

**UNIVERSITY OF THE DISTRICT OF COLUMBIA
SOLICITATION, OFFER, AND AWARD
FOR ARCHITECTURAL /ENGINEERING /CONSTRUCTION ADMINISTRATION
SERVICES TO DESIGN THE NEW STUDENT CENTER FOR THE UDC VAN NESS CAMPUS**

Page 1 of 98

ISSUED BY: University of the District of Columbia Office of Contracting and Procurement 4200 Connecticut Avenue, N.W. Washington, D.C. 20008	DATE ISSUED: February 17, 2010 <hr/> PROPOSAL OPENING DATE: March 17, 2010 <hr/> PROPOSAL OPENING TIME: 2:00 pm <hr/> SUBMITTAL CLOSING DATE: March 17, 2010 <hr/> SUBMITTAL CLOSING TIME: 12:00 pm
SOLICITATION NUMBER: <i>PO-GF-2010-R-0060-WT</i>	OFFER/BID FOR: <i>Design of the New Student Center for the UDC Van Ness Campus</i>

TABLE OF CONTENTS

(√)	SEC.	DESCRIPTION	PAGE(S)	(√)	SEC.	DESCRIPTION	PAGE(S)
PART 1 – The Schedule				PART II – Contract Clauses			
	A	Solicitation/Contract Form	1-2		I	Contract Clauses	26-35
	B	Supplies/Services and Price/Costs	3	PART III – List of Documents, Exhibits and Other Attach			
	C	Description/Specs/Work Statement	4-8		J	List of Attachments	35
	D	Packaging and Marking	9	PART IV – Representations and Instructions			
	E	Inspection and Acceptance	10		K	Representations, Certifications and other Statements of Offerors	36-38
	F	Deliveries or Performance	11-14		L	Instrs. Conds., & Notices to Offerors	39-45
	G	Contract Administration	15-20		M	Evaluation Factors for Award	46-51
	H	Special Contract Requirements	21-25				

OFFER (TO BE COMPLETED BY OFFEROR) Note: In sealed bid solicitations “Offer” and “Offeror” mean “Bid” and “Bidder”.

The undersigned offers and agrees that, with respect to all terms and conditions by the University of the District of Columbia under “AWARD” below, this offer and the provisions of the RFP/IFB will constitute a Formal Contract. All offers are subject to the terms and conditions contained in the solicitation.

OFFEROR: Name: Street: City, State, and Zip: Area Code & Telephone No.: Area Code & Facsimile No.:	Name & Title of Person Authorized to Sign Offer: (Type or Print) SIGNATURE: _____ DATE: _____
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AWARD (To be completed by the University of the District of Columbia)

CONTRACT NO.:	AWARD AMOUNT:
ACCEPTED AS TO THE FOLLOWING ITEMS:	

UNIVERSITY OF THE DISTRICT OF COLUMBIA

BY: _____
Mary Ann Harris
Contracting Officer

CONTRACT PERIOD: _____

_____ DATE:

(Type or Print Name)

SECTION B: SUPPLIES OR SERVICES AND PRICE

B.1 The University of the District of Columbia, Office of Contracting and Procurement, on behalf of the UDC Office of Facilities and Real Estate Capital Construction Division is seeking an Architectural & Engineering contractor with proven experience in delivery of University Quality of Life / Student Center projects to ***provide comprehensive project Architectural & Engineering services for the University's proposed approximately 135,000 Sq Ft Student Center.*** The services provided are to include a project programming study, phased design documentations, project estimation, and comprehensive construction administration services.

B.2 RFP-OPEN MARKET SOLICITATION (CONSTRUCTION)
(35% SBE SUBCONTRACTING SET-ASIDE FOR CONTRACTS OVER \$250,000.00)

Any prime contractor responding to this solicitation must submit with its proposal, a notarized statement detailing its subcontracting plan. Proposals responding to this RFP shall be deemed nonresponsive and shall be rejected if the offeror fails to submit a subcontracting plan that is required by this solicitation. For construction contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted in accordance with section M.1.2.1

B.3 The District contemplates award of a Firm Fixed Price contract. The estimated price range for this requirement is between \$2,300,000.00- \$3,300,000.00

B.3a The Contractor must propose a firm fixed price for the following Contract Line Item Number (CLIN) as described below.

Contract Line Item No. (CLIN)	Item Description (Provide summary description of Supplies/Services)	Total Price
0001 (Base Year)	Contractor shall complete a program study which incorporates the following elements: Conduct meetings with representatives of the University President's Office to confirm project goals and critical objectives, complete a competitive context analysis for Student Centers nationally, analysis of peer institution Student Centers, analysis of local retail for options within geographic market, conduct statistical sample of University Community to determine program needs, and provide outline data sheets and summary report for programming study upon completion. A summary of the proposed buildings program elements to include the size of spaces, unit costs, zoning of program elements, gross and net assignable square footages and a preliminary project budget with hard and anticipated soft cost projections.	\$_____
0002 (Year 1)	Contractor shall complete Site / Civil / Building Designs	\$_____
0003 (Year 2)	Contractor shall complete substantial Building Construction	\$_____

SECTION C: SPECIFICATIONS/WORK STATEMENT

C.1 SCOPE:

In general, the selected Contractor will be required to provide a full range of services necessary to develop a Student Center design solution for the UDC Van Ness Campus. These services will include programming, architectural/engineering design services, cost estimating, and construction administration services.

C.1.1 Programming Services:

The first phase of the project will include completing a program study. The following is intended to provide a basis for the program study. The A/E Contractor is encouraged to supplement these services as deemed necessary to maximize the effectiveness of the information derived. During this phase; at a minimum, the A/E Contractor should complete the following tasks:

Contractor Shall:

- a. Conduct meetings with representatives of the University President's Office (or representative) to confirm the projects goals and critical objectives.
- b. Complete a competitive context analysis for Student Centers nationally recognized as successful.
 - i. A minimum of 6 Schools should be included in this analysis.
 - ii. Information should be based on the most recent data available.
 - iii. All information should be obtained from a reliable source.
- c. Complete a competitive context analysis for Student Centers at UDC's peer institutions.
 - i. The peer institutions should include school UDC competes with for student enrollment as well as other Land Grant Institutions (Min. of 6 Schools).
 - ii. Information should be based on the most recent data available.
 - iii. All information should be obtained from a reliable source.
- d. Complete a local retail analysis to identify current and proposed retail options within the project site's geographic market.
 - i. The study should identify the project site's geographic market.
 - ii. The analysis should include researching the zoning restrictions of areas within the geographic market.
 - iii. The programming report should include an assessment of the existing retail options and the potential for them or other vendors to lease space within the new Student Center.
- e. Survey a statistically reliable sample of the University Community to determine their program needs.
 - i. This effort should include the use of a survey tool implemented over the internet in a manner that controls the integrity of the information gathered.
 - ii. A minimum of 6 focus groups should be conducted. Working with the University, the groups should include a random sampling of the University Community (Students, Faculty, Staff, Neighbors, etc.)
- f. Prepare an outline program using the findings of the programming study.
 - i. The outline program should include a program summary identifying the individual program elements, their size, and adjacency to other program element,

as well as the building's exterior and interior circulation.

- ii. The study should also include program element "Data Sheets". The Data Sheet should provide information specific the individual program element.
- iii. The information should include, but is not limited to a sample floor plan, preferred space height, minimum dimensions, suggested equipment, building system requirements, and any special consideration which will assist the project designers.

C 1.2 Schematic Design Phase Services:

The schematic design shall contain such detail as is typically required for schematic design under a standard AIA contract. In general, the Contractor shall be required to undertake the following tasks during this phase:

- a. Further develop conceptual plans and incorporate design changes.
- b. Develop Digital floor plans and site plan
- c. Create preliminary site/building elevations and sections
- d. Develop a Plan-to-Program Comparison
- e. Develop a Design Narrative
- f. Create an updated Project Budget and Schedule

C.1.3 Design Development Services:

During this phase, the Contractor will be required to progress the schematic design into a full set of design development documents. The design development documents shall contain at least the level of detail typically contemplated in the standard AIA form contract. The Contractor shall be required to have on-board a Project Erection Consultant, to discuss the status of the design and key issues. This consultant may be a General Contractor, but will be precluded from submitting a proposal during the General Contractor solicitation process for both the Site/Civil & Building scopes of work. The specific services required during this phase are:

- a. Develop (in draft form) outline specifications for materials, systems, equipment.
- b. Develop detailed and dimensioned plans, wall sections, building section, and schedules.
- c. Complete code compliance analysis and drawing.
- d. Confirm space-by-space equipment layouts with representatives from the University.
- f. Conduct preliminary meetings with regulatory agencies as required.
- g. Coordinate furniture, fixtures, and equipment requirements ("FFE").

C. 1.4 Construction Documents Services:

The A/E Contractor shall be required to develop a complete, coordinated set of construction drawings. During this phase, the Contractor shall provide the following services:

- a. Prepare detailed and coordinated drawings and specifications for bidding purposes.
- b. Prepare application and submit documents required for building permits.
- c. Prepare any required early-release packages (ex: concrete, steel, elevators) as deemed necessary by the Contractor's Erection Consultant.

C. 1.5 Construction Administration

C.1.5.1 Bidding

The selected Contractor shall provide support to chosen partnership Builder, as needed, to support the bidding of trade subcontracts. These services will include, but are not necessarily limited to:

- a. Assist selected General Contractor with distribution of documents (as needed).
- b. Prepare and issue bidding addenda (if needed).
- c. Respond to bidding questions and issue clarification, as needed.
- d. Consider and evaluate requests for substitutions
- e. Assist with bid openings and tabulations (as needed).

C.1.5.2 General Contractor Construction Administration

The Contractor shall provide support to the selected General Contractor and the University as may be necessary to support the construction phase of the Project. These services will include, but are not necessarily limited to:

- a. Attend weekly progress meetings. Architectural site visits should be included in base fee. Hourly-not-to-exceed allowance should be included for consultant site visits.
- b. Review and process shop drawing submissions, RFI's, etc.
- c. Prepare meeting notes and records of decisions/changes made for all coordinated meetings.
- d. Conduct punch-list inspections.
- e. Review closeout documents for completeness.

In addition, the A/E shall provide the following deliverables during this phase:

- a. ASI's or other clarification documents
- b. Closeout document review comments
- c. As-Builds for affected adjacent buildings (if applicable)

It should be noted the selected Contractor is being charged with the responsibility of developing the University's new Student Center. This includes all tasks reasonable expected in the completion of comparable projects. For this project "comparable" is defined as projects of with similar scale and scope and includes projects referenced in the Contractor response to Section D of the RFP.

C.1.6 Key Personnel

In its proposal, each Contractor will be required to identify its key personnel. Key personnel shall include, at a minimum, the following individuals: (i) the Design Principal; (ii) the Project Architect; (iii) the Project Designer; (iv) the key MEP engineers; (v) the person providing Erection Consultant services; and (vi) any other consultants deemed important by the selected Contractor lead firm. The

selected Contractor will not be permitted to reassign any of the key personnel unless the University approves of the proposed reassignment and the proposed replacement in writing.

C.1.7 Licensing, Accreditation and Registration

The selected Contractor and all of its subcontractors and sub-consultants (regardless of tier) shall comply with all applicable District of Columbia, and federal licensing, accreditation, and registration requirements and standards necessary for the performance of this scope. Without limiting the generality of the foregoing, all drawings produced by the completion of these tasks shall be signed and stamped by a professional architect or engineer licensed in the District of Columbia.

C.1.8 Project Schedule

The preliminary project schedule is as follows:

- Issue RFP February, 2010
- Proposal Due Date March 9, 2010
- Issue Notice To Proceed May 12, 2010
- Design
 - Complete Programming Study August 2010
 - Complete Site/Civil Design October 2010
 - Receive Site/Civil Permit January 2011
 - Complete Building Design April 2011
 - Receive Building Permit September 2011
- Construction
 - Site/Civil January 2011 – June 2011
 - Building September 2011–July 2012
- Substantial Completion July 2012

C.1.9 APPLICABLE DOCUMENTS

Item No.	Document Type	Title	Date
001		Government of the District of Columbia's Standard Contract Provisions for use with Specifications for District of Columbia Government Construction Projects, dated January 2007	January 2007
002		U.S Department of Labor Wage Determination General Decision Number DC 080004, dated 01/08/2010	January 2010

C.1.2 DEFINITIONS

N/A

C.2 BACKGROUND

The University of the District of Columbia was established in 1975 as an HBCU, land grant, open enrollment University after Congress granted limited home rule to the District of Columbia, and S.C. Law 1-36 authorized the mandate for consolidation of three schools: Federal City College, Washington Technical Institute, and D.C. Teachers College. Over the years, this vital public post secondary education system for the District of Columbia has undergone a number of leadership changes and has incurred deteriorating facilities.

The University's Student Center project goal is simple; develop an iconic symbol of the University's position as a premier Land Grant Institution and highlight its plan to provide the highest caliber facilities to the residents of the District. The University's Student Center project is being fully funded by a partnership with the District's City Council and is planned to open prior to the 2012 Fall Semester (late July 2012). The University is in the process of completing a Campus Master plan which references the Student Center project. A copy of the Master Plan will be made available to the awarded A/E Team. In order to achieve the 2012 project completion date the design effort will be implemented in a manner which allows for the production of multiple construction document (CD) sets. It is anticipated the sets will include a Site/Civil CD Set and a Building CD Set. The design documentation will be permitted and a General Contractor will be selected for the two anticipated phases.

As an essential part of the project implementation strategy, the A/E Contractor will be expected to participate in the General Contractor selection process for both phases. The project's phased approach may require the selected A/E Contractor to develop a staff utilization plan which appropriately reserves the resources necessary to support the project during periods of elevated activity. The Van Ness campus is considered a staple of the Ward 3 community. The design must foster this notion and enhance the services and amenities offered to the entire University community. The selected A/E Contractor will need to incorporate all existing UDC Design Guidelines into the project. Variation from existing guidelines must be supported by their ability to positively affect the project budget, aesthetic value or schedule.

C.3 REQUIREMENTS

The University intends to implement the Project through a hybrid of the traditional Design-Bid-Build implementation method. Initially, the selected Contractor will focus on developing a Site/Civil CD set. The A/E Contractor will coordinate the permitting process for this first phase and provide CA services after the package has been awarded to a General Contractor. In order to expedite the design process, *simultaneously* the A/E Contractor will be required to develop a second package for the Building and remaining design documentation. The A/E Contractor will also be required to coordinate the permitting process for this CD set and provide the associated CA Services. While this is the anticipated delivery method and time frame, interested Contractors are welcome to propose alternate strategies for optimizing the design period and maintain the project delivery date.

SECTION D: PACKAGING AND MARKING

D.1 MATERIAL DELIVERY, HANDLING AND STORAGE:

D.1.1 The Contractor shall deliver materials and equipment in the original, properly labeled, unbroken packages, containers, cartridges or bundles and in such quantities and such ample time that progress of work will not be delayed.

D.1.2 The Contractor shall protect materials and products against any damage or deterioration during transit to the site, unloading, delivering and storing at site, installation or erection and during period between installation or erection and final acceptance by the University, that shall include, but not limited to:

D.1.2.1 Minimum exposure to weather during delivery.

D.1.2.2 Storage off ground in dry, well-ventilated spaces.

D.1.2.3 Covering, as necessary, for adequate protection from soiling and wetting.

D.1.3 The Contractor shall provide storage methods that will facilitate inspection and testing before and during the use as follows:

D.1.3.1 Space for storage of materials and equipment will be approved by the University's Contracting Officer Technical Representative (COTR).

D1.3.2 The Contractor shall not occupy more space at the site than is absolutely necessary for proper execution of the work.

SECTION E: INSPECTION AND ACCEPTANCE

E.1 INSPECTION:

The inspection and acceptance requirements for the resultant contract shall be governed by Article 11 of the General Provisions of the Standard Contract Provisions for use with Specifications for the District of Columbia Government Construction Projects, January 2007, incorporated herein as Attachment J.1

E.2 PARTIAL ACCEPTANCE:

- E.2.1** The Contracting Officer's Technical Representative (COTR) may, at his/her option, accept part of the work under the contract in writing prior to the COTR's final acceptance of all work under the contract, when the COTR considers it beneficial to the University.
- E.2.2** Partial acceptance shall not preclude liquidated damages for failure to complete the contract within the required time limits established under the TIME FOR COMPLETION in section F.1

E.3 FINAL INSPECTION:

- E.3.1** The Contractor shall give the COTR written notice at least fourteen (14) days in advance of date on which project will be 100% complete and ready for final inspection. Prior to final inspection date, the contractor shall verify in writing that in the Contractor's best judgment no deficiencies exist. The Contractor shall conduct two inspections. The first inspection shall be conducted after the installation of structural steel and security glass. The second inspection shall be conducted after the dismantling of the stands.
- E.3.2** The Contractor and COTR shall jointly prepare a Punch list of deficiencies found on the final inspection that does not prevent the building or area(s) within the building from being occupied. The Contractor shall correct the deficiencies within (14) days after the building has been occupied and submit to the COTR a report of the corrections as a condition of final acceptance.

SECTION F: DELIVERIES OR PERFORMANCE

F.1 TERM OF CONTRACT

F.1.1 Project Schedule

The preliminary project schedule is as follows:

- | | | |
|---|------------------------------|--------------------------|
| • | Issue RFP | February, 2010 |
| • | Proposal Due Date | March 9, 2010 |
| • | Issue Notice To Proceed | May 12, 2010 |
| • | Design | |
| • | • Complete Programming Study | August 2010 |
| • | • Complete Site/Civil Design | October 2010 |
| • | • Receive Site/Civil Permit | January 2011 |
| • | • Complete Building Design | April 2011 |
| • | • Receive Building Permit | September 2011 |
| • | Construction | |
| • | • Site/Civil | January 2011 – June 2011 |
| • | • Building | September 2011–July 2012 |
| | Substantial Completion | July 2012 |

F.2 OPTION TO EXTEND THE TERM OF THE CONTRACT: N/A

F.3 DELIVERABLES

F.3.1 Programming Services Deliverables:

The A/E Contractor will be required to prepare and submit to the University the following deliverables. All such deliverables shall be subject to review and approval by the University and the Contractor's pricing should assume that revisions to these documents may be required to address concerns raised by the University and/or other project stakeholders.

- a. **Executive Summary** – The summary should describe the scope of work, method used to develop the program and important findings. The executive summary should also identify the project “purpose statement”. This statement will be used to manage the project's direction at critical decision points.
- b. **Focus Group Report** – A written report detailing the focus group effort and the important findings.
- c. **Survey Findings** – A report on the validity of the survey method and important finds.
- d. **Outline Program** – A summary of the proposed building's program elements. The summary should include the size of spaces, unit costs, zoning of program elements, gross and net assignable square footages and a preliminary project budget with hard and anticipated soft cost projections.
- e. **Program Data Sheets** – Each of the program elements identified in the outline program should have a data sheet. The data sheets should provide pertinent

information of the specific program element (size, suggested location within the building, MEP requirements, suggested minimal dimensions, etc.).

- f. **Adjacency Analysis** – This study should focus on identifying suggested adjacencies for each program element. The adjacencies should support the identified purpose of the program element. The purpose should support the space demand identified by the programming study.
- g. **Site Evaluation** – After the program needs are confirmed, the proposed site should be evaluated in terms of its ability to support program needs. The evaluation should also focus on identifying significant site challenges while proposing strategies for overcoming those challenges.

F.3.2 Schematic Design Deliverables:

During this phase, the Contractor will be required to prepare and submit to the University the following deliverables. All such deliverables shall be subject to review and approval by the University. The Contractor's pricing should assume that revisions to these documents may be required to address concerns raised by the University and/or other project stakeholders.

- a. Digital floor plans and site plan
- b. Preliminary site/building elevations and sections
- c. Plan-to-Program Comparison
- d. Design Narrative
- e. Updated Project Budget and Schedule

F.3.3 Design Development Deliverables:

The Contractor shall provide the following deliverables during this phase:

- a. Significant progression of the design for technical disciplines, drawings and specs
- b. Updated Project Budget and Schedule
- c. Presentation quality project representations. This may include professionally mounted images, scale models, computer simulated "walk-thru".

F.3.4 Construction Documents Deliverables:

The Contractor shall provide the following deliverables during this phase:

- a. Drawings and specifications, hard copy and electronic
- b. Presentation quality project representations. This may include professionally mounted images, scale models.
- c. Permit applications and regulatory approval management plan.

CLIN	Deliverable	Quantity	Format/Method of Delivery	Due Date	To Whom
001	Program Services Executive Summary	4	1 Hard Copy (Bound) 3Hard Copies (Loose)	7.28.10	COTR
002	Focus Group Report	4	1 Hard Copy (Bound) 3Hard Copies (Loose)	7.28.10	COTR
003	Survey Report	4	1 Hard Copy (Bound) 3Hard Copies (Loose)	8.4.10	COTR
004	Program Outline Report	4	1 Hard Copy (Bound) 3Hard Copies (Loose)	8.4.10	COTR
005	Program Data Sheet	4	1 Hard Copy (Bound) 3Hard Copies (Loose) 2 – Full Size sets 2 – Half Size sets	8.4.10	COTR
006	Adjacency / Site Evaluation Report	4	1 Hard Copy (Bound) 3Hard Copies (Loose)	8.4.10	COTR
007	Schematic Digital floor plans and site plan	4 sets Per CD package	2 – Full Size sets 2 – Half Size sets	TBD	COTR
008	Schematic Preliminary site/building elevations and sections	4 sets per CD package	2 – Full Size sets 2 – Half Size sets	TBD	COTR
009	Schematic Plan-to-Program Comparison Report	4 sets per CD package	2 – Full Size sets 2 – Half Size sets	TBD	COTR
010	Schematic Design Narrative Report	4 sets per CD package	2 – Full Size sets 2 – Half Size sets	TBD	COTR
011	Updated Schematic Project Budget and Schedule	4 sets per CD package	2 – Full Size sets 2 – Half Size sets	TBD	COTR
012	Design drawings and specs	4 sets per CD package	2 – Full Size sets 2 – Half Size sets	TBD	COTR
013	Updated Design Project Budget and Schedule	4 sets per CD package	2 – Full Size sets 2 – Half Size sets	TBD	COTR
014	Project Design Presentation Materials	4 sets per CD package	2 – Full Size sets 2 – Half Size sets	TBD	COTR

015	Construction Drawings and specifications hard copy and electronic	4 sets per CD package	2 – Full Size sets 2 – Half Size sets	TBD	COTR
016	Construction Presentation Materials	4 sets per CD package	2 – Full Size sets 2 – Half Size sets	TBD	COTR
017	Construction Permit and regulatory approval documentation	7 sets per CD package	1 – Mylar set 5 – Full Size sets 1 – Half Size set	10.21.10 (Site/Civil) 4.13.11 (Build.)	COTR
018	Approved CD Sets and Specifications	5 sets per CD package	3 – Full Size sets 2 – Half Size set	1.21.10 (Site/Civil) 9.8.11 (Build.)	COTR

F.3.5 The Contractor shall submit to the University, as a deliverable, the report described in section H.5.5 of this contract that is required by the 51% District Residents New Hires Requirements and First Source Employment Agreement. If the Contractor does not submit the report as part of the deliverables, final payment to the Contractor may not be paid.

SECTION G : CONTRACT ADMINISTRATION DATA

G.1 INVOICE PAYMENT

G.1.1 The selected Contractor will be paid a fixed price for all design phase services. Construction administration services will be charged on an hourly basis at agreed upon rates. The selected A/E Contractor will be required to submit Design Fees which cover the Contractor's costs for adhering to the expedited design period. A schedule of values should also be provided and allocated to the Design Fees among the various design phases (i.e. programming, schematic, design development, construction documents, and construction administration). This schedule of values will be used for purposes of making progress payments.

G.1.2 The University will pay the Contractor on or before the 30th day after receiving a proper invoice from the Contractor.

G.2 INVOICE SUBMITTAL

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

Name: UDC-Finance c/o Anetria Smart
Address: 4200 Connecticut Ave, NW Bldg. 38 Rm. 302
Washington , DC 20008
Telephone: 202-274-5488

G.2.2 To constitute a proper invoice, the Contractor shall submit the following information on the invoice:

G.2.2.1 Contractor's name, federal tax ID and invoice date (Contractors shall date invoices as of the date of mailing or transmittal);

G.2.2.2 Contract number and invoice number;

G.2.2.3 Description, price, quantity and the date(s) that the supplies or services were delivered or performed;

G.2.2.4 Other supporting documentation or information, as required by the Contracting Officer;

G.2.2.5 Name, title, telephone number and complete mailing address of the responsible official to whom payment is to be sent;

G.2.2.6 Name, title, phone number of person preparing the invoice;

- G.2.2.7** Name, title, phone number and mailing address of person (if different from the person identified in G.2.2.6 above) to be notified in the event of a defective invoice; and
- G.2.2.8** Contractually responsible Authorized signature.

G.3 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT

- G.3.1** For contracts subject to the 51% District Residents New Hires Requirements and First Source Employment Agreement requirements, final request for payment must be accompanied by the report or a request for a waiver of compliance discussed in section H.5.5.
- G.3.2** No final payment shall be made to the Contractor until the CFO has received in writing the Contracting Officer's final determination or approval of waiver of the Contractor's compliance with 51% District Residents New Hires Requirements and First Source Employment Agreement requirements.

G.4 METHOD OF PAYMENT:

- G.4.1** The University will utilize the progress payment method under this contract, and will make progress payments when all of the following conditions are satisfied:
 - G.4.1.1** The portion of the services provided by the Contractor is accepted by the University;
 - G.4.1.2** The work on the specific contract activity as identified on the approved Cost Loaded CPM Schedule, for which the progress payment is requested, is 100% complete;
 - G.4.1.3** The Contractor submits the invoice in the manner described in G.2 for the progress payment.
- G.4.2** The COTR will furnish to the Contractor, the following forms:
 - G.4.2.1** Summary of Progress Payment Breakdown Form;
 - G.4.2.2** Progress Payment Request Form;
 - G.4.2.3** Schedule of Values Form.
- G.4.3** The Contractor shall prepare and deliver to the COTR for approval:
 - G.4.3.1** Original and a copy of completed Summary of Progress Payment Breakdown Form within fourteen (14) days after issuance of written notice to proceed (NTP) and prior to submission of first progress payment request. This detailed estimate of costs shall include a breakdown of costs for all items of work that will be performed under the contract with total amount equal to the lump sum proposal price under Section B.3a
 - G.4.3.2** Original and a copy of the signed (by the authorized representative of the Contractor) Progress Payment Request Form on or before the twenty-fifth (25th) day of each month during progress of the work. The COTR will direct the progress

payment to be made based on the actual work performed based on the COTR's approval of the Schedule of Values. This approval will include only those fractions of work which have been completed and duly accepted by the COTR. The COTR's acceptance signature on the form is mandatory.

G.4.3.3 Copy of the Schedule of Values pre-approved by the COTR with invoice.

G.4.4 Materials and equipment payments:

G.4.4.1 The Contractor may receive progress payment for the materials, equipment and associated components delivered to the jobsite or stored on the site, until they are satisfactorily incorporated into the completed work, at 100% of their invoiced value from the manufacturer or supplier as approved by the COTR. The Contractor shall properly store and protect all the materials and equipment and ensure that all materials and equipment are in compliance with the submittals approved by the COTR.

G.4.4.2 The Contractor may receive progress payment for 75% of the invoiced value for materials, equipment and associated components stored off-site in a bonded warehouse within a twenty-five (25) mile radius of the jobsite. Payment will be subject to the following documentation accompanying the payment request:

G.4.4.2.1 A certified statement giving the exact location of the materials or equipment, that such material or equipment is properly stored and protected meeting the approval of COTR and is consigned to the University; that the materials and equipment will not be diverted for use or installation at a different project, and that they are subject to inventory and inspection by the COTR.

G.4.4.2.2 A valid invoice or bill of sale indicating the unit quantity, description of the material or equipment and its costs as defined in Section G.4.4.1 and G.4.4.2

G.4.4.2.3 A certificate of insurance of a bonded warehouse, in the event the materials / equipment is stored off-site.

G.4.5 Before approval of the CPM schedule, the University may make two (2) initial monthly payments under this contract for the work performed during the first sixty (60) days following the NTP, following the COTR's partial acceptance of the work in writing in accordance with section E.2. In the event that the University elects to proceed in this manner, the following shall apply:

G.4.5.1 The University will not make any additional payments until the baseline CPM schedule is approved by the COTR.

G.4.5.2 The University will not make progress payments for any other activities until the baseline CPM schedule is approved and distributed by the COTR.

G.4.6 The COTR will use the Section F.3.4 Construction Document Deliverables/CPM Schedule approved and updated as the basis upon which to estimate successive progress payments to be made.

G.5 ASSIGNMENT OF CONTRACT PAYMENTS

- G.5.1** In accordance with 27 DCMR 3250, the Contractor may assign funds due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution.
- G.5.2** Any assignment shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party.
- G.5.3** Notwithstanding an assignment of contract payments, the Contractor, not the assignee, is required to prepare invoices. Where such an assignment has been made, the original copy of the invoice must refer to the assignment and must show that payment of the invoice is to be made directly to the assignee as follows:

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

G.6 THE QUICK PAYMENT CLAUSE

G.6.1 Interest Penalties to Contractors

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

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

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

G.6.2 Payments to Subcontractors

- G.6.2.1** The Contractor must take one of the following actions within 7 days of receipt of any amount paid to the Contractor by the University for Work Activities performed by any subcontractor under a contract:
- a) Pay the subcontractor for the proportionate share of the total payment received from the University that is attributable to the subcontractor for work performed under the contract; or

- b) Notify the University and the subcontractor, in writing, of the Contractor's intention to withhold all or part of the subcontractor's payment and state the reason for the nonpayment.

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

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

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

G.6.2.4 A dispute between the Contractor and subcontractor relating to the amounts or entitlement of a subcontractor to a payment or a late payment interest penalty under the Quick Payment Act does not constitute a dispute to which the University is a party. The University may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

G.7 CONTRACTING OFFICER (CO)

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

*Dr. Allen L. Sessoms, President
University of the District of Columbia
Office of Contracting and Procurement
4200 Connecticut Avenue, NW.
Washington D.C. 20008
Telephone Number: 202-274-5100*

G.8 AUTHORIZED CHANGES BY THE CONTRACTING OFFICER

G.8.1 The Contracting Officer is the only person authorized to approve changes in any of the requirements of this contract.

G.8.2 The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the Contracting Officer.

G.8.3 In the event the Contractor effects any change at the instruction or request of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

G.8.4 The Contractor may be held fully responsible for any changes not authorized in advance, in writing, by the Contracting Officer; may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to the University, to take all corrective action necessitated by reason of the unauthorized changes.

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

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

Name: Eric Thompson
Title: Capital Project Manager
Agency: University of the District of Columbia
Office of Facilities and Real Estate
Address: 4200 Connecticut Avenue, NW
Washington, D.C. 20008
Telephone: (202) 274-5600

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

SECTION H: SPECIAL CONTRACT REQUIREMENTS

H.1 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES

H.1.1 For all new employment resulting from this contract or subcontracts hereto, as defined in Mayor's Order 83-265 and implementing instructions, the Contractor shall use its best efforts to comply with the following basic goal and objectives for utilization of bona fide residents of the District of Columbia in each project's labor force:

H.1.1.1 at least fifty-one (51) percent of apprentices and trainees employed shall be residents of the District of Columbia registered in programs approved by the District of Columbia Apprenticeship Council.

H.1.2 The Contractor shall negotiate an Employment Agreement with the Department of Employment Services (DOES) for jobs created as a result of this contract. The DOES shall be the Contractor's first source of referral for qualified apprentices and trainees in the implementation of employment goals contained in this clause.

H.2 DEPARTMENT OF LABOR WAGE DETERMINATIONS

The Contractor shall be bound by the Wage Determination (*Determination No WD DC-080004. www.wdol.gov on 01/08/2010*), issued by the U.S. Department of Labor in accordance with the Service Contract Act (41 U.S.C. 351 *et seq.*) and incorporated herein as Section J.1.2 of this solicitation. The Contractor shall be bound by the wage rates for the term of the contract. If an option is exercised, the Contractor shall be bound by the applicable wage rate at the time of the option. If the option is exercised and the Contracting Officer obtains a revised wage determination, the revised wage determination is applicable for the option periods and the Contractor may be entitled to an equitable adjustment.

H.3 PUBLICITY

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

H.4 FREEDOM OF INFORMATION ACT

The District of Columbia Freedom of Information Act (FOIA), at D.C. Official Code § 2-532 (a-3), requires the University to make available for inspection and copying any record produced or collected pursuant to a University contract with a private contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If the Contractor receives a request for such information, the Contractor shall immediately send the request to the COTR designated in subsection G.9 who will provide the request to the University's FOIA Officer in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a

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

H.5 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT

H.5.1 The Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code §2-219.01 et seq. (“First Source Act”).

H.5.2 The Contractor shall enter into and maintain, during the term of the contract, a First Source Employment Agreement, (Section J.2.4) in which the Contractor shall agree that:

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

H.5.3 The Contractor shall submit to DOES, no later than the 10th each month following execution of the contract, a First Source Agreement Contract Compliance Report (“contract compliance report”) verifying its compliance with the First Source Agreement for the preceding month. The contract compliance report for the contract shall include the:

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

H.5.4 If the contract amount is equal to or greater than \$100,000, the Contractor agrees that 51% of the new employees hired for the contract shall be District residents.

H.5.5 With the submission of the Contractor’s final request for payment from the District, the Contractor shall:

- (1) Document in a report to the Contracting Officer its compliance with the section H.5.4 of this clause; or

- (2) Submit a request to the Contracting Officer for a waiver of compliance with section H.5.4 and include the following documentation:
 - (a) Material supporting a good faith effort to comply;
 - (b) Referrals provided by DOES and other referral sources;
 - (c) Advertisement of job openings listed with DOES and other referral sources; and
 - (d) Any documentation supporting the waiver request pursuant to section H.5.6.

H.5.6 The Contracting Officer may waive the provisions of section H.5.4 if the Contracting Officer finds that:

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

H.5.7 Upon receipt of the contractor's final payment request and related documentation pursuant to sections H.5.5 and H.5.6, the Contracting Officer shall determine whether the Contractor is in compliance with section H.5.4 or whether a waiver of compliance pursuant to section H.5.6 is justified. If the Contracting Officer determines that the Contractor is in compliance, or that a waiver of compliance is justified, the Contracting Officer shall, within two business days of making the determination forward a copy of the determination to the Agency Chief Financial Officer and the COTR.

H.5.8 Willful breach of the First Source Employment Agreement, or failure to submit the report pursuant to section H.5.5, or deliberate submission of falsified data, may be enforced by the Contracting Officer through imposition of penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract. The Contractor shall make payment to DOES. The Contractor may appeal to the D.C. Contract Appeals Board as provided in the contract any decision of the Contracting Officer made pursuant to this section H.5.8.

H.5.9 The provisions of sections H.5.4 through H.5.8 do not apply to nonprofit organizations.

H.6 PROTECTION OF PROPERTY:

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

H.7 AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)

During the performance of the contract, the Contractor and any of its subcontractors shall comply with the ADA. The ADA makes it unlawful to discriminate in employment against a qualified individual with a disability.

See 42 U.S.C. §12101 et seq.

H.8 SECTION 504 OF THE REHABILITATION ACT OF 1973, as amended.

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

H.9 DISTRICT RESPONSIBILITIES: N/A

H.10 CONTRACTOR STANDARDS OF RESPONSIBILITIES:

H.10.1 Pursuant to UDC Procurement Regulations Section 3057 Contractor Responsibility, the prospective Contractor shall submit the following documentation, within ten (10) days of the request by the University, in order to be determined responsible:

H.10.1.1 Evidence of financial resources adequate to perform the Contract, or ability to obtain them;

H.10.1.2 Evidence of ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;

H.10.1.3 A satisfactory performance record;

H.10.1.4 A satisfactory record of integrity and business ethics;

H.10.1.5 The necessary organization, experience, accounting and operational controls and technical skills, or the ability to obtain them;

H.10.1.6 Compliance with the applicable District Licensing and tax laws and regulations;

H.10.1.7 The necessary production, construction and technical equipment and facilities or the ability to obtain them, and

H.10.1.8 Other qualifications and eligibility criteria necessary to receive an award under the applicable laws and regulations.

H.10.2 If the prospective Contractor fails to supply the information requested, the Contracting Officer shall make the determination of responsibility or non-responsibility based upon available information. If the available information is

insufficient to make a determination of responsibility, the Contracting Officer shall determine the prospective Contractor to be non-responsible.

H.11 LIQUIDATED DAMAGES:

H.11.1 The Contractor shall pay to the University of District of Columbia the sum of Four Hundred Seventy Five and 00/100 Dollars (\$475.00) as agreed liquidated damages for each calendar day of delay in completion of the work for this project, within the time limits set forth, subject to provisions of Article 5, DELAYS, of the General Provisions of the Standard Contract Provisions for Construction Projects, January 2007.

H.11.2 If the University terminates for default the Contractor's right to proceed in accordance with Article 5, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs or re-procurement.

SECTION I: CONTRACT CLAUSES

I.1 APPLICABILITY OF STANDARD CONTRACT PROVISIONS

The Government of the District of Columbia's Standard Contract Provisions for use with Specifications for District of Columbia Government Construction Projects, dated January 2007 ("SCP"), are incorporated as part of the contract resulting from this solicitation. To obtain a copy of the SCP offeror's are directed to contact the UDC Office of Contracts and Procurement at 202-274-5181.

I.2 CONTRACTS THAT CROSS FISCAL YEARS: N/A

I.3 CONFLICT OF INTEREST:

I.3.1 No official or employee of the District of Columbia or the Federal Government who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this contract shall, prior to the completion of the project, voluntarily acquire any personal interest, direct or indirect, in the contract or proposed contract. (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)

I.3.2 The Contractor represents and covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants not to employ any person having such known interests in the performance of the contract.

I.4 TIME

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

I.5 RIGHTS IN DATA

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

I.5.2 The term "Technical Data", as used herein, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, include document research, experimental, developmental or engineering work, or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog

item identifications, and related information, and computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, management data or other information incidental to contract administration.

- I.5.3** The term “Computer Software”, as used herein means computer programs and computer databases. “Computer Programs”, as used herein means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. "Computer Programs" include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort merge programs, and automated data processing equipment maintenance diagnostic programs, as well as applications programs such as payroll, inventory control and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general purpose in nature or designed to satisfy the requirements of a particular user.
- I.5.4** The term "computer databases", as used herein, means a collection of data in a form capable of being processed and operated on by a computer.
- I.5.5** All data first produced in the performance of this Contract shall be the sole property of the University. The Contractor hereby acknowledges that all data, including, without limitation, computer program codes, produced by Contractor for the University under this Contract, are works made for hire and are the sole property of the University; but, to the extent any such data may not, by operation of law, be works made for hire, Contractor hereby transfers and assigns to the University the ownership of copyright in such works, whether published or unpublished. The Contractor agrees to give the University all assistance reasonably necessary to perfect such rights including, but not limited to, the works and supporting documentation and the execution of any instrument required to register copyrights. The Contractor agrees not to assert any rights in common law or in equity in such data. The Contractor shall not publish or reproduce such data in whole or in part or in any manner or form, or authorize others to do so, without written consent of the University until such time as the University may have released such data to the public.
- I.5.6** The University will have restricted rights in data, including computer software and all accompanying documentation, manuals and instructional materials, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, provided however, notwithstanding any contrary provision in any such license or agreement, such restricted rights shall include, as a minimum the right to:
- I.5.6.1** Use the computer software and all accompanying documentation and manuals or instructional materials with the computer for which or with which it was acquired, including use at any University installation to which the computer may be transferred by the University;
- I.5.6.2** Use the computer software and all accompanying documentation and manuals or instructional materials with a backup computer if the computer for which or with which it was acquired is inoperative;
- I.5.6.3** Copy computer programs for safekeeping (archives) or backup purposes; and modify the computer software and all accompanying documentation and manuals or instructional

materials, or combine it with other software, subject to the provision that the modified portions shall remain subject to these restrictions.

I.5.7 The restricted rights set forth in section I.5.6 are of no effect unless

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

RESTRICTED RIGHTS LEGEND

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

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

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

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

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

copy of the documentation associated therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.

- I.5.11** The Contractor shall indemnify and save and hold harmless the University, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or (ii) based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.
- I.5.12** Nothing contained in this clause shall imply a license to the University under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the University under any patent.
- I.5.13** Paragraphs I.5.6, I.5.7, I.5.8, I.5.11 and I.5.12 above are not applicable to material furnished to the Contractor by the University and incorporated in the work furnished under contract, provided that such incorporated material is identified by the Contractor at the time of delivery of such work

I.6 OTHER CONTRACTORS

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

I.7 SUBCONTRACTS

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

I.8 INSURANCE

- I.8.1** Contractor shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall submit a certificate of insurance giving evidence of the required coverage's prior to commencing work. All insurance shall be written with responsible companies licensed by the District of Columbia's Department of Insurance, Securities and Banking; have either an A.M. Best Company rating of A-VIII or higher, a Standard & Poor's rating AA or higher, or a Moody's rating of Aa2 or higher.. The Contractor shall require all subcontractors to carry the insurance required herein, or Contractor may, at its option, provide the coverage for any or all subcontractors, and if so, the evidence of insurance submitted shall so stipulate. All policies as required by this section (excluding Workers' Compensation and Professional Liability, if applicable) shall name the University and an additional insured with respect to work or services performed under the Contract. In no event shall work be performed until the required

certificates of insurance have been furnished. The insurance policies shall provide for thirty (30) days' prior written notice to be given to the University in the event coverage is substantially changed, canceled or non-renewed. If the insurance provided is not in compliance with all the requirements herein, the University maintains the right to stop work until proper evidence is provided.

- I.8.2** Certificate of Insurance Requirement: The policy description on the Certificate of Insurance form shall include the contract number, the contract award date (if available), the contract expiration date (if available), the name of the requesting agency, the name of the contracting officer, or a brief description of the work to be performed, the job location, the University as an additional insured, and a waiver of subrogation.
- I.8.3** Commercial General Liability Insurance: The Contractor shall provide evidence satisfactory to the Contracting Officer with respect to the operations performed, that it carries \$2,000,000 limits per occurrence; includes coverage for products and completed operations and personal and advertising injury. The policy coverage shall be primary and non-contributory, shall contain the CGL 2503 per project endorsement, and shall include the University as an additional insured.
- I.8.4** Automobile Liability Insurance: The Contractor shall provide automobile liability insurance to cover all owned, hired or non-owned motor vehicles used in conjunction with the performance of the contract. The policy shall cover the operations performed under the contract with a \$2,000,000 per occurrence combined single limit for bodily injury and property damage. The policy coverage shall be primary and non-contributory and shall include the University as an additional insured.
- I.8.5** Worker's Compensation Insurance: The Contractor shall provide Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.
- Employer's Liability Insurance: The Contractor shall provide employer's liability insurance as follows: \$1,000,000 per accident for injury; \$1,000,000 per employee for disease; and \$1,000,000 for policy disease limit.
- I.8.6** Umbrella or Excess Liability Insurance: The Contractor shall provide umbrella or excess liability insurance as follows: \$2,000,000 per occurrence with the University added as an additional insured.
- I.8.7** Builder's Risk Insurance: The Contractor shall provide a Builder's Risk policy equal to the replacement cost value of the completed building or other structure, including the building supplies and materials to cover damage to existing facilities at the site, with the University named as loss payee.
- I.8.8** Installation Floater Insurance: The Contractor shall provide an Installation Floater policy equal to the replacement cost value of all property being installed under the Contract.
- I.8.9** Professional Liability Insurance (Architect & Engineers): The Contractor (including but not limited to architects, attorneys, engineers, environmental consultants, and healthcare professionals) shall provide Professional Liability Insurance (Errors and Omissions) to cover

liability resulting from any error or omission caused by the performance of professional services under this contract.

The policy shall provide limits of \$1,000,000 per occurrence for each wrongful act and \$2,000,000 per aggregate for each wrongful act.

The Contractor shall maintain this insurance for five (5) years following the University's final acceptance of the work. The policy shall cover the Contractor and its subcontractors of every tier, and shall identify the University as the Project Owner on the policy.

I.8.10 Pollution Liability Insurance: The Contractor shall provide a policy to cover costs associated with pollution incidents including, but not limited to, mold asbestos or lead removal. The policy shall provide a minimum of \$2,000,000 in coverage per occurrence.

I.8.11 Crime Insurance: The Contractor shall provide a policy to cover costs associated with the criminal activities of its employees including, but not limited to, robbery, burglary, larceny, forgery, or embezzlement. The policy shall provide a limit of \$1,000,000 per occurrence for each wrongful act and \$2,000,000 per aggregate for each wrongful act.

I.8.12 Duration: Except as provided in I.8.8, the contractor shall carry all insurance until all contract work is accepted by the University. Each insurance policy shall contain a binding endorsement that: the insurer agrees that the Contracting Officer shall be given thirty (30) days prior written notice via certified mail in the event coverage is substantially changed , canceled or not renewed.

I.8.13 Contractor's Property: Contractors and subcontractor are solely responsible for any loss or damage to their personal property, including owned and leased equipment, whether such equipment, scaffolding and temporary structures, and rented machinery, storage sheds or trailers placed on the project site.

I.8.14 Measure of Payment: The University shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price.

I.9 EQUAL EMPLOYMENT OPPORTUNITY

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

I.10 ORDER OF PRECEDENCE

Any inconsistency in this solicitation shall be resolved by giving precedence in the following order: the Supplies or Services and Price/Cost Section (Section B), Specifications/Work Statement (Section C), the Special Contract Requirements (Section H), the Contract Clauses (Section I), and the SCP.

I.11 CONTRACTS IN EXCESS OF ONE MILLION DOLLARS

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

I.12 DISPUTES:

I.12.1 All disputes arising under or relating to this contract shall be resolved as provided herein.

I.12.2 Claims by a Contractor against the University.

Claim, as used in this clause, means a written assertion by the Contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

I.12.2.1 All claims by a Contractor against the University arising under or relating to a contract shall be in writing and shall be submitted to the CO for a decision. The Contractor's claim shall contain at least the following:

I.12.2.1.1 A description of the claim and the amount in dispute;

I.12.2.1.2 Any data or other information in support of the claim;

I.12.2.1.3 A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and

I.12.2.1.4 The Contractor's request for relief or other action by the CO.

I.12.2.2 The CO may meet with the Contractor in a further attempt to resolve the claim by agreement.

I.12.2.3 For any claim of \$50,000.00 or less, the CO shall issue a decision within sixty (60) calendar days from receipt of a written request from a Contractor that a decision is rendered within that period.

I.12.2.4 For any claim over \$50,000.00, the CO shall issue a decision within ninety (90) calendar days of receipt of the claim. Whenever possible, the CO shall take into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.

I.12.2.5 The CO's written decision shall do the following:

- I.12.2.5.1** Provide a description of the claim or dispute;
- I.12.2.5.2** Refer to the pertinent contract terms;
- I.12.2.5.3** State the factual areas of agreement and disagreement
- I.12.2.5.4** 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;
- I.12.2.5.5** 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;
- I.12.2.5.6** Indicate that the written document is the CO's final decision; and
- I.12.2.5.7** Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

I.12.2.6 Any failure by the CO 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.

I.12.2.6.1 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 University for an amount equal to the unsupported part of the claim in addition to all costs to the University attributable to the cost of reviewing that part of the Contractor's claim.

I.12.2.6.2 Liability under Paragraph I.12.2.6.1 shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.

I.12.2.7 The decision of the CO 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.12.2.8 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 CO.

I.12.3 Claims by the University against a Contractor

I.12.3.1 Claim as used in Paragraph I.12.3 of this clause, means a written demand or written assertion by the University 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 or relating to this contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

I.12.3.2 The CO shall decide all claims by the University against a Contractor arising under or relating to a contract.

I.12.3.2.1 The CO shall send written notice of the claim to the Contractor. The CO's written decision shall do the following:

I.12.3.2.1.1 Provide a description of the claim or dispute;

I.12.3.2.1.2 Refer to the pertinent contract terms;

I.12.3.2.1.3 State the factual areas of agreement and disagreement;

I.12.3.2.1.4 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;

I.12.3.2.1.5 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;

I.12.3.2.1.6 Indicate that the written document is the CO's final decision; and

I.12.3.2.1.7 Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

I.12.3.3 The decision shall be supported by reasons and shall inform the Contractor or his or her rights as provided herein.

I.12.3.4 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.

I.12.3.5 This clause shall not authorize the CO to settle, compromise, pay, or otherwise adjust any claim involving fraud.

I.12.4 The decision of the CO shall be final and not subject to review unless an

administrative appeal or action for judicial review is timely commenced by the District as authorized by D.C. Official Code § 2-309.04.

- I.12.5** Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the CO.

SECTION J: LIST OF ATTACHMENTS

J.1 ATTACHMENT

- J.1.1** Government of the District of Columbia Standard Contract Provisions for use with Specifications for District of Columbia Government Construction Projects (Revised January 2007)
- J.1.2** Wage Determination No. DC-080004 dated 01/08/2010

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

- J.2.1** LSDBE Certification Package
- J.2.2** E.E.O. Information and Mayor's Order 85-85
- J.2.3** Tax Certification Affidavit
- J.2.4** First Source Employment Agreement
- J.2.5** Cost/Price Data Package

SECTION K: REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS

K.1 AUTHORIZED NEGOTIATORS

The offeror represents that the following persons are authorized to negotiate on its behalf with the District in connection with this request for proposals: (list names, titles, and telephone numbers of the authorized negotiators).

K.2 TYPE OF BUSINESS ORGANIZATION

K.2.1 The offeror, by checking the applicable box, represents that

(a) It operates as:

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

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

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

K.3 CERTIFICATION AS TO COMPLIANCE WITH EQUAL OPPORTUNITY OBLIGATIONS

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

Offeror _____ Date _____

Name _____ Title _____

Signature _____

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

K.4 BUY AMERICAN CERTIFICATION

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

_____	EXCLUDED END PRODUCTS
_____	COUNTRY OF ORIGIN

K.5 DISTRICT EMPLOYEES NOT TO BENEFIT CERTIFICATION

Each offeror shall check one of the following:

- _____ No person listed in Clause 13 of the SCP, "District Employees Not To Benefit" will benefit from this contract.
- _____ The following person(s) listed in Clause 13 may benefit from this contract. For each person listed, attach the affidavit required by Clause 13 of the SCP.
- _____
- _____

K.6 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

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

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

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

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

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

K.7 TAX CERTIFICATION

Each offeror must submit with its offer, a sworn Tax Certification Affidavit, incorporated herein as Attachment J.2.3.

SECTION L: INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS

L.1 CONTRACT AWARD

L.1.1 Most Advantageous to the University

The University intends to award a single contract(s) resulting from this solicitation to the responsible offeror(s) whose offer(s) conforming to the solicitation will be most advantageous to the District, cost or price, technical and other factors, specified elsewhere in this solicitation considered.

L.1.2 Initial Offers

The University may award contracts on the basis of initial offers received, without discussion. Therefore, each initial offer should contain the offeror's best terms from a standpoint of cost or price, technical and other factors.

L.2 PROPOSAL FORM, ORGANIZATION AND CONTENT

One original and eight (8) copies of the written proposals shall be submitted in two parts, titled "Technical Proposal" and "Price Proposal". Proposals shall be typewritten in 12 point font size on 8.5" by 11" bond paper. Telephonic, telegraphic, and facsimile proposals will not be accepted. Each proposal shall be submitted in a sealed envelope conspicuously marked: "Proposal in Response to Solicitation No.(PO-GF-2010-R-0060-WT, Design of the New Student Center of the UDC Van Ness Campus and name of offeror)".

(Offerors are directed to the specific proposal evaluation criteria found in Section M of this solicitation, Evaluation Factors. The Offeror shall respond to each factor in a way that will allow the University to evaluate the Offeror's response. The Offeror shall submit information in a clear, concise, factual and logical manner providing a comprehensive description of program supplies and services delivery thereof. The information requested below for the technical proposal shall facilitate evaluation and best value source selection for all proposals. The technical proposal must contain sufficient detail to provide a clear and concise representation of the requirements in Section C.)

L.3 PROPOSAL SUBMISSION DATE AND TIME –PROPOSAL CLOSING

Proposals must be submitted no later than **12:00pm local time on March 17, 2010.**

L.3.1 Proposal Submission

Proposals, modifications to proposals, or requests for withdrawals that are received in the designated University Office of Contracts and Procurement after the exact local time specified above, are "late" and shall be considered only if they are received before the award is made and one (1) or more of the following circumstances apply:

- (a) The proposal or modification was sent by registered or certified mail not later than the fifth (5th) day before the date specified for receipt of offers;

- (b) The proposal or modification was sent by mail and it is determined by the Contracting Officer that the late receipt at the location specified in the solicitation was caused by mishandling by the University, or
- (c) The proposal is the only proposal received.

L.3.2 Withdrawal or Modification of Proposals

An offeror may modify or withdraw its proposal upon written, telegraphic notice, or facsimile transmission if received at the location designated in the solicitation for submission of proposals, but not later than the closing date for receipt of proposals.

L.3.3 Postmarks

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

L.3.4 Late Modifications

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

L.3.5 Late Proposals

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

L.4 EXPLANATION TO PROSPECTIVE OFFERORS

If a prospective offeror has any questions relative to this solicitation, the prospective offeror shall submit the question in writing to the contact person, identified on page one. The prospective offeror shall submit questions no later than **10** days prior to the closing date and time indicated for this solicitation. The University will not consider any questions received less than **10** days before the date set for submission of proposals. The University will furnish responses promptly to all other prospective offerors. An amendment to the solicitation will be issued if that information is necessary in submitting offers, or if the lack of it would be prejudicial to any other prospective offerors. Oral explanations or instructions given before the award of the contract will not be binding.

L.5 FAILURE TO SUBMIT OFFERS

Recipients of this solicitation not responding with an offer should not return this solicitation. Instead, they should advise the Contracting Officer,

Mary Ann Harris, Contracting Officer
UDC Office of Contracts and Procurement
4200 Connecticut Ave. NW
Washington, DC 20008
Phone: 202-274-5423
Fax: 202-274-5432

by letter or postcard whether they want to receive future solicitations for similar requirements. It is also requested that such recipients advise the Contracting Officer, UDC Office of Contracts and Procurement of the reason for not submitting a proposal in response to this solicitation. If a recipient does not submit an offer and does not notify the Contracting Officer, UDC Office of Contracts and Procurement that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

L.6 RESTRICTION ON DISCLOSURE AND USE OF DATA

L.6.1 Offerors who include in their proposal data that they do not want disclosed to the public or used by the District except for use in the procurement process shall mark the title page with the following legend:

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

If, however, a contract is awarded to this offeror as a result of or in connection with the submission of this data, the District will have the right to duplicate, use, or disclose the data to the extent consistent with the District's needs in the procurement process. This restriction does not limit the District's rights to use, without restriction, information contained in this proposal if it is obtained from another source. The data subject to this restriction are contained in sheets (insert page numbers or other identification of sheets)."

L.6.2 Mark each sheet of data it wishes to restrict with the following legend:

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

L.7 PROPOSALS WITH OPTION YEARS: N/A

L.8 PROPOSAL PROTESTS

Any actual or prospective offeror or contractor, who is aggrieved in connection with the solicitation or award of a contract, must file with the D.C. Contract Appeals Board (Board) a protest no later than 10 business days after the basis of protest is known or should have been known, whichever is earlier. A protest based on alleged improprieties in a solicitation which are apparent at the time set for receipt of initial proposals shall be filed with the Board prior

to the time set for receipt of initial proposals. In procurements in which proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, must be protested no later than the next closing time for receipt of proposals following the incorporation. The protest shall be filed in writing, with the Contract Appeals Board, 717 14th Street, N.W., Suite 430, Washington, D.C. 20004. The aggrieved person shall also mail a copy of the protest to the Contracting Officer for the solicitation.

L.9 SIGNING OF OFFERS

The offeror shall sign the offer and print or type its name on the Solicitation, Offer and Award form of this solicitation. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the Contracting Officer.

L.10 UNNECESSARILY ELABORATE PROPOSALS

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective response to this solicitation are not desired and may be construed as an indication of the offeror's lack of cost consciousness. Elaborate artwork, expensive paper and bindings, and expensive visual and other presentation aids are neither necessary nor desired.

L.11 RETENTION OF PROPOSALS

All proposal documents will be the property of the District and retained by the District, and therefore will not be returned to the offerors.

L.12 PROPOSAL COSTS

The University is not liable for any costs incurred by the offerors in submitting proposals in response to this solicitation.

L.13 ELECTRONIC COPY OF PROPOSALS FOR FREEDOM OF INFORMATION ACT REQUESTS

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

L.14 CERTIFICATES OF INSURANCE

The Contractor shall submit certificates of insurance giving evidence of the required coverage's as specified in Section I.8 prior to commencing work. Evidence of insurance shall be submitted within fourteen (14) days of contract award to:

Mary Ann Harris, Contracting Officer
UDC Office of Contracts and Procurement
4200 Connecticut Ave. NW
Washington, DC 20008
Phone: 202-274-5423
Fax: 202-274-5432
mharris@udc.edu

L.15 ACKNOWLEDGMENT OF AMENDMENTS

The Contractor shall acknowledge receipt of any amendment to this solicitation (a) by signing and returning the amendment; (b) by identifying the amendment number and date in the space provided for this purpose in Section A, Solicitation, Offer and Award form; or (c) by letter or telegram including mailgrams. The University must receive the acknowledgment by the date and time specified for receipt of offers. Contractor's failure to acknowledge an amendment may result in rejection of the offer.

L.16 ACCEPTABLE PROPOSAL GUARANTEES:

L.16.1 A proposal guarantee in the amount of 5% of the proposal price is required with proposals over \$100,000.00. If an offeror fails to provide the required proposal guarantee, such failure will require rejection of the bid.

L.16.2 Types of guarantees acceptable to the University of the District of Columbia:

L.16.2.1 A bond provided by a surety in accordance with UDC Regulation Section 3047.

L.16.2.2 A certified check or irrevocable letter of credit issued by an insured financial institution in the equivalent amount of the security; or

L.16.2.3 United States government securities that are assigned to the University which pledge the full faith and credit of the United States.

L.17 ACCEPTANCE PERIOD:

The bidder agrees that its bid remains valid for a period of ninety (90) calendar days from the opening date/time of the bid opening. However, if for administrative reasons, the University is unable to make and award within this time period, the CO will request the Contractor and his/her surety to extend the bid bond for an additional sixty (60) calendar days.

L.18 BEST AND FINAL OFFERS

If, subsequent to receiving original proposals, negotiations are conducted, all Contractors within the competitive range will be so notified and will be provided an opportunity to submit written best and final offers at the designated date and time. Best and Final Offers will be subject to the Late Submissions, Late Modifications and Late Withdrawals of Proposals provision of the solicitation. After receipt of best and final offers, no discussions will be reopened unless the Contracting Officer determines that it is clearly in the University's best interest to do so, e.g., it is clear that information available at that time is inadequate to reasonably justify Contractor selection and award based on the best and final offers received. If discussions are reopened, the Contracting Officer shall issue an additional request for best and final offers to all Contractors still within the competitive range.

L.19 LEGAL STATUS OF OFFEROR

Each proposal must provide the following information:

L.19.1 Name, address, telephone number and federal tax identification number of offeror;

L.19.2 A copy of each District of Columbia license, registration or certification that the Contractor is required by law to obtain. This mandate also requires the Contractor to provide a copy of the executed "Clean Hands Certification" that is referenced in D.C. Official Code §47-2862 (2001), if the Contractor is required by law to make such certification. If the Contractor is a corporation or partnership and does not provide a copy of its license, registration or certification to transact business in the District of Columbia, the offer shall certify its intent to obtain the necessary license, registration or certification prior to contract award or its exemption from such requirements; and

L.19.3 If the Contractor is a partnership or joint venture, the names and addresses of the general partners or individual members of the joint venture, and copies of any joint venture or teaming agreements.

L.19.4 The University reserves the right to request additional information regarding the Offeror's organizational status.

L.20 FAMILIARIZATION WITH CONDITIONS

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

L.21 PAYMENT AND PERFORMANCE BONDS:

Article 12, Sections B and C of the Standard Contract Provisions for the Construction Contracts, January 2007, is amended to incorporate the provisions of the District of Columbia Procurement Practices Act of 1985, D.C. Official Code § 2-305.04 (b), and 27 DCMR § 2703, which require

payment bonds to be in an amount not less than 50% of the amount payable by the terms of the contract and performance bonds to be in an amount not less than 100% of the amount payable by the terms of the contract.

L.22 STANDARDS OF RESPONSIBILITY

L.22.1 Relevant Experience and Capabilities

L.22.2 List all projects that the Contractor has worked on in the last 5-10 years that are similar to University Quality of Life / Student Center projects. For purposes of this paragraph, similar shall mean projects where the construction budget was between \$15M - \$30M. This information may be provided in an overview matrix format or brief. If a project was not delivered on-time or on budget, provide a brief description of the extenuating conditions encountered. To the extent that Contractor's members have multiple offices, only those offices managing projects included in the submission need be included in this section.

L.22.3 Detailed descriptions of no more than eight (8) University Quality of Life / Student Center projects that best illustrate the Contractor's experience and capabilities relevant to this project. On each project description, please provide all of the following information in consistent order:

L.22.4 Indicate Project name and location

L.22.5 Provide the Name, address, contact person and telephone number for owner/reference

L.22.6 Provide a brief project description including project cost, square footage, firm's scope of work, and if the project was delivered on-time and on-budget

L.22.7 Indicate through dissertation key firm strengths exhibited

L.22.8 Provide corroborative identification of personnel involved in the selected project who are proposed to work on this project

L.22.9 Project process and schedule data including whether the firm was able to achieve project milestones and the project's delivery method. Any unusual events or occurrences that affected the project budget or schedule should be explained.

L.22.10 Provide renderings or photographs that show the interior and exterior of the reference project where available.

SECTION M - EVALUATION FACTORS

M.1 EVALUATION FOR AWARD

UDC intends to award this contract through a traditional selection process. Interested Contractors will be required to submit proposals that demonstrate both their ability to implement a project of similar size and complexity as well as their experience with University themed new construction efforts. The submissions should include: (i) a summary of experience and references; (ii) resumes of key personnel; (iii) a staffing plan that identifies the role and responsibilities of key personnel; (iv) a management plan that describes the process the Contractor will use to manage the phased design process and construction administration activities (v) and the Contractor's ability to design projects which are completed on Schedule and within Budget. Based on the scoring results of the proposal evaluation period, a Contractor will be selected.

M.1.2 Mandatory subcontracting requirement:

M.1.2.1 For construction contracts in excess of \$250,000, at least 35% of the dollar volume of the construction contract shall be subcontracted to certified small business enterprises; provided, however, that the costs of materials, goods and supplies shall not be counted towards this 35% subcontracting requirement unless such materials, goods and supplies are purchased from SBE's.

M.1.2.2 If there are insufficient qualified SBE's to completely fulfill the subcontracting requirement of the preceding paragraph, then the subcontracting requirement may be satisfied by subcontracting 35% of the dollar volume to any certified business enterprises; provided, however, that all reasonable efforts shall be made to ensure that qualified SBE's are significant participants in the overall subcontracting work.

M.2 TECHNICAL RATING

The Technical Rating Scale is as follows:

<u>Numeric Rating</u>	<u>Adjective</u>	<u>Description</u>
0	Unacceptable	Fails to meet minimum requirements; e.g., no demonstrated capacity, major deficiencies which are not correctable; offeror did not address the factor.
1	Poor	Marginally meets minimum requirements; major deficiencies which may be correctable.
2	Minimally Acceptable	Marginally meets minimum requirements; minor deficiencies which may be correctable.

3	Acceptable	Meets requirements; no deficiencies.
4	Good	Meets requirements and exceeds some requirements; no deficiencies.
5	Excellent	Exceeds most, if not all requirements; no deficiencies.

For example, if a sub factor has a point evaluation of 0 to 6 points, and (using the Technical Rating Scale) the District evaluates as "good" the part of the proposal applicable to the sub factor, the score for the sub factor is 4.8 (4/5 of 6). The sub factor scores will be added together to determine the score for the factor level.

M.3 EVALUATION STANDARDS

M.3.1 Evaluation Process

The University shall evaluate submissions in accordance with the provisions of this section and the established University's Procurement Regulations.

M.3.2 Evaluation Committee

Each submission shall be evaluated in accordance with **Section M.3** by an Evaluation Committee. The Evaluation Committee shall prepare a written report summarizing its findings and submit the same to the University's Contracting Officer. Based on the information submitted by the Contractor in response to this RFP and the report prepared by the Evaluation Committee, the Contracting Officer shall select the Contractor whose submission is determined to provide the best *value* to the University.

M.3.3 Oral Presentation

The University acknowledges the possibility of identifying the Contractor best able to provide the requested services through the standard RFP process. Should the submissions received leave the Evaluation Committee unable to identify one Contractor to award; the University retains the right to request a minimum of three (3) short listed Contractor's to make oral presentations to the Evaluation Committee prior to making an award. If the University elects to have an oral presentation period each short listed Contractor will be required to present project concept designs to the Evaluation Committee. Each of the shortlisted Contractor's will be paid a design stipend of \$15,000 to help defray the cost of concept development activities. The concept design should include: (i) an initial test fit of the proposed building on the identified site. The test fit should, in a general manner; depict how the building will be layered; adjacency of uses; and a typical finish schedule giving committee members the ability to appreciate how the facility could look when completed. The presentation

should also include (ii) exterior renderings; (iii) a preliminary plan for incorporating LEED design criteria into the project; (iv) a preliminary project cost estimates with fee projections; and (iv) a preliminary project schedule that outlines key milestone dates for project deliverables.

From the oral presentations, the University will recommend the selection of a Contractor. The recommendations will be based on which Contractor will allow the University to develop a project that best exemplifies the University as the Flagship higher education institution for the Nation's Capitol. It is important to note, the University will own the rights to any concepts submitted during the oral presentation phase and reserves the right to use conceptual designs elements as part of the final approved project design.

M.3.4 Length of Oral Presentation

Each Contractor will be given one hour to make the presentation. At the end of the initial presentation, there will be a break for approximately 15 minutes for the Evaluation Committee to assess the presentation and prepare questions. The Contractor's will then respond to questions from the Evaluation Committee for no more than 30 minutes.

M.3.5 Schedule

The order of oral presentation will be selected randomly and the Contractor's will be informed of their presentation date before the beginning of the oral presentation period. The University reserves the right to reschedule any Contractor's presentation at its discretion.

M.3.6 Team Attendees

The oral presentation will be made by the Contractor's personnel who will be assigned the key responsibilities on this project. Each Contractor will be limited to a 7 person team. The responsibilities of the persons attending the presentation will be considered an indication of the Contractor's assessment of the areas of responsibility deemed essential to the successful completion of the project.

M.3.5 Topics

The Team may present information about its capabilities and special qualifications to provide the services identified in this RFP.

M.3.6 Oral Presentation Evaluation Criteria *(If Needed)*

Each of the oral presentations will be scored on a scale of 1 to 100 points.

M.3.7 Quality of Presentation (20 points)

The overall quality of the Contractor's presentation will be considered as part of the Contractors overall ability to complete the project. As this project is important to many of the University's constituents, it can be assumed the Contractor will help represent the University during public presentations. The Contractor's will be evaluated on their oral presentation skills as this ability will

be important to the successful completion of the project. This aspect of the evaluation will be worth up to twenty (20) points.

M.3.8 Innovative Design Ideas (30 points)

The concept design presented during the oral presentations should identify opportunities for innovative design ideas. The ideas described may be specifically generated from a review of the project's unique characteristics or be taken from successfully completed projects of similar scale and scope. The Contractor's concept design will also be evaluated based on (i) how well it accomplishes the University's goal for the project; (ii) whether it effectively utilizes the identified project site; (iii) how well it does in generating a sense of "place" and in using the aesthetics of the surrounding architectural language to generate a new and vibrant representation of the University's vision of the future; and finally the design ideas' (iv) overall aesthetic qualities. This aspect of the evaluation will be worth up to thirty (30) points.

M.3.9 LEED Design Ideas (25 points)

The concept design should also address how the proposed strategy will focus on achieving LEED certification for the building. It should also demonstrate that the Contractor has considered issues that may arise during the more detailed design phases. This aspect of the evaluation will be worth up to twenty five (25) points.

M.3.10 Cost Projection & Fee Proposal (15 points)

The Contractor should also present a project budget and cost proposal that identifies the Contractor's anticipated project costs. These costs should include all required design services. The Evaluation Committee will be most interested in the Contractor's ability to present a strategy for designing a project within the identified cost range. This aspect of the evaluation will be worth up to fifteen (15) points.

M.3.11 Preliminary Design Schedule (10 points)

Contractors should submit a schedule that shows the anticipated manner in which the design will be prepared and how it relates to the proposed construction schedule for this project. The schedule should show sufficient level of detail and convey the Contractor understands of the proposed phased design approach and the key issues related to this process. The Contractor is welcome to propose an alternate phased approach as well as a plan to design the entire project under a single design phase while maintain the project schedule. This element of the evaluation is worth up to ten (10) points.

M. 4 TECHNICAL EVALUATION CRITERIA

Proposals will be evaluated based on the following technical evaluation factors listed in descending order of importance.

- Experience & References (25 points)
- Key Personnel (20 points)
- Staffing Plan (10 points)

- Management Plan (5 points)
- Budget & Schedule Success (10 points)

M.4.1 TECHNICAL CRITERIA (70 Points)

The Technical Proposal must include necessary information to enable evaluators to form a concrete conclusion of the Offeror's ability to manage and perform the work identified in the solicitation. The evaluation of each Technical Proposal shall measure the ability of the Offeror to effectively manage general construction projects, provided in response to the submission requirements specified in **Section L.22** as rated in order as expressed in **Section M.4**

M.4.2 PRICE CRITERIA (30 Points)

The price evaluation will be objective. The offeror with the lowest price will receive the maximum price points. All other proposals will receive a proportionately lower total score. The following formula will be used to determine each offeror's evaluated price score:

$$\frac{\text{Lowest price proposal}}{\text{Price of proposal being evaluated}} \times 30 = \text{Evaluated price score}$$

M.4.3 PREFERENCE (12 Points)

The maximum preference points a Contractor can receive is 12. The preference points will be added to the Contractor evaluation score

M.4.4 TOTAL (112 Points)

M.5 EVALUATION OF OPTION YEARS

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

M.6 Preference for Local, Small, and Disadvantaged Business Enterprises

Under the provisions of the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, D.C. Law 16-33 (codified at D.C. Code § 2-218.01 et seq.), preferences shall be given to Contractors that are certified by the District's Department of Local and Small Business Development office as being a small business enterprise, having resident business ownership, having a longtime resident business, being a local business enterprise, being a disadvantaged business enterprise, or being a local business enterprise with its principal office located in an enterprise zone. A copy of the certification acknowledgment letter must be submitted with the Team's Phase II submission. In accordance with these laws, the following preferences shall be awarded in evaluating an Offeror's proposal:

- M.6.1** Three (3) preference points shall be awarded if a Contractor is certified as having a small business enterprise (SBE) or as applicable will receive a three percent 3% reduction in the bid price for a bid submitted by the SBE in response to this Request for Proposal.
- M.6.2** Five (5) preference points shall be awarded if a Contractor is certified as having a resident business ownership (ROB) or as applicable will receive a five percent 5% reduction in the bid price for a bid submitted by the ROB in response to this Request for Proposal.
- .
- M.6.3** Ten (10) points shall be awarded if a Contractor is certified as having a longtime resident business (LRB) or as applicable will receive a ten percent 10% reduction in the bid price for a bid submitted by the LRB in response to this Request for Proposal.
- .
- M.6.4** Two (2) preference points shall be awarded if a Contractor is certified as a local business enterprise (LBE) or as applicable will receive a two percent 2% reduction in the bid price for a bid submitted by the LBE in response to this Request for Proposal.
- .
- M.6.5** Two (2) preference points shall be awarded if a Contractor is certified as being a local business enterprise with its principal office located in an enterprise zone (DZE) or as applicable will receive a two percent 2% reduction in the bid price for a bid submitted by the DZE in response to this Request for Proposal.
- .
- M.6.6** Two (2) preference points shall be awarded if a Contractor is certified as a disadvantaged business enterprise (DBE) or as applicable will receive a two percent 2% reduction in the bid price for a bid submitted by the DBE in response to this Request for Proposal.
- .

Contractors may be awarded points from more than one of these categories. Thereby making the maximum number of points available under this section is 12 points and the maximum points available during the evaluation period 124 points.

Information: For information regarding the application process, contact the Department of Small and Local Business Development at the following address or telephone number:

Department of Local and Small Business Development
One Judiciary Square Building
441 4th Street, NW, 9th Floor
Washington, DC 20001
(202) 727-3900 (Telephone Number)
(202) 724-3786 (Facsimile Number)

M.7 EVALUATION OF PROMPT PAYMENT DISCOUNT

- M.7.1** Prompt payment discounts shall not be considered in the evaluation of offers. However, any discount offered will form a part of the award and will be taken by the District if payment is made within the discount period specified by the offeror.
- M.7.2** In connection with any discount offered, time will be computed from the date of delivery of the supplies to carrier when delivery and acceptance are at point of origin, or from date of delivery at destination when delivery, installation and acceptance are at that, or from the date correct invoice or voucher is received in the office specified by the District, if the latter date is later than date of delivery. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the District check.

J.1.1

STANDARD CONTRACT PROVISIONS FOR USE WITH SPECIFICATIONS FOR DISTRICT OF COLUMBIA GOVERNMENT CONSTRUCTION PROJECTS, JANUARY 2007

Government of the District of Columbia

STANDARD CONTRACT PROVISIONS

For Use With
Specifications for
District of Columbia Government
Construction Projects
(Revised January 2007)



PLEASE RETAIN FOR YOUR REFERENCE

INDEX

INSTRUCTIONS TO BIDDERS

	PAGE
Qualification of Bidders	5
Bid Documents	5
Examination of Bid	5
Preparation for Bids.....	5
Error in Bids	5
Labor and Material Not Furnished by District	5
Addenda and Interpretations	6
Alternate Bids	6
Bids for All or Part	6
Price Schedule Interpretation	6
Corrections	6
Bond Requirements.....	6
A. Bid Guaranty	6
B. Performance Bond	7
C. Payment Bond	7
D. Bond Source	7
Signature to Bids.....	7
Marking and Mailing Bids	8
Receiving Bids, Modifications or Withdrawals	8
Withdrawal of Bids	8
Opening of Bids	8
Award or Rejection.....	8
Cancellation of Award.....	9
Contract and Bond	9
GENERAL PROVISIONS	
Definitions	10
Specifications and Drawings	10
Changes	11
A. Designated Change Orders	11
B. Other Change Orders	11
C. General Requirements	11
D. Change Order Breakdown	11
EQUITABLE ADJUSTMENT OF CONTRACT TERMS	
Differing Site Conditions	12
Suspension of Work	13

INDEX (Continued)

	PAGE
Significant Changes in Character of Work	13
Termination-Delays.....	14
Termination for Convenience.....	15
Disputes.....	19
Payments to Contractor.....	21
Transfer or Assignment.....	21
Material and Workmanship	21
Surplus Material Use.....	22
District Material.....	22
Plant.....	22
Capability of Workers.....	22
Conformity of Work and Materials.....	23
Unauthorized Work and Materials.....	23
Inspection and Acceptance	23
Superintendence by Contractor	24
Permits and Responsibilities	24
Indemnification	24
Protection Against Trespass	24
Conditions Affecting the Work	24
A. General	24
B. Work and Storage Space	24
C. Work on Sundays, Legal Holidays and at Night	24
D. Existing Features	24
E. Utilities and Vaults	25
F. Site Maintenance	25
G. Private Work	25
H. District of Columbia Noise Control Act of 1977.....	25
Other Contracts	25
Patent Indemnity	26
Additional Bond Security	26
Covenant Against Contingency Fees	26
Appointment of Attorney.. ..	26
District Employees Not to Benefit.....	26
Waiver.....	27
Buy American.. ..	27
A. Agreement.....	27
B. Domestic Construction Material	27
C. Domestic Component	27

D. Foreign Material.....	27
Taxes	
A. Federal Excise Taxes	27
B. Sales and Use Taxes	27
Suspension of Work	28
Safety Program.....	28
A. General	28
B. Contractor's Program Submission.....	29
Retention of Records	29
LABOR PROVISIONS Davis-Bacon Act.....	29
Minimum Wages	29
B. Withholding	30
C. Payroll and Basic Records	30
Convict Labor	31
Apprentices and Trainees	31
A. Apprentices	31
B. Trainees	31
C. Requirements.....	31
Contract Work Hours and Safety Standards Act	32
A. Overtime Basis	32
B. Liability for Unpaid Wages	33
C. Disputes	33
D. Violation Penalty	33
E. Health and Safety Standards	33
Copeland Act —	34
A. Definition	34
B. Weekly Compliance Statement	34
C. Payrolls and Records	34
D. Payroll Deductions Not Subject to Secretary of Labor Approval	34
E. Payroll Deductions Subject to Secretary of Labor Approval	35
F. Applications for Secretary of Labor Approval	36
G. Action by Secretary of Labor Upon Applications	36
H. Prohibited Payroll Deductions	36
I. Methods of Payment of Wages	36
Non-segregated Facilities — Termination and Debarment	37
Form - Weekly Statement of Compliance.....	38
Form – Fringe Benefits Statement	39

INSTRUCTIONS TO BIDDERS

(Construction)

ARTICLE 1. QUALIFICATIONS OF BIDDERS—Bidders shall have the capability to perform classes of work contemplated, have the necessary plant and sufficient capital to execute the work properly within specified time.

Any Bidder who has not performed comparable work for the District within the last 5 years shall submit, at the Contracting Officer's discretion, a certified statement of his organization, plant, manpower, financial resources, and construction experience that he considers will qualify him for proposed contract. This information shall be certified by a Certified Public Accountant for contracts over \$25,000 and submitted on the AGC Form "Standard Questionnaires and Financial Statement for Bidders", obtainable from the Associated General Contractors of America, Inc., at 1957 "B" Street, N. W., Washington, D. C., 20008, or on an approved equivalent form. This requirement is not needed if the bidder has submitted such a statement to the District within a year prior to bid opening date, but will be required if bidder has previously submitted such a statement under one company name or organization or joint venture and is now bidding under another company name or organization or joint venture. A certified statement of prequalification approval by another jurisdiction may be considered as an alternative to foregoing procedure. A bidder shall submit a supplemental statement if requested by the District.

ARTICLE 2. BID DOCUMENTS—The Specifications (including all documents referenced therein and all documents attached thereto), drawings and addenda which form the basis of any bid shall be considered as part thereof and will form part of the bid. Copies of these documents will be furnished to or made available for the inspection of prospective bidders by that office indicated in the advertisement or invitation.

ARTICLE 3. EXAMINATION OF BID DOCUMENTS AND SITE OF WORK—Each Bidder shall carefully examine the site of the proposed work and the bid documents and fully acquaint himself with conditions relating to construction and labor so that he may fully understand the facilities, difficulties and restrictions attending the execution of the work under the bid documents, and he shall judge for and satisfy himself as to conditions to be encountered affecting the character, quality and quantity of the work to be performed and materials to be furnished and to the requirements of the bid documents. Failure to do so will be at the Bidder's own risk and shall not relieve him from any obligation under his bid or contract.

ARTICLE 4. PREPARATION FOR BIDS—The bid form furnished in the bid proposal and specifications shall be used in strict compliance with the requirements of the Invitation and Supplemental Instructions to Bidders in the specifications. Special care shall be exercised in the preparation of bids. Bidders must make their own estimates of the facilities and difficulties to be anticipated upon execution of the contract, including local conditions, uncertainty of weather and all other contingencies. All designations and prices shall be fully and clearly set forth in the bid submission. ALL PRICES SHALL BE INSERTED IN FIGURES TYPED OR PRINTED LEGIBLY ON THE BID FORM. All corrections on the bid documents must be initialed by the person signing the bid form.

ARTICLE 5. ERROR IN BIDS—Bidders or their authorized agents are expected to examine all bid documents and any addenda thereto, and all other instructions pertaining to the work which will be open to their inspection. Failure to do so will be at the bidder's own risk, and will not constitute reason for relief on plea of error in the bid. IN CASE OF ERROR IN THE EXTENSION OF PRICES IN THE BID, UNIT PRICES WILL GOVERN.

The bidder must submit his plea of error in writing to the Contracting Officer and must be prepared to document and prove his error.

ARTICLE 6. LABOR AND MATERIAL NOT FURNISHED BY DISTRICT—The District will not furnish any labor, material or supplies unless a provision to do so is included in the contract documents.

ARTICLE 7. ADDENDA AND INTERPRETATIONS—No oral interpretations of the meaning of the drawings, specifications or other bid documents will be made to any bidder. Verbal clarification will not be binding on the District. All requests must be in writing and addressed to the Contracting Officer responsible for administering the contract. Requests for interpretations of bid documents must be received by the Contracting Officer not later than 10 days prior to bid opening date. All changes to the bid documents will be made by addenda mailed to all prospective bidders, who have obtained copies of the bid documents, not later than 7 days before bid opening date. In case of discrepancy among addenda, a later dated addendum has priority over earlier dated addenda. It shall be the bidder's responsibility to make inquiry as to any or all addenda issued, and failure of any prospective bidder to receive any such addenda issued by the Contracting Officer shall not relieve the bidder from any obligation under his bid as submitted. Bidders must acknowledge receipt of all addenda on the Bid Form; failure to do so may result in rejection of bid. All addenda issued shall become part of the bid and contract documents. -

ARTICLE 8. ALTERNATE BIDS—Alternate bids will not be considered unless called for in the Bid Form.

ARTICLE 9. BIDS FOR ALL OR PART—Where bids are not qualified by specific limitations, the District reserves the right to award all or any of the items according to its best interests.

ARTICLE 10. PRICE SCHEDULE INTERPRETATION—Quantities appearing in the Price Schedule are approximate only and are prepared for the comparison of bids. Payment will be made only for actual material requirements accepted and for work performed and accepted. Schedule quantities may be increased, decreased or omitted and there shall be no adjustment in contract unit prices except as provided, and except for such materials actually purchased or work actually performed prior to notification of the change in items affected.

The price for any item, unless otherwise specified, shall include full compensation for all materials, tests, samples, manufacturers' guaranties, tools, equipment, labor and incidental work needed to complete specified items. Prices without exception shall be net, not subject to discount, and shall include all royalties and costs arising from patents, proprietary items, trademarks and copyrights.

ARTICLE 11. CORRECTIONS—Erasures and other changes in bids must be explained or noted over the signature of the bidder.

ARTICLE 12. BOND REQUIREMENTS

- A. BID GUARANTY**—On all bids of \$100,000.00 or more, security is required to insure the execution of the contract. No bid will be considered unless it is so guaranteed. Each bidder must furnish with his bid either a Bid Bond (Form No. DC 2640-5), with good and sufficient sureties, a certified check payable to the order of the Treasurer of the District of Columbia (uncertified check will not be accepted), negotiable United States bonds (at par value), or an irrevocable letter of credit in an amount not less than five percent (5%) of the amount of his bid, as a guaranty that he will not withdraw said bid within the period specified therein after the opening of the same; or, if no period be specified, within ninety (90) days after said opening, and will, within the period specified therefore, or, if no period be specified, within ten (10) days, after the prescribed forms are forwarded to him for execution (or within any extension of time which may be granted by the officer to whom the bid was addressed) execute and deliver a written contract on the standard District form in accordance with bid as accepted and give bond with good and sufficient sureties, as specified below for the faithful performance and proper fulfillment of such contract and payment of laborers and material men as required by law or, in the event of the withdrawal of said bid within the period above stated, or the failure to enter into such contract and give such bond within the time above stated, that he will pay to the District the difference between the amount specified in said bid and the amount for which the District may procure the required work, if the latter amount be in excess of the former.

In case security is in the form of a certified check or United States bonds, the District may make such disposition of the same as will accomplish the purpose for which

submitted. Certified checks may be held uncollected at the bidder's risk. Certified checks and United States bonds will be returned to the unsuccessful bidders after award of contract and to successful bidders after the signing of prescribed forms of contract and bonds. Guaranty bonds will be returned only upon written application.

B. PERFORMANCE BOND—For any construction contract exceeding \$100,000.00, a Performance Bond (Form No. DC 2640-7) shall be required in a penal amount equal to one hundred percent (100%) of the contract price at time of award. Additional performance bond protection shall be required in connection with any modification effecting an increase in price under any contract for which a bond is required pursuant to the above if:

1. The modification is for new or additional work which is beyond the scope of the existing contract; or,
2. The modification is pursuant to an existing provision of the contract and is expected to increase the contract price by \$50,000 or twenty-five percent (25%) of the original total contract price, whichever is less.

The penal amount of the bond protection shall be increased so that the total performance bond protection is one hundred percent (100%) of the contract price as revised by both the modification requiring such additional protection and the aggregate of any previous modification. The increased penal amount may be secured either by increasing the bond protection provided by existing surety or sureties or by obtaining an additional performance bond from a new surety.

C. PAYMENT BOND—In accordance with the provisions of Section 504(b) of the District of Columbia Procurement Practices Act of 1985, payment bonds shall be required in an amount not less than fifty percent (50%) of the total amount payable by the terms of the contract.

Additional payment protection shall be required in connection with any notification effecting an increase in price under any contract for which a bond is required pursuant to the above if —

1. The modification is for new or additional work which is beyond the scope of the existing contract; or
2. The modification is pursuant to an existing provision of the contract and is expected to increase the contract price by \$50,000 or twenty-five percent (25%) of the original total contract price, whichever is less.

The penal amount of the additional bond protection shall generally be such that the total payment bond protection is fifty percent (50%) of the contract price as revised by both the modification requiring such additional protection, and the aggregate of any previous modifications. The additional protection may be secured either by increasing the bond protection provided by the existing surety or sureties or by obtaining an additional payment bond from a new surety.

D. BOND SOURCE—The bonds may be obtained from any surety company authorized by the U.S. Treasury Department as acceptable sureties on Federal Bonds and authorized to transact business in the District of Columbia by the Director, Department of Insurance, Securities and Banking.

ARTICLE 13. SIGNATURE TO BIDS—Each bid must show the full business address of the bidder and be signed by him with his usual signature. Bids by partnerships must be signed with the partnership name by one of the members of the partnership or by an authorized representative, followed by the signature and designation of the person signing. Bids by corporations must be signed with the name of the corporation, followed by the signature and

Page 7

designation of the President or Vice President and attested by the Secretary of the corporation or other persons authorized to bind the corporation and the corporate seal affixed thereto. If bid is signed by other than the President or Vice President, evidence of authority to so sign must be furnished in the form of an extract of minutes, of a meeting of the Board of Directors or extract of bylaws certified by the Corporate Secretary and corporate seal affixed thereto. The names of all persons signing shall be typed or printed below the signatures. A bid by a person who affixes to his signature the word "President", "Vice President", "Secretary", "Agent", or other designation, without disclosing his principal, may be held personally to the bid. Bids submitted by a joint venture must be signed by all authorized parties to the joint venture.

ARTICLE 14. MARKING AND MAILING BIDS—Bids, addenda acknowledgment, and bid guaranty must be securely sealed in suitable envelopes, addressed and marked on the outside with the name of the bidder, invitation number and date of opening.

ARTICLE 15. RECEIVING BIDS, MODIFICATIONS OR WITHDRAWALS—Bids received prior to the time set for opening will be securely kept unopened. The officer whose duty it is to open them will decide when the specified time has arrived and no bid received thereafter will be considered unless: (1) they are sent by registered mail or by certified mail for which an official dated post office stamp (postmark) on the original Receipt for Certified Mail has been obtained and it is determined by the District that the late receipt was due solely to delay in the mails for which the bidder was not responsible; or (2) if submitted by mail (or by telegram if authorized by the Contracting Officer), it is determined by the District that the late receipt was due solely to mishandling by the District after receipt at the District agency: Provided, that timely receipt at such agency is established upon examination of an appropriate date or time stamp or other documentary evidence of receipt within the control of such agency.

Bidders using certified mail are cautioned to obtain a receipt for certified mail showing legible, dated postmark and to retain such receipt against the chance that it will be required as evidence that a late bid was timely mailed. The only evidence acceptable in this matter is as follows: (1) where the Receipt of Certified Mail identifies the post office station of mailing, evidence furnished by the bidder which establishes, that the business day of the station ended at an earlier time, in which case the time of mailing shall be deemed to be last minute of the business day; or (2) an entry in ink on the Receipt for Certified Mail showing the time of mailing and the initials of postal employee receiving the item and making the entry, with appropriate written verification of such entry from the post office station of mailing, in which case the time of mailing, shall be the time shown in the entry. If the postmark on the original Receipt for Certified Mail does not show a date, the bid shall not be considered.

The time of mailing of late bids submitted by registered or certified mail shall be deemed to be the last minute of the date shown in the postmark on the registered mail receipt or registered mail wrapper or on the Receipt for Certified Mail unless the bidder furnishes evidence from the post office station of mailing which establishes an earlier time.

No responsibility will attach to the District or any of its officers or employees for the premature opening of a bid not properly addressed and identified. Unless specifically authorized, telegraphic bids will not be considered, but modifications, by telegram, of bids already submitted will be considered if received prior to the hour set for opening, but should not reveal the amount of the original or revised bid.

ARTICLE 16. WITHDRAWAL OF BIDS—Bids may be withdrawn on written or telegraphic request received from bidders prior to the time fixed for opening, provided the name of the bidder appears on the outside of the envelope containing the bid. Negligence on the part of the bidder in preparing the bid confers no right for the withdrawal of the bid after it has been opened.

ARTICLE 17. OPENING OF BIDS—At the time fixed for the opening of bids, their contents will be made public by the Office of Contracting and Procurement for the information of bidders and other properly interested persons.

ARTICLE 18. AWARD OR REJECTION—The Contract will be awarded to the lowest responsible Bidder complying with conditions of the bid documents, provided his bid is reasonable and it is in the best interest of the District to accept it. The Bidder, to whom award is made, will be notified by

Page 8

the Contracting Officer at the earliest possible date. The District, however, reserves the right to reject any and all bids and to waive any informality in bids received whenever such rejection or waiver is in the best interest of the District.

If more than one bid be offered by any one party, by or in the name of his or their clerk, partner, or other person, all such bids may be rejected. This shall not prevent a Bidder from proceeding under Article 8 hereof, nor from quoting different prices on different qualities of material or different conditions of delivery. A supplier or material man who has quoted prices on materials to a Bidder is not thereby disqualified from quoting to other bidders or from submitting a bid directly for the materials or work.

Each Bidder shall submit a bid on all items in the Price Schedule; failure to bid on all items may result in bid rejection.

In addition to requirements for qualification of bidders as set forth in Article 1 hereof, and as determined by the District, proposals will be considered irregular and may be rejected by the Contracting Officer for any of, but not limited to, the following reasons:

- A. Incompetency, inadequate plant or insufficient capital as revealed by Bidder's statement on AGC or equivalent form.
- B. Evidence of collusion.
- C. Uncompleted work which might hinder or prevent proper and prompt execution and completion of work contemplated.
- D. Evidence that Bidder has not adequately considered all aspects of contemplated work.
- E. Failure to settle bills satisfactorily, claims and judgments due for labor and material on Bidder's contracts in force on bid opening date.
- F. Default under previous contracts.
- G. Unacceptable rating as listed on published government lists.
- H. Proposal submission on form other than that form furnished by District, or altered or partially detached form.
- I. Unauthorized additions, deletions, omissions, conditional bids, or irregularities which may make proposal incomplete or ambiguous in meaning.
- J. Failure to acknowledge all addenda issued.
- K. Failure to submit bid in the properly labeled receptacle at that location designated as the Office of Contracting and Procurement, Bid Room, Suite 700, 441 4th St., N.W., Washington, D.C. 20001 and prior to the time set for opening as governed by the Official Clock designated as such in that Bid Room.

ARTICLE 19. CANCELLATION OF AWARDS—The right is reserved to the District, without any liability upon the District, to cancel the award of any contract at any time prior to approval of a formal written contract signed by the Contractor and the Contracting Officer.

ARTICLE 20. CONTRACT AND BOND—The Bidder to whom award is made must, when required, enter into a written contract on the standard District form, with satisfactory security in the amount required (see Article 12) within the period specified, or no period be specified, within 10 days after the prescribed forms are presented to him for signature.

**GENERAL PROVISIONS
(Construction Contract)**

ARTICLE 1. DEFINITIONS

- A. "District" as used herein means the District of Columbia, a municipal corporation.
- B. "Mayor" as used herein means the elected head of the District as set forth in Public Law 93-198 dated December 24, 1973, Title 4, Part B, Section 422(1).
- C. "Contracting Officer" as used herein means the District official authorized to execute and administrate the Contract on behalf of the District.
- D. "Contract Documents" or "Contract" as used herein means Addenda, Contract Form, Instructions to Bidders, General Provisions, Labor Provisions, Performance and Payment Bonds, Specifications, Special Provisions, Contract Drawings, approved written Change Orders and Agreements required to acceptably complete the Contract, including authorized extensions thereof.

ARTICLE 2. SPECIFICATIONS AND DRAWINGS—The Contractor shall keep on the work site a copy of Contract drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the Contract drawings, or shown on the Contract drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

All Contract requirements are equally binding. Each Contract requirement, whether or not omitted elsewhere in the Contract, is binding as though occurring in any or all parts of the Contract. In case of discrepancy:

- 1. The Contracting Officer shall be promptly notified in writing of any error, discrepancy or omission, apparent or otherwise.
- 2. Applicable Federal and D. C. Code requirements have priority over: the Contract form, General Provisions, Change Orders, Addenda, Contract drawings, Special Provisions and Specifications.
- 3. The Contract form, General Provisions and Labor Provisions have priority over: Change Orders, Addenda, Contract drawings, Special Provisions and Specifications.
- 4. Change Orders have priority over: Addenda, Contract drawings and Specifications.
- 5. Addenda have priority over: Contract drawings, Special Provisions and Specifications. A later dated Addendum has priority over earlier dated Addenda.
- 6. Special Provisions have priority over: Contract drawings and other specifications.
- 7. Shown and indicated dimensions have priority over scaled dimensions.
- 8. Original scale drawings and details have priority over any other different scale drawings and details.
- 9. Large scale drawings and details have priority over small scale drawings and details.
- 10. Any adjustment by the Contractor without a prior determination by the Contracting Officer shall be at his own risk and expense. The Contracting Officer will furnish from time to time such detail drawings and other information as he may consider necessary, unless otherwise provided.

ARTICLE 3. CHANGES

A. DESIGNATED CHANGE ORDERS—The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Contract, including but not limited to changes

1. In the Contract drawings and specifications;
2. In the method or manner of performance of the work;
3. In the District furnished facilities, equipment, materials or services; or
4. Directing acceleration in the performance of the work.

Nothing provided in this Article shall excuse the Contractor from proceeding with the prosecution of the work so changed.

B. OTHER CHANGE ORDERS—Any other written order or an oral order (which term as used in this Section (B) shall include direction, instruction, interpretation, or determination) from the Contracting Officer which causes any such change, shall be treated as a Change Order under this Article, provided that the Contractor gives the Contracting Officer written notice stating the date, circumstances and sources of the order and that the Contractor regards the order as a Change Order.

C. GENERAL REQUIREMENTS—Except as herein provided, no order, statement or conduct of the Contracting Officer shall be treated as a change under this Article or entitle the Contractor to an equitable adjustment hereunder. If any change under this Article causes an increase or decrease in the Contract's cost of, or the time required for, the performance of any part of the work under this Contract whether or not changed by any order, an equitable adjustment shall be made and the Contract modified in writing accordingly; provided, however, that except for claims based on defective specifications, no claim for any change under (B) above shall be allowed for any cost incurred more than 20 days before the Contractor gives written notice as therein required unless this 20 days is extended by the Contracting Officer and provided further, that in case of defective drawings and specifications, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective drawings and specifications.

If the Contractor intends to assert a claim for an equitable adjustment under this Article, he must, within 30 days after receipt of a written Change Order under (A) above or the furnishing of a written notice under (B) above, submit to the Contracting Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the Contracting Officer. The statement of claim hereunder may be included in the notice under (B) above.

No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under the Contract.

D. CHANGE ORDER BREAKDOWN—Contract prices shall be used for Change Order work where work is of similar nature; no other costs, overhead or profit will be allowed.

Where Contract prices are not appropriate and the nature of the change is known in advance of construction, the parties shall attempt to agree on a fully justifiable price adjustment and/or adjustment of completion time.

When Contract prices are not appropriate, or the parties fail to agree on equitable adjustment, or in processing claims, equitable adjustment for Change Order work shall be per this Article and Article 4 and shall be based upon the breakdown shown in following

subsections 1. through 7. The Contractor shall assemble a complete cost breakdown that lists and substantiates each item of work and each item of cost.

1. **Labor**—Payment will be made for direct labor cost plus indirect labor cost such as insurance, taxes, fringe benefits and welfare provided such costs are considered reasonable. Indirect costs shall be itemized and verified by receipted invoices. If verification is not possible, up to 18 percent of direct labor costs may be allowed. In addition, up to 20 percent of direct plus indirect labor costs may be allowed for overhead and profit.
2. **Bond**—Payment for additional bond cost will be made per bond rate schedule submitted to the Office of Contracting and Procurement with the executed Contract.
3. **Materials**—Payment for cost of required materials will be F.O.B. destination (the job site) with an allowance for overhead and profit.
4. **Rented Equipment**—Payment for required equipment rented from an outside company that is neither an affiliate of, nor a subsidiary of, the Contractor will be based on receipted invoices which shall not exceed rates given in the current edition of the Rental Rate Blue Book for Construction Equipment published by Data Quest. If actual rental rates exceed manual rates, written justification shall be furnished to the Contracting Officer for consideration. No additional allowance will be made for overhead and profit. The Contractor shall submit written certification to the Contracting Officer that any required rented equipment is neither owned by nor rented from the Contractor or an affiliate of or subsidiary of the Contractor.
5. **Contractor's Equipment**— Payment for required equipment owned by the Contractor or an affiliate of the Contractor will be based solely on an hourly rate derived by dividing the current appropriate monthly rate by 176 hours. No payment will be made under any circumstances for repair costs, freight and transportation charges, fuel, lubricants, insurance, any other costs and expenses, or overhead and profit. Payment for such equipment made idle by delays attributable to the District will be based on one-half the derived hourly rate under this subsection.
6. **Miscellaneous**—No additional allowance will be made for general superintendence, use of small tools and other costs for which no specific allowance is herein provided.
7. **Subcontract Work**—Payment for additional necessary subcontract work will be based on applicable procedures in 1. through 6., to which total additional subcontract work up to an additional 10 percent may be allowed for the Contractor's overhead and profit.

ARTICLE 4. EQUITABLE ADJUSTMENT OF CONTRACT TERMS

The Contractor is entitled to an equitable adjustment of the contract terms whenever the following situations develop:

Differing Site Conditions:

- (1) During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the Contractor, upon discovering such conditions, shall promptly notify the Contracting Officer in writing of the specific differing conditions before they are disturbed and before the affected work is performed.

- (2) Upon written notification, the Contracting Officer will investigate the conditions, and if he/she determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding loss of anticipated profits, will be made and the contract modified in writing accordingly. The Contracting Officer will notify the Contractor of his/her determination whether or not an adjustment of the contract is warranted.
- (3) No contract adjustment which results in a benefit to the Contract will be allowed unless the Contractor has provided the required written notice.
- (4) No contract adjustment will be allowed under this clause for any effects caused on unchanged work.

Suspension of Work Ordered by the Contracting Officer:

- (1) If the performance of all or any portion of the work is suspended or delayed by the Contracting Officer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the Contractor shall submit to the Contracting Officer in writing a request for equitable adjustment within seven (7) calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.
- (2) Upon receipt, the Contracting Officer will evaluate the Contractor's request. If the Contracting Officer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control or and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Contracting Officer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The Contracting Officer will notify the Contractor of his/her determination whether or not an adjustment of the contract is warranted.
- (3) No contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed.
- (4) No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term of condition of this contract.

Significant Changes in the Character of Work:

- (1) The Contracting Officer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the Contractor agrees to perform the work as altered.
- (2) If the alterations or changes in quantities significantly change the character of the work under the contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding loss of anticipated profits, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Contractor in such amount as the Contracting Officer may determine to be fair and reasonable.

- (3) If the alterations or changes in quantities significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.
- (4) The term "significant change" shall be construed to apply only to the following circumstances:
 - (a) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
 - (b) When an item of work is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in the case of a decrease below 75 percent, to the actual amount of work performed.

ARTICLE 5. TERMINATION-DELAYS—If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in the Contract, or any extension thereof, or fails to complete said work within specified time, the District may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work involving the delay. In such event the District may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may have been paid for by the District or may be on the site of the work and necessary therefore. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any liability to the District resulting from his refusal or failure to complete the work within the specified time.

If fixed and agreed liquidated damages are provided in the Contract and if the District does not so terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

1. The delay in the completion the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the District in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the District, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, climatic conditions beyond the normal which could be anticipated, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers (the term subcontractors or suppliers shall mean subcontractors or suppliers at any tier); and
2. The Contractor, within 10 days from the beginning of any such delay, (unless the Contracting Officer grants a further period of time before the date of final payment under the Contract) notifies the Contracting Officer in writing of the causes of delay.

The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in Article 7 herein.

If, after notice of termination of the Contractor's right to proceed under the provisions of this Article, it is determined for any reason that the Contractor was not in default under the provisions of this Article, or that the delay was excusable under the provisions of this Article, the rights and

obligations of the parties shall be in accordance with Article 6 herein. Failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of Article 7 herein.

The rights and remedies of the District provided in this Article are in addition to any other rights and remedies provided by law or under the Contract.

The District may, by written notice, terminate the Contract or a portion thereof as a result of an Executive Order of the President of the United States with respect to the prosecution of war or in the interest of national defense. When the Contract is so terminated, no claim for loss of anticipated profits will be permitted.

ARTICLE 6. TERMINATION FOR CONVENIENCE OF THE DISTRICT

- A.** The performance of work under the Contract may be terminated by the District in accordance with this Article in whole, or in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the District. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.
- B.** After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:
 - 1. Stop work under the Contract on the date and to the extent specified in the Notice of Termination.
 - 2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract as is not terminated.
 - 3. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.
 - 4. Assign to the District, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated, in which case the District shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
 - 5. Settle all outstanding liabilities and all claims arising out of such termination of orders or subcontracts, with the approval or ratification of the Contracting Officer to the extent he may require, which approval or ratification shall be final for all purposes of this Article.
 - 6. Transfer title to the District and deliver in the manner, at the times, and to the extent, if any, directed by the Contracting Officer
 - a. The fabricated or unfabricated parts, work in progress, completed work, supplies, and other material procured as a part of, or acquired in connection with, the performance of the work terminated by the Notice of Termination, and
 - b. The completed, or partially completed plans, drawings information and other property which, if the Contract had been completed, would have been required to be furnished to the District.
 - 7. Use his best efforts to sell, in the manner, at the terms, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in 6 above provided, however, that the Contractor:
 - a. Shall not be required to extend credit to any purchaser, and

- b. May acquire any property under the conditions prescribed and at a price or prices approved by the Contracting Officer, and
 - c. Provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the District to the Contractor under the Contract or shall otherwise be credited to the price or cost of the work covered by the Contract or paid in such other manner as the Contracting Officer may direct.
8. Complete performance of such part of the work as shall not have been terminated by the Notice of Termination.
 9. Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to the Contract which is in the possession of the Contractor and in which the District has or may acquire an interest.
 10. The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the cost, or any item of reimbursable cost, under this Article.
 11. "Plant clearance period" means, for each particular property classification (such as raw materials, purchased parts and work in progress) at any one plant or location, a period beginning with the effective date of the termination for convenience and ending 90 days after receipt by the Contracting Officer of acceptable inventory schedules covering all items of that particular property classification in the termination inventory at that plant or location, or ending on such later date as may be agreed to by the Contracting Officer and the Contractor. Final phase of a plant clearance period means that part of a plant clearance period which occurs after the receipt of acceptable inventory schedules covering all items of the particular property classification at the plant or location.

At any time after expiration of the plant clearance period, as defined above, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the District to remove such items or enter into a storage agreement covering them. Not later than 15 days thereafter, the District will accept title to such items and remove them or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items or, if the items are stored, within 45 days from the date of submission of the list, and any necessary adjustments to correct the list as submitted, shall be made prior to final settlement.

- C. After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim, in the form with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one year period or extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any review required by the District's procedures in effect as of the date of execution of the Contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

D. Subject to the provisions of C above, and subject to any review required by the District's procedures in effect as of the date of execution of the Contract, the Contractor and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this Article, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. The Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in E below prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Article, shall be deemed to limit, restrict or otherwise determine or effect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph.

E. In the event of the failure of the Contractor and the Contracting Officer to agree as provided in D above upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Article, the Contracting Officer shall, subject to any review required by the District's procedures in effect as of the date of execution of the Contract, determine, on the basis of information available to him, the amount, if any, due the Contractor by reason of the termination and shall pay to the Contractor the amounts determined by the Contracting Officer, as follows, but without duplication of any amounts agreed upon in accordance with D above:

1. With respect to all Contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of:
 - a. The cost of such work;
 - b. The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in B 5. above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under the Contract, which amounts shall be included in the cost on account of which payment is made under E1.a. above; and
 - c. A sum, as profit on E.1.a. above, determined by the Contracting Officer to be fair and reasonable; provided however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this subparagraph and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and provided further that profit shall be allowed only on preparations made and work done by the Contractor for the terminated portion of the Contract but may not be allowed on the Contractor's settlement expenses. Anticipatory profits and consequential damages will not be allowed. Any reasonable method may be used to arrive at a fair profit, separately or as part of the whole settlement.
2. The reasonable cost of the preservation and protection of property incurred pursuant to B.9; and any other reasonable cost incidental to termination of work under the Contract including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under the Contract.

- F. The total sum to be paid to me Contractor under E.1. above shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. Except for normal spoilage, and except to the extent that the District shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under E.1. above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the District, or to a buyer pursuant to B.7 above.
- G. The Contractor shall have the right of appeal, under Article 7 herein, from any determination made by the Contracting Officer under C. or E. above, except that, if the Contractor has failed to submit his claim within the time provided in C above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under C. or E. above, the District shall pay to the Contractor the following:
1. If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or
 2. If an appeal had been taken, the amount finally determined on such appeal.
- H. In arriving at the amount due the Contractor under this Article there shall be deducted:
1. all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of the Contract;
 2. any claim which the District may have against the Contractor in connection with the Contract; and
 3. the agreed price for, or the proceeds of sale of, any materials, supplies or other things kept by the Contractor or sold, pursuant to the provisions of this Article and not otherwise recovered by or credited to the District.
- I. If the termination hereunder be partial, prior to the settlement of the terminated portion of the Contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made at such price or prices; however, nothing contained herein shall limit the right of the District and the Contractor to agree upon the amount or amounts to be paid to the Contractor for the completion of the continued portion of the Contract when said Contract does not contain an established Contract price for such continued portion.
- J. The District may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the terminated portion of the Contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Article, such excess shall be payable by the Contractor to the District upon demand, together with interest computed at the rate of 6 percent per annum for the period from the date such excess is received by the Contractor to the date on which such excess is repaid to the District; provided however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

- K. Unless otherwise provided in the Contract or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under the Contract, shall preserve and make available to the District at all reasonable times at the office of the Contractor, but without direct charge to the District, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under the Contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs and other authentic reproductions thereof.

ARTICLE 7. DISPUTES

- A. All disputes arising under or relating to this contract shall be resolved as provided herein.

- B. Claims by a Contractor against the District.

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

- (a) All claims by a Contractor against the District arising under or relating to a contract shall be in writing and shall be submitted to the Contracting Officer for a decision. The contractor's claim shall contain at least the following:

- (1) A description of the claim and the amount in dispute;
- (2) Any data or other information in support of the claim;
- (3) A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and
- (4) The Contractor's request for relief or other action by the Contracting Officer.

(b) The Contracting Officer may meet with the Contractor in a further attempt to resolve the claim by agreement.

November (2004)

SCP. 9

(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

Page 19

will authorize the commencement of an appeal to the Contract Appeals Board as authorized by D.C. Official Code § 2-309.04.

(g) (1) If a Contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim.

(2) Liability under paragraph (g)(1) shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.

(h) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor as authorized by D. C. Official Code § 2-309.04.

(i) Pending final decision of an appeal, action, or final settlement, a Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

November (2004)

SCP. 10

C. Claims by the District against a Contractor

(a) Claim as used in Section C of this clause, means a written demand or written assertion by the District seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

(b) (1) All claims by the District against a Contractor arising under or relating to a contract shall be decided by the Contracting Officer.

(2) The Contracting Officer shall send written notice of the claim to the Contractor. The Contracting Officer's written decision shall do the following:

(a) Provide a description of the claim or dispute;

(b) Refer to the pertinent contract terms;

(c) State the factual areas of agreement and disagreement;

(d) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;

(e) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;

(f) Indicate that the written document is the Contracting Officer's final decision; and

(g) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

(3) The decision shall be supported by reasons and shall inform the Contractor of its rights as provided herein.

(4) The authority contained in this clause shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle, or determine.

(5) This clause shall not authorize the Contracting Officer to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(c) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor as authorized by D.C. Official Code §2-309.04.

(d) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

ARTICLE 8. PAYMENTS TO CONTRACTOR—The District will pay the contract price or prices as hereinafter provided in accordance with District and Federal regulations.

The District will make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer. The Contractor shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the Contracting Officer, at his discretion, may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration:

1. If such consideration is specifically authorized by the Contract;
2. If the Contractor furnishes satisfactory evidence that he has acquired title to such material, that it meets Contract requirements and that it will be utilized on the work covered by the Contract; and
3. If the Contractor furnishes to the Contracting Officer an itemized list.

The Contracting Officer at his/her discretion shall cause to be withheld retention in an amount sufficient to protect the interest of the District of Columbia. The amount shall not exceed ten percent (10%) of the partial payment. However, if the Contracting Officer, at any time after 50 percent of the work has been completed, finds that satisfactory progress is being made, he may authorize any of the remaining progress payments to be made in full or may retain from such remaining partial payments less than 10 percent thereof. Also, whenever work is substantially complete, the Contracting Officer, if he considers the amount retained to be in excess of the amount adequate for the protection of the District, at his discretion, may release to the Contractor all or a portion of such excess amount. Furthermore, on completion and acceptance of each separate building, public work, or other division of the Contract, on which the price is stated separately in the Contract, payment may be made therefore without retention of a percentage, less authorized deductions.

All material and work covered by progress payments made shall thereupon become the sole property of the District, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work, or as waiving the right of the District to require the fulfillment of all of the terms of the Contract.

Upon completion and acceptance of all work, the amount due the Contractor under the Contract shall be paid upon presentation at a properly executed voucher and after the Contractor shall have furnished the District with a release, if required, of all claims against the District arising by virtue of the Contract, other than claims in stated amounts as may be specifically excepted by the Contractor from the operation of the release.

ARTICLE 9. TRANSFER OR ASSIGNMENT—Unless otherwise provided by law, neither the Contract nor any interest therein may be transferred or assigned by the Contractor to any other party without the written consent of the Contracting Officer nor without the written acceptance by the surety on the performance and payment bond securing the Contract of the assignee as the Contractor and the principal on such bond; and any attempted transfer or assignment not authorized by this Article shall constitute a breach of the Contract and the District may for such cause terminate the right of the Contractor to proceed in the same manner as provided in Article 5 herein, and the Contractor and his sureties shall be liable to the District for any excess cost occasioned the District thereby.

ARTICLE 10. MATERIAL AND WORKMANSHIP

- A. GENERAL**—Unless otherwise specifically provided in the Contract, all equipment, material and articles incorporated in the work covered by the Contract shall be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in the Contract, reference to any equipment, material, article or patented

process, by trade name, make or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition., and the Contractor may use any equipment, material, article or process which, in the judgment of the Contracting Officer, is equivalent to that named unless otherwise specified. The Contractor shall furnish to the Contracting Officer for his approval the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature and rating of the mechanical and other equipment which the Contractor contemplates incorporating in the work. Machinery and equipment shall be in proper condition. When required by the Contract or when called for by the Contracting Officer, the Contractor shall furnish to the Contracting Officer for approval full information concerning the material or articles which he contemplates incorporating in the work. When so directed, samples shall be submitted for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles installed or used without required approval shall be at the risk of subsequent rejection and subject to satisfactory replacement at Contractor's expense.

- B. SURPLUS MATERIALS USE**—Whenever specified in the Contract or authorized by the Contracting Officer that materials become the property of the Contractor, which by reference or otherwise shall include disposal of materials, it is understood that the Contractor accepts such materials "as is" with no further expense or liability to the District. If such material specified in the Contract will have a potential or real interest of value, the Contractor shall make allowance in the Contract to show such value.
- C. DISTRICT MATERIAL**—No materials furnished by the District shall be applied to any other use, public or private, than that for which they are issued to the Contractor. The full amount of the cost to the District of all materials furnished by the District to the Contractor and for which no charge is made, which are not accounted for by the Contractor to the satisfaction of the Contracting Officer, will be charged against the Contractor and his sureties and may be deducted from any monies due the Contractor, and this charge shall be in addition to and not in lieu of any other liabilities of the Contractor whether civil or criminal. Materials furnished by the District for which a charge is made at a rate mentioned in the specifications will be delivered to the Contractor upon proper requisitions therefore and will be charged to his account.
- D. Plant** —The Contractor shall at all times employ sufficient tools and equipment for prosecuting the various classes of work to full completion in the manner and time required. The Contractor shall at all times perform work in sufficient light and shall provide proper illumination, including lighting required for night work as directed, as a Contract requirement. All equipment, tools, formwork and staging used on the project shall be of sufficient size and in proper mechanical and safe condition to meet work requirements, to produce satisfactory work quality and to prevent injury to persons, the project or adjacent property. When methods and equipment are not prescribed in the Contract, the Contractor is free to use tools, methods and equipment that he satisfactorily demonstrates will accomplish the work in conformity with Contract requirements.

If the Contractor desires to use a method or type of tool or equipment other than specified in the Contract, he shall request approval to do so; the request shall be in writing and shall include a full description of proposed methods, tools and equipment and reason for the change or substitution. Approval of substitutions and changed methods will be on condition that the Contractor will be fully responsible for producing work meeting Contract requirements. If after trial use of the substituted methods, tools and equipment, the Contracting Officer determines that work produced does not meet Contract requirements, the Contractor shall complete remaining work with specified methods, tools and equipment.

- E. CAPABILITY OF WORKERS**- All work under the Contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require the Contractor to remove from the work any such employees as the Contracting Officer deems incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the work is deemed by the Contracting Officer to be contrary to the public interest. Such request will be in writing:

- F. CONFORMITY OF WORK AND MATERIALS**—All work performed and materials and products furnished shall be in conformity, within indicated tolerances, with lines, grades, cross sections, details, dimensions, material and construction requirements shown or intended by the drawings and specifications.

When materials, products or work cannot be corrected, written notice of rejection will be issued. Rejected materials, products and work shall be eliminated from the project and acceptably replaced at Contractor's expense. The Contracting Officer's failure to reject any portion of the project shall not constitute implied acceptance nor in any way release the Contractor from Contract requirements.

- G. UNAUTHORIZED WORK AND MATERIALS**—Work performed or materials ordered or furnished for the project deviating from requirements without written authority, will be considered unauthorized and at Contractor's expense. The District is not obligated to pay for unauthorized work. Unauthorized work and materials may be ordered removed and replaced at Contractor's expense.

ARTICLE 11. INSPECTION AND ACCEPTANCE—Except as otherwise provided in the Contract, inspection and test by the District of material and workmanship required by the Contract shall be made at reasonable times and at the site of the work, unless the Contracting Officer determines that such inspection or test of material which is to be incorporated in the work shall be made at the place of production, manufacture or shipment of such material. To the extent specified by the Contracting Officer at the time of determining to make off-site inspection or test, such inspection or test shall be conclusive as to whether the material involved conforms to Contract requirements. Such off-site inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the District after acceptance of the completed work under the terms of the last paragraph of this Article, except as herein above provided.

The Contractor shall, without charge, replace any material and correct any workmanship found by the District not to conform to Contract requirements, unless in the public interest the District consents to accept such material or workmanship with an appropriate adjustment in Contract price. The Contractor shall promptly segregate and remove rejected material from the premises at Contractor's expense.

If the Contractor does not promptly replace rejected material or correct rejected workmanship, the District:

1. May, by contract or otherwise, replace such material and correct such workmanship and charge the cost thereof to the Contractor, or
2. May terminate the Contractor's right to proceed in accordance with Article 5 herein.

The Contractor shall furnish promptly, without additional cost to the District, all facilities, labor and material reasonably needed for performing such safe and convenient inspection and test as may be required by the Contracting Officer. All inspections and tests by the District shall be performed in such manner as not unnecessarily to delay the work. Special, full size, and performance tests shall be performed as described in the Contract. The Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready for inspection at the time specified by the Contractor.

Should it be considered necessary or advisable by the Contracting Officer at any time before acceptance of the work, either in part or in its entirety, to make an examination of work completed, by removing or tearing out same, the Contractor shall, on request, promptly furnish all necessary facilities, labor and material to do same. If such work is found to be defective or nonconforming in any material respect, due to the fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, an equitable adjustment shall be made in the Contract price.

to compensate the Contractor for the additional services involved in such examination and reconstruction and, if completion of the work has been delayed thereby, he shall, in addition, be granted an equitable extension of time.

Unless otherwise provided in the Contract, acceptance by the District will be made as promptly as practicable after completion and inspection of all work required by the Contract. Acceptance shall be final and conclusive except as regards to latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the District's rights under any warranty or guaranty.

ARTICLE 12. SUPERINTENDENCE BY CONTRACTOR—The Contractor shall give his personal superintendence to the performance of the work or have a competent foreman or superintendent, satisfactory to the Contracting Officer, on the work site at all times during progress, with authority to act for him.

ARTICLE 13. PERMITS AND RESPONSIBILITIES—The Contractor shall, without expense to the District, be responsible for obtaining any necessary licenses, certificates and permits, and for complying with any applicable Federal, State, and Municipal laws, codes and regulations, in connection with the prosecution of the work. He shall be similarly responsible for all damages to persons or property that occurs as a result of his fault or negligence. He shall take proper safety, health and environmental precautions to protect the work, the workers, the public, and the property of others. He shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire construction work, except for any completed unit of construction thereof which theretofore may have been accepted.

ARTICLE 14. INDEMNIFICATION—The Contractor shall indemnify and save harmless the District and all of its officers, agents and servants against any and all claims or liability arising from or based on, or as a consequence or result of, any act, omission or default of the Contractor, his employees, or his subcontractors, in the performance of, or in connection with, any work required, contemplated or performed under the Contract.

ARTICLE 15. PROTECTION AGAINST TRESPASS—Except as otherwise expressly provided in the Contract, the Contractor is authorized to refuse admission either to the premises or to the working space covered by the Contract to any person whose admission is not specifically authorized in writing by the Contracting Officer.

ARTICLE 16. CONDITIONS AFFECTING THE WORK

A. GENERAL—The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions which can affect the work and the cost thereof. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the work as specified without additional expense to the District. The District assumes no responsibility for any understanding or representation concerning conditions made by any of its officers or agents prior to the execution of the Contract, unless such understanding or representation by the District is expressly stated in the Contract.

B. WORK AND STORAGE SPACE—Available work and storage space designated by the District shall be developed as required by the Contract or restored at completion of the project by the Contractor to a condition equivalent to that existing prior to construction. No payment will be made for furnishing or restoration of any work and storage space. If no area is designated or the area designated is not sufficient for the Contractor's operations, he shall obtain necessary space elsewhere at no expense or liability to the District.

C. WORK ON SUNDAYS, LEGAL HOLIDAYS AND AT NIGHT—No work shall be done at any time on Sundays or legal holidays or on any other day before 7 a.m. or after 7 p.m., except with the written permission of the Contracting Officer and pursuant to the requirements of the Police Requirements of the District.

D. EXISTING FEATURES—Subsurface and topographic information including borings data, utilities data and other physical data contained in the Contract or otherwise available, are

not intended as representations or warranties but are furnished as available information. The District assumes no expense or liability for the accuracy of, or interpretations made from, existing features. The Contractor shall be responsible for reasonable consideration of existing features above and below ground which may affect the project.

- E. UTILITIES AND VAULTS**—The Contractor shall take necessary measures to prevent interruption of service or damage to existing utilities within or adjacent to the project. It shall be the Contractor's responsibility to determine exact locations of all utilities in the field.

For any underground utility or vault encountered, the Contractor shall immediately notify the Contracting Officer and take necessary measures to protect the utility or vault and maintain the service until relocation by owner is accomplished. No additional payment will be made for the encountering of these obstructions.

In case of damage to utilities by the Contractor, either above or below ground, the Contractor shall restore such utilities to a condition equivalent to that which existed prior to the damage by repairing, rebuilding or otherwise restoring as may be directed, at the Contractor's sole expense. Damaged utilities shall be repaired by the Contractor or, when directed by the Contracting Officer, the utility owner will make needed repairs at the Contractor's expense.

No compensation, other than authorized time extensions, will be allowed the Contractor for protective measures, work interruptions, changes in construction sequence, changes in methods of handling excavation and drainage or changes in types of equipment used, made necessary by existing utilities, imprecise utility or vault information or by others performing work within or adjacent to the project.

- F. SITE MAINTENANCE**—The Contractor shall maintain the project site in a neat and presentable manner throughout the course of all operations, and shall be responsible for such maintenance until final acceptance by the District. Trash containers shall be furnished, maintained and emptied by the Contractor to the satisfaction of the Contracting Officer. Excavated earthwork, stripped forms and all other materials and debris not scheduled for reuse in the project shall be promptly removed from the site.

The Contracting Officer may order the Contractor to clean up the project site at any stage of work at no added expense to the District. If the Contractor fails to comply with this order, the Contracting Officer may require the work to be done by others and the costs will be charged to the Contractor.

Upon completion of all work and prior to final inspection, the Contractor shall clean up and remove from the project area and adjacent areas all excess materials, equipment, temporary structures, and refuse, and restore said areas to an acceptable condition.

- G. PRIVATE WORK**—Except as specifically authorized by the Contracting Officer, the Contractor shall not perform any private work abutting District projects with any labor, materials, tools, equipment, supplies or supervision scheduled for the Contract until all work under the Contract has been completed. Contract materials used for any unauthorized purpose shall be subtracted from Contract amount.

- H. DISTRICT OF COLUMBIA NOISE CONTROL ACT OF 1977**—The contractor shall be in strict compliance with D.C. Law 2-53, District of Columbia Noise Control Act of 1977 and all provisions thereof. Effective March 16, 1978. 24 D.C. Register 5293.

ARTICLE 17. OTHER CONTRACTS—The District may undertake or award other contracts for additional work and the Contractor shall fully cooperate with such other contractors and District employees and carefully coordinate his own work with such additional work as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by District employees. The District assumes no liability, other than authorized time extensions, for Contract delays and damages resulting from delays and lack of progress by others.

Page 25

ARTICLE 18. PATENT INDEMNITY—Except as otherwise provided, the Contractor agrees to indemnify the District and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any Letters Patent of the United States (except Letters Patent issued upon an application which is now or may hereafter be, for reasons of national security, ordered by the Federal Government to be kept classified or otherwise withheld from issue) arising out of the performance of the Contract or out of the use or disposal, by or for the account of the District, of supplies furnished or construction work performed hereunder.

ARTICLE 19. ADDITIONAL BOND SECURITY—If any surety upon any bond furnished in connection with the Contract becomes unacceptable to the District, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the District, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the District and of persons supplying labor or materials in the prosecution of the work contemplated by the Contract. Provided that upon the failure of the Contractor to furnish such additional security within ten (10) days after written notice so to do, all payments under the Contract will be withheld until such additional security is furnished.

ARTICLE 20. 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 shall 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 such commission, percentage, brokerage or contingent fee.

ARTICLE 21. APPOINTMENT OF ATTORNEY—The Contractor does hereby irrevocably designate and appoint the Clerk of the Superior Court of the District of Columbia and his successors 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, as well as service of all pleadings and other papers, in relation to any action or legal proceeding arising out of or pertaining to the Contract or the work required or performed hereunder.

The Contractor 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 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, pleading or other paper so served upon the said Clerk, provided that said Clerk shall have deposited in the United States mail, certified and postage prepaid, a copy of such process, notice, pleading or other papers addressed to the Contractor at the address stated in the Contract.

ARTICLE 22. 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.

ARTICLE 23. WAIVER—No waiver of any breach of any provision of the Contract shall operate as a waiver of such provision or of the Contract or as a waiver of subsequent or other breaches of the same or any other provision of the Contract; nor shall any action or non-action by the Contracting Officer or by the Mayor be construed as a waiver of any provision of the Contract or of any breach thereof unless the same has been expressly declared or recognized as a waiver by the Contracting Officer or the Mayor in writing.

ARTICLE 24. BUY AMERICAN

- A. AGREEMENT**—In accordance with the Buy American Act (41 USC 10a-10d), and Executive Order 10582, December 17, 1954 (3 CFR, 1954-58 Comp., p. 230), as amended by Executive Order 11051, September 27, 1962 (3 CFR, 1059-63 Comp., p. 635), the Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, material men and suppliers in the performance of the Contract, except for non-domestic material listed in the Contract.
- B. DOMESTIC CONSTRUCTION MATERIAL**—"Construction material" means any article, material or supply brought to the construction site for incorporation in the building or work. An unmanufactured construction material is a "domestic construction material" if it has been mined or produced in the United States. A manufactured construction material is a "domestic construction material" if it has been manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. "Component" means any article, material, or supply directly incorporated in a construction material. -
- C. DOMESTIC COMPONENT**—A component shall be considered to have been "mined, produced, or manufactured in the United States" regardless of its source, in fact, if the article, material or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the District to be not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.
- D. FOREIGN MATERIAL** - When steel materials are used in a project a minimal use of foreign steel is permitted. The cost of such materials can not exceed one-tenth of one percent of the total project cost, or \$2,500,000, whichever is greater.

ARTICLE 25. TAXES

- A. FEDERAL EXCISE**—Materials, supplies and equipment are not subject to the Federal Manufacturer's Excise Tax, if they are furnished or used in connection with the Contract provided that title to such materials, supplies and equipment passes to the District under the Contract. The Contractor shall in such cases furnish his subcontractors and suppliers with a purchaser's certificate in the form prescribed by the U.S. Internal Revenue Service.
- B. SALES AND USE TAXES**—Materials which are physically incorporated as a permanent part of real property are not subject to District of Columbia Sales and Use Tax. The Contractor shall, when purchasing such materials, furnish his suppliers with a Contractor's Exempt Purchase Certificate in the form prescribed in the Sales and Use Tax Regulations of the District of Columbia. Where the Contractor, subcontractor or material man has already paid the Sales and Use Tax on material, as prescribed above, the Sales and Use Tax Regulations of the District of Columbia permit the Contractor, subcontractor or material man to deduct the sales or use tax on the purchase price of the same on his next monthly return as an adjustment. However, the Contractor, subcontractor or material man must satisfy the Chief Financial Officer for the District of Columbia that no sum in reimbursement of such tax was included in the Contract or else that the District has received a credit under the Contract in an amount equal to such tax.

District of Columbia Sales and Use Tax shall be paid on any material and supplies, including equipment rentals, which do not become a physical part of the finished project. (See District of Columbia Sales and Use Tax Administration Ruling No. 6).

The Contractor, subcontractor, or material supplier shall provide proof of compliance with the provisions of D.C. Law 9-260, as amended, codified in D.C. Code 46-103, Employer Contributions, prior to award.

Material and supplies required under contracts relating to Glenn Dale Hospital, Glenn Dale, Maryland, and Children's Center, Laurel, Maryland, are subject to the Maryland State Sales and Use Tax, effective July 1, 1968. BIDDERS SHALL INCLUDE SUCH TAX IN THEIR BIDS. Contracts relating to Department of Corrections, Lorton, Virginia, are subject to the Virginia Retail Sales and Use Tax, effective September 1, 1966, when incorporated in public works contracts of the District. BIDDERS SHALL INCLUDE SUCH TAX IN THEIR BIDS.

The Contractor, subcontractor, or material supplier shall provide proof of compliance with the applicable tax filing and licensing requirements set forth in D.C. Code, Title 47, Taxation and Fiscal Affairs, prior to contract award.

ARTICLE 26. SUSPENSION OF WORK—The Contracting Officer may order the Contractor in writing to suspend, delay or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the District.

If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed or interrupted by an act of the Contracting Officer in the administration of the Contract, or by his failure to act within the time specified in the Contract (or if no time is specified, within a reasonable time), an adjustment will be made for an increase in the cost of performance of the Contract (excluding profit) necessarily caused by such unreasonable suspension, delay or interruption and the Contract modified in writing accordingly. However, no adjustment will be made under this Article for any suspension, delay or interruption to the extent:

1. That performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the contractor, or
2. For which an equitable adjustment is provided or excluded under any other provision of the Contract.

No claim under this Article shall be allowed:

1. For any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and
2. Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the Contract.

ARTICLE 27. SAFETY PROGRAM

A. GENERAL—In order to provide safety controls for the protection of the life and health of District and Contract employees and the general public; prevention of damage to property, materials, supplies, and equipment; and for avoidance of work interruptions in the performance of the Contract, the Contractor shall comply with all applicable Federal and local laws governing safety, health and sanitation including the Safety Standards, Rules and Regulations issued by the American National Standards, U. S. Department of Labor, U. S. Department of Health and Human Services, D. C. Minimum Wage and Industrial Safety Board and the latest edition of "Manual of Uniform Traffic Control Devices" issued by the Federal Highway Administration.

The Contractor shall also take or cause to be taken such additional safety measures as the Contracting Officer may determine to be reasonably necessary.

The Contractor shall designate one person to be responsible for carrying out the Contractor's obligation under this Article.

The Contractor shall maintain an accurate record of all accidents resulting in death, injury, occupational disease, and/or damage to property, materials, supplies, and equipment incident to work performed under the Contract. Copies of these reports shall be furnished to the Contracting Officer within two working days after occurrence.

The Contracting Officer will notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately take corrective action. Such notice, when delivered to the Contractor or his representative at the site of the work, shall be deemed sufficient for the purpose. If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

This Article is applicable to all subcontractors used under the Contract and compliance with these provisions by the subcontractors will be the responsibility of the Contractor.

(In Contracts involving work of short duration or of non-hazardous character, the following Section B. will be deleted by Special Provision)

B. CONTRACTOR'S PROGRAM SUBMISSION—Prior to commencement of the work, the Contractor shall:

1. Submit in writing to the Contracting Officer for his approval his program for complying with this Article for accident prevention.
2. Meet with the Contracting Officer's Safety Representative after submission of the above program to develop a mutual understanding relative to the administration of the overall safety program.

ARTICLE 28. RETENTION OF RECORDS—Unless otherwise provided in the Contract, or by applicable statute, the Contractor, from the effective date of Contract completion and for a period of three years after final settlement under the Contract, shall preserve and make available to the District at all reasonable times at the office of the Contractor but without direct charge to the District, all his books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under the Contract.

LABOR PROVISIONS
(Construction Contract)

ARTICLE 1. DAVIS-BACON ACT (40 USC 276a-276a 7) —Each Contractor and subcontractor at any tier contracting for any part of Contract work in excess of \$2,000 for construction alteration, and/or repair, including painting and decorating of public buildings and public works and which requires or involves the employment of mechanics and/or laborers shall be subject to the Davis-Bacon Act provisions as follows:

A. MINIMUM WAGES—

1. All mechanics and laborers employed or working upon the site of the work or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the United States Department of Labor, hereinafter referred to as the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such Laborers and mechanics; and the wage determination decision shall be posted by the contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv). Also for the purpose of this clause; regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.
2. The contracting officer shall require that any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination and a report of the action taken shall be sent by the Contracting Officer to the Secretary of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics, including apprentices and trainees, to be used, the question accompanied by the recommendation of the Contracting Officer shall be referred to the Secretary for final determination.
3. The Contracting Officer shall require, whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question, accompanied by the recommendation of the Contracting Officer, shall be referred to the Secretary of Labor for determination.
4. If the Contractor does not make payments to a trustee or other third person, he may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is a part of this contract: Provided, however, The Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the

contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

B. WITHHOLDING.—The Contracting Officer may withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices and trainees, employed by the contractor or any subcontractor on the work the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice or trainee, employed or working on the site of the work or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project, all or part of the wages required by the contract, the District may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

C. PAYROLLS AND BASIC RECORDS. —

1. Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work, or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project. Such records will contain the name and address of each such employee, his correct classification, rates of pay, (including rates of contributions or costs anticipated of the types described in section I(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1) (iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section I(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing, to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.
2. The contractor will submit weekly a copy of all payrolls to the Contracting Officer if the agency is a party to the contract, but if the agency is not such a party the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Contracting Officer. The copy shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each laborer or mechanic conform with the work he performed. A submission of a "Weekly Statement of Compliance" which is required under this contract and the Copeland regulations of the Secretary of Labor (29 CFR, Part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor under 29 CFR 5.5(a)(1)(iv) shall satisfy this requirement. The prime contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The contractor will make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of the District and the Department of Labor, and will permit such representatives to interview employees during working hours on the job. Contractors employing apprentices or trainees under approved programs shall include a notation on the first weekly certified payrolls submitted to the Contracting Officer that their employment is pursuant to an approved program and shall identify the program.

ARTICLE 2. CONVICT LABOR (18 USC 438)—Convict labor shall not be used on Contract work unless otherwise provided by law.

ARTICLE 3. APPRENTICES AND TRAINEES

- A. APPRENTICES**—Apprentices shall be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with the Apprenticeship Council, D.C. Department of Labor. The allowance ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Contractor a to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in Section B. of this Article or is not registered as above, shall be paid the wage rate determined by the Secretary of Labor or the classifications of work he actually performed. The Contractor and Subcontractor shall furnish to the Contracting Officer written evidence of the registration of his appropriate ratios and wage rates for the areas of construction, prior to using any apprentice on the Contract.
- B. TRAINEES**—Trainees will be permitted to work as such when they are bona fide trainees employed pursuant to a program approved by the Contracting Officer and Apprenticeship Council, D.C. Department of Labor.
- C. REQUIREMENTS**—The Contractor agrees to hire for the performance of the Contract a number of apprentices or trainees or both, in each occupation, which bears to the average number of the journeymen in that occupation to be employed in the performance of the Contract the applicable ratios as determined by the Apprenticeship Council, D. C. Department of Labor.
1. The Contractor shall assure that 25 percent of such apprentices or trainees in each occupation are in their first year of training, when feasible. Feasibility here involves a consideration of:
 - a. The availability of training opportunities for first year apprentices;
 - b. The hazardous nature of the work for beginning workers;
 - c. Excessive unemployment of apprentices in their second and subsequent years of training.
 2. The Contractor shall maintain records of employment, by trade, of the number of apprentices and trainees, apprentices and trainees by first year of training, and of journeymen, and the wages paid and hours of work of such apprentices, trainees and journeymen. The Contractor shall make these records available for inspection upon request of the Contracting Officer and the Apprenticeship Council, D. C. Department of Labor.
 3. The Contractor who claims compliance based on the criterion stated in 29 CFR5.a. agrees to maintain records of employment as described in 29 CFR5.a..3(a)(2) on non-governmental and non-governmentally assisted construction work done during the performance of the Contract in the same labor market area. The Contractor shall make these records available for inspection upon request of the Contracting Officer and the Apprenticeship Council, D. C. Department of Labor.
 4. The Contractor agrees to supply one copy of the written notices as required in accordance with 29 CFR. 5.a.4(c) at the request of the Contracting Officer. The Contractor shall supply at 3 month intervals during performance of the Contract and after completion of the Contract performance a statement containing a breakdown by craft of hours worked and wages paid for first year apprentices and trainees, other apprentices and trainees, and journeymen. Two copies of the statement shall be submitted to the Contracting Officer, who will submit a copy to the Apprenticeship Council, D. C. Department of Labor.

5. Section 5, D. C. Law 2—156, AC] 2—325, dated December 29, 1978, is hereby incorporated as part of this Amendment as follows:

"All prime contractors and subcontractors who contract with the District of Columbia Government to perform construction or renovation work with a single contract or cumulative contracts of at least \$500,000, let within a twelve (12) month period, shall be required to register an apprentice.—ship program with the District of Columbia Apprenticeship Council." 25 D.C. Register 6991.

ARTICLE 4. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 USC 327- 330)

- A. OVERTIME BASIS**—Each Contractor and subcontractor at any tier contracting for any part of Contract work which may require or involve the employment of laborers, mechanics, watchmen or guards, apprentices or trainees shall not require or permit any laborer, mechanic, watchman or guard, apprentice or trainee in any workweek in which he is employed on such work, to work in excess of eight (8) hours in any calendar day or in excess of forty (40) hours in such workweek unless such laborer, mechanic, watchman or guard, apprentice or trainee receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight (8) hours in any calendar day or in excess of forty (40) hours in such workweek, as the case may be.
- B. LIABILITY FOR UNPAID WAGES**—In the event of violation of the provisions of Section A, the Contractor and any subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the District for Liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman or guard, apprentice or trainee employed in violation of any provision of Section A, in the amount of \$10 for each calendar day on which such employee was required or permitted to work in excess of eight (8) hours or in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by Section A.

The Contracting Officer may withhold or cause to be withheld from the Contractor such sums as administratively determined to satisfy any liability of the Contractor and subcontractors for unpaid wages and liquidated damages as herein provided. In the event of failure to pay any laborer, mechanic, watchman, or guard, apprentice or trainee employed or working on the work site, all or part of the wages required by the Contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds until such violations have ceased.

- C. DISPUTES**—Any Contractor or subcontractor aggrieved by the withholding of a sum as liquidated damages as provided shall have the right, within sixty (60) days thereafter, to appeal to the Contracting Officer in the case of liquidated damages withheld for the use and benefit of the District. The Contracting Officer shall have authority to review the administrative determination of liquidated damages and to issue a final order affirming such determination; or if it is found that the sum determined is incorrect or that the Contractor or subcontractor violated these Labor Provisions inadvertently notwithstanding the exercise of due care on his part and that of his agents, recommendations may be made to the Secretary of Labor that an appropriate adjustment in liquidated damages be made, or that the Contractor or subcontractor be relieved of liability for such liquidated damages. The Secretary will review all pertinent facts in the matter and may conduct such investigation as he deems necessary so as to affirm or reject the recommendation. The decision of the Secretary shall be final. In all such cases in which a Contractor or subcontractor may be aggrieved by a final order for the withholding of liquidated damages as herein before provided, the Contractor or subcontractor may, within sixty (60) days after such final order, file a claim per Article 7 of the General Provisions, provided, however, that final orders of the Contracting Officer or the Secretary of Labor as the case may be, shall be conclusive with respect to findings of fact if such findings are supported by substantial evidence.

- D. VIOLATION PENALTY**—If the Contractor or subcontractor who employs, directs & controls any laborer or mechanic employed in the performance of any work contemplated by the Contract, shall intentionally violate any provision herein, he shall be deemed guilty of a misdemeanor, and for each and every such offense shall, upon conviction, be punished by a fine of not to exceed \$1,000 or by imprisonment for not more than six (6) months, or by both such fine and imprisonment, in the discretion of the court having jurisdiction thereof (Section 106 Title 1, P.L. 87—851, 40 USC Sec. 332, 76 Stat. 359).
- E. HEALTH AND SAFETY STANDARDS**—It is a condition of the Contract, and shall be made a condition of each subcontract under the Contract, that the Contractor and any subcontractor shall not require any laborer or mechanic employed in performance of the Contract to work in surroundings or wider working condition which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards per 29 CFR Part 1518.

The Secretary of Labor is authorized to make such inspections, hold such hearings, issue such orders, and make such decisions based on findings of fact, as are deemed necessary to gain compliance with this Section and any health and safety standard promulgated by the Secretary. In the event that the Secretary of Labor determines non-compliance under the provisions of this Section after an opportunity for an adjudicatory hearing by the Secretary of any condition of the Contract, the District shall have the right to cancel the Contract, and to enter into other contracts for the completion of the Contract work, charging any additional cost to the Contractor.

ARTICLE 5. COPELAND ACT (18 USC 874, and 40 USC 276c) - Each Contractor and subcontractor at any tier contracting for any part of Contract work in excess of \$2,000.00 shall be subject to the Copeland Act provisions as follow:

- A. DEFINITION**—As used in this Article, the term "employee" shall not apply to persons in classifications higher than that of laborer or mechanic and those who are the immediate supervisors of such employees.
- B. WEEKLY COMPLIANCE STATEMENT**—The Contractor and each subcontractor engaged in the construction, prosecution, completion or repair of any public building or public work shall furnish each week a statement with respect to the wages paid each of his employees engaged on work covered by these Labor Provisions during the preceding weekly payroll period. The statement shall be executed by the Contractor or subcontractor, or by an authorized officer or employee of the Contractor or subcontractor, who supervises the payment of wages, and shall be on the form attached at the end of these Labor Provisions and entitled "Weekly Statement of Compliance" (Form No. DC 2640-11).

Each weekly statement required shall be delivered by the Contractor or subcontractor, within seven (7) days after regular payment date of the payroll period, to a representative of the Contracting Officer in charge at the site of the building or work. After each examination and check as may be made, such statement, or copy thereof, shall be kept available, or shall be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the US. Department of Labor.

Upon a written finding by the Contracting Officer, the Secretary of Labor may provide reasonable limitations, variations, tolerances and exemptions from the requirements of this Section subject to such conditions as the Secretary of Labor may specify.

- C. PAYROLLS AND RECORDS**—The Contractor and each subcontractor shall preserve his weekly payroll records for a period of three (3) years from date of completion of the Contract. The payroll records shall set out accurately and completely the name, address and Social Security Number of each laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records shall be made available at all times for inspection by the Contracting Officer, and by authorized representatives of the U.S. Department of Labor.

D. PAYROLL DEDUCTIONS NOT SUBJECT TO SECRETARY OF LABOR APPROVAL—

Deductions made under the circumstances or in the situations described in paragraphs of this Section may be made without application to and approval at the Secretary of Labor:

1. Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or State withholding income taxes and Federal social security taxes.
2. Any deduction of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds.
3. Any deduction of amounts required by court process to be paid to another, unless the deduction is in favor of the Contractor, subcontractor, or any affiliated person, or when collusion or collaboration exists.
4. Any deduction constituting a contribution on behalf of the person employed to funds established by the employer, or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities or retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents: Provided, however, that the following standards are met:
 - a. The deduction is not otherwise prohibited by law;
 - b. it is either voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or provided for in a bona fide collective bargaining agreement between the Contractor or subcontractor and representatives of his employees;
 - c. No profit or other benefit is otherwise obtained, directly or indirectly, by the Contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and
 - d. The deductions - shall serve the convenience and interest of the employee.
5. Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.
6. Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal, State and District credit union statutes.
7. Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.
8. Any deduction voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.

9. Any deduction to pay regular union initiation fees and membership dues, not including fines or special assessments; provided, however, that a collective bargaining agreement between the Contractor or subcontractor and representatives of his employees provides for such deductions and the deductions are not otherwise prohibited by law.
 10. Any deduction not more than for the "reasonable cost" of board, lodging, or other facilities meeting the requirements of Section 3(m) of the Fair Labor Standards Act of 1938, as amended, and Part 531 of said title. When such a deduction is made the additional records required under 516.25(a) of this title shall be kept.
- E. PAYROLL DEDUCTIONS SUBJECT TO SECRETARY OF LABOR APPROVAL**—The Contractor and any subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under Section D. The Secretary may grant permission whenever he finds that:
1. The Contractor, subcontractor or any affiliated person does not make a profit or benefit directly from the deduction, either in the form of a commission, dividend or otherwise;
 2. The deduction, is not otherwise prohibited by law;
 3. The deduction is either:
 - a. voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance, or
 - b. provided for in a bona fide collective bargaining agreement between the Contractor or subcontractor and representatives of its employees; and
 4. The deduction serves the convenience and interest of the employee.
- F. APPLICATIONS FOR SECRETARY OF LABOR APPROVAL**—Any application for the making of payroll deductions under Section E. shall comply with the requirements prescribed in Paragraphs 1 through 5:
1. The application shall be in writing and shall be addressed to the Secretary of Labor.
 2. The application shall identify the Contract under which the work in question is to be performed. Permission will be given for deductions only on specific, identified contracts, except upon a showing of exceptional circumstances.
 3. The application shall state affirmatively that there is compliance with the standards set forth in Section B. The affirmation shall be accompanied by a full statement of the facts indicating such compliance.
 4. The application shall include a description of the proposed deduction, the purpose to be served thereby, and the classes of laborers or mechanics from whose wages proposed deduction would be made.
 5. The application shall state the name and business of any third person to whom any funds obtained from the proposed deductions are to be transmitted and the affiliation of such person, if any, with the applicant.
- G. ACTION BY SECRETARY OF LABOR UPON APPLICATIONS**—The Secretary will decide whether or not the requested deduction is permissible under provisions of Section B, and shall notify the applicant in writing of his decision.
- H. PROHIBITED PAYROLL DEDUCTIONS**—Deductions not elsewhere stipulated and which are not found to be permissible under Section B are prohibited.

- I. **METHODS OF PAYMENT OF WAGES**—The payment of wages shall be by cash, negotiable instruments payable on demand, or the additional forms of compensation for which deductions are permissible. No other methods of payment shall be recognized on work subject to the Copeland Act.

ARTICLE 6. RESERVED

ARTICLE 7. NONSEGREGATED FACILITIES—The Contractor certifies that he does not and will not maintain or provide for his employees any segregated facility at any of his establishments; that he does not and will not permit his employees to perform their services at any location under his control where segregated facilities are maintained; and that he will obtain and retain identical certifications from proposed subcontractors prior to award or subcontracts.

“Segregated facilities” shall mean any waiting room, work area, wash and rest rooms, restaurant and other eating area, time clock, locker room and other storage or dressing area, parking lot, drinking fountain, recreation or entertainment area, transportation and housing facility, provided for employees which is segregated by explicit directive or is segregated on the basis of race, color, age, sex, religion or national origin, because of habit, local custom or otherwise. Penalty for violation or making false statements is prescribed in 18 USC 1001.

J.1.2

**US DEPARTMENT OF LABOR WAGE DETERMINATION GENERAL
DECISION NUMBER DC080004, DATED 01/08/2010**

DOL Wage Determination for Building Construction Projects dated 01/08/2010

General Decision Number: DC080004 01/08/2010 DC4

State: District of Columbia

Construction Type: Building

County: District of Columbia Statewide.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Modification Number	Publication Date
0	06/12/2009
1	06/19/2009
2	06/26/2009
3	07/03/2009
4	07/10/2009
5	07/31/2009
6	08/14/2009
7	09/18/2009
8	10/02/2009
9	11/20/2009
10	01/08/2010

ASBE0024-007 10/01/2008

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR.....	\$ 29.18	14.18

Includes the application of all insulating materials,
protective coverings, coatings and finishes to all types of
mechanical systems

ASBE0024-008 10/01/2008

	Rates	Fringes
ASBESTOS WORKER: HAZARDOUS MATERIAL HANDLER (REMOVAL FROM MECHANICAL SYSTEMS, WHICH WILL NOT BE REPLACED OR SCRAPPED).....	\$ 17.85	6.60

BRDC0001-002 05/04/2009

	Rates	Fringes
BRICKLAYER.....	\$ 26.31	7.11

 CARP0132-008 05/01/2009

	Rates	Fringes
CARPENTER, Including Drywall Hanging, Formsetting and Carpet/Soft Floor Laying.....	\$ 26.38	7.00
PILEDRIVERMAN.....	\$ 24.48	7.70

 CARP1831-002 04/01/2009

	Rates	Fringes
MILLWRIGHT.....	\$ 29.39	6.55

 ELEC0026-016 06/01/2009

	Rates	Fringes
ELECTRICIAN, Including HVAC Temperature Control Installation.....	\$ 37.60	12.28+a

a. PAID HOLIDAYS: New Year's Day, Martin Luther King Jr.'s
 Birthday, Inauguration Day, Memorial Day, Fourth of July,
 Labor Day, Veterans Day, Thanksgiving Day, the day after
 Thanksgiving and Christmas Day or days designated as legal
 holidays by the Federal Government.

 ELEC0026-017 09/01/2008

	Rates	Fringes
ELECTRICIAN: COMMUNICATION TECHNICIAN.....	\$ 24.25	3%+6.87

SCOPE OF WORK: Includes low voltage construction,
 installation, maintenance and removal of teledata
 facilities (voice, data and video) including outside plant,
 telephone and data inside wire, interconnect, terminal
 equipment, central offices, PABX, fiber optic cable and
 equipment, railroad communications, micro waves, VSAT,
 bypass, CATV, WAN (Wide area networks), LAN (Local area
 networks) and ISDN (Integrated systems digital network).

WORK EXCLUDED: The installation of computer systems in
 industrial applications such as assembly lines, robotics
 and computer controller manufacturing systems. The
 installation of conduit and/or raceways shall be installed
 by Inside Wiremen. On sites where there is no Inside
 Wireman employed, the Teledata Technician may install

raceway or conduit not greater than 10 feet. Fire alarm work is excluded on all new construction sites or wherever the fire alarm system is installed in conduit. All HVAC control work.

* ELEV0010-001 01/01/2010

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 37.30	20.035+a+b

a. PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Christmas Day and the Friday after Thanksgiving.

b. VACATIONS: Employer contributes 8% of basic hourly rate for 5 years or more of service; 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.

IRON0005-005 06/01/2009

	Rates	Fringes
IRONWORKER, ORNAMENTAL AND STRUCTURAL.....	\$ 28.83	13.295

IRON0201-006 05/01/2009

	Rates	Fringes
IRONWORKER, REINFORCING.....	\$ 25.20	14.33

LABO0657-015 06/01/2009

	Rates	Fringes
LABORER: Skilled.....	\$ 20.22	5.25

FOOTNOTE: Potmen, power tool operator, small machine operator, signalmen, laser beam operator, waterproofer, open caisson, test pit, underpinnig, pier hole and ditches, ladders and all work associated with lagging that is not expressly stated, strippers, operator of hand derricks, vibrator operators, pipe layers, or tile layers, operators of jackhammers, paving breakers, spaders or any machine that does the same general type of work, carpenter tenders, scaffold builders, operators of towmasters, scootcretes, buggymobiles and other machines of similar character, operators of tampers and rammers and other machines that do the same general type of work, whether powered by air, electric or gasoline, builders of trestle scaffolds over one tier high and sand blasters, power and chain saw operators used in clearing, installers of well points, wagon drill operators, acetylene burners and licensed powdermen, stake jumper, structural demolition.

MARB0002-004 05/01/2009

	Rates	Fringes
MARBLE/STONE MASON.....	\$ 32.63	12.99

INCLUDING pointing, caulking and cleaning of All types of
masonry, brick, stone and cement EXCEPT pointing, caulking,
cleaning of existing masonry, brick, stone and cement
(restoration work)

MARB0003-006 05/01/2009

	Rates	Fringes
TERRAZZO WORKER/SETTER.....	\$ 26.04	9.09

MARB0003-007 05/01/2009

	Rates	Fringes
TERRAZZO FINISHER.....	\$ 20.48	8.19

MARB0003-008 05/01/2009

	Rates	Fringes
TILE SETTER.....	\$ 25.29	9.09

MARB0003-009 05/01/2009

	Rates	Fringes
TILE FINISHER.....	\$ 20.48	8.19

PAIN0051-014 06/01/2008

	Rates	Fringes
GLAZIER		
Contracts \$2 million and		
under.....	\$ 25.12	7.46
Contracts over \$2 million...	\$ 27.84	7.46

PAIN0051-015 06/01/2009

	Rates	Fringes
PAINTER		
Brush, Roller, Spray and		
Drywall Finisher.....	\$ 24.64	7.86

PLAS0891-005 07/01/2009

	Rates	Fringes
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PLASTERER.....	\$ 27.00	5.82

PLAS0891-006 05/01/2008		
	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER....	\$ 27.15	6.47

PLAS0891-007 07/01/2008		
	Rates	Fringes
FIREPROOFER		
Handler.....	\$ 11.50	3.93
Mixer/Pump.....	\$ 14.00	3.93
Sprayer.....	\$ 19.00	3.93
<p>Spraying of all Fireproofing materials. Hand application of Fireproofing materials. This includes wet or dry, hard or soft. Intumescent fireproofing and refraction work, including, but not limited to, all steel beams, columns, metal decks, vessels, floors, roofs, where ever fireproofing is required. Plus any installation of thermal and acoustical insulation. All that encompasses setting up for Fireproofing, and taken down. Removal of fireproofing materials and protection. Mixing of all materials either by hand or machine following manufactures standards.</p>		

PLUM0005-008 08/01/2009		
	Rates	Fringes
PLUMBER		
Apartment Buildings over 4 stories (except hotels).....	\$ 22.66	9.36+a
ALL Other Work.....	\$ 37.67	14.69+a
<p>a. PAID HOLIDAYS: Labor Day, Veterans' Day, Thanksgiving Day and the day after Thanksgiving, Christmas Day, New Year's Day, Martin Luther King's Birthday, Memorial Day and the Fourth of July.</p>		

PLUM0602-008 08/01/2009		
	Rates	Fringes
PIPEFITTER, Including HVAC		
Pipe Installation.....	\$ 36.87	15.47+a
<p>a. PAID HOLIDAYS: New Year's Day, Martin Luther King's Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day and the day after Thanksgiving and Christmas Day.</p>		

ROOF0030-016 05/01/2009		

	Rates	Fringes
ROOFER.....	\$ 25.80	8.26

* SFDC0669-002 01/01/2010		

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	\$ 30.45	16.35

SHEE0100-015 07/01/2009		

	Rates	Fringes
SHEET METAL WORKER (Including HVAC Duct Installation).....	\$ 33.19	12.76

SUDC2009-003 05/19/2009		

	Rates	Fringes
LABORER: Common or General.....	\$ 13.04	2.80
LABORER: Mason Tender - Cement/Concrete.....	\$ 15.40	2.85

LABORER: Mason Tender for
pointing, caulking, cleaning
of existing masonry, brick,
stone and cement structures
(restoration work); excludes
pointing, caulking and
cleaning of new or
replacement masonry, brick,
stone and cement.....\$ 11.67

POINTER, CAULKER, CLEANER:
Includes pointing, caulking,
cleaning of existing masonry,
brick, stone and cement
structures (restoration
work); excludes pointing,
caulking, cleaning of new or
replacement
masonry, brick, stone or
cement.....\$ 18.88

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.

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Unlisted classifications needed for work not included within

the scope of the
classifications listed may be added after award only as
provided in the labor
standards contract clauses (29 CFR 5.5(a)(1)(ii)).

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In the listing above, the "SU" designation means that rates
listed under the
identifier do not reflect collectively bargained wage and
fringe benefit
rates. Other designations indicate unions whose rates have
been determined
to be prevailing.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can
be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on
a wage
determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests
for summaries
of surveys, should be with the Wage and Hour Regional Office
for the area in
which the survey was conducted because those Regional Offices
have
responsibility for the Davis-Bacon survey program. If the
response from this
initial contact is not satisfactory, then the process described
in 2.) and
3.) should be followed.

With regard to any other matter not yet ripe for the formal
process
described here, initial contact should be with the Branch of
Construction
Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7).

Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION