



DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

ATTACHMENT D

SPECIAL PROVISIONS

GOODS AND SERVICES CONTRACTS

Attachment D: Special Provisions

1. Type of Contract:

The contract awarded shall be Firm Fixed Price.

2. Term of Contract:

- 2.1. The term of the contract shall be for a period of one (1) year from the award date, subject to the DC Water option to extend the term of the contract in accordance with paragraphs 2.3.2 and 2.3.3 below.
- 2.2. Option Periods. If DC Water determines it to be advantageous, it may extend the term of the contract for two (2) one-year periods or a fraction of a year.
- 2.3. Option to Extend the Term of the Contract:
 - 2.3.1. DC Water may extend the term of this contract by written notice to the Contractor before the expiration of the contract; provided that the DC Water gives the Contractor a preliminary written notice of its intent to extend at least thirty days before the contract expires. The preliminary notice does not commit DC Water to an extension. The exercise of this option is also subject to the availability of funds at the time of the exercise of the option.
 - 2.3.2. The pricing and deliverables for the option period shall be determined at the time the option is exercised.
 - 2.3.3. If DC Water exercises this option, the extended contract shall be considered to include this option provision.
 - 2.3.4. The total duration of this contract including the exercise of any options under this provision shall not exceed three (3) years.

3. Cancellation of Orders:

Purchases made under this contract are for readily available equipment specified herein. Time is of the essence in furnishing the goods ordered. DC Water reserves the right to cancel this order and/or refuse delivery of equipment if the items ordered are not furnished with the time specified in the contract.

4. Time of Delivery Essential:

Time of delivery is of the essence. Any extension in time of performance will require the advance written approval of DC Water.

5. Standard of Performance:

The Contractor agrees to provide a high standard of professional service and will exert its best efforts within the time and funds available for the project(s). In determining whether the Contractor has performed accordingly, it is understood and agreed that DC Water may measure the amount and quality of the effort against the representations made by the Contractor in its written proposal.

6. Payment and Invoices:

- 6.1. Invoices shall be submitted quarterly. Payment will be processed net thirty (30) from invoice receipt date. Note that invoices are considered received only if fully supported by documentation and after goods and/or service has been received.
- 6.2. The Contractor shall submit invoices in duplicate, (original and one (1) copy). Invoices must contain the following:
 1. Contract No.;
 2. Purchase Order No.;
 3. Period of service covered by the invoice (billing period);

4. Identify the services performed; and
5. Supporting documents, as applicable.

6.3. Invoices shall be mailed in duplicate to the address below:

The District of Columbia Water and Sewer Authority
Accounts Payable
5000 Overlook Avenue, SW, Fourth Floor
Washington, DC 20032

Invoices can also be emailed to Accounts.Payable@dewater.com.

6.4. The Contractor shall prepare verification data of any items questioned for the amount claimed and provide complete cooperation during such investigation.

7. Protection of Property:

Any damages caused directly or indirectly to DC Water or private property by the Contractor's operation shall be repaired or replaced by the Contractor to the satisfaction of the Contracting Officer or his representative at no additional cost to DC Water.

8. Assignment of Anti-Trust:

For good cause, and as partial consideration for executing this contract, the Contractor, acting by and through its duly authorized agent, hereby conveys, sells, assigns and transfers to DC Water all rights, title and interests in and to all causes of action it now holds or hereafter may acquire under the anti-trust laws of the United States, the District of Columbia, or any state or territory, relating to the particular goods, materials or services purchased in connection with this contract.

9. Cancellation Ceiling:

In the event of cancellation of the contract because of non-appropriation for fiscal year 2016, or any option years, there shall be a cancellation ceiling of zero dollars, representing reasonable pre-production and other non-recurring costs, which would be applicable to the items or services being furnished and normally amortized over the life of the contract.

10. Disclosure of Information:

No information regarding the Contractor's performance of the contract shall be disclosed by the Contractor to anyone unless written approval is obtained in advance from the contracting officer.

11. Time:

Time, if stated in a number of days, shall include Monday through Friday, except holidays.

12. Contract Administration:

- 12.1. Contracting Officer: The Contracting Officer is the only person authorized to contractually bind the Authority. The Contracting Officer shall be the General Manager or designee, District of Columbia Water and Sewer Authority, 5000 Overlook Ave., SW., 3rd floor, Washington, DC 20032.
- 12.2. The Contracting Officer Technical Representative (COTR) is designated by the Contracting Officer as the liaison between the Contractor's management and the Contracting Officer in routine matters constituting general program direction within the scope of the contract. The COTR(s) for the contract(s) awarded will be designated at time of award or shortly thereafter.

13. Insurance:

Prior to commencement of any contract work of any nature, and in addition to other insurance, bonds, or securities required by law or under contract terms, the Contractor shall procure and maintain, during the life of the contract all required insurance coverage detailed in the District of Columbia Water and Sewer Authority General Provisions Goods and Services Contracts, Part 13, Insurance Requirements, subsection 13.1 through 13.12.

14. DC Water Inspections:

DC Water reserves the right to inspect all items delivered and to witness any tests performed on the equipment.

15. Proprietary Information Received From DC Water:

For a period of ten (10) years from the date of receipt of information provided to the Contractor by DC Water that is clearly marked and labeled "Confidential" hereafter referred to as "DC Water Confidential Information," the Contractor shall maintain all DC Water confidential information in confidence and shall not disclose same to any third party. In protecting such information from disclosure, the Contractor shall use at least the same degree of care as it normally uses in the protection of its own confidential and proprietary information of like kinds. Such degree of care shall be no less than the prevailing standard of reasonable care in the Contractor's industry. Upon discovery of an inadvertent or accidental disclosure, the Contractor shall promptly notify the DC Water of such disclosure and shall take all reasonable steps to retrieve the disclosed information and prevent such further disclosure. The Contractor shall return any proprietary information to DC Water when the proprietary information is no longer being used by the Contractor.

16. Termination:

The performance of work under the contract may be terminated by DC Water for default or for convenience in accordance with Part 6 of the District of Columbia Water and Sewer Authority General Provisions for Goods and Services Contracts, Incorporated Documents 22.1 (a), incorporated herein.

17. Inspection and Acceptance for supplies and services:

(a) To the extent applicable or appropriate, the Authority may, in its sole discretion, enter the place of business of the Contractor or the place of business of any Subcontractor in order to inspect or test supplies or services for acceptance by the Authority. If inspections and tests are performed at the place of business of the Contractor or any Subcontractor, the inspections and tests shall be performed in a manner so as to not unduly delay the work. Inspections and tests by the Authority shall not relieve the Contractor or any Subcontractor of responsibility for defects or other failures to meet contract requirements, and shall not constitute or imply acceptance.

(b) Notwithstanding the Authority's acceptance of any product or service delivered by the Contractor, the Contractor shall remain liable for latent defects, fraud, gross mistakes amounting to fraud and the Authority's rights under any implied or express warranty or guarantee.

(c) The Authority shall have the right to enter the place of business of the Contractor or the place of business of any Subcontractor in order to investigate any Contractor or offeror with respect to a debarment or suspension of such Contractor or offeror.

18. Data Protection:

18.1. Data Ownership

Information, including Personal and DC Water Data, collected by the Contractor in connection with providing the Services to DC Water, whether in existence as of the Effective Date or compiled thereafter in the course of performing the Services, shall be and remain, and shall be treated by the Contractor as, the exclusive property of DC Water. The Contractor expressly disclaims and shall not possess or assert any lien or other right against or to Personal or DC Water

Data. Personal or DC Water Data shall be made available to DC Water upon its request in such form and format as reasonably agreed to by the Parties. The Contractor shall not withhold any Personal or DC Water Data as a means of resolving any dispute. Personal or DC Water Data shall not be utilized by the Contractor for any purpose other than the performance of Services under this Agreement. DC Water shall have reasonable access to all files containing Personal or DC Water Data. At no time shall such files be withheld from DC Water or otherwise disguised or encoded in a manner inconsistent with the purpose and intent of providing full and complete DC Water access. In addition to the definition of Personal Data and DC Water Data found in Schedule 1.1, for purposes of this Agreement, Personal and DC Water Data shall also mean any information that may be used to track, locate or identify such individuals (or which is otherwise protected by Law), that is generated by or disclosed to the Contractor or its subcontractors in connection with the Services.

18.2. Data Protection

18.2.1. DC Water and the Contractor represent and warrant to the other Party that it has complied and will continue to comply, with the Data Protection Laws in respect of Personal and DC Water Data, this Agreement, the Services and the appointment of the Contractor hereunder.

18.2.2. The Contractor shall, during the Term, comply with any data retention policies of DC Water in which DC Water has specified and supplied such data retention policies to the Contractor before the Effective Date. The implementation of any subsequent changes to such data retention policies may be requested by DC Water and will be subject to agreement through the Change Management Process. Where DC Water fails to specify data retention policies, the Contractor shall retain all Personal and DC Water Data for a period of 24 months from receipt of such Personal and DC Water Data unless the Contractor is required to delete or destroy Personal and DC Water Data in order to comply with its own obligations under Applicable Law.

18.2.3. The Contractor shall require any and all third parties, providing services for the Contractor to perform the Services hereunder, to maintain the same or higher data protection obligations required by DC Water of the Contractor under this Agreement. The Contractor shall restrict the disclosure of the Personal and DC Water Data to those the Contractor Personnel who may be required by the Contractor to assist the Contractor in meeting its obligations under this Agreement. Such the Contractor Personnel used by the Contractor to provide the Services as they relate to Personal and DC Water Data shall have undergone reasonable levels of training that is standard in the industry for the Data Protection Laws and in the care and handling of Personal and DC Water Data. the Contractor may disclose Personal and DC Water Data to its employees, subcontractors or other third parties to the extent such disclosure is reasonably necessary for the Contractor to perform its obligations under this Agreement, provided that such disclosure is limited to those parties who are bound in writing by obligations of data security, confidentiality, and non-disclosure that are at least as restrictive and extensive in scope as those set forth herein. The Contractor agrees that any such disclosure shall be limited to only that Personal and DC Water Data which the third party requires to perform its obligations to the Contractor. The Contractor assumes full responsibility for the acts or omissions of the persons and entities to which the Contractor makes disclosure of Personal and DC Water Data.

18.2.4. Unless otherwise required by law or regulatory authorities, the Contractor shall process, modify, amend, alter, disclose or permit the disclosure of Personal and DC Water Data only in accordance with DC Water's reasonable and lawful instructions and this Agreement. The Contractor shall employ requisite technical and organizational measures to keep Personal and DC Water Data safe from unauthorized or unlawful processing and against accidental

loss, destruction, alteration or disclosure of, or damage to, the Personal and DC Water Data. The Contractor shall maintain environmental, technical, organizational, safety and facility procedures, data security and backup procedures and other security measures, and shall provide appropriate equipment, software and other systems that comply with recognized industry standards, for the purpose of protecting against the destruction, loss, unauthorized access, disclosure or alteration of Personal and DC Water Data. Such procedures, measures, equipment and systems shall be:

- a) no less rigorous than those maintained by the Contractor for its own information of a similar nature;
- b) comply with the Contractor's DC Water records retention policy;
- c) meet any security policies, standards, requirements and specifications set forth herein; and
- d) comply with any applicable Laws.

18.2.5. The Contractor agrees to assist DC Water, when reasonably requested by DC Water, in compliance with its obligations under the Data Protection Laws, including providing information in order for DC Water to be able to respond to requests for records and information under FOIA. However, as of the Effective Date, nothing in this Section 18 (Data Protection) or this Agreement shall be understood as an obligation for the Contractor to respond directly to any requests for such records and information, and DC Water is and shall remain responsible for the handling of any and all such requests. Should DC Water request the Contractor to handle such requests directly, such request shall be subject to agreement through the Change Management Process.

18.2.6. The Contractor may use, upon obtaining DC Water's review and approval of such De identified Data for any purpose subject to compliance with applicable Data Protection Laws. The Contractor may combine De identified Data with other data in the process of de identifying it.

18.2.7. the Contractor shall as soon as reasonably practicable notify DC Water if:

- a) it receives a request under FOIA;
- b) it receives a complaint or request relating to DC Water's obligations under the Data Protection Laws;
- c) it receives any other communication relating directly or indirectly to the processing of any Personal Data in connection with this Agreement; and
- d) it becomes aware of any breach of the Data Protection Laws related to this Agreement.

18.2.8. The Contractor shall maintain in escrow copies of all platforms, software and any other material or data necessary for DC Water to continue use of the Services provided herein.

18.2.9. In the event the Contractor discovers or is notified of a suspected or actual Security Breach of DC Water, or other clients of the Contractor, due to acts or omissions of the Contractor, the Contractor shall, at its own expense:

- a) immediately notify DC Water of such Security Breach;

- b) perform a root cause analysis (including, as appropriate, a forensic investigation to determine what Systems, data and information have been affected by such event) and report its findings to DC Water;
- c) provide DC Water with a remediation plan, acceptable to DC Water, to address the Security Breach and prevent any further incidents; and
- d) cooperate with DC Water and any third party(ies) investigating such Security Breach.

18.2.10. DC Water shall make the final decision on notifying DC Water’s customers, employees, service providers and/or the general public of such Security Breach, and the implementation of the remediation plan.

18.2.11. The Contractor shall reimburse DC Water for all reasonable notification related costs incurred by DC Water arising out of or in connection with any such Security Breach to the extent such Security Breach was caused by the Contractor’s acts or omissions herein. In the event that the Contractor becomes aware of any Security Breach which is not due to the Contractor acts or omissions, the Contractor shall immediately notify DC Water and the Parties shall reasonably cooperate regarding which of the foregoing or other activities may be appropriate under the circumstances, including any applicable charges for the same. The Contractor shall notify DC Water within five (5) business days of the commencement of any investigation of its use of Personal or DC Water Data or security practices by any governmental authority or organization, any material change in such investigation and the results of such investigation.

18.2.12. Reconstruction of Personal and DC Water Data. Following termination of this Agreement, the Contractor may process the Personal and DC Water Data for so long as is required or as may be necessary for the purpose of defending any legal proceedings that may be brought against the Contractor or DC Water by any person in relation to this Agreement or as is required by Applicable Law.

18.3. SAS/SSAE 16 Audits and Reporting

The Contractor shall deliver to DC Water a report from the Contractor’s independent auditors of examinations in accordance with Service Organization Controls (“SOC”) 1, Type 2 report of a service organization’s controls for all entities providing services under this Agreement, which will include the following general areas of control objectives: security, availability, processing integrity, confidentiality, and privacy of a system; and will include a representative sample of the computer environments used to process applications supporting the Services (collectively “Control Objective Processes”). In addition, the Contractor shall, during the period between issuance of each of its SOC 1 Reports, maintain the internal controls and control environment(s) described in the then-most-current/updated SOC 1 Report. In addition to any other audit rights hereunder, DC Water may audit or examine any the Contractor internal controls related to the Services locations or systems that are unique to DC Water and that are not otherwise the subject of a SOC 1 report.

-END OF SPECIAL PROVISIONS -