GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES

HVAC CHEMICAL TREATMENT SERVICES

Solicitation #: DCAM-16-NC-0036

Amendment No. 2
Issued: November 3, 2015

This Amendment Number 02 is issued by e-mail on November 3, 2015. Except as modified hereby, the Request for Proposals ("RFP") remains unmodified.

Item #1:

Requests for Information: Below is a list of questions received and the Department's responses.

1. The following locations are included in the solicitation, but do not indicate whether or not service should be provided or what systems are located in each facility. Under the previous contract we were providing service.
    a. Bald Eagle Recreation Ctr. (#115) on attachment A
    b. Stead Recreation Ctr. (#190) on attachment A
    c. DC/OCME Morgue (#259) on the attachment A

    Was this an oversight and should we include pricing for these locations? **Response: These facilities are included in the Group 2 list and service will be provided on a time and materials basis at the rates bid by the selected Contractor for the Group 2 facilities.**
2. The following locations were not included in the solicitation, however, we provided service for these locations until the end of the last contract period.
    a. MPD Traffic & Safety, 501 NY Avenue NW DC
    b. Police Training Academy, 5000 Overlook St. SW DC
    c. Bundy Recreation Ctr., 429 O St. NW DC
    d. Fleet Maintenance, 1103 Half St. SW DC

    Was this an oversight and should we include pricing for these locations? **Response: These facilities will be added to the Group 2 list and service will be provided, if needed, on a time and materials basis at the rates bid by the selected Contractor for the Group 2 facilities.**
3. With respect to the Bid Form, Line item "A", The Lump Sum Contract Price for Group 1: Question: Are the amounts for line A to include all fixed costs including chemicals, service labor, Legionella, test kits, training and any other required services or items? **Response: The Lump Sum Contract Price for Group 1 should include <u>all costs</u> to service the Group 1 facilities with the exception of test kits. Tests kits will be supplied at the unit rate(s) bid on Line item "C" on the Bid Form (for both Group 1 and Group 2 facilities).**
4. With respect to the Bid Form, Line item "B", The Unit Price For Servicing the Group 2 Facilities: Reference Item: Unit Rate for Dispensing Equipment that will be installed or connected to the system equipment. Question: Since the majority of systems have the necessary equipment, should this line item amount equal the

anticipated repair cost, the cost for additional equipment, replacement equipment and new equipment for the various locations? It is difficult to provide "Unit Pricing" rate because the additional or replacement equipment is not known at this time.
Response: Offerors should provide unit rates for the cost of various replacement equipment that would typically be used for the various HVAC systems that may generally be encountered in the Department's facilities.

5. With respect to the Bid Form, Reference Item: The Unit Price for test Kit. Question: There are many test kits associated with the various HVAC systems. Providing a one type fits all HAVC systems would not be appropriate. We propose providing a Master Test kit for each of the various systems. **Response: To the extent different test kits may be required, Offerors should propose Test Kit Unit Rates for each of the various HVAC systems that may generally be encountered in the Department's facilities.**
6. With respect to the Bid Form, the second issue is how many test kits do you want? **Response: Test Kits will be provided on a unit rate basis, as needed, and Offerors will be compensated per kit at the unit rate(s) provided. An allowance will be established in the contract to fund the provision of test kits.**
7. Our final concern is when we can expect to receive the formal pricing format for the contract which should include a lump sum for chemical and service for Group 2. **Response: Please see the attached Form of Contract.**

Item #2

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

Item #3

Clarification: With respect to the Bid Form, Line Item B "Unit Rates for Necessary Treatment Chemicals", please provide a comprehensive list of chemicals, with associated unit rates, that may be needed to treat the Department's Group 2 HVAC systems. As a subset to this response, please also identify the specific type(s) of chemicals required, and the estimated amount of such chemical, that would be needed to treat each of the following system types one (1) time:

- One (1) typical hot water boiler system
- One (1) typical steam boiler system
- One (1) typical cooling tower system

Item #4

The bid date is hereby changed. Proposals are due by **November 10, 2015 at 2:00 pm EDT**. Proposals that are hand-delivered should be delivered to the attention of: Courtney Washington, Contract Specialist, at **Frank D. Reeves Center, 2000 14th Street, NW, 8th floor, Washington, DC 20009**.

- End of Amendment No. 2 -

CONTRACT FOR
HVAC CHEMICAL TREATMENT SERVICES
DCAM-16-NC-0036[ ]
([GROUP 1/GROUP2])

THIS CONTRACT FOR HVAC CHEMICAL TREATMENT SERVICES ("Agreement") is entered into by and between the District of Columbia government acting by and through its **DEPARTMENT OF GENERAL SERVICES** ("Department" or "DGS") and **[CONTRACTOR]** ("Contractor").

WITNESSETH:

WHEREAS, the Department is charged with maintaining the HVAC systems of the District of Columbia Public Schools ("DCPS"), parks and recreation facilities, and certain other municipal facilities (together, the "Project Facilities");

WHEREAS, the Department issued a Request for Proposals to engage a contractor to provide chemical treatment services for the HVAC systems at the Project Facilities;

WHEREAS, the Contractor submitted a proposal in response to the Request for Proposals, and the Department wishes to engage the Contractor to provide the requested services; and

WHEREAS, the Department desires that the Contractor provide the requested services for a one year term.

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the sufficiency and adequacy of which is hereby acknowledged, the parties to this Agreement agree as follows:

Agreement

Section 1 Scope of Work.

Section 1.1 General Scope of Work & Intent of Contract. Subject to the terms and conditions of this Agreement, the Contractor shall provide all services, labor and materials necessary to: (i) chemically treat the water in boilers and cooling towers once per month; (ii) conduct monthly tests on equipment to verify chemical levels are adequate; (iii) conduct bacteria testing on cooling towers once per season; and (iv) repair or replace dosage equipment as needed (the "Project") at the Project Facilities listed on **Exhibit A**. Attached as **Exhibit B** is a detailed narrative scope of work that more fully describes the tasks outlined above. To the extent the narrative scope of work is inconsistent with the requirements set forth above, the more expensive requirement shall prevail. **[Note to Bidders: Please include within your proposal a narrative scope of work which describes how the work will be performed and any performance criteria that you wish to propose. This scope of work will be negotiated after award and incorporated into the contract as Exhibit B.]**

Section 1.2 **Prolog.** If requested, the Contractor shall utilize the Department's Prolog system to submit any and all documentation required to be provided by the Contractor for the Project, including, but not limited to, (i) requests for information; (ii) submittals; (iii) meeting minutes; (iv) proposed changes; and (v) applications for payment. The Contractor also shall require all subcontractors and subconsultants to utilize Prolog for the Project.

Section 2 **Additional Work.** As may be requested from time to time by the Department, Contractor agrees to provide similar services at such other facilities within the District of Columbia as may be requested by the Department. With regard to any such Work, the Contractor and the Department shall agree upon an appropriate price for such Work.

Section 3 **Contract Price.**

Section 3.1 **Type of Contract**. This is a [lump sum for Group 1; time & materials for Group 2] contract. For performing the Group 1 Work under the Contract (as designated on **Exhibit A**), the Contractor will be paid an amount equal to [AMOUNT] Dollars ($[NUMBER]) ("Group 1 Lump Sum Price"). It is understood that the Group 1 Lump Sum Price includes an allowance of [AMOUNT] for the provision of test kits and reimbursement for Replacement Equipment and Parts. For performing the Group 2 Work under the Contract (as designated on **Exhibit A**), the Contractor will be paid on a time and materials basis in accordance with the hourly rates set forth in **Exhibit H;** provided, however, that in no event shall the Contractor be paid more than [NOT TO EXCEED AMOUNT] (such amount the "Not To Exceed Amount") for the Group 2 work unless the Contractor is authorized to exceed the Not To Exceed Amount in advance and in writing by the Department's contracting officer.

Section 3.1.1 Contractor shall be required to provide test kits, as requested by the Department, for the Department's use throughout the Contract term. Contractor shall be paid $[UNIT RATE] per test kit ("Test Kit Unit Rate"). Contractor shall also be reimbursed for the cost of Replacement Equipment and Parts, which will be reimbursed at the verifiable wholesale price of such Parts or Equipment plus a markup of [PERCENTAGE] percent.

Section 3.1.2 The [Group 1 Lump Sum Price or the Group 2 hourly rates set forth on **Exhibit H**] shall be the Contractor's sole compensation for the chemical treatment services. The Contract Price shall include, but is not limited to, amounts necessary to compensate the Contractor for profit, overhead, home office staff, insurance and bonding, labor, transportation, and equipment and materials.

Section 4 **Schedule**.

Section 4.1 **Time is of the Essence**. Time is of the essence in the performance of the Contractor's obligations under this Agreement.

Section 4.2 **Term.** This Agreement shall begin upon execution of this Agreement and shall terminate one (1) year from such date (the "Base Year"). The Contractor shall be required

to provide HVAC chemical treatment services for all of the Project Facilities during the term of this Agreement.

Section 4.3 **Term & Option Years.** The Department shall have the right to extend the term of this Agreement for two (2) one-year option periods (each such period, an "Option Year"), the first of which would begin on the date that the Base Year Term expires and end one year from the date that such Base Year Term expires; and the second of which would begin on the date that Option Year 001 expires and end one year from the date that Option Year 001 expires. In the event the Department desires to extend the Term of this Agreement pursuant to this Section 4.3, the Department shall give the Contractor written notice of such election at least sixty (60) days prior to the beginning of the applicable Option Year. In the event the Department fails to provide such notice by the required date, this Agreement shall automatically terminate and the Contractor shall not be required to provide further services, but may if so requested by the Department during the option period as if notice of the intent to exercise of the option had been timely, and in which case the Agreement shall not be terminated.

Section 5 **Changes**.

Section 5.1 **Changes Authorized**. The Department may, without invalidating the Contract, and without notice to or approval of any surety, order changes in the work, including additions, deletions or modifications. Any such change must be conveyed by the Department to the Contractor via written Change Directive or Change Order.

Section 5.2 **Executed Change Directive/Order Required**. Changes to the Contract may be made only by a written Change Directive or Change Order executed by the Department.

Section 5.3 **Department-Initiated Changes.** If the Department wishes to make a change in the Work or to accelerate the Work, it will execute and issue to the Contractor a written Change Directive, either directing the Contractor to proceed at once with the changed Work or directing it to not to proceed, but to inform the Department, in writing, of the amount, if any, by which the Contractor believes that the completion date for work authorized under the Contract and/or the cost of the work should be adjusted to take the Change Order or Change Directive into account.

Section 5.4 **Notice of Change Event.** The Contractor must give the Department written notice of any Change Event within ten (10) calendar days of the date on which the Contractor knew, or reasonably should have known, of the Change Event. To the extent available, the notice must state the nature of the Change Event and describe, generally, all changes in the Contract to which the Contractor believes it is entitled. Such notice is an express condition precedent to any claim or request for adjustment to the completion date for work authorized under the Contract, or the cost of the work arising from the Change Event and, if the notice is not given within the required time, the Contractor will have waived the right to any adjustment to the completion date for work authorized under the Contract or the cost of the work arising from the Change Event.

Section 5.5 **Detailed Change Request.** Within twenty (20) days after giving notice of a Change Event, the Contractor shall submit a written change request describing, in reasonable detail, all adjustments it seeks to the completion date for work authorized under the Contract or the cost of the work as a result of the Change Event. The change request shall include the same information as described in Section 5.3 with respect to any Contract changes the Contractor seeks due to the Change Event, and the amount of any requested adjustment to the cost of the work shall be limited in accordance with that Subsection.

Section 5.6 **Executed Change Orders Final**. The Contractor agrees that any Change Order executed by the Department and the Contractor constitutes its full and final adjustment for all costs, delays, disruptions, inefficiencies, cumulative impact, accelerations, schedule impacts, or other consequences arising from the change in question, whether a Change Directive, or a Change Event, or from any claimed cumulative effect of changes made to the date of the Change Order, and that no further adjustments in compensation or time shall be sought or made with respect to the Change Directive or the Change Event giving rise to the Change Order.

Section 5.7 **Failure to Agree**. If the Contractor claims entitlement to a change in the Contract, and the Department does not agree that any action or event has occurred to justify any change in time or compensation, or if the Parties fail to agree upon the appropriate amount of the adjustment in time or compensation, the Department will unilaterally make such changes, if any, to the Contract, as it determines are appropriate pursuant to the terms of this Agreement. The Contractor shall proceed with the work and the Department's directives, without interruption or delay, and may make a claim as provided in Section 11 of this Agreement. Failure to proceed due to a dispute over a change request shall constitute a material breach of the Contract and entitle the Department to all available remedies for such breach, including, without limitation, termination for default.

Section 5.8 **Department's Designated Representative.** The Department designates Christopher Weaver, Acting Director, Department of General Services, as its representative with express authority to bind the Department with respect to all matters requiring the Department's approval or authorization; provided, however, that James Marshall and Kimberly Gray, Supervisory Contract Specialists in the Contracts & Procurement Division, shall have the express authority to bind the Department for matters that are administrative in nature or of a value no greater than One Hundred Thousand Dollars ($100,000). These representatives shall have the exclusive authority to make decisions on behalf of the Department concerning estimates and schedules, construction budgets, changes in the Work, and execution of Change Orders or Change Directives, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Contractor. In order for the Department to effectively manage the Project and assure that the Contractor does not receive conflicting instructions regarding the Work, the Contractor shall promptly notify the Department's representative upon receiving any instructions or other communication in connection with the Contractor's Work from any employee of the Department or other purported agent of the Department other than the Department's representative.

Section 5.9 **Contractor's Designated Representative.** The Contractor designates the individual(s) identified in **Exhibit G** as its representative with express authority to bind the

Contractor with respect to all matters requiring the Contractor's approval or authorization. In addition, the Department retains the right to approve candidates for key on-site personnel in accordance with their experience with similar projects and local marketplace conditions. Once approved, individuals cannot be changed without the Department's prior approval. During the entire term, it is agreed that the Contractor's designated representative will devote his time exclusively to the Project, unless the Department consents to a reduction in time. All services provided by the Contractor shall be performed in accordance with the highest professional standards recognized and adhered to by Contractors that perform HVAC chemical treatment services for municipal facilities.

Section 6 **Indemnification.** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Department and the Department's consultants and agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

Section 7 **Payments**

Section 7.1 **Payment Schedule**. Within fifteen (15) days after this Agreement is executed, the Department and the Contractor shall agree upon a payment schedule which allocates the Contract Price fairly over the term of this Agreement. Once such payment schedule has been agreed to, the Contractor shall be entitled to bill for its services in accordance with the payment schedule.

Section 7.2 **Additional Work & Services.** Attached as **Exhibit E** is a list of services and events that are not included within the Contractor's fixed price (such events and services, "Additional Work"). In the event that the Contractor encounters Additional Work, it shall promptly notify the Department and its Program Manager and advise them of this fact. Unless the event is an emergency that requires immediate response, the Contractor shall not proceed with any such additional work unless first directed to do so in writing by the Department. Payment for such Additional Work shall be made in accordance with **Exhibit E** unless otherwise agreed to by the parties. **[Note to Bidders: Please include within your proposal a proposed listing of additional services. Among other things, this exhibit would include procedures by which the Contractor would be compensated for excessive water leakage. This list will be negotiated after award and incorporated into the contract as Exhibit E.]**

Section 8 **Subcontracts.** The Contractor shall perform the work with its own forces. In the event that the Contractor desires to engage one or more subcontractors to assist with the work, it shall advise the Department and obtain the Department's written approval of any such subcontractor. All subcontractors shall be required to comply with the insurance requirements set forth herein. In addition, the Contractor shall be responsible for all work performed by the subcontractors and shall assume the risk of the subcontractors non-performance. To the extent

the Contractor intends to subcontract a portion of the Work, any subcontract in excess of Twenty Five Thousand Dollars ($25,000) shall include the following provisions:

.1 that, to the extent of the Work or supply within the Contract's scope, the Subcontractor or supplier is bound to the Contractor for the performance of all obligations which the Contractor owes the Department under the Contract;

.2 that the Subcontractor or supplier is not in privity with the Department and shall not seek compensation directly from the Department on any third-party beneficiary, quantum meruit, or unjust enrichment claim, or otherwise, except as may be permitted by any applicable mechanic's lien law;

.3 that the Department is a third-party beneficiary of the subcontract or supply agreement, entitled to enforce any rights thereunder for its benefit;

.4 that the Subcontractor or supplier consents to assignment of its agreement to the Department, at the Department's sole option, if the Contractor is terminated for default;

.5 that the Subcontractor or supplier shall comply immediately with a written order from the Department to the Contractor to suspend or stop work;

.6 that the Subcontractor or supplier shall maintain records of all Work it is requested or authorized to do on a time and material or cost-plus basis, or with respect to claims that it has asserted on a time and materials or cost-plus basis, during the Project and for a period of time specified in Contract and requiring the Subcontractor or supplier to make those records available for review or audit by the Department during that time;

.7 that the Subcontractor shall obtain and maintain, throughout the Project, workers' compensation insurance in accordance with the laws of the District of Columbia. It is understood that this provision is not applicable to supply agreements;

.8 that, if the Department terminates the Contract for convenience, the Contractor may similarly terminate the subcontract or supply agreement for convenience, upon seven (7) days' written notice to the Subcontractor or supplier, and that the Subcontractor or supplier shall, in such a case, be entitled only to the costs set forth in the Termination for Convenience provisions of this Agreement;

.9 that the Department shall have the right to enter into a contract with the Subcontractor or supplier for the same price as its subcontract or supply agreement price less amounts already paid, if the Contractor files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it; and

.10 that the Subcontractor or supplier shall not be entitled to payment for defective or non-conforming work, materials or equipment, and shall be obligated promptly to repair or replace non-conforming work, materials or equipment at its own cost.

Section 8.1 **Certified Subcontractors.** The Contractor shall not substitute or replace any Subcontractor or supplier certified by the District of Columbia Department of Small and Local Business Development without the Department's prior written consent.

Section 9 **Economic Inclusion**

Section 9.1 **CBE Utilization.**

Section 9.1.1 The Contractor shall ensure that Local, Small and Disadvantaged Business Enterprises will participate in at least fifty percent (50%) of the Contract work. Thirty-five percent (35%) of the Contract work must be awarded to entities that are certified as either Small or Disadvantaged Business Enterprises by the District of Columbia Local Business Opportunity Owner and twenty percent (20%) of the Contract work must be awarded to entities that are certified as Disadvantaged Business Enterprises. The LSDBE certification shall be, in each case, as of the effective date of the subcontract. Supply agreements with material suppliers shall be counted toward meeting this goal.

Section 9.1.2 The Contractor has developed a CBE Utilization Plan that is attached hereto as **Exhibit D**. The Contractor shall comply with the terms of the CBE Utilization Plan in making purchases and administering its Subcontractors and Supply Agreements.

Section 9.1.3 Neither the Contractor or a Subcontractor may remove a Subcontractor or tier-Subcontractor if such Subcontractor or tier-Subcontractor is certified as an LSDBE company unless the Department approves of such removal. The Department may condition its approval upon the Contractor developing a plan that is, in the Department's sole and absolute judgment, adequate to maintain the level of LSDBE participation on the Project.

Section 9.2 **First Source Agreement**

Section 9.2.1 Upon execution of the Contract, the Contractor and all its member firms, if any, and each of its Subcontractors shall submit to the Department a list of current employees and apprentices that will be assigned to the Contract, the date they were hired and whether or not they live in the District of Columbia.

Section 9.2.2 The Contractor and its constituent entities shall comply with subchapter X of Chapter II of Title 2, and all successor acts thereto, including by not limited to the *Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011*, and all successor acts thereto and the rules and regulations promulgated thereunder. The Contractor and all member firms and Subcontractors shall execute a First Source Agreement with the District of Columbia Department of Employment Services ("DOES") prior to beginning Work at the Project site. The Contractor shall ensure that at least fifty-one percent (51%) of the Contractor's Team and every subconsultant's and subcontractor's employees hired after the

effective date of the Contract, or after such subconsultant or subcontractor enters into a contract with the Contractor, to work on the Project shall be residents of the District of Columbia. This percentage shall be applied in the aggregate, and not trade by trade.

Section 9.2.3 The Contractor shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

Section 9.2.4 The Contractor shall be responsible for: (i) including the provisions of this Section 9.2 in all subcontracts; (ii) collecting the information required in this Section 9.2 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in any reports required to be submitted by the Contractor pursuant to this Section 9.2.

Section 9.3 **Workforce Utilization Plan.** The Contractor shall comply with the requirements of the approved Workforce Utilization Plan attached as **Exhibit F**. At least Forty Percent (40%) of the percentage labor hours for the Project must be performed by District of Columbia residents (such requirement, the "Workforce Utilization Requirement").

Section 10 **Termination.**

Section 10.1 **Termination for Convenience.** The Department may at any time terminate this Agreement, in whole or specified part, for convenience. In such an event, the Contractor shall be entitled to receive compensation for services performed through the effective date of termination in accordance with the terms of this Agreement. In no event, however, shall the Contractor be entitled to recover lost profits or opportunity costs on the unperformed portion of work.

Section 10.2 **Termination for Default.** The Department may terminate the Contract for default if the Contractor fails materially to perform any of its duties or obligations under the Contract. The Department must provide the Contractor with written notice of its intent to terminate the Contract under this provision seven (7) days before actually putting the termination into effect. If the Contractor has begun its curative action and has made progress satisfactory to the Department within the seven (7) days, the Department may so notify the Contractor and the termination will not take effect. Otherwise, the termination shall take effect after seven (7) days without further notice or opportunity to cure.

Section 11 **Claims Dispute Resolution.**

Section 11.1 **Notice of Claim**. If the Contractor has complied with all provisions in Section 5 regarding changes, and the Department has denied the changes requested in a written Change Order proposal, or has failed to respond to a written Change Order proposal within thirty (30) calendar days, and the Contractor wishes to pursue a claim over the disputed item or if the Contractor wishes to assert a claim over a dispute not arising from matters related to a Change Event, Change Order or Change Directive, it shall inform the Department, in writing, of its claim. The written notice of claim must be submitted to the Department pursuant to procedures set forth in Section 4733 of the Department's procurement rules and Section 908 of the District's Procurement Practices Reform Act of 2010 (PPRA).

Section 11.2 **Contents of Notice of Claim.** The notice of claim shall state the nature of the claim, the events or circumstances giving rise to the claim, the type of relief requested, and the amount of time or additional compensation, or other damages sought. If the amount of time, compensation, or other damages sought is not reasonably ascertainable at the time, the Contractor shall so state, explain why, and provide whatever estimates it can reasonably provide. The notice shall state clearly that the Contractor intends to assert a claim against the Department.

Section 11.3 **Appeal Procedures.** All claims arising under or in connection with the Agreement or its breach, or relating to the Project, whether framed in contract, tort or otherwise, and which are not resolved via the claims process may be resolved by filing an appeal with the District of Columbia Board of Contract Appeals in accordance with Title X of the *Procurement Practices Reform Act of 2010* (PPRA). However, if a third party brings any claim against the Department, including, without limitation, claims of infringement of patents, copyrights or other intellectual property rights, the Department may bring an action for defense or indemnification against the Contractor in the court in which such claim is being litigated.

Section 12 **Insurance**.

Section 12.1 **Required Insurance**. The Contractor will be required to maintain the following types of insurance throughout the life of the contract. In the event that a claim for or related to the Project is made on any such policy or any other policy, the Contractor shall be responsible for the payment of any applicable deductible and shall not be entitled to an increase in Contract Price for the costs of paying such deductible.

.1 Commercial general public liability insurance ("Liability Insurance") against liability for bodily injury and death and property damage, such Liability Insurance written on an occurrence basis to be in an amount not less than Five Million Dollars ($5,000,000) for liability for bodily injury, death and property damage arising from any one occurrence and Five Million Dollars ($5,000,000) from the aggregate of all occurrences within each policy year. The policies shall contain blanket contractual coverage (including coverage for the indemnity clauses to be provided under the Agreement) and completed operations coverage (for two (2) years beyond completion of the Work).

.2 Workers' compensation providing statutory benefits for all persons employed by the Contractor, or its contractors and subcontractors at or in connection with the Work.

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

.4 Excess umbrella liability coverage (on at least a follow form basis) and when combined with the general liability policy has an aggregate limit of at least Five Million Dollars ($5,000,000).

.5 Contractor's Pollution Liability coverage in the amount of at least Two Million Dollars ($2,000,000) for each occurrence. Such coverage shall be maintain for the duration of the Project as well as three (3) years after Substantial Completion of the Project is achieved.

Section 12.2 **Additional Insureds**. Each insurance policy shall be issued in the name of the Contractor and shall name as additional insured parties the Department, and the District of Columbia, and the officers, agents and employees of each. Such insurance policies shall not be cancelable or reduced without thirty (30) days prior written notice to the Department.

Section 12.3 **Waiver of Subrogation**. All such insurance shall contain a waiver of subrogation against the Department, the District of Columbia Public Schools, and their respective agents.

Section 12.4 **Strength of Insurer**. All insurance shall be placed with insurers that are reasonably acceptable to the Department and with an A.M. Best's rating of not less than a then-current rating of "A-" or better and a financial size category of Class XV or higher. All such insurers shall be licensed/approved to do business in the District of Columbia.

Section 12.5 **Blanket Policies**. Any insurance required to be carried by the Contractor may be carried under a blanket policy; provided that: (i) the coverage afforded the Department shall not be reduced or otherwise adversely affected; and (ii) there is a specific allocation for this contract which cannot be exhausted by claims on other projects (provided, however, that this clause (ii) shall not apply to any design errors and omissions policy).

Section 13 **Miscellaneous Provisions**.

Section 13.1 **Service Contract Act Provision**. The Contractor agrees that the work performed under this Contract shall be subject to the Service Contract Act. The wage rates applicable to this Project are attached as **Exhibit C**.

Section 13.2 **False Claims Act**. The Contractor shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to the government, including the prescriptions set forth in D.C. Code § 2-308.14.

Section 13.3 **Retention of Records: Inspections and Audits**.

Section 13.3.1 The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance under the Contract in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Contract.

Section 13.3.2 The Contractor shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the Department and the required cost submissions in effect on the date of execution of the Department.

Section 13.3.3 The Department, the District of Columbia government, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall have access to the books, records, documents and other evidence held, owned or maintained by the Contractor for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Contractor. The Contractor shall provide proper facilities for such access and inspection.

Section 13.3.4 The Contractor agrees to include the wording of this Section 13 in all its subcontracts in excess of Five Thousand Dollars ($5,000.00) that directly relate to Project performance.

Section 13.3.5 Audits conducted pursuant to this Section will be in accordance with generally accepted auditing standards with the results prepared in accordance with generally accepted accounting principles and established procedures and guidelines of the applicable reviewing or audit agency.

Section 13.3.6 The Contractor agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Department. Where the audit concerns the Contractor, the auditing agency will afford the Contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

Section 13.3.7 The Contractor shall preserve all records described herein from the effective date of the Contract completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.

Section 13.4 **Gratuities and Officers Not to Benefit Provisions**.

Section 13.4.1 If it is found, after notice and hearing, by the Department that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any official, employee or agent of the Department or the District with a view toward securing the Contract or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Contract, the Department may, by written notice to the Contractor, terminate the right of the Contractor to proceed under the Contract and may pursue such other rights and remedies provided by law and under the Contract.

Section 13.4.2 In the event the Contract is terminated as provided in Section 13.4.1, the Department shall be entitled:

.1 to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor; and

.2 as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Department) which shall be not less than ten (10) times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

Section 13.4.3 No member of, nor delegate to Congress, Mayor or City Council Member, nor officer nor employee of the District, nor officer nor employee of the Department shall be admitted to any share or part of the Contract or to any benefit that may arise therefrom, and all agreements entered into by the Contracting Officer of the Department in which he or any officer or employee of the Department shall be personally interested as well as all agreements made by the Department in which the Mayor or City Council Member or officer or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Department or by any officer thereof; but this provision shall not be construed or extend to the agreement if the share of or benefit to the member of, or delegate to Congress, Mayor or City Council Member, or officer or employee of the District is de minimis.

Section 13.5 **Ethical Standards for Department's Employees and Former Employees**. The Department expects the Contractor to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Contractor, nor any person associated with the Contractor, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Department not in conformity with applicable law, rules or regulations. The Contractor shall not engage the services of any person or persons in the employment of the Department or the District for any Work required, contemplated or performed under the Contract. The Contractor may not assign to any former Department or District employee or agent who has joined the Contractor's firm any matter on which the former employee, while in the employ of the Department, had material or substantial involvement in the matter. The Contractor may request a waiver to permit the assignment of such matters to former Department personnel on a case-by-case basis. The Contractor shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Subcontractor or vendor.

Section 13.6 **Anti-Deficiency Act**. The Department's obligations and responsibilities under the terms of the Contract and the Contract Documents are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1350, 1351, (ii) the D.C. Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Code §§ 47-355.01 - 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act. Neither the Contract nor any of the Contract Documents shall constitute an indebtedness of the Department, nor shall it constitute an

obligation for which the Department is obligated to levy or pledge any form of taxation, or for which the Department has levied or pledged any form of taxation. **IN ACCORDANCE WITH § 446 OF THE HOME RULE ACT, D.C. CODE § 1-204.46, NO DISTRICT OF COLUMBIA OFFICIAL IS AUTHORIZED TO OBLIGATE OR EXPEND ANY AMOUNT UNDER THE CONTRACT OR CONTRACT DOCUMENTS UNLESS SUCH AMOUNT HAS BEEN APPROVED, IS LAWFULLY AVAILABLE AND APPROPRIATED BY ACT OF CONGRESS.**

Section 13.7 **Conformance with Laws.** It shall be the responsibility of the Contractor to perform the Contract in conformance with the Department's Procurement Regulations (27 DCMR § 4700 *et seq.*) and all statutes, laws, codes, ordinances, regulations, rules, requirements and orders of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the Builder to determine the Procurement Regulations, statutes, laws, codes, ordinances, regulations, rules, requirements and orders that apply and their effect on the Builder's obligations thereunder.

Section 13.8 **Warranties and Representations**

Section 13.8.1 All disclosures, representations, warranties, and certifications the Contractor makes in its proposal in response to the RFP shall remain binding and in effect throughout the term of the Contract. The Contractor reaffirms that all such disclosures, representations, warranties, and certifications are true and correct.

Section 13.8.2 If any disclosure, representation, warranty or certification the Contractor has made or makes pursuant to the RFP or the Contract, including, without limitation, representations concerning the Contractor's experience and qualifications, claims or litigation history or financial condition, is materially inaccurate, that shall constitute a material breach of the Contract, entitling the Department to all available remedies.

Section 13.9 **Responsibility for Agents and Contractors.** At all times and during both the Contract, the Contractor shall be responsible to the Department for any and all acts and omissions of the Contractor's agents, employees, Subcontractors, Sub-Subcontractors, material suppliers, and laborers, and the agents and employees of the Subcontractors, Sub-Subcontractors, material suppliers, and laborers performing or supplying Work in connection with the Project.

Section 13.10 **Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and in lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be valid, legal and enforceable; each part of this Agreement is intended to be severable.

Section 13.11 **Governing Law.** The Contract shall be governed by and construed in accordance with the laws of the District of Columbia, without regard to its conflict of laws principles.

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

DEPARTMENT OF GENERAL SERVICES

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

[CONTRACTOR]

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

Exhibit A

Project Facilities

Exhibit B

Scope of Work

Exhibit C

Service Contract Act

Exhibit D

CBE Plan

Exhibit E

Additional Work & Services

Exhibit F

Workforce Utilization Plan

Exhibit G

Contractor’s Representative

Exhibit H

Rates

Attachment B

[Contractor's Letterhead]

[Insert Date]

District of Columbia Department of General Services
2000 14th Street, NW
Washington, DC 20009

Att'n: Mr. Christopher Weaver
Acting Director

Reference: Request for Proposals -
HVAC Chemical Treatment Services (DCAM-16-NC-0036)

Dear Mr. Weaver:

On behalf of [insert name of bidder] (the "Offeror"), I am pleased to submit this proposal in response to the Department of General Services' (the "Department" or "DGS") Request for Proposals (the "RFP") to provide HVAC chemical treatment services at various District of Columbia public schools, parks and recreation facilities, and certain other municipal facilities. The Offeror has reviewed the RFP and the attachments thereto, any addenda thereto, and the proposed Form of Contract (collectively, the "Bid Documents") and has conducted such due diligence and analysis as the Offeror, in its sole judgment, has deemed necessary in order to submit its Proposal in response to the RFP. The Offeror's proposal and the Lump Sum Price (as defined in paragraph A), the Hourly & Unit Rates for Servicing the Group 2 Facilities (as defined in paragraph B), the Unit Rate for Test Kits (as defined in paragraph C), and the Percentage Mark-Up for Replacement Equipment/Parts (as defined in paragraph D) are based on the Bid Documents as issued and assume no material alteration of the terms of the Bid Documents. (Collectively, the proposal and the price components set forth in paragraphs A through D are referred to as the "Offeror's Bid".)

The Offeror's Bid is as follows:

A. The Lump Sum Contract Price for Group 1 is : $_____

B. Unit Prices for Servicing the Group 2 Facilities are as follow:

Hourly Rate for Service Technician: $_____

Unit Rate for Dispensing Equipment that will be Installed or Connected to the System Equipment: $ (see attached list)__

Unit Rate for Legionella Testing: $_____

Unit Rates for Necessary Treatment Chemicals: $ (see attached list)__

C. The Unit Price for Test Kits is: $ (see attached list)__

D. Percentage Mark-Up for Replacement Equipment/Parts _____

The Offeror acknowledges and understands that the Lump Sum Contract Price for Group 1 is a firm, fixed price to fully complete the work described in the RFP and that such amount includes funding for work which is not described in the RFP but which is reasonably inferable from the RFP. The Offeror acknowledges and understands that the Unit Prices for Servicing the Group 2 Facilities are fixed, loaded rates to fully complete the work described in the RFP.

The Offeror's Bid is based on and subject to the following conditions:

1. The Offeror agrees to hold its proposal open for a period of at least one hundred twenty (120) days after the date of the bid.

2. Assuming the Offeror is selected by the Department and subject only to the changes requested in paragraph 5, the Offeror agrees to enter into a contract with the Department on the terms and conditions described in the Bid Documents within ten (10) days of the notice of the award.

3. Both the Offeror and the undersigned represent and warrant that the undersigned has the full legal authority to submit this bid form and bind the Offeror to the terms of the Offeror's Bid. The Offeror further represents and warrants that no further action or approval must be obtained by the Offeror in order to authorize the terms of the Offeror's Bid.

4. The Offeror and its principal team members hereby represent and warrant that they have not: (i) colluded with any other group or person that is submitting a proposal in response to the RFP in order to fix or set prices; (ii) acted in such a manner so as to discourage any other group or person from submitting a proposal in response to the RFP; or (iii) otherwise engaged in conduct that would violate applicable anti-trust law.

5. The Offeror's proposal is subject to the following requested changes to the Form of Contract: **[INSERT REQUESTED CHANGES. OFFERORS ARE ADVISES THAT THE CHANGES SO IDENTIFIED SHOULD BE SPECIFIC SO AS TO PERMIT THE DEPARTMENT TO EVALUATE THE IMPACT OF THE REQUESTED CHANGES IN ITS REVIEW PROCESS. GENERIC STATEMENTS, SUCH AS "A MUTUALLY ACCEPTABLE CONTRACT" ARE <u>NOT</u> ACCEPTABLE. OFFERORS ARE FURTHER ADVISED THAT THE DEPARTMENT WILL CONSIDER THE REQUESTED CHANGES AS PART OF THE EVALUATION PROCESS.]**

6. The Offeror hereby certifies that neither it nor any of its team members have entered into any agreement (written or oral) that would prohibit any contractor, subcontractor or subconsultant that is certified by the District of Columbia Office of Department of Small and Local Business Enterprises as a Local, Small, Resident Owned or Disadvantaged Business Enterprise (collectively, "LSDBE Certified Companies") from participating in the work if another company is awarded the contract.

7. This bid form and the Offeror's Bid are being submitted on behalf of [INSERT FULL LEGAL NAME, TYPE OF ORGANIZATION, AND STATE OF FORMATION FOR THE OFFEROR].

Sincerely,

By: _____
Name: _____
Title: _____