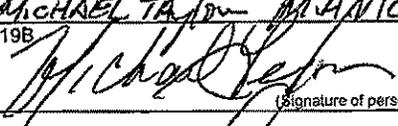
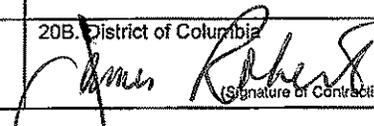


<b>AWARD/CONTRACT</b>		1. Reserved for later use		Page of Pages			
2. Contract Number DCKT-2009-B-0002		3. Effective Date July 24, 2009		1   21			
5. Issued By: Department of Public Works Office of Contracting and Procurement 2000 14 <sup>th</sup> Street, NW, 6 <sup>th</sup> Floor Washington, DC 20009		Code		4. Requisition/Purchase Request/Project No.			
7. Name and Address of Contractor (No. street, city, county, state and Zip Code) Recycle America Alliance LLC 1000 Ritchie Road Capital Heights, MD 20743 Attn: Jim Marcinko 301-499-1707		8. Delivery <input type="checkbox"/> FOB Origin <input checked="" type="checkbox"/> Other		6. Administered by (If other than line 5) Department of Public Works Solid Waste Management Administration			
Duns No. <input type="text"/> TIN <input type="text"/>		9. Discount for prompt payment:		10. Submit invoices to the Address shown in Section G.2 (2 copies unless otherwise specified)			
11. Ship to/Mark For		Code		12. Payment will be made by			
13. Remit Address:		Code		14. Accounting and Appropriation Data ENCUMBRANCE CODE:			
15A. Item	15B. Supplies/Services	15C. Qty.	15D. Unit	15E. Unit Price	15F. Amount		
	See Section B.3 Price Schedule						
Total Estimated Amount of Contract					640,000.00		
16. Table of Contents							
(X)	Section	Description	Page	(X)	Section	Description	Page
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
X	A	Contract Form	1	X	I	Contract Clauses	14
X	B	Supplies or Services & Cost/Price	2	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS			
X	C	Services	4	x	J	List of Attachments	21
	D	Packing and Marking		PART IV - REPRESENTATIONS AND INSTRUCTIONS			
X	E	Inspection and Acceptance	4	K	Representations, Certifications and Other Statements of Offerors		
X	F	Contract Term	4	L	Instructions, conditions & notices to offerors		
X	G	Contract Administration data	5	M	Evaluation factors for award		
x	H	Special Contract Requirements	9				
Contracting Officer will complete Item 17 or 18 as applicable							
17. <input checked="" type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return (2) copies to issuing office.) Contractor agrees to furnish and deliver all items, perform all the services set forth or otherwise identified above and on any continuation sheets, for the consideration stated herein. The rights and obligations of the parties to this Agreement shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, as amended, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)				18. <input type="checkbox"/> AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number including the additions or changes made by which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.			
19A. Name and Title of Signer (Type or print) MICHAEL TRAYN MICHAEL TRAYN PRESIDENT				20A. Name of Contracting Officer			
19B.  (Signature of person authorized to sign)		19C. Date Signed 7-24-09		20B. District of Columbia  (Signature of Contracting Officer)		20C. Date Signed 7/24/09	

## **SECTION B: SUPPLIES OR SERVICES AND PRICE**

- B.1** The Government of the District of Columbia, Office of Contracting and Procurement, on behalf of the Department of Public Works (the District) engages the contractor to provide a Materials Recovery Facility (MRF) to receive, process and market Recyclables from the District's residential recycling collection program along with materials from drop off facilities located at District transfer stations and government building recycling programs.
- B.2** The District awards a requirements contract.
- B.2.1** The District will purchase its requirements of the articles or services included herein from the Contractor. The estimated quantities stated herein reflect the best estimates available. The estimate shall not be construed as a representation that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable. They shall not be construed to limit the quantities which may be ordered from the Contractor by the District or to relieve the Contractor of its obligation to fill all such orders.
- a) Delivery or performance shall be made only as authorized in accordance with the Ordering Clause, G.10. The District may issue orders requiring delivery to multiple destinations or performance at multiple locations. If the District urgently requires delivery before the earliest date that delivery may be specified under this contract, and if the Contractor shall not accept an order providing for the accelerated delivery, the District may acquire the urgently required goods or services from another source.
  - b) There is no limit on the number of orders that may be issued. The District may issue orders requiring delivery to multiple destinations or performance at multiple locations.
  - c) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and District's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after contract expiration or termination.

**B.3 PRICE SCHEDULE**

**SERVICES/DESCRIPTION/PRICE**

Contract Line Item # (CLIN)	Item Description	Price Per Ton (Processing/transporting)*	Estimated Total Price
0001	Fee for processing and transporting, and marketing recyclables in a Single Stream of mixed Rigid Containers and Paper Products from the District's residential recycling collection program.	\$-99.50 	\$640,000.00

**\*The District will pay the contractor a net cost per ton. Net cost per ton equal processing/transporting fee minimum market revenue.**

## **SECTION C: SPECIFICATIONS/WORK STATEMENT**

### **C.1 SCOPE:**

The District engages the contractor to continue to provide a materials Recovery Facility (MRF) to receive, process and market Recyclables from the District's residential recycling collection program along with materials from drop off facilities located at District transfer stations and government building recycling programs.

### **C.2 REQUIREMENTS**

The contractor shall continue to provide a MRF in accordance with the terms and conditions of contract POKT-2003-B-0013-NJ which is incorporated in this contract, except as otherwise noted.

## **SECTION D: PACKAGING AND MARKING**

Not Applicable

## **SECTION E: INSPECTION AND ACCEPTANCE**

The inspection and acceptance requirements for the resultant contract shall be governed by clause number six (6), Inspection of Services of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated March 2007.

## **SECTION F: DELIVERIES OR PERFORMANCE**

### **F.1 TERM OF CONTRACT**

The term of the contract shall be for a period of 120 days from date of award specified on the cover page of the contract (July 24, 2009 through November 23, 2009).

### **F.2 DELIVERABLES**

- F.3.1** The contractor shall submit, to the COTR, an updated copy of its Safety Plan providing a description of safety procedures used at the MRF. The plan shall include the identification, handling, and disposal of hazardous waste.
- F.3.2** The contractor shall prepare and submit a monthly performance report to the COTR by the 10<sup>th</sup> working day of each month.
- F.3.3** The contractor shall submit to the District, as a deliverable, the report described in section H.5.5 of this contract that is required by the 51% District Residents New Hires Requirements and First Source Employment Agreement. If the Contractor

does not submit the report as part of the deliverables, final payment to the Contractor may not be paid.

## **SECTION G : CONTRACT ADMINISTRATION DATA**

### **G.1 INVOICE PAYMENT**

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

**G.1.2** The District will pay the Contractor on or before the 30<sup>th</sup> 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 (CFO) with concurrent copies to the Contracting Officer's Technical Representative (COTR) specified in Section G.9 below. The address of the CFO is:

**Name:** Chief Financial Officer  
**Address:** Customer Care Division  
2000 14<sup>th</sup> Street, NW, 6<sup>th</sup> Floor  
Washington, DC 20009  
**Telephone:** 202-671-2300

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

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

**G.2.2.2** Contract number and invoice number;

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

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

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

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

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

**G.2.2.8** Authorized signature.

**G.3 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT**

**G.3.1** For contracts subject to the 51% District Residents New Hires Requirements and First Source Employment Agreement requirements, final request for payment must be accompanied by the report or a waiver of compliance discussed in section H.5.5.

**G.3.2** No final payment shall be made to the Contractor until the CFO has received the Contracting Officer's final determination or approval of waiver of the Contractor's compliance with 51% District Residents New Hires Requirements and First Source Employment Agreement requirements.

**G.4 PAYMENT**

The District will pay the contractor on a monthly basis based on the unit prices per ton listed in section B.3 The District will pay the full monthly amount due under this contract after:

1. Delivery and acceptance of all deliverables,
2. Presentation of a properly executed invoice, and
3. Contractual services have been provided and accepted.

**G.5 ASSIGNMENT OF CONTRACT PAYMENTS**

**G.5.1** In accordance with 27 DCMR 3250, the Contractor may assign funds due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution.

**G.5.2** Any assignment shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party.

**G.5.3** Notwithstanding an assignment of contract payments, the Contractor, not the assignee, is required to prepare invoices. Where such an assignment has been made, the original copy of the invoice must refer to the assignment and must show that payment of the invoice is to be made directly to the assignee as follows:

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

**G.6 THE QUICK PAYMENT CLAUSE**

## **G.6.1 Interest Penalties to Contractors**

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

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

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

## **G.6.2 Payments to Subcontractors**

**G.6.2.1** The Contractor must take one of the following actions within 7 days of receipt of any amount paid to the Contractor by the District for work performed by any subcontractor under a contract:

- a) Pay the subcontractor for the proportionate share of the total payment received from the District that is attributable to the subcontractor for work performed under the contract; or
- b) Notify the District and the subcontractor, in writing, of the Contractor's intention to withhold all or part of the subcontractor's payment and state the reason for the nonpayment.

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

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

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

**G.6.2.4** A dispute between the Contractor and subcontractor relating to the amounts or entitlement of a subcontractor to a payment or a late payment interest penalty under the Quick Payment Act does not constitute a dispute to which the District of

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

**G.7 CONTRACTING OFFICER (CO)**

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

James Roberts  
Office of Contracting and Procurement  
2000 14<sup>th</sup> Street, NW, 6<sup>th</sup> Floor  
Washington, DC 20009  
Telephone: 202-671-2200

**G.8 AUTHORIZED CHANGES BY THE CONTRACTING OFFICER**

- G.8.1** The Contracting Officer is the only person authorized to approve changes in any of the requirements of this contract.
- G.8.2** The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the Contracting Officer.
- G.8.3** In the event the Contractor effects any change at the instruction or request of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

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

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

William Easley  
Department of Public Works  
Office of Recycling  
3220 Pennsylvania Avenue, SE  
Washington, DC 20020  
202-645-8513

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

**G.9.3** The Contractor may be held fully responsible for any changes not authorized in advance, in writing, by the Contracting Officer; may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.

## **G.10 ORDERING CLAUSE**

- a) Any supplies and services to be furnished under this contract must be ordered by issuance of delivery orders or task orders by the Contracting Officer or Contracting Officer's Technical Representative. Such orders may be issued during the term of this contract.
- b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of a conflict between a delivery order or task order and this contract, the contract shall control.
- c) If mailed, a delivery order or task order is considered "issued" when the District deposits the order in the mail. Orders may be issued by facsimile or by electronic commerce methods.

## **SECTION H: SPECIAL CONTRACT REQUIREMENTS**

### **H.1 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES**

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

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

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

### **H.2 DEPARTMENT OF LABOR WAGE DETERMINATIONS**

The Contractor shall be bound by the Wage Determination 2005-2103, revision 8, dated May 26, 2009, issued by the U.S. Department of Labor in accordance with the Service Contract Act (41 U.S.C. 351 et seq.) and incorporated herein as Section

J.1.1 of this contract. The Contractor shall be bound by the wage rates for the term of the contract. If an option is exercised, the Contractor shall be bound by the applicable wage rate at the time of the option. If the option is exercised and the Contracting Officer obtains a revised wage determination, the revised wage determination is applicable for the option periods and the Contractor may be entitled to an equitable adjustment.

### **H.3 PUBLICITY**

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

### **H.4 FREEDOM OF INFORMATION ACT**

The District of Columbia Freedom of Information Act, at D.C. Official Code § 2-532 (a-3), requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If the Contractor receives a request for such information, the Contractor shall immediately send the request to the COTR designated in subsection G.9 who will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by the Contractor pursuant to the contract, the COTR will forward a copy to the Contractor. In either event, the Contractor is required by law to provide all responsive records to the COTR within the timeframe designated by the COTR. The FOIA Officer for the agency with programmatic responsibility will determine the releasability of the records. The District will reimburse the Contractor for the costs of searching and copying the records in accordance with D.C. Official Code §2-532 and Chapter 4 of Title 1 of the *D.C. Municipal Regulations*.

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

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

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

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

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

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

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

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

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

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

- (1) A good faith effort to comply is demonstrated by the Contractor;

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

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

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

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

**H.6 PROTECTION OF PROPERTY:**

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

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

During the performance of the contract, the Contractor and any of its subcontractors shall comply with the ADA. The ADA makes it unlawful to discriminate in employment against a qualified individual with a disability. See 42 U.S.C. §12101 *et seq.*

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

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

**H.9 WAY TO WORK AMENDMENT ACT OF 2006**

**H.9.1** Except as described in H.9. 8 below, the Contractor shall comply with Title I of the Way to Work Amendment Act of 2006, effective June 8, 2006 (D.C. Law 16-118, D.C. Official Code §2-220.01 *et seq.*) (“Living Wage Act of 2006”), for contracts for services in the amount of \$100,000 or more in a 12-month period.

**H.9.2** The Contractor shall pay its employees and subcontractors who perform services under the contract no less than the current living wage rate.

**H.9.3** The Contractor shall include in any subcontract for \$15,000 or more a provision requiring the subcontractor to pay its employees who perform services under the contract no less than the current living wage rate.

**H.9.4** The Department of Employment Services may adjust the living wage annually and the OCP will publish the current living wage rate on its website at [www.ocp.dc.gov](http://www.ocp.dc.gov). If the living wage is adjusted during the term of the contract, the Contractor shall be bound by the applicable wage rate as of the effective date of the adjustment, and the Contractor may be entitled to an equitable adjustment.

**H.9.5** The Contractor shall provide a copy of the Fact Sheet attached as J.1.3 to each employee and subcontractor who performs services under the contract. The Contractor shall also post the Notice attached as J.1.4 in a conspicuous place in its place of business. The Contractor shall include in any subcontract for \$15,000 or more a provision requiring the subcontractor to post the Notice in a conspicuous place in its place of business.

**H.9.6** The Contractor shall maintain its payroll records under the contract in the regular course of business for a period of at least three (3) years from the payroll date, and shall include this requirement in its subcontracts for \$15,000 or more under the contract.

**H.9.7** The payment of wages required under the Living Wage Act of 2006 shall be consistent with and subject to the provisions of D.C. Official Code §32-1301 *et seq.*

**H.9.8** The requirements of the Living Wage Act of 2006 do not apply to:

- (1) Contracts or other agreements that are subject to higher wage level determinations required by federal law;
- (2) Existing and future collective bargaining agreements, provided, that the future collective bargaining agreement results in the employee being paid no less than the established living wage;

- (3) Contracts for electricity, telephone, water, sewer or other services provided by a regulated utility;
- (4) Contracts for services needed immediately to prevent or respond to a disaster or eminent threat to public health or safety declared by the Mayor;
- (5) Contracts or other agreements that provide trainees with additional services including, but not limited to, case management and job readiness services; provided that the trainees do not replace employees subject to the Living Wage Act of 2006;
- (6) An employee under 22 years of age employed during a school vacation period, or enrolled as a full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than 25 hours per week; provided that he or she does not replace employees subject to the Living Wage Act of 2006;
- (7) Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia; provided, that the tenant or retail establishment did not receive direct government assistance from the District;
- (8) Employees of nonprofit organizations that employ not more than 50 individuals and qualify for taxation exemption pursuant to section 501(c)(3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3));
- (9) Medicaid provider agreements for direct care services to Medicaid recipients, provided, that the direct care service is not provided through a home care agency, a community residence facility, or a group home for mentally retarded persons as those terms are defined in section 2 of the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501); and
- (10) Contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.

**H.9.9** The Mayor may exempt a contractor from the requirements of the Living Wage Act of 2006, subject to the approval of Council, in accordance with the provisions of Section 109 of the Living Wage Act of 2006.

## **SECTION I: CONTRACT CLAUSES**

### **I.1 APPLICABILITY OF STANDARD CONTRACT PROVISIONS**

The Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts dated March 2007 (“SCP”), are incorporated as part of the contract resulting from this solicitation. To obtain a copy of the SCP go to [www.ocp.dc.gov](http://www.ocp.dc.gov), click on OCP Policies under the heading “Information”, then click on “Standard Contract Provisions – Supplies and Services Contracts”.

### **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**

All information obtained by the Contractor relating to any employee or customer of the District will be kept in absolute confidence and shall not be used by the Contractor in connection with any other matters, nor shall any such information be disclosed to any other person, firm, or corporation, in accordance with the District 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.

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

**I.5.6** The District will have restricted rights in data, including computer software and all accompanying documentation, manuals and instructional materials, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, provided however, notwithstanding any contrary provision in any such license or agreement, such restricted rights shall include, as a minimum the right to:

**I.5.6.1** Use the computer software and all accompanying documentation and manuals or instructional materials with the computer for which or with which it was acquired, including use at any District installation to which the computer may be transferred by the District;

**I.5.6.2** Use the computer software and all accompanying documentation and manuals or instructional materials with a backup computer if the computer for which or with which it was acquired is inoperative;

**I.5.6.3** Copy computer programs for safekeeping (archives) or backup purposes; and modify the computer software and all accompanying documentation and manuals or instructional materials, or combine it with other software, subject to the provision that the modified portions shall remain subject to these restrictions.

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

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

**RESTRICTED RIGHTS LEGEND**

Use, duplication, or disclosure is subject to restrictions stated in Contract No. \_\_\_\_\_

With \_\_\_\_\_ (Contractor's Name); and

- (ii) If the data is computer software, the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The Contractor may not place any legend on the computer software indicating restrictions on the District's rights in such software unless the restrictions are set forth in a license or agreement made a part of the contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the District 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 District 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 District 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 District under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the District 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 District's or the Contractor's rights in that subcontractor data or computer software which is required for the District.
- I.5.10** For all computer software furnished to the District with the rights specified in Section I.5.5, the Contractor shall furnish to the District, 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 District with the restricted rights specified in Section I.5.6, the District, if the Contractor, either directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided the District under 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 District, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished

under this contract, or (ii) based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.

**I.5.12** Nothing contained in this clause shall imply a license to the District under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the District under any patent.

**I.5.13** Paragraphs I.5.6, I.5.7, I.5.8, I.5.11 and I.5.12 above are not applicable to material furnished to the Contractor by the District and incorporated in the work furnished under contract, provided that such incorporated material is identified by the Contractor at the time of delivery of such work

## **I.6 OTHER CONTRACTORS**

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

## **I.7 INSURANCE**

### **I.7.1 GENERAL REQUIREMENTS:**

Contractor shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall submit a certificate of insurance giving evidence of the required coverage prior to award. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed; have either an A.M. Best Company rating of A-VIII or higher, a Standard & Poor's rating of AA or higher, or a Moody's rating of Aa2 or higher. The Contractor shall require all subcontractors to carry the insurance required herein, or the Contractor may, at its option, provide the coverage for any or all subcontractors, and if so, the evidence of insurance submitted shall so stipulate. All policies (excluding Workers' Compensation and Professional Liability, if applicable) shall name the District as an additional insured with respect to work or services performed under the Contract. All policies shall provide that the insurance coverage provided hereunder will be primary and noncontributory with any other applicable insurance. All policies shall contain a waiver of subrogation in favor of the District of Columbia. In no event shall work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) has been furnished. All policies shall provide that the Contracting Officer shall be given thirty (30) days prior written notice via certified mail in the event coverage is substantially changed, canceled or not renewed.

**I.7.1.1** Certificate of Insurance Requirement. The policy description on the Certificate of Insurance form shall include the contract number, the

contract award date (if available), the contract expiration date (if available), the name of the requesting agency, the name of the contracting officer, a brief description of the work to be performed, the job location, the District as an additional insured, and a waiver of subrogation.

**I.7.1.2**      Commercial General Liability Insurance. The contractor shall provide evidence satisfactory to the Contracting Officer with respect to the operations performed, that it carries \$1,000,000 limits per occurrence; \$2,000,000 per aggregate; \$1,000,000 for products and completed operations; and \$1,000,000 for personal and advertising injury. The policy coverage shall be primary and non-contributory, shall contain the CGL 2503 per project endorsement, and shall include the District of Columbia as an additional insured.

Commercial General Liability Insurance. If the Contractor is providing insurance for a subcontractor, the Contractor shall provide evidence satisfactory to the Contracting Officer with respect to the operations performed, that it carries \$1,000,000 limits per occurrence; \$2,000,000 per aggregate; \$1,000,000 for products and completed operations; and \$1,000,000 for personal and advertising injury. The policy coverage shall be primary and non-contributory, shall contain the CGL 2503 per project endorsement, and shall include the District of Columbia as an additional insured.

**I.7.1.3**      Automobile Liability Insurance. The Contractor shall provide automobile liability insurance to cover all owned, hired or non-owned motor vehicles used in conjunction with the performance of the contract. The policy shall cover the operations performed under the contract with a \$1,000,000 per occurrence combined single limit for bodily injury and property damage. The policy coverage shall be primary and non-contributory and shall include the District of Columbia as an additional insured.

**I.7.1.4**      Worker's Compensation Insurance.

Worker's Compensation Insurance. The Contractor shall provide Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed. , \$100,000 per accident for

Employer's Liability Insurance. The Contractor shall provide employer's liability insurance as follows: \$1,000,000 per accident for injury; \$1,000,000 per employee for disease; and \$1,000,000 for policy disease limit.

**I.7.1.5**      Umbrella or Excess Liability Insurance. The Contractor shall provide umbrella or excess liability insurance as follows: \$5,000,000 limits per occurrence, with the District of Columbia as an additional insured.

- I.7.2** DURATION. The Contractor shall carry all insurance until all contract work is accepted by the District. Each insurance policy shall contain a binding endorsement that: The insurer agrees that the Contracting Officer shall be given thirty (30) days prior written notice via certified mail in the event coverage is substantially changed, cancelled or not renewed.
- I.7.3** CONTRACTOR'S PROPERTY. Contractors and subcontractors are solely responsible for any loss or damage to their personal property, including owned and leased equipment, whether such equipment is located at a project site or "in transit". This includes Contractor tools and equipment, scaffolding and temporary structures, and rented machinery, storage sheds or trailers placed on the project site.
- I.7.4** MEASURE OF PAYMENT. The District shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price.

## **I.8 SUBCONTRACTS**

The Contractor hereunder shall not subcontract any of the Contractor's work or services to any subcontractor without the prior written consent of the Contracting Officer. Any work or service so subcontracted shall be performed pursuant to a subcontract agreement, which the District 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 District, the Contractor shall remain liable to the District for all Contractor's work and services required hereunder.

## **I.9 EQUAL EMPLOYMENT OPPORTUNITY**

The contractor shall comply with the District of Columbia Administrative Issuance System, Mayor's Order 85-85 dated June 10, 1985. An award cannot be made to any offeror who has not satisfied the equal employment requirements.

## **I.10 INCORPORATED DOCUMENTS AND ORDER OF PRECEDENCE**

The following documents are incorporated by reference into the contract. In the event of an inconsistency among the provisions of this Agreement, the inconsistency shall be resolved by giving precedence in the following order:

- I.10.1** This Agreement, Sections A-K, including Standard Contract Provisions for Use with District of Columbia Government Supply and Services Contracts, dated March 2007;
- I.10.2** Contract POKT-2003-B-0013-NJ

**I.11 CONTRACTS IN EXCESS OF ONE MILLION DOLLARS**

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

**SECTION J: LIST OF ATTACHMENTS**

**J.1 ATTACHMENT**

**J.1.1** Wage Determination No. 2005-2103, revision 8 dated May 26, 2009

**J.1.2** Contract POKT-2003-B-0013-NJ

**J.1.3** Living Wage Fact Sheet

**J.1.4** Living Wage Notice