

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES



Procurement Assistance Consulting Services
Solicitation No. DCAM-14-NC-0058

Addendum No. 2
Issued: October 23, 2013

This Addendum No. 2 is issued by e-mail on October 23, 2013 and posted on the Department's website. Except as modified hereby, the Request for Proposals ("RFP") remains unmodified.

Item #1

Form of Contract: Attached to this Addendum is the Form of Contract. THE TERMS OF THE FORM OF CONTRACT SHALL PREVAIL OVER THE RFP. TO THE EXTENT THERE IS AN INCONSISTENCY BETWEEN THE FORM OF CONTRACT ISSUED HERewith AND THE RFP, THE FORM OF CONTRACT SHALL GOVERN.

Item #2

The RFP is modified as follows:

Attachment B Bid Form

Delete: "The allocation of 6500 hours is for evaluation purposes only."

Replace With: "The allocation of 4200 hours is for evaluation purposes only."

Item #3

The bid date remains unchanged. Proposals are due by October 28, 2013 at 2:00 PM EDT. Proposals that are hand-delivered should be delivered to the attention of: JW Lanum, Associate Director, at Frank D. Reeves Center, 2000 14th Street, N. W., 8th Floor, Washington, DC 20009.

End of Addendum No. 2

JW Lanum
Associate Director,
Contracts and Procurement

**AGREEMENT FOR
Procurement Assistance Consulting Services
(Insert Agreement Number)**

THIS AGREEMENT FOR PROCUREMENT ASSISTANCE CONSULTING SERVICES (“Agreement”) is entered into by and between the District of Columbia government acting by and through its **DEPARTMENT OF GENERAL SERVICES** (“Department” or “DGS”) and _____ (“Consultant”).

WITNESSETH:

R.1 On September 14, 2011, the Department was, pursuant to the *Fiscal Year 2012 Budget Support Act of 2011*, D.C. Law 19-0021, established as a subordinate agency within the executive branch of the government of the District of Columbia;

R.2 Among the statutory duties of the Department is the duty to manage the capital improvement and construction program for District government facilities, including the modernization or new construction of District facilities by approving and authorizing decisions at every stage of modernization and new construction, including planning, design, procurement, and construction, in accordance with the approved Capital Improvement Plan;

R.3 Given the nature of the portfolio, including the number of projects to be implemented and the volume of construction to be undertaken, the Department desires to engage a Consultant with expertise in architectural, engineering, and construction industry procurement methodologies to assist in managing its procurement efforts.

R.4 On October 2, 2013, the Department issued a Request for Proposals for procurement assistance consulting services (the “RFP”).

R.5 The Consultant submitted a proposal in response to the RFP on October 28, 2013.

R.6 The Department desires to retain the Consultant under the conditions and terms set forth herein to provide the services specified herein.

R.7 The Consultant desires to provide such services subject to the conditions and terms set forth herein.

AGREEMENT:

NOW, THEREFORE, intending to be legally bound, in consideration of the promises and the covenants, conditions, representations and warranties contained herein, and for good and valuable consideration, the sufficiency and adequacy of which is hereby acknowledged, the Parties agree as follows:

Section 1 **Scope of Work.**

Section 1.1 **Standard of Care.** In performing its duties hereunder, the Consultant shall use a level of skill and exhibit a standard of care that is appropriate to procurement services for a large, multi-site construction and renovation portfolio of similar size and scope. The Consultant understands and acknowledges that the Department's decision to enter into an Agreement with the Consultant is based upon such representation as well as the experience, qualification and other materials submitted in response to the RFP. The Consultant further represents and warrants that such materials are, as of the date they were submitted and the date hereof, accurate in all material respects and fairly represent the capabilities of the Consultant.

Section 1.2 The Consultant accepts the relationship of trust and confidence established with the Department by this Agreement, and covenants with the Department to provide the reasonable skill and judgment and to cooperate with the Department and its various Consultants including those working on the various projects with the Portfolio in furthering the interests of the Department. The Consultant shall use its reasonable best efforts to ensure that the procurement activities assigned to the Consultant are completed on-time and in a manner consistent with the Department's economic inclusion goals and other goals for the Portfolio.

Section 1.3 **Consulting Services.** The Consultant shall provide the following services pursuant to this Agreement:

- .1 Develop of project delivery and procurement strategies for capital construction and renovation programs and projects.
- .2 Develop and draft solicitations and related documents required to implement such procurement strategies.
- .3 Employ various project delivery methods with a particular emphasis on design-build and other fast track project delivery methods with particular emphasis on the coordination between the owner, architect, builder and others.
- .4 Negotiate contract provisions and terms that advance the selected procurement strategies, conform with procurement and other laws, regulations and policies applicable to DGS, and reflect an understanding of the conditions and constraints of the construction marketplace.
- .5 General knowledge of and experience with the District of Columbia regulatory environment.
- .6 Participate in the management of construction programs and projects as part of an owner's representative or Consultant team.

Section 2 **Reporting and Deliverables.**

Section 2.1 The Consultant shall submit the following deliverables and reports:

- .1 By the 5th day of each month, a two-part monthly compilation of the Consultant's procurement activities that includes, but is not limited to, actions currently pending and actions completed the previous month.
- .2 A Weekly Status Report of actions currently pending, including the identification of any issues associated with those actions.
- .3 On an on-going basis, documents, including but not limited to, solicitations and addendums; contracts and agreements; technical and price proposal evaluations; and other supporting documents required to establish and maintain official contract files on all procurement actions managed by the Consultant.
- .4 At the request of the COTR, any other reports and documents pertinent to the Consultant's procurement activities.

Section 3 Contract Type.

This is a time and materials contract with a cost reimbursement component. On-line research fees, copying, postage, delivery services, out-of-town travel and long distance phone calls will be reimbursable at cost and without mark-up.

Section 4 Consultant's Compensation.

Section 4.1 The Consultant will be paid on a monthly basis in accordance with the fully loaded hourly rates shown on Exhibit ____.

Section 4.2 Overall Compensation Cap. Notwithstanding any other provisions of this Agreement, in no even shall the Consultant be entitled to receive more than [NOT-TO-EXCEED AMOUNT] under this Agreement unless authorized in advance and in writing by the Department.

Section 5 Term of Agreement.

Section 5.1 Base Term. The base term of this Agreement shall be from Date of Award to one year thereafter.

Section 5.2 Option Year. The Department shall have the right to extend the term of this Agreement for four (4) terms of one (1) year; provided that the Department shall give the Consultant preliminary written notice of its intent to exercise the option to extend the term of the Contract thirty (30) days prior to the expiration of the contract. The preliminary notice does not commit the Department to an extension. Consultant may waive the thirty (30) day notice requirement by providing a written waiver to the Contracting Officer prior to the expiration of the Contract.

Section 5.3 Option Years Pricing. In the event the Department exercises its option to extend the Agreement to cover an option year, the rates applicable to such Option Year are set forth in Exhibit ___.

Section 6 Changes.

Section 6.1 Changes Authorized. The Department may, without invalidating the contract, and without notice to or approval of any surety, order changes in the Work, including additions, deletions or modifications. Any such change must be conveyed by the Department to the Consultant via written Change Directive or Change Order.

Section 6.1.1 The Contracting Officer is the only person authorized to approve changes in any of the requirements of this contract. The Consultant shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the Contracting Officer.

Section 6.1.2 In the event the Consultant effects any change at the instruction or request of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

Section 6.2 Executed Change Directive/Order Required. Changes to the Agreement may be made only by a written Change Directive or Change Order executed by the Department.

Section 6.3 Prompt Notice. In the event the Consultant encounters a situation which the Consultant believes to be a change to this Agreement, the Consultant shall provide the Department with prompt written notice of such event and the possible impact such event could have on cost and schedule. All such notices shall be given promptly, considering the then applicable situations, but in no event more than ten (10) calendar days after encountering the situation. The Consultant acknowledges that the failure to provide such notice in a timely manner could limit or eliminate the Department's ability to mitigate such events, and thus, the Consultant shall not be entitled to an adjustment in the event it fails to provide prompt notice. The Consultant shall include provisions similar to this provision in all of its subcontracts.

Section 6.4 Failure to Agree. If the Consultant claims entitlement to a change in the Agreement, and the Department does not agree that any action or event has occurred to justify any change in time or compensation, or if the parties fail to agree upon the appropriate amount of the adjustment in time or compensation, the Department will unilaterally make such changes, if any, to the Agreement, as it determines are appropriate pursuant to the terms of this Agreement. The Consultant shall proceed with the Work and the Department's directives, without interruption or delay, and may make a claim of this Agreement. Failure to proceed due to a dispute over a change request shall constitute a material breach of the Agreement and entitle the Department to all available remedies for such breach, including, without limitation, termination for default.

Section 6.5 Indemnification. The Consultant shall indemnify and hold harmless the Department, DCPS/DPR, and the District of Columbia, and the respective employees, officers and agents of either from and against all liabilities, obligations, damages, losses, fines, penalties, claims, demands, costs, charges, judgments and expenses (including, without limitation, reasonable attorney's fees and disbursements) whatsoever, which may be imposed or incurred or paid by, or asserted against the Indemnities or the Project, to the extent caused by the failure of the Consultant to perform the work in accordance with the standard of care set forth in Section 1.2 hereto; provided, however, that it is understood and agreed that the grant of indemnification made hereby shall not extend to designers or builders engaged by the Department with regard to claims or costs asserted by such designers or builders arising from the failure of the Consultant to timely process submittals but it is understood and agreed that that the preceding limitation on the grant of indemnification shall not bar claims asserted by the Department in its own name; and, provided, further, that the Department agrees and understands that design reviews conducted by the Consultant are solely for the purpose of assessing whether the proposed designs comply with the Department's functional and aesthetic requirements and that in no event shall the Consultant be liable to the Department if the systems reflected in such designs fail to perform as intended.

Section 7 Disputes.

Section 7.1 Informal Resolution. It is the mutual desire of the parties to resolve any disputes arising under, or otherwise related to, this Agreement in an informal manner and by consensus. Toward this end, should any such dispute arise, the parties shall use their best efforts to resolve the dispute without the need for formal litigation or process of any kind. In the event that any such dispute cannot be resolved by the parties' field representatives, the parties shall arrange for representatives of their senior management to meet and, if possible, discuss the issue. If this process cannot resolve the problem, then either party may initiate arbitration in accordance with Section 7.2 of this Agreement. If resolution is not reached in such manner, the Consultant shall make a claim in accordance with this Section.

Section 7.2 Formal Dispute Resolution Procedure.

Section 7.2.1 Notice of Claim. If the Consultant wishes to assert a claim over a contract dispute, the Consultant shall provide written notice of the claim to the Department pursuant to procedures set forth in section 4732 of the Department's procurement rules and section 1004 of the District's Procurement Practices Reform Act of 2010 (PPRA).

Section 7.2.2 Contents of Notice of Claim. The notice of claim shall state the nature of the claim, the events or circumstances giving rise to the claim, the type of relief requested, and the amount of time or additional compensation, or other damages sought. If the amount of time, compensation, or other damages sought is not reasonably ascertainable at the time such notice is provided, the Consultant shall so state, explain why, and provide whatever estimates it can reasonably provide. The notice shall state clearly that the Architect intends to assert a claim against the Department.

Section 7.2.3 Appeal Procedures. All claims arising under or in connection with the Agreement or its breach, or relating to the Project, whether framed in contract, tort or otherwise,

and which are not resolved via the claims process may be resolved by filing an appeal with the District of Columbia Board of Contract Appeals in accordance with Title X of the *Procurement Practices Reform Act of 2010* (PPRA). However, if a third party brings any claim against the Department, including, without limitation, claims of infringement of patents, copyrights or other intellectual property rights, the Department may bring an action for defense or indemnification against the Consultant in the court in which such claim is being litigated.

Section 8 Termination.

Section 8.1 Termination for Default. The Department may terminate this Agreement for default if the Consultant fails materially to perform any of its duties or obligations under this Agreement and such failure continues for a period of at least seven (7) days after receiving written notice of such failure from the Department.

Section 8.2 Termination for Convenience. The Department may, upon seven (7) days written notice to the Consultant, terminate this Agreement in whole or specified part, for its convenience, whether the Consultant is in breach of this Agreement or not. In the event the Department exercises its right to terminate this Agreement for convenience, the Consultant shall not be entitled to recover for lost profits on the unperformed aspect of the work. The notice of termination shall state the effective date of termination, the extent of the termination, and any specific instructions. In such event, the Consultant shall promptly submit all documents and computer files it has prepared relating to this engagement. The Consultant shall submit a proposal for settlement of all amounts due as a result of the termination for convenience.

Section 9 Contracting Officer (CO). Contracts will be entered into and signed on behalf of the District only by Contracting Officers. The contact information for the Contracting Officer is:

Brian J. Hanlon
Director/Chief Contracting Officer
Department of General Services
2000 14th Street, NW, 8th Floor
Washington, DC 20009

Section 10 Contracting Officer's Technical Representative (COTR). The COTR is responsible for general administration of the contract and advising the Contracting Officer as to the Consultant's compliance or noncompliance with the contract. The COTR has the responsibility of ensuring that the work conforms to the requirements of this contract and such other responsibilities and authorities as may be specified in the contract. These include:

(a) Keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the contract;

(b) Coordinating site entry for Consultant personnel, if applicable;

(c) Reviewing invoices for completed work and recommending approval by the CO if the Consultant's prices and costs are consistent with the contractual amounts and progress is satisfactory and commensurate with the rate of expenditure;

(d) Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions; and

(e) Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, and equipment) and invoice or vouchers.

(f) The contact information of the COTR is:

Insert COTR Name

Title

Address

Phone

Fax

Email

Section 11 Payments.

Section 11.1 Invoicing. The Consultant shall invoice the Department on a monthly basis. Each such invoice shall itemize all of the work performed and submitted to the COTR and to dgsfm.inves@dc.gov

Section 11.2 Right to Withhold Payments. The Department will notify the Consultant within fifteen (15) calendar days after receiving any invoice for payment, of any defect in the invoice or the work which may result in the Department's declining to pay all or a part of the invoiced amount. The Department may withhold payment from the Consultant, in whole or part, as appropriate, if:

(a) The work is defective and such defects have not been remedied; or

(b) The Department has determined that the Consultant's progress has fallen behind the Project Schedule, and the Consultant fails, within ten calendar days of the Department's written demand, to provide the Department with a realistic and acceptable plan to recover the delays; or

(c) The Consultant has failed to pay sub-consultants promptly or has made false or inaccurate certifications that payments to Sub-consultants or Suppliers are due or have been made; or

(d) The Consultant is otherwise in substantial breach of the Contract (including, without limitation, failures to comply with the Economic Inclusion Requirements in Section 9 of this Contract).

Section 11.3 The Department's liability under this contract is contingent upon the future availability of appropriated monies with which to make payment under the contract. The legal liability on the part of the Department for the payment of any money shall not arise unless and until such appropriations have been provided.

Section 12 Subcontracts. The Consultant shall perform the work with its own forces. In the event that the Consultant desires to engage one or more sub-consultants to assist with the work, it shall advise the Department and obtain the Department's written approval of any such sub-consultant. All sub-consultants shall be required to comply with the insurance requirements set forth herein. In addition, the Consultant shall be responsible for all work performed by the sub-consultants and shall assume the risk of the sub-consultants' non-performance.

Section 12.1 Subcontracted Work. The Consultant will be permitted to subcontract the work in order to meet LSDBE utilization goals, in accordance with Section 13 herein. However, for all work, the Consultant's compensation will be based on the rates established in Exhibit A, and thus, such rates must be sufficient to cover the cost of subcontracting in the event the Consultant plans to satisfy its contractual obligations through subcontracting.

Section 13 Economic Inclusion.

Section 13.1 Certified Business Enterprises.

Section 13.1.1 The Department requires that Local, Small and Disadvantaged Business Enterprises ("LSDBEs") participate in this project to the greatest extent possible and desires that such businesses perform at least thirty five percent (35%) of the work under this procurement. At least thirty five percent (35%) must be awarded to entities that are certified as either Small or Disadvantaged Business Enterprises by the District of Columbia Local Business Opportunity Commission, and twenty percent (20%) to entities that are certified as Disadvantaged Business Enterprises.

Section 13.1.2 The Consultant, if certified as a small, local or disadvantage business enterprise, shall not be required to comply with the provisions of Sections 13.1.1.

Section 13.2 First Source Agreement.

Section 13.2.1 The Consultant and all its member firms, if any, and each of its Sub-consultants shall submit to the Department a list of current employees that will be assigned to the Contract, the date they were hired and whether or not they live in the District of Columbia.

Section 13.2.2 The Consultant and its constituent entities shall comply with subchapter III of Chapter 11 Title 1, and subchapter II of Chapter 11 of Title 1 of the D.C. Code, and all successor acts thereto and the rules and regulations promulgated thereunder. The Consultant and all member firms and Sub-consultants shall execute a First Source Agreement with the District of Columbia Department of Employment Services ("DOES") prior to beginning Work at the Project site.

Section 13.2.3 The Consultant shall maintain detailed records relating to the general hiring of District of Columbia and community residents. At least fifty-one percent (51%) of the Consultant's Team and every sub-consultant's employees hired after the Consultant enters into this contract with the Department, or after such sub-consultant enters into a contract with the Consultant, to work on this project, shall be residents of the District of Columbia.

Section 13.2.4 The Consultant shall be responsible for: (i) including the provisions of this Section 13.2 in all subcontracts; (ii) collecting the information required in this Section 13.2 from its Sub-consultants; and (iii) providing the information collected from its Sub-consultants in any reports required to be submitted by the Consultant pursuant to this Section 13.2.

Section 14 Insurance

Section 14.1 Required Insurance. The Consultant will be required to maintain the following types of insurance throughout the life of the contract.

(a) Commercial general public liability insurance ("Liability Insurance") against liability for bodily injury and death and property damage, such Liability Insurance written on an occurrence basis to be in an amount not less than One Million Dollars (\$1,000,000.00) for liability for bodily injury, death and property damage arising from any one occurrence and One Million Dollars (\$1,000,000.00) from the aggregate of all occurrences within each policy year. The policies shall contain blanket contractual coverage (including coverage for the indemnity clauses to be provided under the Agreement) and completed operations coverage (for 3 years beyond completion of the Work).

(b) Workers' compensation providing statutory benefits for all persons employed by the Consultant, or its Consultants and sub-consultants at or in connection with the Work.

(c) Automobile Liability, including Hired and Non-Owned Auto Liability in the amount of at least One Million Dollars (\$1,000,000.00) for each occurrence for bodily injury and property damage.

Section 14.2 Additional Insured. Each insurance policy shall be issued in the name of the Consultant and shall name as additional insured the Department and the District of Columbia and shall not be cancelable or reduced without thirty (30) calendar days' prior written notice to the Department.

Section 14.3 Waiver of Subrogation. All such insurance shall contain a waiver of subrogation against the Department and its respective agents.

Section 14.4 Strength of Insurer. All insurance shall be placed with insurers that are reasonably acceptable to the Department and with an A.M. Best's rating of not less than a then-current rating of "A-" or better and a financial size category of Class XV or higher. All such insurers shall be licensed/approved to do business in the District of Columbia.

Section 15 **Miscellaneous Provisions.**

Section 15.1 **Governing Law.** This Agreement, and any disputes arising out of or related to this Agreement, shall be governed by, and construed in accordance with, the laws of the District of Columbia.

Section 15.2 **Standard Contract Provisions.** The Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts dated March, 2007 (“SCP”) are incorporated by reference into this Agreement.

Section 15.3 **Service Contract Act Provision.** The Consultant agrees that the work performed under this Agreement shall be subject to the Service Contract Act and the Living Wage Act.

Section 15.4 **False Claims Act.** The Consultant shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to the government, including the prescriptions set forth in D.C. Code § 2-308.14.

Section 15.5 **Anti-Deficiency Acts.**

Section 15.5.1 The obligations of the Department to fulfill financial obligations pursuant to this Agreement, or any subsequent agreement entered into pursuant to this Agreement or referenced herein (to which the Department is a party), are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351 1511-1519 (2004) (the “**Federal ADA**”), and D.C. Official Code §§ 1-206.03(e) and 47-105 (2001); (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08 (2004 Supp.) (the “**D.C. ADA**” and (i) and (ii) collectively, as amended from time to time, the “**Anti-Deficiency Acts**”); and (iii) Section 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2001). Pursuant to the Anti-Deficiency Acts, nothing in this Agreement shall create an obligation of the Department in anticipation of an appropriation by Congress for such purpose, and the Department’s legal liability for payments and other charges under this Agreement shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress.

Section 15.5.2 The Department agrees to exercise all lawful authority available to it to satisfy the financial obligations of the Department that may arise under this Agreement. During the term of this Agreement, the Mayor of the District of Columbia or other appropriate official shall, for each fiscal period, include in the budget application submitted to the Council of the District of Columbia the amount necessary to fund the Department’s known potential financial obligations under this Agreement for such fiscal period. In the event that a request for such appropriations is excluded from the budget approved by the Council and submitted to Congress by the President for the applicable fiscal year or if no appropriation is made by Congress to pay any amounts due under this Agreement for any period after the fiscal year for which appropriations have been made, and in the event appropriated funds for such purposes are not otherwise lawfully available, the Department will not be liable to make any payment under this Agreement upon the expiration of any then-existing appropriation, the Department shall

promptly notify the Contractor, and this Agreement shall immediately terminate upon the expiration of any then-existing appropriation.

Section 15.5.3 Notwithstanding the foregoing, no officer, employee, director, member or other natural person or agent of the District or Department shall have any personal liability in connection with the breach of the provisions of this Section or in the event of non-payment by the Department under this Agreement.

Section 15.5.4 This Agreement shall not constitute an indebtedness of the District and/or the Department nor shall it constitute an obligation for which the Department is obligated to levy or pledge any form of taxation or for which the District has levied or pledged any form of taxation. No District of Columbia Official or employee is authorized to obligate or expend any amount under this Agreement unless such amount has been appropriated by Act of Congress and is lawfully available.

Section 15.6 Freedom Of Information Act. The District of Columbia Freedom of Information Act, at D.C. Official Code § 2-532 (a-3), requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private Consultant to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If the Consultant receives a request for such information, the Consultant shall immediately send the request to the COTR designated in subsection 6.7. who will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by the Consultant pursuant to the contract, the COTR will forward a copy to the Consultant. In either event, the Consultant is required by law to provide all responsive records to the COTR within the timeframe designated by the COTR. The FOIA Officer for the agency with programmatic responsibility will determine the releasability of the records. The District will reimburse the Consultant for the costs of searching and copying the records in accordance with D.C. Official Code §2-532 and Chapter 4 of Title 1 of the D.C. Municipal Regulations.

Section 15.7 Retention of Records: Inspections and Audits.

(a) The Consultant shall maintain books, records, documents and other evidence directly pertinent to performance under the Agreement in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Contract.

(b) The Consultant shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the Department and the required cost submissions in effect on the date of execution of the Department.

(c) The Department, the District of Columbia government, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall have access to the books, records, documents and other evidence held, owned or maintained by the Consultant for the purpose of inspection, audit and copying during normal business hours and

upon advance written notice to the Consultant. The Consultant shall provide proper facilities for such access and inspection.

(d) The Consultant agrees to include the wording of this Section in all its subcontracts in excess of Five Thousand Dollars (\$5,000.00) that directly relate to performance under this contract.

Audits conducted pursuant to this Section will be in accordance with generally accepted auditing standards with the results prepared in accordance with generally accepted accounting principles and established procedures and guidelines of the applicable reviewing or audit agency.

The Consultant agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Department. Where the audit concerns the Consultant, the auditing agency will afford the Consultant an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

The Consultant shall preserve all records described herein from the effective date of the Agreement through completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.

Section 15.8 Gratuities and Officers Not to Benefit Provisions.

Section 15.8.1 If it is found, after notice and hearing, by the Department that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the Consultant, or any agent or representative of the Consultant, to any official, employee or agent of the Department or the District with a view toward securing the Agreement or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Contract, the Department may, by written notice to the Consultant, terminate the right of the Consultant to proceed under the Agreement and may pursue such other rights and remedies provided by law and under the Agreement.

Section 15.8.2 In the event the Agreement is terminated as provided in Section 11, the Department shall be entitled:

(a) To pursue the same remedies against the Consultant as it could pursue in the event of a breach of the Agreement by the Consultant; and

(b) As a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Department which shall be not less than ten times the costs incurred by the Consultant in providing any such gratuities to any such officer or employee.

(c) No member of, nor delegate to Congress, Mayor or City Council Member, nor officer nor employee of the District, nor officer nor employee of the Department shall be admitted to any share or part of the Agreement or to any benefit that may arise therefrom, and all agreements entered into by the Contracting Officer of the Department in which he or any officer or employee of the Department shall be personally interested as well as all agreements made by the Department in which the Mayor or City Council Member or officer or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Department or by any officer thereof; but this provision shall not be construed or extend to the agreement if the share of or benefit to the member of, or delegate to Congress, Mayor or City Council Member, or officer or employee of the District is de minimis.

Section 15.9 Ethical Standards For Owner's Employees And Former Employees.

The Department expects the Consultant to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Consultant, nor any person associated with the Consultant, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Department not in conformity with applicable law, rules or regulations. The Consultant shall not engage the services of any person or persons in the employment of the Department or the District for any Work required, contemplated or performed under the Contract. The Consultant may not assign to any former Department or District employee or agent who has joined the Consultant's firm any matter on which the former employee, while in the employ of the Department, had material or substantial involvement in the matter. The Consultant may request a waiver to permit the assignment of such matters to former Department personnel on a case-by-case basis. The Consultant shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Sub-consultant or vendor.

Section 15.10 Applicable Law. It shall be the Consultant's responsibility to perform under this Agreement in conformance with all applicable statutes, laws, codes, ordinances, regulations, rules, requirements, orders, and policies of governmental entities. It is the sole responsibility of the Consultant to determine the statutes, laws, codes, ordinances, regulations, rules, requirements, orders, and policies that apply to the performance of this Agreement and their effects.

Section 15.11 Assignment. Neither this Agreement, nor any of the rights or obligations hereunder, may be assigned by the Consultant. Any such purported assignment shall be null and void.

Section 15.12 Acts of Agents and Employees. The Consultant shall be responsible to the Department for any and all acts and omissions of the Consultant, its agents, employees, sub-consultants and sub-consultants.

Section 15.13 No Waiver. The failure of a Party to enforce, insist upon, or comply with any of the terms, conditions or covenants of this Agreement, or a Party's waiver of the same in any instance or instances shall not be construed as a general waiver or relinquishment of any

such terms, conditions or covenants, but the same shall be and remain at all times in full force and effect.

Section 15.14 Representations & Warranties. All disclosures, representations, warranties, and certifications made by the Consultant in its proposal in response to the RFP shall remain binding and in effect throughout the term of this Agreement. The Consultant reaffirms that all such disclosures, representations, warranties, and certifications are true and correct in all material aspects as of the date of this Agreement. If any disclosure, representation, warranty, or certification the Consultant has made in connection with the RFP, including, but not limited to, those representations concerning the Consultant's qualifications, are materially inaccurate, this shall be a material breach of this Agreement.

Section 15.15 Ownership and Use of Work Product, Including Electronic and Written Data and Documents. Any work product, whether written or in electronic format, prepared by the Consultant during the term of this Agreement for the Department shall become the sole and exclusive property of the Department. Such work product shall not be used by the Consultant or its Sub-consultants for other projects without the specific written consent of the Department.

Section 15.16 No Third Party Beneficiaries. Except as otherwise expressly provided in this Agreement, neither this Agreement nor any term or provision of this Agreement, shall be construed as being for the benefit of any party not a signatory hereto.

Section 15.17 Notices. All notices, requests, demands, offers and other written communications given or delivered under or by reason of the provisions of this Agreement shall be in writing, shall be signed by the party giving such notice, shall be addressed as provided herein and shall be given by registered mail, postage prepaid and return receipt requested, by delivery by hand or by nationally recognized air courier service, to:

If to the Consultant:

[INSERT CONTACT INFORMATION]

If to the Department:

Mr. Brian J. Hanlon
Director
Department of General Services
200014th Street, NW
Washington, D.C. 20009
with a copy to:

JW Lanum
Assistant Director

Contracts and Procurement
200014th Street, NW
Washington, D.C. 20009

Any such notice shall become effective when received (or refused) by the addressee, provided that any notice or communication that is received other than during regular business hours of the recipient on a business day shall be deemed to have been given at the opening of business on the next business day. From time to time, each of the Parties may designate a new address for purposes of notice hereunder by notice to such effect to the other.

Section 15.18 Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, extend or limit the scope or intent of such document or the intent of any provision contained therein.

Section 15.19 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and in lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be valid, legal and enforceable. Each part of this Agreement is intended to be severable.

Section 15.20 Publicity. The Consultant shall at all times obtain the prior written approval from the Contracting Officer before the Consultant, any of its officers, agents, employees or sub-consultants, either during or after expiration or termination of the contract, make any statement, or issue any material, for publication through any medium of communication, bearing on the work performed or data collected under this contract.

Section 15.21 Personal Services. The Consultant and the Consultant's employees shall perform the services specified herein as independent Consultants, not as employees of the government and shall be responsible for their own management and administration of the work required and bear sole responsibility for complying with any and all technical, schedule, financial requirements or constraints related to the performance of this contract.

Section 16 Order of Precedence. A conflict in language shall be resolved by giving precedence to the document in the highest order of priority that contains language addressing the issue in question. The following documents are incorporated into the contract by reference and made a part of the contract in the following order of precedence:

- a. Contract Document
- b. Offeror's Proposal
- c. RFP, as amended

Section 17 Entire Agreement. This Agreement sets forth the full and complete understanding of the Parties relating to the subject matter hereof as to its date, and supersedes

any and all negotiation, agreements and representations made or dated prior hereto with respect to the subject matter of this Agreement.

IN WITNESS WHEREOF, each of the parties to this Agreement has caused this Agreement to be signed by its duly authorized representative.

DEPARTMENT OF GENERAL SERVICES

By: _____
Name: Brian J. Hanlon
Title: Director
Date: _____

CONSULTANT

By: _____
Name: _____
Title: _____
Date: _____