| SOLICITATION, OFFER, AND AWARD | 1.Caption **Interior Improvements to the Clerk of the Superior Court – Suite 2500** | Page of Pages 1 | 54 |
|---|---|---|---|

| 2. Contract Number | 3. Solicitation Number | 4. Type of Solicitation | 5. Date Issued | 6. Type of Market |
|---|---|---|---|---|
| | CPFMD-17-1130 | ☐ Sealed Bid (IFB)<br>☒ Sealed Proposals (RFP)<br>☐ Sole Source<br>☐ Emergency | 11- 30-16 | ☒ Open - Construction, Building (General Construction, etc.)<br>☐ Set Aside |

| 7. Issued By | 8. Address Offer to: |
|---|---|
| **DISTRICT OF COLUMBIA COURTS**<br>**CAPITAL PROJECTS FACILITIES MANGAGEMENT DIVISION**<br>**616 H STREET, N.W., ROOM 622**<br>**WASHINGTON, D.C. 20001** | **DISTRICT OF COLUMBIA COURTS**<br>**CAPITAL PROJECTS FACILITIES MANAGEMENT DIVISION**<br>**616 H STREET, N.W., ROOM 622**<br>**WASHINGTON, D.C. 20001** |

NOTE: In sealed bid solicitations "offer" or "Contractor" means "bid or "bidder"

## SOLICITATION

9. Sealed offers in original and 3 copies for furnishing the items in the Schedule will be submitted to the address listed above in Section 8; at the attention of Ms. Monica I. Wilkerson, not later than 3:00 p.m.(est.) (Hour) local time January 9, 2017 (Date)

CAUTION: See L.4-- **PROPOSAL SUBMISSION DATE AND TIME, AND LATE SUBMISSIONS, LATE MODIFICATIONS, WITHDRAWAL OR MODIFICATION OF PROPOSALS AND LATE PROPOSALS.** All offers are subject to all terms & conditions contained in solicitation.

| 10. For Information Contact | A. Name | B. Telephone (Area Code) | (Number) | (Ext) | C. E-mail Address |
|---|---|---|---|---|---|
| | Monica I. Wilkerson | | | | Monica.Wilkerson@dcsc.gov |

11. Table of Contents

| (X) | Section | Description | Page No. | (X) | Section | Description | Page No. |
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**Total Proposed Contract Amount (from page 2 – Price Schedule) $_____**

12. In conjunction with the above, the undersigned agrees, if this offer is accepted within 120 calendar days from the receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified herein.

| 13. Discount for Prompt Payment | 10 Calendar days % | 20 Calendar days % | 30 Calendar days % | ____ Calendar days % |
|---|---|---|---|---|

| 14. Acknowledgement of Amendments (The Contractor acknowledges receipt of amendments to the SOLICITATION): | Amendment Number | Date | Amendment Number | Date |
|---|---|---|---|---|
| | | | | |
| | | | | |

| 15A. Name and Address of Contractor | | 16. Name and Title of Person Authorized to Sign Offer/Contract |
|---|---|---|
| 15B. Telephone (Area Code) (Number) (Ext) | ☐ 15 C. Check if remittance address is different from above – Refer to section G | 17. Signature / 18. Award Date |

## AWARD (TO BE COMPLETED BY THE DC COURTS)

| 19. Accepted as to Items Numbered | 20. Amount | 21. Accounting and Appropriation/Certification of Funding date: |
|---|---|---|
| 22. Name of Contracting Officer (Type or Print)<br>Dr. Cheryl Bailey | 23. Signature of Contracting Officer (Courts) | 24. Award Date |

All written communications regarding this solicitation should be ***addressed*** to the Contracting Officer at the mailing address listed on page 1. All communications should be ***directed*** by e-mail to: Monica.Wilkerson@dcsc.gov

This solicitation is an **OPEN MARKET** procurement.

# SECTION B: CONTRACT TYPE, SUPPLIES OR SERVICES AND PRICE/COST

**B.1** The District of Columbia Courts (hereafter "Courts") is seeking a contractor to provide for the Moultrie Courthouse IA, installation of fire sprinkler piping and devices; installation of gypsum board partitions; installation of doors; door frames and door hardware; installation of various millwork and "built-in" construction items; installation of kitchen equipment; installation of lighting fixture and other ceiling-mounted devices; installation of demountable partitions; installation and maintenance of temporary return air filters; temporary signage as specified; erection of temporary dust protection to protect adjacent public areas; and perform miscellaneous coordination duties with other Courts staff and vendor personnel including IT, communications, A/V, furniture, fire alarm; security, third party inspection staff etc., for work located throughout the limits of the construction area.

**B.2** The Courts contemplates award of a single fixed price contract. The Magnitude of this Construction Projects is between $250,000 and $500,000. **The Courts require completion of this contract within one hundred and eighty (180) days from Notice to Proceed (NTP).**

## B.3 PRICE SCHEDULE:

| Contract Line Item No. (CLIN) | Item Description<br><br>Demolition and Build Out of Interior Improvements to the Clerk of the Superior Court – Suite 2500 | Total Price |
|---|---|---|
| 0001 | **Demolition of existing spaces located on the 2nd Floor within the H. Carl Moultrie Courthouse Building,** as per Section C.5, Requirements and all other applicable documents, to include, but not be limited to, Drawings and Specifications found in **Attachment J.23** of this solicitation. | $_____ |
| 0002 | **Build Out of Interior improvements to the Clerk of the Superior Court Suite,** as per Section C.5, Requirements and all other applicable documents, to include, but not be limited to, Drawings and Specifications found in **Attachment J.23** of this solicitation. | $_____ |
| 0003 | CSO allowance, as per C.5.2.5, Requirements | $30,000.00 |
| 0004 | Hazardous Material Abatement allowance, as per C.5.3.1, Requirements | $40,000.00 |
| | Existing Non-Compliance Condition allowance, as per C.5.6, Requirements | $20,000.00 |
| **Grand Total for B.1** | | $_____ |

B.4 In conjunction with the Price Schedule B.1 above, the Offeror is required to complete the cost and price data information found in **Attachment J.13** - Bid/Offer Breakdown Sheet, made a part of, and incorporated into this solicitation/award. Offerors shall provide certified cost and

price data by completing the Bid/Offer Breakdown Sheet incorporated under **Attachment J.13** of this RFP and submit same with Offer in accordance with instructions found in Section L.4.3 of this RFP.

**B.5** The Contract Sum is based upon the fact that this contract is a Firm-Fixed Priced contractual agreement (FFP).

**B.6** Unit prices, if any, are to be fully incorporated into the Offer Breakdown Sheet (**Attachment J.13).**

**B.7** The Contracting Officer, or any of its duly authorized representatives shall, until (3) three years after final payment, have the right to examine any directly pertinent books, documents, papers and record of the Contractor involving transactions related to the contract.

**B.8** The Contractor shall be expected to maintain complete and accurate records justifying all actual and accrued expenditures. The Contractor's records shall be subject to periodic audit by the Courts.

# SECTION C: SPECIFICATIONS/WORK STATEMENT

## C.1 SCOPE:

The scope of work for the Interior Improvements to the Clerk of the Courts Suite 2500 in the Moultrie Courthouse includes, but is not limited to, the following: installation of fire sprinkler piping and devices; installation of gypsum board partitions; installation of doors; door frames and door hardware; installation of various millwork and "built-in" construction items; installation of kitchen equipment; installation of lighting fixture and other ceiling-mounted devices; installation of demountable partitions; installation and maintenance of temporary return air filters; temporary signage as specified; erection of temporary dust protection to protect adjacent public areas; and perform miscellaneous coordination duties with other Courts staff and vendor personnel including IT, communications, A/V, furniture, fire alarm; security, third party inspection staff etc., for work located throughout the limits of the construction area.

## C.2 APPLICABLE DOCUMENTS:

C.2.1 The following documents are applicable to this procurement and are hereby reference:

**C.2.2** Table 1 below:

| Item No.(s) | Document Type | Title | Date |
|---|---|---|---|
| 0001 –0004 | DC Courts | DC Courts General Contract Provisions | April 2008 |
| 0001 –0004 | DC Courts | Procurement Guidelines of the DC Courts | March 21, 2011, as amended |
| 0001 – 0004 | DC Courts | General Conditions of the Contract for Construction | November 2016 |
| 0001 – 0004 | DC Courts | Sexual Harassment Policy | July 21, 1999 |

**C.3 DEFINITIONS:** These terms when used in this RFP have the following meanings:

**C.3.1 "Construction and demolition materials and debris" means materials and debris generated during construction, renovation, demolition, or dismantling of all structures and buildings and associated infrastructure.**

**C.3.2 "Diverting" means redirecting materials that might otherwise be placed in the waste stream to recycling or recovery, excluding diversion to waste-to-energy facilities.** Request for Proposal (RFP) Documents include the solicitation and all incorporated Contract Documents. The Solicitation/Offer/Award form found on page one of the Solicitation serves as a three in one form and will be used in soliciting, when Offeror's submit proposals and in the resultant contract award.

**C.3.3** Definitions set forth in the District of Columbia Courts Standard Contract Provisions for Construction, or in other Contract Documents are applicable to the Offering Documents.

**C.3.4** "Contract" is intended to refer to a contract for construction, unless another meaning is clearly intended.

**C.3.5** "Design" means defining the construction requirement (including the functional relationships and technical systems to be used, such as architectural, environmental, structural, electrical, mechanical, and fire protection), producing the technical specifications and drawings, and preparing the construction cost estimate.

**C.3.6** "Design-bid-build" means the traditional delivery method where design and construction are sequential and contracted for separately with two contracts and two contractors.

**C.3.7** "Design-build" means combining design and construction in a single contract with one contractor.

**C.3.8** "Firm" in conjunction with architect-engineer services, means any individual, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering.

**C.3.9** "Plans and specifications" means drawings, specifications, and other data for and preliminary to the construction.

**C.3.10** "Record drawings" means drawings submitted by a contractor or subcontractor at any tier to show the construction of a particular structure or work as actually completed under the contract.

**C.3.11** "Two-phase design-build selection procedures" is a selection method in which a limited number of offerors (normally five or fewer) is selected during Phase One to submit detailed proposals for Phase Two

**C.3.12** Written Amendments and or graphic instruments are issued by the Contracting Officer prior to the execution of the Contract that modify or interpret the Offering Documents by additions, deletions, clarifications or corrections.

**C.3.13** An Offer is a complete and fully executed proposal that explains Work to be performed for the sums stipulated therein, submitted in accordance with the Offering Documents.

**C.3.14** The Base Offer is the stated sum in the Offer, for which the Offeror agrees to perform the Work described in the Offering Documents as the Base; still, Work may be added and/or deleted for sums stated within the Alternate Offers.

**C.3.15** An Alternate Offer (or Alternate) is an amount stated in the Offer to be added to or deducted from the amount of the Base Offer if the corresponding change in the Work, as described in the Offering Documents, is accepted.

**C.3.16** An Option Offer is an option to the contract that may be exercised as presented, negotiated, or declined by and at the sole discretion of the Courts.

**C.3.17** A Unit Price is an amount stated in the Offer as a price per unit of measurement for materials, equipment and/or services, or a portion of the Work as described in the Offering Documents.

**C.3.18** An Offeror is a person or entity who submits an Offer and meets the requirements set forth in the Offering Documents.

**C.3.19** A Sub-offeror is a person or entity who submits an Offer to an Offeror for materials, equipment and/or labor for a portion of the Work.

## C.4 BACKGROUND:

**C.4.1** The District of Columbia Courts, consisting of the Court of Appeals, the Superior Court, and the Court System, constitute the Judicial Branch of the District of Columbia and are separate and distinct from the Executive and Legislative Branches. The organization and operation of the District of Columbia courts, is a completely unified court system.

**C.4.2** The H. Carl Moultrie I Courthouse, built in the 1970s, although not historic, is also located along the view corridor and reinforces the symmetry of Judiciary Square through its similar form and material to the municipal building located across the John Marshall Plaza. The Moultrie Courthouse provides space for Superior Court, and Family Court operations and the Clerk's offices.

## C.5 REQUIREMENTS:

**C.5.1** This project is located in Suite 2500 of the H. Carl Moultrie Courthouse Building and includes the following: installation of fire sprinkler piping and devices; installation of gypsum board partitions; installation of doors; door frames and door hardware; installation of various millwork and "built-in" construction items; installation of kitchen equipment; installation of lighting fixture and other ceiling-mounted devices; installation of demountable partitions; installation and maintenance of temporary return air filters; temporary signage as specified; erection of temporary dust protection to protect adjacent public areas; and perform miscellaneous coordination duties with other Courts staff and vendor personnel including IT, communications, A/V, furniture, fire alarm; security, third party inspection staff etc., for work located throughout the limits of the construction area.

## C.5.2 ADDITIONAL PRICING INCLUSIONS:

**C.5.2.1** The Contractor shall provide fulltime dedicated Project Management and Project Manager throughout the duration of the project for such items including, but not limited to, walkthroughs and weekly progress meetings.

**C.5.2.2** The Contractor shall provide a fulltime dedicated project Superintendent throughout the duration of the project, who will remain on-site at all times when work on the project is being performed on the project.

**C.5.2.3** The Courts will contract directly with a 3rd Party Code Compliance Inspection Agency and a Material Inspection Agency to provide the necessary DCRA required inspections and testing services. The Contractor will be responsible for all required coordination and inspection scheduling with the 3rd Party Code Compliance Inspectors and Material Testing Agencies.

**C.5.2.4** The Offeror shall include an allowance in the Offer as indicated below to cover the costs associated with the use of Courts Security Officers (CSOs) during the various stages or phases of the this project. The Offeror shall be required to coordinate and schedule CSO activities for their work on this project and shall be required to provide monthly invoices and detailed explanations in order to support the use of the CSOs.

**C.5.2.5 The CSO allowance for this project is as follows: $30,000**

**C.5.3** The Offeror shall include an allowance in the Offer to cover the costs associated with the Hazardous Material Abatement in accordance with C.5.4 below.

**C.5.3.1 The Hazardous Material Abatement allowance for this project is as follows: $40,000**

**C.5.4 Required Hazardous Material Abatement Scope of Work clarifications**

The Offeror shall be responsible for all hazardous material abatement. If hazardous materials are detected within the project area, the abatement and removal of this hazardous material shall be performed in accordance with all applicable regulations. The Offeror shall coordinate work to be completed in each phase to make sure it does not interrupt continued operations of other areas. The Offeror is responsible for the following items during any hazardous material removal:

C.5.4.1 Adhering to all applicable hazardous material removal regulations and guidelines (DDOE, OSHA, etc.).

**C.5.4.2** Obtaining all abatement permits (and demolition permits as necessary).

**C.5.4.3** Utilizing a qualified Industrial Hygienist to perform air monitoring services for asbestos and provide daily reports to the Courts each day by 8:00 am.

**C.5.4.4** Submitting a detailed Hazardous Plan of Action to the Courts to include the following:

a. Areas to be abated.
b. General approach per regulations and guidelines.
c. Process for handling additional hazardous materials (if discovered).
d. Air monitoring.
e. Emergency action plan.
f. Signage.

**C.5.4.5** The Offeror is to assume all existing HVAC duct sealant mastic, pipe sealant, pipe insulation and pipe hanger blocks are hazardous and are to be removed through an abatement process. This includes all components listed on the Construction Documents to be demolished, and the "existing to remain" components within the project limits of construction.

**C.5.4.6** The Offeror shall include the necessary cost to replace all existing HVAC hazardous components including, but not limited to ducts, pipe insulation and pipe hanger blocks that are not already shown as new work in the Construction Documents which have been removed as part of the abatement process.

**C.5.4.7** The Offeror shall include the necessary cost to replace all asbestos-containing material and lead-containing paint not already shown as new work in the Construction Documents which have been removed as part of the abatement process.

**C.5.5 Working Hours**

Pricing should assume work within the H. Carl Moultrie Courthouse building is limited to the hours of 6:00 PM to 6:00 AM, Monday through Friday, except as otherwise indicated in Specifications.

**C.5.6** The Offeror shall include costs in the Offer to cover existing non-compliant code conditions throughout the Project limits. Typical items observed in the Moultrie Courthouse that will need to be corrected during the Project to meet minimum code requirements, if those items are existing-to-remain to include, but not limited to, the following:

**C.5.6.1** Duct insulation repair IMC 604.1
**C.5.6.2** Missing Pipe saddles IPC 305.3
**C.5.6.3** Support or remove control wiring NEC 800.133
**C.5.6.4** Cover open electrical boxes NEC 110.12A
C.5.6.5 Support for electrical boxes NEC 314.23
**C.5.6.6** Support for conduits NEC 342.30B
**C.5.6.7** Support for MC cable NEC 330.30

**C.5.6.8 The Existing Non-Compliance Condition allowance for this project is as follows: $20,000**

**C.5.7 Construction Management Software:** The Offeror is mandated to use the Courts web-based Construction Management Software (**"PROCORE"**) for construction management activities including: Submittals, RFI's, logs, and documentations. At the Courts discretion, this may supersede submittals requirements stated in the current project's specifications, if in conflict. In such cases, Offeror shall point out and seek Courts direction.

**C.5.8** The Offeror shall include the applicable project fees and cost escalation necessary for a scheduled Contruction Mobilization date of **January 30, 2017**.

**C.5.9** The Courts shall contract separately for the tenant furniture, phone/data low voltage cabling, and security equipment and wiring. The Offeror shall be responsible for providing rough-in locations for the above items per coordinated shop drawings. The Offeror shall be required to help coordinate the separately contracted work to be completed in each phase to make sure it does not interrupt operations in other areas of the building.

**C.5.10** At the Courts' discretion, we will contract directly with the Commissioning Agent for commissioning of the major mechanical, electrical, and plumbing work in the project as noted in the Construction Documents. The Contractor shall coordinate with the Courts Commissioning Agent to test and provide written report of the performance of all new HVAC and plumbing systems prior to the completion of the project. The Contractor shall also attend

testing, adjusting and balancing review and coordination meetings as required. Refer to the Contract Documents for more information regarding commissioning.

**C.5.11** The Contractor shall institute and perform Fire Watch Protocol activity as necessary to complete the requirements listed under this solicitation.

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# SECTION D: PACKAGING AND MARKING:

N/A in this solicitation

# SECTION E: INSPECTION AND ACCEPTANCE

## E.1 INSPECTION OF SERVICES:

**E.1.1** "Services" as used in this clause includes services performed, workmanship, and material furnished or utilized in the performance of services.

**E.1.2** The Contractor shall provide and maintain an inspection system acceptable to the Court covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Court during contract performance and for as long afterwards as the contract requires.

**E.1.3** The Court has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Court will perform inspections and tests in a manner that will not unduly delay the work.

**E.1.4** If the Court performs inspections or tests on the premises of the Contractor or subcontractor, the Contractor shall furnish, without additional charge, all reasonable facilities and assistance for the safety and convenient performance of these duties.

**E.1.5** If any of the services do not conform to the contract requirements, the Court may require the Contractor to perform these services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by performance, the Court may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect value of services performed.

**E.1.6** If the Contractor fails to promptly perform the services again or take the necessary action to ensure future performance in conformity to contract requirements, the Court may (1) by contract or otherwise, perform the services and charge the Contractor any cost incurred by the Court that is directly related to the performance of such services, or (2) terminate the contract for default.

# SECTION F: PERIOD OF PERFORMANCE AND DELIVERABLES

## F.1 TERM OF CONTRACT:

The term of the contract shall be for a period not to exceed (**NTE**) **one year or until completion of contract,** whichever comes first. Should extension to period of performance be required, the Courts, at its discretion, will modify the existing contract to extend the contract period.

## F.2 TIME EXTENSIONS:

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

## F.3 DELIVERABLES:

**F.3.1** The Contractor shall perform the activities required to successfully complete the Courts requirements and submit each deliverable to the Contracting Officer's Technical Representative identified in section G.9 of this RFP.

**F.3.2** All deliverables shall be in a form and manner acceptable to the Courts. The Contractor shall furnish office supplies, materials, equipment and employees required to meet and perform the requirements of this Contract.

**F.3.3** The Contractor shall provide the Courts with timeframes for the completion of each build out. The Courts will provide a priority list based on the timeframes provided.

**F.3.4** The Contractor shall provide the Courts with a schedule for final review and acceptance.

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## SECTION G: CONTRACT ADMINISTRATION:

### G.1 INVOICE PAYMENT:

**G.1.1** The Courts will make payments to the Contractor, upon the submission of proper invoices, at the prices stipulated in this contract, for supplies delivered and accepted or services performed and accepted, less any discounts, allowances or adjustments provided for in this contract.

**G.1.2** The Courts 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 agency Chief Financial Officer. The address of the CFO is:

Accounting Supervisor
Budget and Finance Division
District of Columbia Courts
616 H Street, N.W., Suite 600
Washington, D.C. 20001
Telephone: 202-879-2813

**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 (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** Authorized signature.

## G.4 PAYMENT:

**G.4.1** Based upon Applications for Payment submitted to the Courts by the Contractor, the Courts shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

**G.4.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

**G.4.3** Notwithstanding any other payment terms in this contract, the Courts will make invoice payments under the terms and conditions in accordance with the Courts policies. The Courts shall make progress payments monthly as the work proceeds or at more frequent intervals as determined by the Contracting Officer, based on percentages of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer.

(1) The Contractor's request for progress payments shall include the following substantiation:
(i) An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.
(ii) A listing of the amount included for work performed by each subcontractor under the contract.
(iii) A listing of the total amount of each subcontract under the contract.
(iv) A listing of the amounts previously paid to each such subcontractor under the contract.
(v) Additional supporting data in a form and detail required by the Contracting Officer.
(vi) Release of Lien from General Contractor & 2nd tier releases from Sub-subs.

(2) In the preparation of estimates, the Contracting Officer 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 also may be taken into consideration if --

(i) Consideration is specifically authorized by this contract; and
(ii) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(3) Contractor certification. Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made: (See **Attachment J.8**).

**G.4.4** Each Application for Payment shall be based on the most recent **approved** cost loaded schedule submitted by the Contractor in accordance with the Contract Documents. The **approved** cost loaded schedule shall allocate the entire Contract Sum among the various portions of the Work. The **approved** cost loaded schedule shall be prepared in such form and supported by such data to substantiate its accuracy as the Courts may be require to perform an earned value management analysis. This schedule, unless objected to by the Courts, shall be used as a basis for reviewing the Contractor's Applications for Payment. See **Attachment J.23**; and Specifications Section 01-2900 Payment Procedures. The contractor should thoroughly review their cost-loaded schedule prior to submission to the Courts to ensure the identified costs accurately reflect the true costs of each cost-loaded activity. In the event DC Courts chooses to delete specific portions of work, these identified and approved costs will be the firm costs

deleted from the contract scope of work. The contractor will not be allowed to modify these costs at a later date when determining potential contract cost credits.

**G.4.5** Applications for Payment shall indicate the percentage of completion of each portion of the work as of the end of the period covered by the Application for Payment.

**G.4.6** Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

1. Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of **Ten percent (10.00%)** to be modified. Pending final determination of cost to the Contracting Officer of changes in the Work, amounts not in dispute shall be;

2. Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of **Ten percent (10.00%);**

3. Subtract the aggregate of previous payments made by the Owner; and

4. Subtract amounts, if any, for which the Courts has withheld or nullified a Certificate for Payment.

**G.4.7** The progress payment amount determined shall be further modified under the following circumstances:

1. Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Courts and Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and

2. Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts.

**G.4.8** Reduction or limitation of retainage, if any, shall be as follows:

**G.4.8.1** Until the contract completion, the retainage will be held at ten percent (**10.00%**) of the earned value of the work completed to date.

**G.4.9** Except with the Courts prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site. A contractor request which includes payment for project material stored at a location other than the project site will not be approved until the contractor meets the off-site material storage requirements as indicated by DC Courts.

## G.5 FINAL PAYMENT

**G.5.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Courts to the Contractor when:

1. the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided Section C and all other applicable incorporated documents, and to satisfy other requirements, if any, which extend beyond final payment; and

2. a final Certificate for Payment has been issued to the Courts.

**G.5.2** The Courts final payment to the Contractor shall be made no later than thirty (30) days after the issuance of the Courts final Certificate for Payment.

## G.6 ASSIGNMENT OF CONTRACT PAYMENTS

**G.6.1** The Contractor may assign to a bank, trust company, or other financing institution funds due or to become due as a result of the performance of this contract.

**G.6.2** Any assignment shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party.

**G.6.3** 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.7 Payments to Subcontractors

**G.7.1** The Contractor must take one of the following actions within seven (7) days of receipt of any amount paid to the Contractor by the Courts for work performed by any subcontractor under this contract:

a) Pay the subcontractor for the proportionate share of the total payment received from the Courts that is attributable to the subcontractor for work performed under the contract; or

b) Notify the Courts 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.7.2** The Contractor must pay any 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 the 15th day after the required payment date for any other services.

**G.7.3** 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.7.4** 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 Courts is a party. The Courts may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

**G.7.5 Subcontract requirements**

**G.7.5.1** The Contractor shall include in each subcontract under this contract a provision requiring the subcontractor to include in its contract with any lower-tier subcontractor or supplier the payment and interest clauses.

## G.8 CONTRACTING OFFICER (CO)

Contracts will be entered into and signed on behalf of the Courts only by the Contracting Officer. The contact information for the Contracting Officer is:

Dr. Cheryl R. Bailey
Courts of Columbia Courts
Capital Projects and Facilities Management Division
616 H St., NW, Suite 622
Washington, DC 20001
Email: Cheryl.Bailey@dcsc.gov

## G.9 AUTHORIZED CHANGES BY THE CONTRACTING OFFICER

**G.9.1** The CO is the only person authorized to approve changes in any of the requirements of this contract.

**G.9.2** 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 CO.

**G.9.3** In the event the Contractor effects any change at the instruction or request of any person other than the CO, 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.10 CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)

**G.10.1** The COTR is responsible for general administration of the contract and advising the CO as to the Contractor's compliance or noncompliance with the contract. The COTR has the

responsibility of ensuring the work conforms to the requirements of the contract and such other responsibilities and authorities as may be specified in the contract. These include:

**G.10.2** Keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the contract;

**G.10.3** Coordinating site entry for Contractor personnel, if applicable;

**G.10.4** Reviewing invoices for completed work and recommending approval by the CO if the Contractor's costs are consistent with the negotiated amounts and progress is satisfactory and commensurate with the rate of expenditure;

**G.10.5** Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the Courts payment provisions; and

**G.10.6** Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.

**G.10.7** The address and email of the COTR is:

Judith Hill
Projects Manager
Capital Projects and Facilities Management Division
616 H Street, N.W., Suite 622
Washington, D.C. 20001
judith.hill@dcsc.gov

**G.10.8** The COTR shall NOT have the authority to:

1. Award, agree to, or sign any contract, delivery order or task order. Only the CO shall make contractual agreements, commitments or modifications;
2. Grant deviations from or waive any of the terms and conditions of the contract;
3. Increase the dollar limit of the contract or authorize work beyond the dollar limit of the contract,
4. Authorize the expenditure of funds by the Contractor;
5. Change the period of performance; or
6. Authorize the use of Courts property, except as specified under the contract.

**G.10.9** The Contractor will be fully responsible for any changes not authorized in advance, in writing, by the CO; 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 Courts, to take all corrective action necessitated by reason of the unauthorized changes.

# SECTION H: SPECIAL CONTRACT REQUIREMENTS

## H.1 DEPARTMENT OF LABOR WAGE DETERMINATIONS

The Contractor shall be bound by the Wage Determination No: DC160002, dated 11/04/2016, 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.19. The Contractor shall be bound by the wage rates for the term of the contract subject to revision as stated herein and in accordance with the SCP. If an option is exercised, the Contractor shall be bound by the applicable wage rates at the time of the option. If the option is exercised and the CO 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.2 COURTS RESPONSIBILITIES

**H.2.1** The Courts will procure a building permit to transfer to the selected Contractor.

**H.2.2** The Courts shall contract separately for the tenant furniture, phone/data low voltage cabling, and security equipment and wiring. The Offeror shall be responsible for providing rough-in locations for the above items per coordinated shop drawings. The Offeror shall need to help coordinate the separately contracted work to be completed in each phase to make sure it does not interrupt operations in other areas of the building.

**H.2.3** At the Courts discretion, we will contract directly with the Commissioning Agent for commissioning of the major mechanical, electrical, and plumbing work in the project as noted in the Construction Documents. The Contractor shall coordinate with the Courts Commissioning Agent to test and provide written report of the performance of all new HVAC and plumbing systems prior to the completion of the project. The Contractor shall also attend testing, adjusting and balancing review and coordination meetings as required. Refer to the Contract Documents for more information regarding commissioning.

## H.3 CONTRACTOR RESPONSIBILITIES

**H.3.1** See this solicitation and all other incorporated Contract Documents for Contractor Responsibilities.

## H.4 SECURITY REQUIREMENTS

**H.4.1** The requirement for Contractor personnel to obtain a security clearance and temporary Court identification badges, as designated by the Contracting Officer, may arise per District of Columbia Courts' security policies and procedures. The District of Columbia Courts will notify the Contractor of all such requirements as soon as practicable.

## H.5 SPECIAL STANDARDS OF RESPONSIBILITY

**H.5.1 In addition to the general standards of responsibility set forth above, the Offeror must demonstrate to the satisfaction of the Courts the Offerors ability to obtain performance**

**and payment bonds. Offeror must submit with its proposal convincing evidence that demonstrates that the Offeror meets the Special Standard(s) of Responsibility. At a minimum, an Offeror must provide the following evidence:**

## H.6 PERFORMANCE BOND AND PAYMENT BOND REQUIRMENTS

**H.6.1** If stipulated in the Offering Documents, the Offeror shall furnish bonds covering the faithful performance of the Contract and payment of all obligations arising there under. Bonds may be secured through the Offeror's usual sources.

**H.6.2** If the furnishing of such bonds is stipulated in the Offering Documents, the cost shall be included in the Offer. If the furnishing of such bonds is required after receipt of Offers and before execution of the Contract, the cost of such bonds shall be added to the Offer in determining the Contract Sum.

**H.6.3** If the Courts requires that bonds be secured from other than the Offeror's usual sources, changes in cost will be adjusted as provided in the Contract Documents.

## H.7 TIME OF DELIVERY AND FORM OF BONDS

**H.7.1** The Offeror shall deliver the required bonds to the Courts not later than three (3) days following the date of execution of the Contract. If the Work is to be commenced prior thereto in response to a letter of intent, the Offeror shall, prior to commencement of the Work, submit evidence satisfactory to the Courts that such bonds will be furnished and delivered.

**H.7.2** Unless otherwise provided, the bonds shall be written on the attached Bond Forms. Both bonds shall be written in the amount of the Contract Sum.

**H.7.3** The bonds shall be dated on or after the date of the Contract Award.

**H.7.4** The Offeror shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

## H.8 SPECIAL INSTRUCTIONS AND REQUIREMENTS

**H.8.1** The Courts creates a unique environment for Contractors to perform Work. There are levels of security that can hinder access to all areas of the building, such as, high-traffic public areas, cell blocks, and secure areas for Judges and Jurors. Working in a building that includes many different levels of security can be challenging. The Contractor is required to obtain clearances for their project team and their subcontractors, and obtain permission to work in secure areas. The processes to obtain clearances and permissions takes time, but Contractors are still required to maintain their prescribed schedules. Clearances and background checks can take up to four (4) weeks to process. Due to the Court's business operations, workers who have obtained clearances in other government facilities may not be cleared to work in the Courthouse. The requirement for Contractor personnel to obtain a security clearance is mandatory to work on the DC Courts' premise. If the procedures to acquire the security clearance change, the Contracting Officer will notify the Contractor of any new requirements as soon as practicable. The Contractor shall satisfy security clearance requirements as designated by the Contracting

Officer. Contractors should understand that some secure areas require work to be performed during off hours or with the accompaniment of Court Security Officers (CSO's). These secure areas include the Clerk of the Court office area, the Executive Office area, Judges' Chambers, and U.S. Marshals Space. The CSO's and U.S. Marshals can be retained for use by the Contractor in these instances.

**H.8.2** Due to ongoing warranty and electrical requirements for the existing Fire Alarm system, the Courts will contract directly with a separate Fire Alarm contractor to complete all work involving the relocation and / or additions to the Fire Alarm system in the H. Carl Moultrie building: this will include all required maintenance and operational requirements (i.e., shutdowns, silencing, etc.) associated with this project. The contractor shall be responsible for all required coordination and scheduling with the Courts Fire Alarm contractor. The Contractor shall be responsible for providing the required rough-in locations per coordinated shop drawings. The Contractor shall coordinate the separately contracted work to be completed in each phase to make sure it does not interrupt continued operations in other areas of the building.

**H.8.3** Due to warranty requirements, EMS Technology, Inc. is the required HVAC control systems contractor for any work that involves the infrastructure and relocation or addition of the HVAC controls system in the H. Carl Moultrie I. Building. They are required to provide the same pricing to all contractors. Their contact information is as follows:

EMS Technology, Inc.
2134 Estey Court, Suite 5
Crofton, MD 21114
(301) 858-0220

## H.9 LIQUIDATED DAMAGES:

**H.9.1** The Contractor shall complete all project work, including, warranty information, Operations and Maintenance (O+M) data As-builts, etc. not later than 45 days from the date of substantial completion, or as follows:

**H.9.2** Subject to adjustments of this Contract Time as provided in the Contract Documents.

**H.9.3** In the event the Work is not substantially completed by the Contractual Date of Substantial Completion, which is defined as the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Courts can fully, safely, and securely commence their Work in the Project Area, the Contractor, its agents and subcontractors shall be liable to the Courts for liquidated damages for each calendar day thereafter until the Contractor reaches Substantial Completion as specified, according to the following schedule:

1. $1,000.00 per calendar day for each day up to thirty (30) days; thereafter,
2. $2,000.00 per calendar day for each day in excess of thirty (30) days up to sixty (60) days; and for each day thereafter,
3. $5,000.00 per calendar day for each day in excess of sixty (60) days until Substantial Completion.

**H.9.4** Furthermore, Substantial Completion is defined as the date when work per the Contract Documents is complete to the point where the Courts can fully, safely, and securely commence work in the Project Area, all punch list work is complete and cabling, security, furniture installations are complete, and the other Courts vendors (i.e. IT and Telecom) can deliver and install their respective equipment and furnishings to bring this project to a final point where it is ready for full Occupancy.

**H.9.5** Ready for Owner Occupancy is defined as the date when the Courts vendors are complete (i.e. IT and Telecom) and the Project Area is ready for full Occupancy to meet the necessary Courts functions.

**H.9.6** Final Project Completion is defined as the date when paperwork and close out documentation has been submitted for review, approved, and accepted by the Courts.

**H.9.7** The Contractor, its agent and subcontractors shall be liable for liquidated damages for each day of delay in achieving Substantial Completion and Final Project.

**H.9.8** Notwithstanding any contrary provisions in the Contract Documents, the term "Substantial Completion" relating to the completion of the Work shall mean the date certified by the Contracting Officer, when (i) construction of all of the work is sufficiently complete in accordance with the Contract Documents, so that the Courts can fully, safely, and securely commence work in the project area. (ii) the Architect has prepared a punch list of work remaining to be performed and has established a reserve equal to 200% of the value attributed to punch list work, or Fifty thousand dollars ($50,000), whichever is greater, (iii) all required governmental inspections applicable to the satisfactory completion of Contractor's work only have been conducted and all final approvals required for beneficial occupancy have been obtained from public and quasi-public authorities with jurisdiction over the Project, including a Certificate of Occupancy or Non-Residential Use Permit, if required, issued by appropriate authorities, and (iv) all other conditions precedent to Substantial Completion as set forth in the Contract Documents have been satisfied. The Date of Substantial Completion shall be reflected in each copy of the Contractor's Construction Schedule, prepared.

# SECTION I: CONTRACT CLAUSES

## I.1 APPLICABILITY OF STANDARD CONTRACT PROVISIONS

The D.C. Courts General Contract Provisions, dated April 2008 (**Attachment J.1**) and the General Conditions of the Construction Contracts (**Attachment J.2**) are incorporated as part of the resultant contract.

## I.2 CONTRACTS THAT CROSS FISCAL YEARS

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

## I.3 CONFIDENTIALITY OF INFORMATION

The Contractor shall keep all information relating to any employee or customer of the Courts in absolute confidence and shall not use the information in connection with any other matters; nor shall it disclose any such information to any other person, firm or corporation, in accordance with the Courts and federal laws governing the confidentiality of records.

## I.4 TIME

Time, if stated in a number of days, will include Saturdays, Sundays, and holidays, unless otherwise stated herein. The Contract Time shall be measured from the date of receipt of the notice to proceed (NTP).

## 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, 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, and 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 Courts. The Contractor hereby acknowledges that all data, including, without limitation, computer program codes, produced by Contractor for the Courts under this Contract, are works made for hire and are the sole property of the Courts; 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 Courts the ownership of copyright in such works, whether published or unpublished. The Contractor agrees to give the Courts 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 Courts until such time as the Courts may have released such data to the public.

**I.5.6** The Courts 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, not withstanding 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 Courts installation to which the computer may be transferred by the Courts;

**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. TheContractor may not place any legend on the computer software indicating restrictions onthe Courts rights in such software unless the restrictions are set forth in a license oragreement made a part of the contract prior to the delivery date of the software. Failureof the Contractor to apply a restricted rights legend to such computer software shallrelieve the Courts 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 Courts 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 Courts 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 Courts under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the Courts 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 Courts or the Contractor's rights in that subcontractor data or computer software which is required for the Courts.

**I.5.10** For all computer software furnished to the Courts with the rights specified in Section I.5.5, the Contractor shall furnish to the Courts, 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 Courts with the restricted rights specified in Section I.5.6, the Courts, if the Contractor, either directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided the Courts 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 Courts, 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 Courts under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Courts under any patent.

**I.5.13** Paragraphs I.5.6, I.5.7, I.5.8, I.5.11 and I.5.12above are not applicable to material furnished to the Contractor by the Courts 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.

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**A. Definitions**

1. "Products" - A deliverable under any contract that may include commodities, services and/or technology furnished by or through Contractor, including existing and custom Products, such as, but not limited to: a) recorded information, regardless of form or the media on which it may be recorded; b) document research; c) experimental, developmental, or engineering work; d) licensed software; e) components of the hardware environment; f) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings); g) third party software; h) modifications, customizations, custom programs, program listings, programming tools, data, modules, components; and i) any intellectual property embodied therein, whether in tangible or intangible form, including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, and object code.

2. "Existing Products" - Tangible Products and intangible licensed Products that exist prior to the commencement of work under the contract. Existing Products must be identified on the Product prior to commencement of work or else will be presumed to be Custom Products.

3. "Custom Products" - Products, preliminary, final or otherwise, which are created or developed by Contractor, its subcontractors, partners, employees, resellers or agents for the Courts under the contract.

4. "Courts" – The Courts and its agencies.

**B. Title to Project Deliverables**

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

1. Existing Products: Title to all Existing Licensed Product(s), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall: (1) remain with Contractor or third party proprietary owner, who retains all rights, title and

interest (including patent, trademark or copyrights). Effective upon payment, the Courts is granted an irrevocable, non-exclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, adapt (unless Contractor advises the Courts as part of Contractor's proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the Courts satisfaction) and distribute Existing Product to Courts users up to the license capacity stated in the contract with all license rights necessary to fully effect the general business purpose(s) of the project or work plan or contract; and (2) be licensed in the name of the Courts. The Courts agrees to reproduce the copyright notice and any other legend of ownership on any copies authorized under this paragraph.

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

**C. Transfers or Assignments of Existing or Custom Products by the Courts**

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

**D. Subcontractor Rights**

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

**E. Source Code Escrow**

1. For all computer software furnished to the Courts with the rights specified in section B.2, the Contractor shall furnish to the Courts, a copy of the source code with such rights of the scope as specified in section B.2 of this clause. For all computer software furnished to the Courts with the restricted rights specified in section B.1 of this clause, the Courts, if the Contractor either directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided the Courts under the contract or any paid-up maintenance agreement, or if the Contractor should be declared insolvent by a court of competent jurisdiction, shall have the right to obtain, for its own and sole use only, a single copy of the current version of the source code supplied under the contract, and a single copy of the documentation associated therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.

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

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

**F. Indemnification and Limitation of Liability**

The Contractor shall indemnify and save and hold harmless the Courts, 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.6 OTHER CONTRACTORS

The Contractor shall not commit or permit any act that will interfere with the performance of work by another Courts contractor or by any Courts 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 CO. Any work or service so subcontracted shall be performed pursuant to a subcontract agreement, which the Courts 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 Courts, the Contractor shall remain liable to the Courts for all Contractor's work and services required hereunder.

## I.8 INSURANCE

**I.8.1 General Requirements**: Prior to execution of the contract, the Contractor shall obtain at its own cost and expense and keep in force and effect during the term of this contract, including all extensions, the insurance specified below with an insurance company licensed or qualified to do

business with the District of Columbia Courts. **All insurance shall set forth the District of Columbia Courts as an additional insured. The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event the stated limit in the declarations page of the policy is reduced via endorsement or the policy is canceled prior to the expiration date shown on the certificate. The Contractor shall provide the CO with Ten (10) days prior written notice in the event of non-payment of premium. The Contractor must submit to the Contracting Officer a certificate of insurance as evidence of compliance within ten (10) calendar days after request.**

a. General Liability Insurance. The Contractor shall provide bodily injury liability insurance coverage of at least $2,500,000.00 per occurrence.

b. Automobile Liability Insurance. (applicable to owned, non-owned and hired vehicles): The Contractor shall provide comprehensive automobile liability insurance to cover all owned, hired or non-owned motor vehicles used in conjunction with the performance of this contract against liability for bodily injury and property damage in an amount not less than that required by law of the District's Compulsory/No-Fault Vehicle Insurance of 1982, as amended. The policy shall provide coverage of at least $2,500,000.00, per person, $2,500,000.00 per occurrence for bodily injury.

c. Workers' Compensation Insurance. The Contractor shall provide Workers' Compensation insurance covering all of its employees working in conjunction with the performance of this contract. Contractor agrees to comply at all times with applicable Federal and District of Columbia workers' compensation and occupational disease statutes.

d. Certificates of insurance acceptable to the Courts shall be filed with the Courts prior to commencement of the Work. These certificates and the insurance policies required shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Courts. If any of the foregoing insurance coverage are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by **Attachment J.22**. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

**I.9** **Duration:** The Contractor shall carry all required insurance until all contract work is accepted by the Courts, and shall carry the required General Liability; any required Professional Liability; and any required Employment Practices Liability insurance for three (3) years following final acceptance of the work performed under this contract.

**I.10** **Liability:** These are the required minimum insurance requirements established by the Courts. However, the required minimum insurance provided above will not in any way limit the Contractor's liability under this Contract.

**I.11** **Contractor's Property:** Contractor and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the Courts.

**I.12** **Measure of Payment:** The Courts 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.13** **Notification:** The Contractor shall immediately provide the CO with written notice in the event that its insurance coverage has or will be substantially changed, canceled or not renewed, and provide an updated certificate of insurance to the CO.

**I.14** **Certificates of Insurance:** The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Evidence of insurance shall be submitted to:

Dr. Cheryl Bailey
CPFMD Contracting Officer
Capital Projects and Facilities Management
District of Columbia Courts
616 H St. NW - Suite 622
Washington, D.C. 20001
Cheryl.Bailey@dcsc.gov

**I.15** **Disclosure of Information**: The Contractor agrees that the Courts may disclose the name and contact information of its insurers to any third party which presents a claim against the Courts for any damages or claims resulting from or arising out of work performed by the Contractor, its agents, employees, servants or subcontractors in the performance of this contract

**I.16 EQUAL EMPLOYMENT OPPORTUNITY**

**I.16.1** Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, marital status, sex, disability, sexual preference or age. Contractor shall take such actions as are reasonably necessary to ensure that employees and applicants for employment are treated without regard to their race, creed, color, national origin, marital status, sex, sexual preference or age. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated.

**I.16.2** Contractor shall furnish all information and reports required by Governmental Authorities to determine Contractor's compliance with the provisions of Applicable Laws, and shall permit access to its books and records by DC Courts and/or any such Governmental Authority during regular business hours for purposes of investigation to ascertain compliance with this Section.

## I.17 DISPUTES:

**Any dispute arising under or out of this contract is subject to the provisions of Chapter 8 of the Procurement Guidelines of the Courts.**

## I.18 COST AND PRICING DATA

**Offeror shall complete the Attachment J.13 – Bid/Offer Breakdown Sheet, certifying independent price determination.**

## I.19 ORDER OF PRECEDENCE

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

(1) An applicable Court Order, if any
(2) Contract Award document
(3) Standard Contract Provisions
(4) General Conditions of the Contract for Construction
(5) Contract attachments other than the Standard Contract Provisions
(6) RFP, as amended
(7) BAFOs (in order of most recent to earliest)
(8) Proposal

## I.20 CANCELLATION CEILING

**In the event of cancellation of the contract because of non-appropriation for any fiscal year after fiscal year 2017, there shall be a cancellation ceiling of zero dollars representing reasonable preproduction and nonrecurring costs, which would be applicable to the items or services being furnished and normally amortized over the life of the contract.**

## I.21 GOVERNING LAW

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

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## SECTION J: ATTACHMENTS

J.1 The following list of attachments is incorporated into the solicitation by reference and/or actual physical incorporated, whichever applicable.

| Attachment Number | Document |
|---|---|
| **J.1** | District of Columbia Courts General Contract Provisions (April 2008) |
| **J.2** | General Conditions of the Contract for Construction |
| **J.3** | Anti-Collusion Statement |
| **J.4** | Certification of Eligibility |
| **J.5** | Certification Regarding A Drug-Free Workplace |
| **J.6** | Tax Certification Affidavit |
| **J.7** | Release of Claims |
| **J.8** | Payment to Subcontractors and Suppliers Certificate |
| **J.9** | Ethics in Public Contracting |
| **J.10** | Non-Discrimination |
| **J.11** | Solicitation/Offer/Award Form for Supplies or Services |
| **J.12** | Bid/Offer Form |
| **J.13** | Bid/Offer Breakdown Sheet |
| **J.14** | Bid/Offer Bond Form |

| Attachment Number | Document |
|---|---|
| **J.15** | Payment Bond Form |
| **J.16** | Performance Bond Form |
| **J.17** | Tax Regulations |
| **J.18** | DC Courts Tax Exemption Certificate |
| **J.19** | Davis Bacon Act and Davis Bacon Wage Rates |
| **J.20** | Contract Work Hours and Safety Standards Act |
| **J.21** | District of Columbia Courts Sexual Harassment Policy |
| **J.22** | Application for Payment |
| **J.23** | Project Drawings and Drawings Index& Specifications |

# SECTION K: REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS

## K.1 CERTIFICATE REGARDING A DRUG-FREE WORKPLACE (See Attachment J.5)

## K.2 WALSH-HEALY ACT

If your bid is $10,000 or more, the following information **MUST** be furnished:

(a) Regular Dealer

( ) The Bidder is a Regular Dealer pursuant to Clause 28 of the District of Columbia Courts General Contract Provisions.

( ) The Bidder is not a Regular Dealer pursuant to Clause 28 of the District of Columbia Courts General Contract Provisions.

(b) Manufacturer

( ) The Bidder is a Manufacturer pursuant to Clause 28 of the District of Columbia Courts General Contract Provisions.

( ) The Bidder is not a Manufacturer pursuant to Clause 28 of the District of Columbia Courts General Contract Provisions.

## K.3 BUY AMERICAN CERTIFICATION

The Bidder hereby certifies that each end product, except the end products listed below, is a domestic end product (as defined in Clause 28 of the District of Columbia Courts General Contract Provisions ), and that components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.

| EXCLUDED END PRODUCTS | COUNTRY OR ORIGIN |
|---|---|
| | |

## K.4 OFFICERS NOT TO BENEFIT CERTIFICATION

Each Bidder shall check one of the following:

____ (a) No person listed in Clause 21 of the District of Columbia Courts General Contract Provisions will benefit from this contract.

____ (b) The following person(s) listed in Clause 21 of the District of Columbia Courts General Contract Provisions may benefit from this contract. For each person listed, attach the affidavit required by Clause 21 of the District of Columbia Courts General Contract Provisions.

## K.5 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

(a) Each signature on the offer is considered to be a certification by the signatory that:

(1) The prices in this bid have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any bidder or competitor relating to (i) those prices, (ii) the intention to submit a bid, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this bid have not been and will not be knowingly disclosed by the Offeror, directly or indirectly, to any other bidder or competitor before offer opening unless otherwise required by law; and

(3) No attempt has been made or will be made by the Bidder to induce any other concern to submit or not to submit abid for the purpose of restricting competition.

(b) Each signature on the bid 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 bid, 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) (i) 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 or person(s) in the organization responsible for determining the prices offered in this bid and the title of his or her position in the Offeror's organization);

(ii) As an authorized agent, does certify that the principals named in subdivision (b) (2) (1) above have not participated, and will not participate, in any action contrary to subparagraphs (a) (1) through (a) (3) above; and

(iii) As an agent, has not participated, and will not participate, in any action contrary to subparagraphs (a) (1) through (a) (3) above.

(c) If Offeror deletes or modifies subparagraph (a) (2) above, the Offeror must furnish with its bid a signed statement setting forth in detail the circumstances of the disclosure.

**K.6 TYPE OF BUSINESS ORGANIZATION**

Bidder operates as ( ) an individual, ( ) a partnership, ( ) a nonprofit organization, ( ) a corporation, incorporated under the laws of the State of _____, ( ) a joint venture, ( ) other.

**K.7 PAYMENT IDENTIFICATION NO.**

The District of Columbia Courts utilizes an automated vendor database. All firms are required to submit their Federal Tax Identification Number. Individuals must submit their social security numbers.

Please list below applicable vendor information:

Federal Tax Identification Number: _____

Or

Social Security Number: _____

Dunn and Bradstreet Number: _____

Legal Name of Entity Assigned this Number: _____

Street Address and/or Mailing Address: _____

City, State, and Zip Code: _____

Type of Business: _____

Telephone Number: _____

Fax Number: _____

**PAYMENTS UNDER TERMS OF ANY CONTRACT RESULTING FROM THIS SOLICITATION WILL BE HELD IN ABEYANCE PENDING RECEIPT OF A VALID FEDERAL TAX IDENTIFICATION NUMBER OR SOCIAL SECURITY NUMBER.**

**K.8** The Offeror by making an Offer represents that:

**K.8.1** The Offeror has read and understands the Offering Documents or Contract Documents, to the extent that such documentation relates to the Work for which the Offer is submitted, and for other portions of the Project, if any, being offered concurrently or presently under construction. Offerors are expected to examine the Statement of Work and all instructions and attachments in this solicitation. Failure to do so will be at the Offeror's risk.

**K.8.2** The Offer is made in compliance with the Offering Documents.

**K.8.3** The Offeror has visited the site, become familiar with local conditions under which the Work is to be performed, and has correlated the Offeror's personal observations with the requirements of the proposed Contract Documents.

**K.8.4** The Offer is based upon the materials, equipment and systems required for the Work as stated in the Offering Documents without exception.

**K.9 Penalties for Misrepresentations**
Any material misrepresentation on the sworn notarized self-certification form could result in termination of the contract; in accordance with District of Columbia law, Contractor's liability for civil and criminal action indicates possible sanctions.

**K.10 Standards of Responsibility**
The prospective Contractor must demonstrate to the satisfaction of the Courts, the capability in all respects to perform fully the contract requirements; therefore, the prospective Contractor must submit with its Offer the document listed below in K.10.1 andK.10.2:

**K.10.1** Performance of the contract. (See Section L.3.2.2 Volume 1 Technical Information Tab B Corporate Capabilities)

**K.10.2** Furnish evidence of the ability to comply with the required and/or proposed delivery or performance schedule, taking into consideration all existing commercial and government business commitments. (See Section L.3.2.2 Volume 1 Technical Information Tab B)

**K.11 OFFERING DOCUMENTS/COPIES**

**K.11.1** Offerors will receive one (1) set of the complete Offering Documents.

**K.11.2** Offering Documents will not be issued directly to Sub-offerors unless specifically offered in the Advertisement or Invitation to Offer.

**K.11.3**Offerors shall use complete sets of Offering Documents in preparing Offers; neither the Courts nor Architect assumes responsibility for errors or misinterpretations resulting from the use of incomplete sets of Offering Documents.

**K.11.4** The Courts may make copies of the Offering Documents available for the purpose of obtaining Offers on the Work. No license or grant of use is conferred by the issuance of copies of the Offering Documents.

**K.12 INTERPRETATIONS OR CORRECTIONS OF OFFERING DOCUMENTS**

**K.12.1** The Offeror shall carefully study and compare each of the Offering Documents with one another, and with other Work being offered concurrently or presently under construction to the extent that it relates to the Work for which the Offer is submitted; the Offeror shall also examine the site and local conditions, and at once, report to the Courts any errors, inconsistencies or ambiguities discovered.

**K.12.2** Questions concerning this Solicitation must be directed, in writing to:

Monica I. Wilkerson
Attorney Advisor
District of Columbia Courts
Capital Projects and Facilities Management Division
616 H St., NW, Suite 622
Washington, DC 20001
E-mail address: Monica.Wilkderson@dcsc.gov

**K.12.3** Any prospective Offeror desiring an explanation or Interpretation of this Solicitation must request it in writing by **December 16, 2016, no later than 3:00 pm**. Requests should be directed to the COTR via the email address listed above. Any substantive information given to a prospective Offeror concerning a solicitation will be furnished promptly to all other prospective Offerors. **Oral explanations and/or instructions given before the award of the contract will not be binding.**

**K.12.4** The terms and conditions of the Offering Documents may only be modified by written Amendments issued by the Contracting Officer; set apart from any oral representations to the contrary.

## K.13 SUBSTITUTIONS

**K.13.1** The materials, products and equipment(s) described in the Offering Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution.

**K.13.2** No substitutions will be considered prior to receipt of Offers unless written request for approval has been received by the Contracting Officer at least fourteen (14) days prior to the date for receipt of Offers. Such requests shall include the name of the material and/or equipment for which it is to be substituted, and also, a complete description of the proposed substitution including drawings, performance and test data, and other information necessary for an evaluation. If any further changes in other materials, equipment(s) or other portions of the Work to include but not limited to changes in the work of other contracts, that incorporation of the proposed substitution would require a written request. The burden of proof of the proposed substitution is upon the merit of the proposer. The Owner's decision of approval or disapproval of a proposed substitution shall be final.

**K.13.3** If the Courts approves a proposed substitution prior to receipt of Offers, such approval will be set forth in an Amendment. Offerors shall not rely upon approvals made in any other manner.

**K.13.4** No substitutions will be considered after the Contract is awarded unless specifically stated in the Contract Documents.

## K.14 AMENDMENTS

**K.14.1** Amendments will be transmitted by the issuing office to all who are known to have initially received a complete set of the Offering Documents.

**K.14.2** Copies of Amendments will be made available for inspection wherever Offering Documents are on file for clarification.

**K.14.3** Amendments will be issued no later than three (3) days prior to the date of receipt of the Offers unless an Amendment withdrawing the request for Offers or one which includes postponement of the date for receipt of Offers.

**K.14.4** Prior to submitting an Offer, each Offeror shall ascertain all Amendments issued, and acknowledge their receipt in the Offer.

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# SECTION L: INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS

## L.1 CONTRACT AWARD

### L.1.1 Most Advantageous to the Courts

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

### L.1.2 SELECTION OF NEGOTIATION PROCESS

In accordance with the Procurement Guidelines of the Courts, amended March 21, 2011, after evaluation of the proposals using only the criteria stated in the RFP and in accordance with weightings provided in the RFP, the CO may elect to proceed with any method of negotiations, discussions or award of the contract without negotiations. If the CO elects to proceed with negotiations, the CO may limit, for purposes of efficiency, the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

## L.2 PROPOSAL ORGANIZATION AND CONTENT

**L.2.1 Proposals shall be mailed and/or hand delivered to the following address:**

**District of Columbia Courts**
**Capital Projects and Facilities Management Division**
**Attn: Monica I. Wilkerson, Attorney Advisor**
**616 H Street, N.W., Suite 622**
**Washington, D.C. 20001**

**L.2.2 The Courts will not be responsible for corruption of any file submitted. If the submitted file cannot be viewed and printed as submitted, it will not be considered.**

**L.2.3** The Offeror shall submit two (2) attachments: (1) a technical proposal, and (2) a price proposal.

**L.2.4** The Offeror shall label each attachment, i.e., "Technical Proposal", "Price Proposal." and shall conspicuously mark the outside of the Proposal Package the name and address of the Offeror(s) and the following:

**Solicitation Number: CPFMD-17-1130**
**Project Name: Interior Improvements to the Clerk of the Superior Court – Suite 2500**
**Proposal due Date and Time: January 9, 2017 not later than 3:00pm, local time**

**L.2.5** 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 Courts 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 and delivery thereof. The information requested for the technical proposal shall facilitate evaluation for all proposals. The technical proposal must contain sufficient detail to provide a clear and concise response fully reflecting the manner in which the Offeror proposes to fully meet the requirements in Section C and all other incorporated solicitation documents.

**L.2.6** Offerors shall complete, sign and submit all Representations, Certifications and Acknowledgments as appropriate.

## L.3 VOLUME 1 – TECHNICAL INFORMATION

**L.3.1** In the first separately bound and labeled volume, include the following:

**L.3.2** **No pricing information is to be included in Volume 1.**

### L.3.2.1 TAB A – BASIC CORPORATE INFORMATION

Provide basic information about the Offering firm. At a minimum provide:

1. Entity name, address, and contact information.
2. Name and address of Parent Company, if applicable.
3. Type of Entity.
4. DUNS Number.
5. Copy of current license, permit, or registration to transact business (in the District of Columbia) for self-performed scope (if applicable)
6. Statement of percentage of Ownership by Foreign Corporation with interest exceeding five (5) percent.
7. Statement of Authorized Negotiators per Section 6.1 Authorized Negotiators.
8. Explanation and organizational structure of Joint Venture (if applicable).

### L.3.2.2 TAB B – QUALITY

1. Quality Assurance Program: Provide a quality assurance program that addresses the issues **specifically related to this project**. Address the submittal process, mock-ups, inspections, pre-installation meetings, etc.

2. Quality Control Program: Provide a project **specific quality control program for this project**. Address onsite inspections, deficiency responses, etc. Describe in detail steps related with implementing an effective three-phase quality control inspection program (preparatory/initial/follow-up inspections) and also include a list of all major definable features of work.

3. Sufficient and Competent Staff for Quality Assurance Program: Provide a staffing plan that addresses the staff as directly relates to this project and their experience to be considered competent in the Quality Assurance Program. Provide a detailed proposed organizational chart for this project including the roles and responsibilities of each member of the project team down to the Foreman (or equivalent) level.

4. Internal Quality Assurance Acceptance Criteria is in line with DC Code and IBC Specifications: Provide sufficient information to clearly indicate how the company and staff will ensure that the Internal Quality Assurance criteria meet the DC Codes and IBC Specifications.

**L.3.2.3 TAB C – EXPERIENCE**

1. Corporate Project Experience: Provide historical information on projects located in the DC metro area completed by the firm within the past 10 years, which are similar in size, scope, and value. Address at a minimum, the project description, size, value, delivery date, and contact information for each project.

5. Professional References/Past Performance: Provide written references from a minimum of three (3) previous customers, with contact information, regarding the past or present performance of the firm on projects of similar size, scope, and value.

6. Proposed Project Staff: Provide information pertaining to proposed Project Managers, Project Engineers, Superintendents, each member listed in the staff organizational chart as needed in Section L.3.2.2.3 Volume 1 Tab B and other staff members who will have regular interaction with the Courts management and field personnel on this project. Provide at a minimum, resumes, references, certifications, education, relevant experience (highlight similar projects completed by individual team members), participation of proposed team members on example projects, and history with company (if any), etc.

**L.3.2.4 TAB D – PROJECT UNDERSTANDING**

1. Restate the project in your own words to include at a minimum, the scope of work, interaction with other contractors, phasing, staging and security considerations. Identify at least two (2) potential risks or issues regarding the success of the project and provide an explanation of a plan to mitigate the risk resulting from each risk or issue, etc.

2. Identify any other issues (not necessarily phasing related) that are of concern per your review of the contract documents. Provide an explanation of the issues and a plan to mitigate the resulting risk from each. The Courts may have many variables that may affect campus work as described in the project manual. Provide at a minimum, an explanation of your company's plan to deal with: coordination with other contractors, public and political interaction, security, ongoing Courts operations, occasional contractor work hour adjustments, etc.

**L.3.2.5 TAB E – SCHEDULE**

1. Provide a legible Critical Path Method (CPM) schedule for the project showing a well-developed critical path (with logic indicated) for the completion of the project. Offeror shall provide the schedule based on the following requirements:

   a. The Critical Path Method (CPM) Schedule must be prepared within the following scheduling software programs: Primavera P3, P5, P6 or Suretrak.

b. An electronic data file of the Bid Schedule must be generated from the software program being used to generate this schedule, and submitted on a CDROM as part of the Bid submittal requirements.

2. Provide a legible CPM schedule for the project showing a well-developed critical path (with logic indicated) for the completion of the project. The project schedule must include all project activities (not to exceed 14 days on any given activity), show coordination with all major actions, and must indicate the date of Substantial Completion, a date of Ready For Owner Occupancy, and a date of Final Project Completion (as defined below). In addition, provide a written narrative of the schedule.

3. Substantial Completion is defined as the date when work per the Contract Documents is complete to the point where the Courts can fully, safely, and securely commence work in the Project Area. For scheduling purposes the cabling, security, and furniture installations are complete, and the other DC Court vendors (i.e. IT and Telecom) can deliver and install their respective equipment and furnishings to bring this project to a final point where it is ready for full Occupancy.

7. Ready For Owner Occupancy is defined as the date when the Courts vendors are complete (i.e. Security, IT and Telecom) and the Project Area is ready for full Occupancy to meet the necessary DC Court functions.

8. Final Project Completion is defined as the date when all punch list corrections, project paperwork and close out documentation has been submitted for review, approved, and accepted by the Courts.

9. The Courts will procure a building permit to transfer to the selected Offeror.

10. For preparation of the CPM schedule, assume a Notice to Proceed Date of approximately **Friday, January 27, 2017.**

11. For preparation of the CPM schedule, assume a Construction Mobilization Date of approximately **January 30, 2017.**

12. Provide at a minimum, a preliminary project site utilization plan and indicate how the plan will change over time as the project progresses.

13. Provide a copy of the firm's cost control systems and programs for this project.

## L.3.2.6 TAB F – SCOPE CLARIFICATIONS AND EXCLUSIONS

1. Provide a list of any Offer or scope clarifications and qualifications that are a part of your offer. (A duplicate copy will be required in Volume 2 – Tab B.)

2. As stated in Section 1.12.3 of this document, T**he Courts will contract directly with a 3rd Party Code Inspection Agency and a Material Inspection Agency to provide the necessary DCRA required inspections.**

3. In addition to the list of scope clarifications and qualifications, provide an estimate for the following:

   A. Proposed number of 3rd Party Code (i.e. DCRA) inspections and material inspections required to complete the project (include all estimated inspections throughout the life-cycle of the project).

   B. Provide confirmation in the scope of clarifications and qualifications that the Contractor will coordinate with the 3rd Party Code Inspection Agency and 3rd Party Materials/Inspection Agency.

**L.3.2.7 TAB G – FORMS**

**Provide executed copies of the following solicitation attachments:**

**Attachment J.3 – Anti-Collusion Statement**
**Attachment J.4 – Certification of Eligibility**
**Attachment J.5 – Certification Regarding A Drug-Free Workplace**
**Attachment J.6 – Tax Certification Affidavit**
**Attachment J.7 – Release of Claims**
**Attachment J.8 – Payment to Subcontractors and Suppliers Certificate**
**Attachment J.9 – Ethics in Public Contracting**
**Attachment J.10 – Non Discrimination**

**L.4 VOLUME 2 – PRICING INFORMATION**

**L.4.1** In a second separately bound and labeled volume, include the following:

**L.4.2 TAB A -** Provide executed copies of the following solicitation attachments**:**

1. **Attachment J.11 – Solicitation / Offer / Award Form**
2. **Attachment J.12 – Bid/Offer Form**

**L.4.3 TAB B -** Provide executed copies of the following solicitation attachments:

1. **Attachment J.13 – Bid/Offer Breakdown Sheet (Hard Copy)**

**L.4.3.1** In addition, provide the following:

1. An electronic copy (in MS Excel) of the completed Bid/Offer Breakdown Sheet, submitted on a Data Compact Disc (Data CD) within this tab section. The following documents described below are to be submitted as separate electronic files on the Data CD.

2. A separate listing of any Allowance items and their values carried within the Offer Breakdown Sheet.

3. A list of any Offer or scope clarifications and qualifications that are a part of your offer. (This is a duplicate copy those submitted in Section L.3.2.6 Volume 1 – Tab F and must meet the same requirements outlined in Section L.3.2.6 Volume 1 – Tab F.)

**L.4.3.2** The Offeror shall include all required items described in Section C and all other incorporated applicable documents.

**L.4.3.3** This electronic form is to be completed by inserting values and information into the cells where appropriate. **DO NOT ADD TO, DELETE, OR CHANGE THE LAYOUT AND FORMATTING OF THE BID/OFFER BREAKDOWN FORM. HOWEVER, OFFERORS ARE RESPONSIBLE FOR CONFIRMING THAT THE FORM ACCURATELY REFLECTS THE OFFEROR'S PROPOSAL AND PRICING.**

**L.4.4** **Tab C** Provide executed copies of the following solicitation attachment(s):

**Attachment J.14 – Bid/Offer Bond Form**

**L.4.4.1** Provide written confirmation that the Offeror is able to complete and execute the following attachments upon award:

1. **Attachment J.15 – Payment Bond Form**
2. **Attachment J.16 – Performance Bond Form**

**L.5** The Courts reserves the right not to accept any exceptions to this Solicitation.

## L.6 PROPOSAL PREPARATION COSTS

**L.6.1** Each Offeror shall bear all costs it incurs in providing responses to this Solicitation and for providing any additional information required by the Courts to conduct the evaluation process. The successful Offeror shall also bear all costs incurred in conjunction with contract development and negotiation.

**L.6.2** Each Offeror may propose services that are provided by subcontractor(s), but any service(s) proposed must meet all of the requirements of this Solicitation. If the Offeror's proposal includes services provided by subcontractor(s), the Offeror will be required to act as the prime Contractor for all such items and must assume full responsibility for the award of a contract, delivery and quality of such services. The Contractor will be considered the sole point of contact with regard to all stipulations, including payment of all charges and the meeting of all requirements of this Solicitation.

## L.7 SIGNING OFFERS AND CERTIFICATIONS

**L.7.1** **Each Offeror must provide a full business address and telephone number of the Offeror and the Offer must BE SIGNED BY THE PERSON OR PERSONS LEGALLY**

**AUTHORIZED TO SIGN CONTRACTS.** All correspondence concerning the offer or resulting contract will be mailed to the address referred above on the offer in the absence of written instructions from the Offeror to the contrary. Any offer submitted by a partnership must be signed with the partnership name by a general partner with authority to bind the partnership. Any offer submitted by a corporation, followed by the signature and title of the person having authority to sign for the corporation. Upon request, an Offeror shall provide to the Courts satisfactory evidence of authority of the person signing on behalf of the corporation. If an agent signs an offer, the Offeror shall submit to the Contracting Officer, the agent's authority to bind the Offeror. The Offeror shall complete and sign all Representations and Acknowledgments, as appropriate. Failure to do so may result in the Offer being rejected.

## L.8 OFFER SECURITY

**L.8.1** Each Offer shall be accompanied by a Surety Offer in amount of 5% of the Offer. The Offeror pledges to enter into a Contract with the Courts on the terms stated in the Offer and will, if required, furnish bonds covering the faithful performance of the Contract and payment of all obligations arising there under. Should the Offeror refuse to enter into such Contract or fail to furnish such bonds if required, the amount of the Surety Offer shall be forfeited to the Courts as liquidated damages, not as a penalty.

**L.8.2** The Surety Bond shall be written on the attached Bid/Offer Bond form unless otherwise provided in the Offering Documents. Furthermore, the attorney-in-fact who executes the bond on behalf of the surety shall affix to the Bond a certified and current copy of the power of attorney.

**L.8.3** The Courts will have the right to retain the Surety Offer of Offerors to whom an award is being considered until either (a) the Contract has been executed and bonds, if required, have been furnished, or (b) the specified time has elapsed so that Offers may be withdrawn or (c) all Offers have been rejected.

## L.9 PROPOSAL SUBMISSION DATE AND TIME, AND LATE SUBMISSIONS, LATE MODIFICATIONS, WITHDRAWAL OR MODIFICATION OF PROPOSALS AND LATE PROPOSALS

### L.9.1 Proposal Submission

**L.9.1.1** Proposals must be delivered to the Courts no later than the closing date and time specified on page one of this solicitation. The Courts will not allow late proposals, modifications to proposals, or requests for withdrawals after the exact closing date and time.

**L.9.1.2** It is solely the offeror's responsibility to ensure that proposals are submitted in a timely manner.

### L.9.2 Withdrawal or Modification of Proposals

An offeror may modify or withdraw its proposal by informing the Contracting Officer at any time before the closing date and time for receipt of proposals.

### L.9.3 Late Proposals

The Courts will not accept late proposals or modifications to proposals after the closing date and time for receipt of proposals.

### L.9.4 Late Modifications

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

## L.10 EXPLANATION TO PROSPECTIVE OFFERORS

If a prospective offeror has any questions relating to this solicitation, the prospective offeror shall submit the question to Monica I. Wilkerson at Monica.Wilkerson@dcsc.gov . The prospective offeror should submit questions no later than ***December 16, 2016, by 3pm, local time***. The Courts may not consider any questions received after December 16, 2016, by 3pm, local time. The Courts will furnish responses via Offeror email address or in writing. An amendment to the solicitation will be issued if the CO decides that information is necessary in submitting offers, or if the lack of it would be prejudicial to any prospective Offeror. Oral explanations or instructions given by Courts officials before the award of the contract will not be binding.

## L.11 RESTRICTION ON DISCLOSURE AND USE OF DATA

**L.11.1** Offerors who include in their proposal data that they do not want disclosed to the public or used by the Courts except for use in the procurement process shall mark the title page with the following legend:

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

**b.** **If, however, a contract is awarded to this Offeror as a result of or in connection with the submission of this data, the Courts will have the right to duplicate, use, or disclose the data to the extent consistent with the Courts needs in the procurement process. This restriction does not limit the Courts 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.11.2** 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.12 PROPOSALS WITH OPTION YEARS

Reserved

## L.13 PROPOSAL PROTESTS

L.13.1 Any aggrieved person may protest this Solicitation, Award, or Proposed Contract Award in accordance with Chapter 8 of the Procurement Guidelines of the District of Columbia Courts. Protest shall be filed in writing, within ten (10) working days after the basis of the protest is known (or should have been known); whichever is earlier with the Contracting Officer at:

Dr. Cheryl Bailey
District of Columbia Courts
Capital Projects and Facilities Management Division
616 H Street, NW, Suite 622
Washington, D.C. 20001

**L.13.2** A protest shall include the following:

1. Name, address and telephone number of the protester;
2. Solicitation (CPFMD) or contract number;
3. Detailed statement of the legal and factual grounds for the protest including copies of relevant documents;
4. Request for a ruling by the Contracting Officer; and
5. Statement as to the form of relief requested.

## L.14 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. Elaborate artwork, expensive visual and other presentation aids are neither necessary nor desired.

## L.15 RETENTION OF PROPOSALS

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

## L.16 PROPOSAL COSTS

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

## L.17 CERTIFICATES OF INSURANCE

Prior to commencing work, the Contractor shall have its insurance broker or insurance company submit certificates of insurance giving evidence of the required coverages as specified in Section I.8 to:

Dr. Cheryl Bailey
District of Columbia Courts
Capital Projects and Facilities Management Division
616 H Street, NW, Suite 622
Washington, D.C. 20001

## L.18 ACKNOWLEDGMENT OF AMENDMENTS

The offeror shall acknowledge receipt of any amendment to this solicitation by the Courts. The Courts must receive the acknowledgment by the date and time specified for receipt of proposals. An offeror's failure to acknowledge an amendment may result in rejection of its offer.

## L.19 BEST AND FINAL OFFERS

If, subsequent to receiving original proposals, negotiations are conducted under FAR, Part 15, all offerors within the competitive range will be so notified and will be provided an opportunity to submit written best and final offers at a designated date and time. Best and final offers will be subject to the Late Submissions, Late Modifications and Late Withdrawals of Proposals provisions of the solicitation. After evaluation of best and final offers, the CO may award the contract to the highest-ranked offeror, or negotiate with the highest ranked offeror in accordance with FAR, Part 15.

## L.20 LEGAL STATUS OF OFFEROR

Each proposal must provide the following information:

**L.20.1** Name, address, telephone number and federal tax identification number of offeror;

**L.20.2** A copy of each Courts license, registration or certification that the offeror is required by law to obtain. If the offeror is a corporation or partnership and does not provide a copy of its license, registration or certification to transact business in the Courts, 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.20.3** If the offeror 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.21 FAMILIARIZATION WITH CONDITIONS

Offerors 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.22 GENERAL STANDARDS OF RESPONSIBILITY

The prospective contractor must demonstrate to the satisfaction of the Courts its capability in all respects to perform fully the contract requirements; therefore, the prospective contractor must submit relevant documentation within five (5) days of the request by the Courts.

**L.22.1** To be determined responsible, a prospective contractor must demonstrate that it:

(a) Has adequate financial resources, or the ability to obtain such resources, required to perform the contract;

(b) Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and government contract commitments;

(c) Has a satisfactory performance record;

(d) Has a satisfactory record of integrity and business ethics;

(e) Has a satisfactory record of compliance with the applicable Courts licensing and tax laws and regulations;

(f) Has, or has the ability to obtain, the necessary organization, experience, accounting, and operational control, and technical skills;

(g) Has, or has the ability to obtain, the necessary production, construction, technical equipment, and facilities;

(h) Has not exhibited a pattern of overcharging the Courts;

(i) Does not have an outstanding debt with the Courts or the federal government in a delinquent status; and

(j) Is otherwise qualified and is eligible to receive an award under applicable laws and regulations.

**L.22.2** If the prospective contractor fails to supply the information requested, the CO 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 CO shall determine the prospective contractor to be non-responsible.

## L.23 PRE-PROPOSAL CONFERENCE

**L.23.1** A pre-proposal conference will be held ***on December 6, 2016, at 10:00 am. The meeting will be held in Room 617 at Gallery Place, 616 H Street, N.W., Sixth Floor, Washington, D.C. 20001. Offerors' participation is encouraged although attendance is not mandatory.*** The purpose of the conference is to provide a structured and formal opportunity for the Courts to accept questions from Offerors on the solicitation document as well as to clarify the contents of the solicitation. Attending Offerors must complete the pre-proposal conference Attendance Roster at the conference so that their attendance can be properly recorded. ***The meeting will provide an opportunity for discussion of the Scope of Work.*** A site investigation will be held immediately following the pre-proposal meeting. ***The site investigation will be held at the Main Indiana Entrance Lobby at the H. Carl Moultrie Courthouse, 500 Indiana Avenue, N.W., Washington, D.C. 20001. Offerors' participation is encouraged although attendance is not mandatory. The site investigation will provide an additional opportunity for discussion of the Scope of Work. See L.24 below for Site Investigation Period.***

**L.23.2 No oral statement made by a DC Court representative(s) during the pre-proposal conference, nor any written record of such oral statements made and subsequently furnished to the Offeror, will be deemed to have the effect of adding to, modifying, or otherwise varying from the written provisions of the invitation for Offers (including, but not limited to specifications, drawings and written amendments to the solicitation). In the event the discussion or questions raised during the pre-proposal conference indicate a need to modify the invitation for Offers, an Amendment to the Solicitation will be issued in writing; any such amendment to the Solicitation must be acknowledged in the same manner and under the same conditions as all other written amendments to an invitation for Offers.**

## L.24 Site Investigation Period

Arrangements for additional building and site investigation periods will be established at the pre-proposal meeting. All parties entering the building to perform investigations will be required to go through security. No destructive investigation or testing will be allowed. To arrange for the site visit, contact the following person(s):

Ms. Judith Hill
District of Columbia Courts
Project Manager
Capital Projects and Facilities Management Division
E-mail address: **Judith.Hill@dcsc.gov**

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## SECTION M - EVALUATION FACTORS

### M.1 EVALUATION FOR AWARD

The contract will be awarded to the responsible Offeror whose offer is most advantageous to the Courts, based upon the evaluation criteria specified below. Thus, while the points in the evaluation criteria indicate their relative importance, the total scores will not necessarily be determinative of the award. Rather, the total scores will guide the Courts in making an intelligent award decision based upon the evaluation criteria.

### M.2 TECHNICAL RATING

**M.2.1** The Technical Rating Scale is as follows:

| Numeric Rating | Adjective | Description |
|---|---|---|
| 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. |

**M.2.2** The technical rating is a weighting mechanism that will be applied to the point value for each evaluation factor to determine the offeror's score for each factor. The offeror's total technical score will be determined by adding the offeror's score in each evaluation factor. **For example, if an evaluation factor has a point value range of zero (0) to forty (40) points, using the Technical Rating Scale above, if the Courts evaluates the offeror's response as "Good," then the score for that evaluation factor is 4/5 of 40 or 32.**

If subfactors are applied, the offeror's total technical score will be determined by adding the offeror's score for each subfactor. **For example, if an evaluation factor has a point value range of zero (0) to forty (40) points, with two subfactors of twenty (20) points each, using the Technical Rating Scale above, if the Courts evaluates the offeror's response as "Good" for the first subfactor and "Poor" for the second subfactor, then the total score**

**for that evaluation factor is 4/5 of 20 or 16 for the first subfactor plus 1/5 of 20 or 4 for the second subfactor, for a total of 20 for the entire factor.**

## M.3 EVALUATION CRITERIA

**Proposals for this solicitation will be evaluated based on the following evaluation factors in the manner described below:**

### M.3.1 TECHNICAL CRITERIA (75 Points Maximum)

| Technical Evaluation Factors | Points |
|---|---|
| | |
| Factor A – Contractor's Quality related to the project requirements | 10 |
| Factor B – Past Performance (Contractor's experience related to the project requirements) | 20 |
| Factor C - Contractor's understanding of the project requirements and variables | 15 |
| Factor D – Proposed Project Schedule | 30 |
| Total | 75 |

## M.4 PRICE CRITERION (25 Points Maximum)

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:

Lowest price proposal
---------- x weight = Evaluated price score
Price of proposal being evaluated

## M.5 Volume 1 – Technical Information (See L.3)

### M.5.1 Contractor's Quality related to the project requirements <u>10 pts</u>

(See L.3.2.2 – Tab B)
Quality Assurance Program & Quality Control Program - project specific: **5 pts**
Management and Communication Approach to the project & Corporate Capabilities: **5 pts**

### M.5.2 Contractor's experience related to the project requirements <u>20 pts</u>

(See L.3.2.3 – Tab C)
Five (5) years of History performing similar projects in scope and value & three (3) years of Courthouse experience: **10 pts**
Three (3) letters of references speaking to the firm's professional experience: **5 pts**
Contractor's proposed management team including qualifications and references: **5 pts**

**M.5.3 Contractors understanding of the project requirements and variables, and coordination efforts, including the clarifications and inclusions:** **15 pts**
(See L.3.2.4 & L.3.2.6 - Tab D)
Understanding of the scope of the project along with a comprehensive and organized response to working in a courthouse environment: **10 pts**
Detailed description of Contractor's program to assist the Courts in necessary coordination between the project and other related projects, existing conditions, or future conditions; for example, this may include, but not limited to, the associated coordination efforts of a major change in the project scope of work that directly impacts an existing condition that is not within the project limits: **5 pts**

**M.5.4 Contractors Proposed Project Schedule** **30 pts**
(See L.3.2.5 – Tab E)
Legible Critical Path Method (CPM) schedule for the project showing a well-developed critical path (with logic indicated) for the completion of the project: **25 pts**
Clarity of the Proposed Phasing and Site Utilization Plans alone with the Contractor's Cost Controls: **5 pts**

**M.6 Volume 2 – Pricing Information** **25 pts**
(See L.4 - Tab A & B)
Cost of the overall project.
Cost of alternates, if applicable

**M.6.1** The price points will be determined as follows:
Price evaluation will account for up to 20 points of the total score. The Offeror with the lowest complete total price will receive the maximum points. All other proposals will receive a proportionately lower total score.

**M.7 TOTAL POINTS (100 Points Maximum)**

Total points shall be the cumulative total of the offeror's technical criteria points, price criterion points.

**ATTACHMENT J.1**

# D.C. COURTS GENERAL CONTRACT PROVISIONS

**(Revised 2008)**

## D.C. COURTS GENERAL CONTRACT PROVISIONS


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## 1. Definitions.

The term "Contracting Officer" shall mean the Executive Officer of the District of Columbia Courts or her or his authorized representative. The term "Court" shall, depending on how that term is defined elsewhere in this contract, mean the Superior Court of the District of Columbia, the District of Columbia Court of Appeals or the District of Columbia Court System. If the Contractor is an individual, the term "Contractor" shall mean the Contractor, his or her heir(s), executors and administrators. If the Contractor is a corporation, the "Contractor" shall mean the Contractor and its successor. The term "District of Columbia government" shall mean all the branches of the government of the District of Columbia, including the District of Columbia Courts.

## 2. Changes.

The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes in this contract within the general scope hereof. If such change causes an increase or decrease in the cost of performance of this contract, or in the time required for performance, an equitable adjustment shall be made. Any claim for adjustment under this paragraph must be asserted within twenty-one (21) days from the date the change is offered, provided however, that the Contracting Officer, may, in his or her discretion receive, consider and adjust any such claim asserted at any time prior to the final settlement of the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined in accordance with Clause 18. Nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

## 3. Transfers.

This contract or any interest herein shall not be transferred by either the Court or the Contractor except upon written permission of the other party.

## 4. Waiver.

The waiver of any breach of this contract will not constitute a waiver of any subsequent breach thereof nor a waiver of this contract.

## 5. Indemnification (Revised 11/24/08).

(a) The Contractor shall indemnify and save harmless the Court and its officers, agents and employees from and against any and all claims, losses, liabilities, penalties, fines, forfeitures, demands, causes of action, suits and expenses incidental thereto (including the cost of defense and attorneys' fees) resulting from, arising out of, or in any way connected to any act, omission or default of the Contractor, its officers, agents, employees, servants or its subcontractors, or any other person acting for or by permission of the Contractor in the performance of this contract, regardless of whether or not any damage resulting from the Contractor's act, omission or default is caused in part by the Court. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed in performance of this Contract. The Contractor shall also repair or replace any Court

property that is damaged by the Contractor, Contractor's officers, employees, agents, servants, subcontractors, or any other person acting for or by permission of the Contractor While performing work hereunder.

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

(c) The Contractor shall indemnify and save harmless the Courts and its officers, agents, Servants and employees from liability of any nature or kind, including costs and expenses, for or on account of the use of any patented or unpatented invention, item or process, manufactured or used in the performance of this contract, including their use by the Court, unless otherwise specifically stipulated in the contract.

(d) The Contractors hall indemnify and save harmless the Court and its officers, agents, Servants and employees against any claim for copyright infringement relating to any work produced, used or delivered under this contract.

**6. <u>Patents and Copyrights.</u>**

(a) The Contractor shall not make application for a patent or copyright on any invention, item or process produced under this contract except with the written permission of the Court. The Courts shall have an irrevocable nonexclusive royalty free license with the right to sublicense in any invention conceived or first actually reduced to practice in the course of or under this contract or any subcontract thereunder.

(b) All reports, programs, manuals, discs, tapes, card desks, listing, and other materials prepared by or worked upon by the Contractor's employees under this Agreement shall belong exclusively to the Courts.

(c) Contractor agrees not to publish or disclose any material first prepared under this Agreement without prior permission of the Court.

(d) Contractor will not knowingly include any work copyrighted by others in any material prepared under this Agreement unless it obtained either prior permission from the Court or an irrevocable royalty free license for the Court in such work.

(e) Contractor agrees to give the Court all assistance reasonably required to protest the rights defined in these provisions.

**7. Covenant Against Contingent Fees.**

The Contractor warrants that no person or 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 a bona fide employee or agency maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Court shall have the right to terminate this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of the commission, percentage, brokerage, or contingent fee.

**8. Quality.**

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

**9. Health And Safety Standards.**

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

**10. Inspection Of Supplies.**

(a) "Supplies," as used in this clause, includes, but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.

(b) The Contractor shall be responsible for the materials or supplies covered by this contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notification of rejection. Upon the Contractor's failure to cure within ten (10) days after date of notification, the Court may return the rejected materials or supplies to the Contractor at the Contractor's risk and expense.

(c) The Contractor shall provide and maintain an inspection system acceptable to the Court covering supplies under this contract and shall tender to the Court for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Contractor to be in conformity with contract requirements. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the Court during contract performance and for as long afterwards as the contract requires. The Court may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under this contract.

(d) The Court has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before

acceptance. The Court will perform inspections and tests in a manner that will not unduly delay the work. The Court assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in the contract.

(e) If the Court performs inspection or test on the premises of the Contractor or subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, the Court will bear the expense of Court inspections or tests made at other than Contractor's or subcontractor's premises; provided, that in case of rejection, the Court will not be liable for any reduction in the value of inspection or test samples.

(1) When supplies are not ready at the time specified by the Contractor for inspection or test, the Contracting Officer may charge to the Contractor the additional cost of inspection or test.

(2) Contracting Officer may also charge the Contractor for any additional cost of inspection or test when prior rejection makes re-inspection or retest necessary.

(f) The Court has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or otherwise not in conformity with contract requirements. The Court may reject nonconforming supplies with or without disposition instructions.

(g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and when required, shall disclose the corrective action taken.

(h) If the Contractor fails to remove, replace, or correct rejected supplies that are required to be replaced or corrected within ten (10) days, the Court may either (1) by contract or otherwise, remove, replace or correct the supplies and charge the cost to the Contractor or (2) terminate the contract for default. Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Contracting Officer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

(i) If this contract provides for the performance of Court quality assurance at source, and if requested by the Court, the Contractor shall furnish advance notification of the time (i) when Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract, and (ii) when the supplies will be ready for Court inspection.

(j) The Court request shall specify the period and method of the advance notification and the Court representative to whom it shall be furnished. Requests shall not require more than 2 business days of advance notification if the Court representative is in residence in the Contractor's plant, nor more than 7 business days in other instances.

(k) The Court will accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. Court failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability upon the Court, for non-conforming supplies.

(l) Inspections and tests by the Court do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

(m)If acceptance is not conclusive for any of the reasons in subparagraph (l) hereof, the Court, in addition to any other rights and remedies provided by law, or under provisions of this contract, shall have the right to require the Contractor (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; provided, that the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Contractor of notice of defects or noncompliance, to repay such portion of the contract as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Court will have the right to return the rejected materials at Contractor's risk and expense or contract or otherwise to replace or correct such supplies and charge to the Contractor the cost occasioned the Court thereby.

**11. <u>Inspection Of Services.</u>**

(a) "Services" as used in this clause includes services performed, workmanship, and material furnished or utilized in the performance of services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Court covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Court during contract performance and for as long afterwards as the contract requires.

(c) The Court has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Court will perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Court performs inspections or tests on the premises of the Contractor or subcontractor, the Contractor shall furnish, without additional charge, all reasonable facilities and assistance for the safety and convenient performance of these duties.

(e) If any of the services do not conform to the contract requirements, the Court may require the Contractor to perform these services again in conformity with contract requirements, at no increase in

contract amount. When the defects in services cannot be corrected by performance, the Court may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect value of services performed.

(f) If the Contractor fails to promptly perform the services again or take the necessary action to ensure future performance in conformity to contract requirements, the Court may (1) by contract or otherwise, perform the services and charge the Contractor any cost incurred by the Court that is directly related to the performance of such services, or (2) terminate the contract for default.

**12. Payment.**

The Court shall pay the Contractor for services performed by the Contractor in the manner set forth in this contract, at the rate prescribed upon the submission by the Contractor of proper invoices or time statements, at the time provided for in this contract, to the Budget and Finance Division for contracts involving the Superior Court of the District of Columbia or the Court System, or to the Clerk of the District of Columbia Court of Appeals for contracts involving the District of Columbia Court of Appeals.

**13. Taxes.**

The District of Columbia Courts are exempt from and will not pay Federal Excise Tax, Transportation Tax, and the District of Columbia Sales and Use Taxes.

**14. Appointment of Attorney (Revised 11/24/08).**

The bidder/offeror or Contractor (whichever the case may be) does hereby irrevocably Designate and appoint the Clerk of the District of Columbia Superior Court and his or her Successor in office as the true and lawful attorney of the Contractor for the purpose of Receiving service of all notices and processes issued by any court in the District of Columbia, as well as service of all pleadings and other papers, in relation to any action or legal proceeding arising out of or pertaining to this contractor the work required or performed hereunder.

The bidder/offeror or Contractor (whichever the case may be) expressly agrees that the validity of any service upon the said Clerk as herein authorized shall not be affected either by the fact that the Contractor was personally within the District of Columbia and otherwise subject to personal service at the time of such service upon the said Clerk or by the fact that the contractor failed to receive a copy of such process, notice or other paper so served upon the said Clerk provided the said Clerk shall have deposited in the United States mail, registered and postage prepaid, a copy of such process, notice, pleading or other paper addressed to the bidder/offeror or contractor at the address stated in this contract.

**15. Termination for Default.**

(a) The Contracting Officer may, subject to the provisions of paragraph (c) below, by written notice to the Contractor, terminate the whole or any part of this contract for any of the following reasons:

(1) If the Contractor fails to make delivery of the supplies or to perform the services within the

time specified herein or any extension thereof; or

(2) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the Contracting Officer terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Contracting Officer may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Court for any excess costs for similar supplies or services; provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the District or Federal Government in either their sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without fault or negligence of the Contractor. If the failure to perform is caused by the default of the subcontractor, and if such default arises out of causes beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess cost for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Court, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Court, in the manner and to the extent directed by the Contracting Officer, (i) completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures plans, drawing information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Court has an interest. Payment for completed supplies delivered to and accepted by the Court will be at the contract price. Payment for manufacturing materials delivered to and accepted by the Court and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the **Disputes c**lause of this contract**.** The Court may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the Court against loss because of outstanding liens or claims of former lien holders.

(e) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default

was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination of convenience of the Court, be the same as if the notice of termination had been issued pursuant to such clause.

(f) The rights and remedies of the Court provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(g) As used in paragraph (c) of this clause, the term "subcontractor(s)" means subcontractor(s) at any tier.

**16. Termination for Convenience of the Court.**

(a) The Court may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Court's interest. The Contracting Officer shall terminate by delivering to the Contractor a written Notice of Termination specifying the extent of termination and effective date.

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

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all contracts to the extent they relate to the work terminated.

(4) Assign to the Court, as directed by the Contracting Officer, all rights, title and interest of the Contractor under the subcontracts terminated, in which case the Court will have the right to settle or pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts. The approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Court (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other materials produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract has been completed, would be required to be furnished to the Court.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the

protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Court has or may acquire an interest.

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

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

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

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

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

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

(2) The total of:

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

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

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

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

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

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

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

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

(h) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraphs (d), (f) or (j), except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) or (j), and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (d), (f) or (j), the Court will pay the Contractor (1) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

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

(1) All unliquidated advances or other payments to the Contractor under the termination portion of the contract;

(2) Any claim which the Court has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Court.

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

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

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

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

**17. <u>Termination of Contracts for Certain Crimes and Violations.</u>**

(a) The District may terminate without liability any contract and may deduct from the contract price or otherwise recover the full amount of any fee, commission, percentage, gift, or consideration paid in violation of this title if:

(1) The Contractor has been convicted of a crime arising out of or in connection with the procurement of any work to be done or any payment to be made under the contract; or

(2) There has been any breach or violation of:

(A) Any provision of the Procurement Practices Act of 1985, as amended, or

(B) The contract provision against contingent fees.

(b) If a contract is terminated pursuant to this clause, the Contractor:

(1) May be paid only the actual costs of the work performed to the date of termination, plus termination costs, if any; and

(2) Shall refund all profits or fixed fees realized under the Contract.

(c) The rights and remedies contained in this are in addition to any other right or remedy provided by law, and the exercise of any of them is not a waiver of any other right or remedy provided by law.

**18. Protests and Disputes.**

Any protest or dispute arising under or out of this contract is subject to the provisions of Chapter 8 of the Procurement Guidelines of the District of Columbia Courts (August 2003 or subsequent modifications).

**19. Independent Contractor Relationship.**

It is expressly understood and agreed that the professional technical personnel assigned by the Contractor to work under this contract are the Contractor's employees or agents. Under no circumstances are such individuals to be considered Court employees or agents. Contractor and its employees shall be considered in an independent contract relationship with the Court at all times.

**20. Security.**

Contractor agrees that its employees shall treat as strictly confidential, all information received as a result of the performance of this contract. Such information will not, except as required by law, be disclosed to anyone outside of the Court's organization during the period of this contract or thereafter.

**21. Officials not to Benefit.**

Unless a determination is made as provided herein, no officer or employee of the District of Columbia government shall be admitted to any share or part of this contract or to any benefit arising therefrom, and any contract made by the Contracting Officer or any Court employee authorized to execute contracts in which they or an employee of the Court will be personally interested shall be void, and no payment shall be made thereon by the Court or any officer thereof, but this provision shall not be construed to extend to this contract to the extent that this contract is made with a corporation for the corporation's general benefit. A District employee shall not be a party to a contract with the Court 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 Court that there is a compelling reason for contracting with the employee, such as when the Court's needs cannot reasonably otherwise be met.

**22. Retention and Examination of Books.**

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

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

The Contracting officer, or his or her duly authorized representative shall, until three years after final payment, have the right to examine any directly pertinent books, documents, papers and records of the Contractor involving transactions related to this contract.

**23. Recovery of Debts Owed the Court.**

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

**24. Appropriation of Funds.**

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

**25. Non-Discrimination in Employment.**

(a) The Contractor shall not discriminate in any manner against an employee or applicant for employment because of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation, or political affiliation, as these terms are defined in the District of Columbia Human Rights Act, as amended (D.C. Official Code § 2-1401.02). The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation or political affiliation. The affirmative action shall include, but not be limited to the following: employment, upgrading, or transfer; recruitment or recruitment advertising; demotion, layoff, or termination; rates of pay, or other forms of

compensation; and selection for training and apprenticeship.

(b) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions in paragraph (a) of this clause.

(c) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation or political affiliation.

(d) The Contractor agrees to send each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising each labor union or worker's representative of the commitment Contractor has made pursuant to paragraph n (a) of this clause.

(e) The Contractor agrees to permit the Contracting Officer or his or her designated representative access to the Contractor's books, records, and accounts, pertaining to its employment practices for purposes of investigation to ascertain compliance with the provisions contained in this clause.

(f) The Contractor shall include in every subcontract the provisions contained in paragraphs (a), (b), (c), (d) and (e) of this clause so that such provisions will be binding upon each subcontractor.

**26. <u>Buy American Act.</u>**

(a) The Buy American Act (41 U.S.C. §10a) provides that the District of Columbia give preference to domestic end products. "Components," as used in this clause, means those articles, materials, and supplies incorporated directly into the end products. "Domestic end product," as used in this clause, means (1) an un-manufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States, exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (b)(3) or (4) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic. "End products," as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

(b) The Contractor shall deliver only domestic end products, except those-

(1) For use outside the United States;

(2) For which the Court determines the cost to be unreasonable;

(3) For which the Court determines that domestic preference would be inconsistent with the public interest; or

(4) That the Court determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

**27. <u>Service Contract Act of 1965.</u>**

(a) Definitions. "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. §351 *et seq.).* "Contractor," as used in this clause, means the prime Contractor or any subcontractor at any tier. "Service employee," as used in this clause, means any person (other than a person employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR Part 541) engaged in performing a Court contract not exempted under 41 U.S.C. §356, the principal purpose of which is to furnish services in the United States, as defined in section 22.1001 of the Federal Acquisition Regulation. It includes all such persons regardless of the actual or alleged contractual relationship between them and a contractor or subcontractor.

(b) Applicability. To the extent that the Act applies, this contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). All interpretations of the Act in Subpart C of 29 CFR Part 4 are incorporated in this contract by reference. This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. §356, as interpreted in Subpart C of 29 CFR Part 4.

(c) Compensation. (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or the Secretary's authorized representative, as specified in any wage determination attached to this contract.

(2)(A) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee not listed in it, but to be employed under this contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(B) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration (ESA), U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(C) The final determination of the conformance action by the Wage and Hour Division shall be

transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(D)(i) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(ii) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds to a contract under which the classification in question was previously conformed pursuant to this paragraph (c), a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (*i.e.*, adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subparagraph (c)(2)(B) of this clause need not be followed.

(iii) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(E) The wage rate and fringe benefits finally determined under subparagraph (c)(2)of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract;

(F) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) If the term of this contract is more than 1 year, the minimum wages and fringe benefits required for service employees under this contract shall be subject to adjustment after 1 year and not less

often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) Obligation to furnish fringe benefits. The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) Minimum wage. In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor shall pay any service or other employees performing work under this contract less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §206). Nothing in this clause shall relieve the Contractor or any subcontractor of any other legal or contractual obligation to pay a higher wage to any employee.

(f) Successor contracts. If this contract succeeds a contract subject to the Act under which substantially the same services were furnished and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, then, in the absence of a minimum wage attachment to this contract, neither the Contractor nor the subcontractor shall pay any service employee performing this contract less than the wages and fringe benefits, including those accrued and any prospective increases, provided for under that agreement. No Contractor or subcontractor may be relieved of this obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing under 29 CFR 4.10, that the wages and fringe benefits provided for by that agreement vary substantially from those prevailing for similar services in the locality or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and 4.11 and parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) Notification to employees. The Contractor and any subcontractor shall notify each service employee commencing work on this contract of the minimum wage and any fringe benefits required to be paid, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) Safe and sanitary working conditions. The Contractor or subcontractor shall not permit services called for by this contract to be performed in buildings or surroundings or under working conditions

provided by or under the control or supervision of the Contractor or subcontractor that are unsanitary, hazardous, or dangerous to the health or safety of service employees. The Contractor or subcontractor shall comply with the health standards applied under 29 CFR Part 1925.

(i) Records. (1) The Contractor and each subcontractor shall maintain for 3 years from the completion of work, and make available for inspection and transcription by authorized ESA representatives, a record of the following:

(A) For each employee subject to the Act:

(i) Name, address and social security number;

(ii) Work classification or classifications, rate or rates of wages and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(iii) Daily and weekly hours worked; and

(iv) Any deductions, rebates, or refunds from total daily or weekly compensation.

(B) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by ESA under the terms of paragraph (c) of this clause. A copy of the report required by subparagraph (c)(2)(B) of this clause will fulfill this requirement.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) Pay periods. The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(k) Withholding of payments and termination of contract. The Contracting Officer shall withhold from the prime Contractor under this or any other Court contract with the prime contractor any sums the Contracting Officer, or an appropriate officer of the Labor Department, decides may be necessary to pay underpaid employees of the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of

funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination for default. In such event, the Court may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) Subcontracts. The Contractor agrees to insert this clause in all subcontracts.

(m) Contractor's report.

(1) If there is a wage determination attachment to this contract and any classes of service employees not listed on it are to be employed under the contract, the Contractor shall report promptly to the Contracting Officer the wages to be paid and the fringe benefits to be provided each of these classes, when determined under paragraph (c) of this clause.

(2) If wages to be paid or fringe benefits to be furnished any service employees under the contract are covered in a collective bargaining agreement effective at any time when the contract is being performed, the Contractor shall provide to the Contracting Officer a copy of the agreement and full information on the application and accrual of wages and benefits (including any prospective increases) to service employees working on the contract. The Contractor shall report when contract performance begins, in the case of agreements then in effect, and shall report subsequently effective agreements, provisions, or amendments promptly after they are negotiated.

(n) Contractor's Certification. By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Court contracts by virtue of the sanctions imposed under section 5 of the Act. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Court contract under section 5 of the Act. The penalty for making false statements is prescribed in the D.C. Code § 22-2405.

(o) Variations, tolerances, and exemptions involving employment. Notwithstanding any of the provisions in paragraphs (c) through (l) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions authorized by the Secretary of Labor.

(1) In accordance with regulations issued under Section 14 of the Fair Labor Standards Act of 1938 by the Administrator of the Wage and Hour Division, ESA (29 CFR parts 520, 521, 524, and 525), apprentices, student learners, and workers whose earning capacity is impaired by age or by physical or mental deficiency or injury, may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act, without diminishing any fringe benefits or payments in lieu of these benefits required under section 2(a)(2) of the Act.

(2) The Administrator will issue certificates under the Act for employing apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages, but without changing requirements concerning fringe benefits or supplementary cash payments in lieu of these benefits.

(3) The Administrator may also withdraw, annul, or cancel such certificates under 29 CFR parts 525 and 528.

(p) Tips. An employee engaged in an occupation in which the employee customarily and regularly receives more than $30 a month in tips shall be credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with regulations in 29 CFR part 531. However, the amount of credit shall not exceed 40 percent of the minimum rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 as amended.

**28. WALSH-HEALEY PUBLIC CONTRACTS ACT:**

(a) All representations and stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These representations and stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

(b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

**29. Governing Law.**

This contract shall be governed by the laws of the District of Columbia both as to interpretation and performance.

**30. Multiyear Contract.**

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