation with the rating agencies to ascertain any changes or developments that may influence the form and structuring, and therefore the rating, of any prospective financing. The Contractor shall advise the District concerning actions that should be taken to improve its bond ratings with regard to a particular issuance and/or with regard to outstanding bonds.

An integral aspect of any financing involves the discussion with and presentation to the rating agencies. Acacia's professionals have an impressive track record of maximizing its clients' ratings by devising specific strategies to address the concerns of the rating agencies. Our professionals have successfully obtained credit rating upgrades and established investment grade credit ratings for many of our clients by developing a clear understanding of the analytical methods utilized by each agency.

Phoebe Selden, one of the experienced and talented Acacia professionals assigned to the District's engagement, opened and led the Chicago office of Moody's Investor Services, where she was responsible for all Midwest municipal credits, giving her an in depth understanding of credit fundamentals. She also was responsible for rating agency strategy execution for 13 years for the City of Chicago.

Communication with rating agencies is critical, both in connection with new financings and on an ongoing basis. As Financial Advisor to many major issuers, we understand that each client has its unique set of circumstances and is faced with equally unique challenges. Our professional staff understands the rating agency criteria and develops credit rating strategies designed to identify issuer strengths, weaknesses and historical trends prior to the presentation of materials to rating analysts. In addition, we maintain close personal contact with staff members at the rating agencies regarding their views of debt covenants, innovative financing techniques and unique debt structures. Acacia's long-standing relationship with the credit rating agencies as well as the firm's expertise in the development of rating agency presentations will facilitate this process for the District.

7. The Contractor shall provide assistance to the District in negotiations with commercial banks or other qualified institutions interested in acting as trustee, as the District deems appropriate, and assisting the District in obtaining competent and high quality trustee services. If requested, the Contractor shall advise and assist the District in the selection of trustees, escrow agents, paying agents and/or registrars.

Acacia has extensive experience assisting in the evaluation and selection of underwriters/investment bankers, commercial banking services, legal counsel, credit facility providers, trustees, verification agents, printers, and other professional service providers, including preparation of requests for proposals or bids and the review and evaluation of submitted proposals or bids. Acacia has developed several templates to assist in the solicitation and evaluation of an underwriting team and other finance professionals. The firm's review system allows our clients to efficiently evaluate responses and compare respondents based on the criteria set forth by our clients.

8. The Contractor shall participate in the public opening of all proposals submitted for the purchase of bonds and notes and advise the District on the award to the lowest bidder or rejection of all bids; evaluating a bid or bids by one or more groups of underwriters and comparing such bids with other recent relevant bond or note sales. The Contractor shall obtain from underwriters a complete detailed analysis of the distribution of its securities and the sales performance of syndicate members.

Acacia has developed an in-house model to quickly and accurately evaluate bids and verify the winner based on true or net interest cost parameters. As financial advisor, Acacia will coordinate the bid process and will attend the bid in person or via conference call as directed by the District. Following the receipt of bids, Acacia will contact with winning bidder to obtain all necessary information to complete the final cash-flows. Similar to our role on negotiated sales, Acacia will prepare comprehensive pre- and post-pricing books which will include market data and comparable transactions.

9. The Contractor shall participate in all pricing discussions. The Contractor shall provide data on market comparables and indices and provide a cost/benefit analysis of different structuring and pricing options. As requested, the Contractor shall provide independent price guidance for each maturity across a range of couponing alternatives using option adjusted spread analyses. The Contractor shall analyze and recommend fair pricing levels based on the issuers' historical pricings and the pricing of comparable credits in the then current municipal bond market.

Acacia believes that one of the most important responsibilities a financial advisor bears on a transaction is to ensure that the issuer achieves the best possible price for its bonds. To that end, our professionals work tirelessly on behalf of our clients in all phases of the pricing process to continuously provide updated market information from a wide variety of sources. Through our aggressive research process and immediate access to real-time primary and secondary market information, Acacia is able to provide direct economic benefit to issuers in the pricing of their obligations and ensure fair market pricing.

Acacia has subscriptions with Bloomberg, Thomson Municipal Market Monitor (TM3), The Bond Buyer and The Wall Street Journal. Bloomberg and TM3 (along with EMMA) provide real-time access to a number of market indices (included MMD) and current transactions in both the primary and secondary markets. Prior to each bond sale, Acacia will prepare a detailed pre-pricing report which will include specific information regarding the transaction, the forward bond and economic indicator calendars, a market summary detailing current conditions and trends, historical pricing information related to the issuer and the most recent comparable transactions. Our professionals track the supply of transactions coming to market, evaluate the release of key economic data and client related news and activities. These tools are essential in determining the appropriate pricing levels during the order period.

Discussions with the underwriter early in the process over pricing levels and comparable transactions allows for a better understanding of appropriate interest rate levels. Setting appropriate interest rate levels during the primary pricing is important for trading in the secondary market and future transactions. If obligations are priced incorrectly, bonds will be underwritten by the syndicate and will most likely trade-up in the secondary market. This type of momentum discourages the co-managers and selling group members from placing orders for bonds during the initial pricing with the knowledge that they can obtain them in the secondary market at a better price. Therefore, ensuring the quality of the book during the initial pricing period with a priority for going-away orders is a vital step in the process of establishing appropriate levels in the primary and secondary markets. By following these important steps, Acacia ensures that the bonds are priced at initial levels reflecting fair market value and are prepared to provide a written opinion to the District to that extent.

Although historical pricing levels and past precedents are important in establishing initial pricing indications, current comparable transactions and secondary market trades in the market during the week of pricing are the true drivers of interest rate levels. With consideration for security structure, credit profile, name recognition, deal size and transaction frequency, Acacia will determine if the bonds are being offered at levels that appropriately reflect the current market environment and compare favorably with other transactions being offered.

In addition to the absolute level of interest rates, the size and quality of the order book is another indication of a successful pricing. By requesting access to an IPREO order monitor or comparable tool, Acacia can help the Division to track order flow and quality. A book containing both retail and institutional participation with a moderate level of over-subscription can provide comfort in the success of an issuer's marketing initiatives and that the bonds were priced fairly.

10. The Contractor shall advise the District with respect to marketing strategy and the marketing plans proposed by lead underwriters for negotiated sales. The Contractor shall contribute to investor outreach including preparation and review of investor materials.

With an average of two bond sales per week over the last three years, Acacia's professionals are experts in the pricing and marketing of municipal securities. The firm has extensive experience with negotiated sales and has assisted many of our large, complex issuers in taking positive steps to improve the marketability of their offerings and increase their investor outreach efforts on a retail and institutional basis. We have experience assisting issuers in developing investor presentations and in participating in both electronic and in-person roadshows. Our experience from such wide ranging financing programs as the States of Connecticut, Illinois and Ohio, the Cities of Philadelphia and Los Angeles, and Empire State Development will provide the District with both a knowledgeable and fresh perspective on the pricing and marketing of its bonds.

MARKETING INITIATIVES

The success of an issuer's marketing initiatives can be measured by the results of its bond sales. Outreach to a broad and diverse array of retail and institutional buyers can greatly expand an issuer's universe of investors; however if the communications do not result in meaningful orders and the ability to leverage interest for a direct economic benefit, then it becomes difficult to determine the success of such efforts. We would strongly recommend the utilization of a retail order period as well as a variety of marketing strategies to (1) build relationships with an expanded investor base and (2) improve the accessibility and flow of information to the investor community as outlined below:

RETAIL ORDER PERIOD: The utilization of a retail order period has become a valuable tool for many issuers. It is particularly viable for an issuer with a strong credit quality such as the District. By placing bonds in the hands of actual retail customers, who are traditionally less price sensitive than institutional investors, many issuers have successfully lowered the overall cost of their borrowings. The key to this success is to ensure that retail investors are aware of the upcoming bond offering and have ample time to make a buy decision. Therefore, the best strategy is to release retail price guidance on the Friday prior to the sale date to allow brokers the time to contact retail accounts over the weekend and so those orders can be processed the following week.

Choosing an appropriate underwriting syndicate is also an important component to a successful retail pricing. Including local investment banking firms with retail offices in the area in either the management team or selling group can augment retail efforts and participation.

Finally, it is important to establish a definition for retail in advance of the order period. This is an evolving process but Acacia currently recommends that the District define retail as individuals, and bank trust departments or investment advisors for the benefit of individuals with a limit on order size of \$500,000 to \$1 million given the demographics of the District. Acacia recommends the use of zip codes to validate those orders.

INSTITUTIONAL PRICING: Acacia will also assist the District in navigating the institutional order period. One of the biggest frustrations among issuers is how to motivate the non-bookrunning members of the management team to generate orders during both the retail and institutional order periods. No matter what policies are in place, it is important for the issuer and the financial advisory team to set the stage with clear communication of expectations for participation before and during the pricing. Day of pricing monitoring can be facilitated by requesting IPREO viewing of the orders as they are entered in the order book. This provides transparency to serve as a negotiating tool during pricing and also when allotting the bonds. Acacia will review the book of orders, police the allotments and talk with managers and accounts to hear if they feel they were treated fairly and had access to bonds.

DISCLOSURE MATERIALS: Whether issuing fixed or variable rate bonds, disclosure is of paramount importance. The Preliminary Official Statement and ongoing disclosure materials should be detailed, transparent and provide continued accessibility to the investor community in order to build a strong understanding of the District's security structure and credit quality. This promotes investor interaction and ultimately increases the likelihood of participation in the District's bond sale. The District should release its Preliminary Official Statement at least 10-14 days prior to the sale of the bonds to ensure investors have adequate time to conduct their due diligence, complete the credit review process and ultimately make a buy decision.

WEBSITE ENHANCEMENTS: An identifiable link on the District's webpage can assist investors (retail and institutional) in getting information on upcoming bond sales more quickly and easily. Providing a single portal where investors can view the District's financials, credit reports and debt summary can increase transparency and reduce the amount of time answering individual questions. The District's "Invest in DC Bonds" link does an adequate job of serving this function although it could be positioned as a more robust tool to aggregate the District's bond related materials and educate investors.

ONLINE INVESTOR ROADSHOW: This has become an effective tool for educating institutional investors on the overall credit strengths of a particular bond program. The District's rating agency presentation can be adapted to produce an investor roadshow with limited additional effort. Other benefits include the ability to replay the presentation at the investors' convenience and the requirement to sign into the presentation provides the District with a list of investors to follow up with one-on-one calls.

ONE-ON-ONE CALLS: One-on-one calls with investors can provide the District with direct access to "tell the story" about its credit. Accommodating the needs of individual investors can cultivate stronger investor relationships which can provide economically beneficial opportunities when selling its bonds.

ADVERTISING: Traditional media & internet advertising can be utilized as a means for creating awareness of an issue and directing investors to the District's "Invest in DC Bonds" website. Print media in weekend papers and announcements on the District's website can also direct retail traffic to the sale. *Acacia just recently assisted Empire State Development with a successful internet based advertising campaign in connection with the sale of its Personal Income Tax Revenue Bonds, Series 2013A-1 and 2013A-2.*

Acacia's professionals have experience marketing a wide array of credits. Our marketing efforts typically involve the following:

- **Early publication of the POS** – To facilitate the effectiveness of some of the below described activities, it would be beneficial for the POS to be posted at least 2 weeks prior to the sale date.
- **Publication/Advertisement** – The traditional mediums (Bond Buyer, posting on State websites, regional newspapers) should be utilized to promote the visibility of the transaction to the maximum extent possible.

- **Investor Net Roadshow** – This would be prepared by the underwriter and the financial advisor, mirroring the information included in the rating agency presentation. This and the POS will provide the backbone of the marketing tools.
- **Direct discussions (one-on-ones) with likely significant buyers** – As mentioned, this effort will be essential to achieving the best pricing performance.

11. The Contractor shall coordinate, advise, and assist the District and its internal and outside counsel in connection with the preparation, execution and delivery of closing documents.

Acacia routinely assists issuers and their attorneys in connection with the preparation, execution and delivery of closing documents. This process starts at the beginning of the transaction with input on the drafting of authorizing resolutions, ordinances and other similar material through the closing of the bond issue.

12. If requested, the Contractor shall provide a detailed report to be delivered to the District following the closing of any financing transaction. Such report shall include an opinion on the fairness of any negotiated pricing, as well as a summary of the critical elements and results of the transaction. Information regarding underwriting negotiation, detailed costs of issuance, participants in the transaction and their roles, relevant pricing comparisons, security features, and other relevant information shall be included; and provide any necessary follow-up subsequent to closing of any financing transaction in a timely and diligent manner.

As noted earlier herein, Acacia frequently provides comprehensive post pricing reports to issuers which summarize the key financial aspects of the transaction. Taking this a step further, we have also been asked by certain high profile issuers to provide a “fair market price” opinion in connection with the negotiated sale of municipal bonds. In these cases, the opinion was provided based upon multiple factors that included:

- Other recent comparable primary market issuances;
- Recent secondary market trades for other obligations of the same issuer;
- Recent secondary market trades for other issuers with similar credits;
- Overall market “tone” on the date of sale;
- Relevant market information;
- Status of “going away” orders during the order period;
- Discussions with the book-running manager and co-managers during the sale.

Acacia believes that it is appropriate to consider a broad range of available data in the evaluation of fair market value or reasonableness. Unlike the “homogenous” nature of Treasury Bonds, municipal bonds each have their own story. Even with the same credit ratings, municipal bonds can differ from one another due to tax status, State of issuance, issuer name, couponing, call feature, account appetite to issuer (capacity issue), size of maturities (liquidity issue), insurance status, etc. This “individuality” of municipal bonds inherently means that they carry a wider range of pricing that can be considered fair market.

13. If requested, the Contractor shall develop and maintain a post-pricing database summarizing how the District's bonds price relative to market indices and benchmarks, other comparables, orders and allotments and any goals established prior to the sale. The Contractor shall monitor and report on post-sale trading activity, volume and spreads.

Acacia recommends and takes responsibility for monitoring secondary market trades after the pricing of bonds. Post-sale secondary market trading has taken on new importance in over the last year months and it is worthwhile for an issuer to be aware of the trading differential to industry proxies of its obligations. The availability of secondary market data has been enhanced by the Municipal Securities Rulemaking Board's (MSRB) transaction reporting program whose goal is to provide price transparency for all market participants.

The launch of the MSRB EMMA system has increased the transparency of the secondary market and allowed issuers and advisors to easily monitor post-sale trades. This practice was most recently brought to light as a result of the wave of federal subsidy products such as Build America Bonds which were introduced to the market in the wake of the financial collapse of 2008. Although the IRS has not provided specific guidance as to the record keeping that should be maintained by issuers following a sale, many issuers have applied this practice to all of their bond transactions as a means to simply "put something in file" to the extent that the IRS formally introduces a policy in the future. To that extent, Acacia has started monitoring secondary market trades for all of its issuers between pricing and closing and providing a report at closing to memorialize our findings. Our analysis will compare spreads to MMD (or other applicable index) on the day of pricing to the spreads on the day that the trade was made. The analysis is meant to highlight any "significant" trades (\$1M or greater) that may illustrate a market dislocation or suggest evidence that the obligations were priced inaccurately at the time of sale.

In addition to monitoring the secondary market trading activity of a particular issue, Acacia also maintains a detailed pricing database for each series that includes detail regarding the pricing progression from preliminary discussions and scales, to the pre-pricing calls, to retail order period and finally through the institutional pricing. This level of detail provides valuable information to the issuer when evaluating strategies for structuring a sale and entering the market. This database also includes all relevant detail regarding the orders and allotments for each bond issue.

14. If requested, the Contractor shall review and comment on leases, engineering studies, insurance policies, construction bid documents and other matters directly or indirectly related to the proposed financings, as and to the extent that they relate to the issuance and/or payment of bonds, notes, certificates of participation or other obligations of the District.

As part of our normal scope of services on any engagement (whether or not related to a debt issuance), Acacia's professionals typically review and comment all relevant documents. We believe it is critical to have a complete understanding of all aspects of a transaction or project in order to provide the most accurate and effective financial advice.

15. As requested, the Contractor shall identify new strategies and initiatives to enhance debt performance and lower costs. The Contractor shall identify new ideas and products in the marketplace, including derivatives, liquidity/credit enhancement, and report on strategies of other issuers that may be relevant to the Districts. The Contractor shall monitor market movements and developments and keep the District informed of these developments.

As a daily market participant, Acacia is always prepared to provide our clients with information relating to new developments in the industry. With the introduction of notable changes or innovative products in the market, our professionals interpret and share this knowledge with our clients in order to provide the best possible recommendations based on the information available at that time.

In order to manage the debt capacity concerns and risk profiles of our clients, Acacia has assisted in the evaluation of both long and short term, fixed and variable rate, and derivative products. The recommendation to utilize any specific product must be given with consideration for coverage levels, reserve requirements and additional bonds tests, along with analysis of the District's overall risk profile and desired credit rating.

Our professionals have advised on the issuance of a variety of tools including, but not limited to:

- Fixed rate bonds which "wrap" around an issuer's existing debt amortization
- Variable rate bonds (including FRNs and Refundable Principal Installments) with long-dated notional principal amounts and short duration mandatory put options to manage reserve requirements
- Complete restructuring transactions to create capacity in a specific part of the curve
- Development of commercial paper and working capital programs
- Tax and Revenue Anticipation Notes and Economic Recovery Notes
- Development and/or modification of new and existing credit structures

In many instances, the evaluation of these various financing options begins with the development of a custom built debt capacity model. Acacia is expert in the creation of models that serve as a tool for clients to gauge the impact of numerous financing alternatives under an array of variable assumptions.



Section 3: Price Schedule

For financial advisory services rendered to the Office of the Chief Financial Officer, District of Columbia, for category of Debt Obligations, Acacia proposes to be compensated based on the following schedule. As directed by the District, the rates indicated below are inclusive of wages, overhead, general and administrative expenses, travel expense, profit and materials.

Price Schedule

CLIN*	Class/Title	Hourly Rate				
		Base Year	Option Year 1	Option Year 2	Option Year 3	Option Year 4
01	Co-President	\$350.00/hr.	\$350.00/hr.	\$365.00/hr.	\$365.00/hr.	\$365.00/hr.
02	Managing Director/Sr. VP	\$300.00/hr.	\$300.00/hr.	\$315.00/hr.	\$315.00/hr.	\$315.00/hr.
03	Vice President	\$275.00/hr.	\$275.00/hr.	\$290.00/hr.	\$290.00/hr.	\$290.00/hr.
04	Associate	\$250.00/hr.	\$250.00/hr.	\$265.00/hr.	\$265.00/hr.	\$265.00/hr.
05	Analyst	\$225.00/hr.	\$225.00/hr.	\$240.00/hr.	\$240.00/hr.	\$240.00/hr.
06	Administrative	\$50.00/hr.	\$50.00/hr.	\$50.00/hr.	\$50.00/hr.	\$50.00/hr.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

STANDARD CONTRACT PROVISIONS

FOR USE WITH

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

STANDARD CONTRACT PROVISIONS

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1. Covenant Against Contingent Fees:

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

2. Shipping Instructions – Consignment:

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

3. Patents:

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

4. Quality:

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

5. Inspection Of Supplies:

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

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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.

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

6. Inspection Of Services:

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

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

7. **Waiver:**

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

8. **Default:**

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

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

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9. Indemnification:

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

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

10. Transfer:

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

11. Taxes:

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

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

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

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

- a) Deliveries to Glenn Dale Hospital – Exemption No. 4647
- b) Deliveries to Children's Center – Exemption No. 4648
- c) Deliveries to other District Departments or Agencies – Exemption No. 09339

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

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12. Appointment of Attorney:

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

13. District Employees Not To Benefit:

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

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

14. Disputes:

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

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

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

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

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

C. Claims by the District against a Contractor

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

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

15. Changes:

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

16. Termination For Convenience Of The District:

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

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- (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

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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

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- (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

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

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

17. Recovery Of Debts Owed The District:

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

18. Retention and Examination Of Records:

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

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

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

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

19. Non-Discrimination Clause:

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

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

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

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

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

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

20. Definitions:

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

21. Health And Safety Standards:

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

22. Appropriation Of Funds:

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

23. Buy American Act:

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

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

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

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

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

24. Service Contract Act of 1965:

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

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

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

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

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

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

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

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

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

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

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

25. Cost and Pricing Data:

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

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

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

26. Multiyear Contract:

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

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

27. Termination Of Contracts For Certain Crimes And Violations:

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