

**City of Baltimore
Department of Finance
Bureau of Procurement**

The seal of the City of Baltimore is a large, faint watermark in the background. It features an oval border with a rope-like pattern. Inside the oval, the words "CITY OF" are on the left and "BALTIMORE" is on the right. In the center is a detailed illustration of the Baltimore City Monument, a tall stone tower with a statue on top. Below the monument is a fence. At the bottom of the oval, the year "1797" is inscribed.

**Invitation for Bids
for**

**(General Terms & Conditions)
Part 2 of 2**

Solicitation Number: **RFQ-00**_____

1797

Important Notice to Vendors
Regarding Registration as a Requirement for
Bidding/Proposing

- To be added to the bidder list you must be registered in Workday and then download the solicitation.
- Register at [Workday](#)

General Terms & Conditions of Proposal and Contract

(NOTE: Bidder, Proposer, Offeror, and Vendor all have the same meaning herein.)

GC1. DEFINITIONS.

The following definitions apply to this Solicitation:

A. CITY — is the Mayor and City Council of Baltimore, the legal entity preparing and issuing this Solicitation and may also be referred to and/or encompass Baltimore City, City of Baltimore, Department, Agency, Department of Finance, Bureau of Procurement, Board of Estimates of Baltimore City and/or Board of Estimates. The City is the contracting entity, even in the event that this Solicitation is to meet the needs of State agencies or quasi-City agencies for which the City has agreed to procure, or is responsible for procuring its goods and/or services under this Solicitation.

B. CONTRACT — includes the written legally binding agreement entered into by and between the City and the Offeror as a result of an Offer submitted in response to this Solicitation and awarded by the City. The Contract includes this Solicitation document and all addenda issued by the City thereto, the Offer submitted by the Offeror, and all approved documents thereto and accepted by the City, and/all other closing documents (such as a formal agreement, performance bond, payment bond, certificate of insurance, other agreements required by this Solicitation, among others) executed as a result of award resulting from this Solicitation, the Supplier Contract, the Purchase Order(s) and all Contract Draws therefrom, and any/all other documents fully executed by both parties that are directly related to the Contract.

C. CONTRACTOR — is the legal entity who submits a successful Offer, obtains an award by the Board of Estimates, and enters into a Contract with the City, and may also be referred to and/or used interchangeably as provider, bidder, proposer, vendor, firm, company, contractor, operator, manager, or corporation.

D. OFFER — a written document prepared and submitted by the Offeror in response to this Solicitation, which may also be referred to and/or used interchangeably as completed Bid/Proposal forms, bid, proposal, quote, submission, or information, which states that the Offeror agrees to provide a product or perform a service to the City in accordance with this Solicitation.

E. OFFEROR — is the legal entity preparing and submitting an Offer in response to this Solicitation, and may also be referred to and/or used interchangeably as provider, bidder, proposer, vendor, firm, company, contractor, operator, manager, or corporation.

F. PURCHASE ORDER — is the electronic file residing in Workday, the City's electronic procurement database located at <https://wd1.myworkdaysite.com/supplier/baltimorecity/SupplierSite>, notice of which is emailed to the Contractor

after the City's approval of the award. If a Supplier Contract or Purchase Order is issued to the Contractor, this is the Contractor's notice to proceed. If a Supplier Contract or Catalog is issued to the Contractor, this is notice that the City will commence placing orders, by issuing individual Contract Draws.

G. SOLICITATION — is this entire document, including Parts 1 and 2, any other attachment(s) referenced, and any subsequent addenda thereto as issued by the City, and may also be referred to and/or used interchangeably as Request for Bids (RFB), Invitation for Bids (IFB), Request for Proposals (RFP), Request for Quotes (RFQ) or Request for Information (RFI).

GC2. ORDER OF PRECEDENCE.

A. In the event of a conflict between similar terms in any of the various components of this Contract or other related documents, the following order of precedence shall apply:

- (1) Addenda (more recent having precedence over older);
- (2) Detailed Specifications;
- (3) Statement of Work;
- (4) General Terms & Conditions;
- (5) City-provided Bid/Proposal forms, including MBE/WBE package;
- (6) All other related documents issued by the City, and lastly;
- (7) Offeror's submission.

B. In the event of a conflict among similar terms, conditions, or language between or within Contract components, the term, condition, or language that is in the best interest of and most advantageous to the City shall prevail, as determined at any time, including after award, by and at the sole discretion of the City Purchasing Agent.

C. In the event that an individual term, condition, or language is determined at any time, including after award, by the City Purchasing Agent to be "not applicable at all" to this Contract, then the term, condition, or language/wording may be disregarded, even though an addendum is not issued. However, if the City Purchasing Agent determines that the term, condition, or language is "applicable in part," then the term, condition, or language will apply to the degree applicable, even though an addendum is not issued.

D. In the event of a discrepancy or dispute between the Offeror's original Offer and any of its duplicate copies, the original Offer shall prevail.

GC3. BID SECURITY. (Bids or Proposals, when filed, shall be IRREVOCABLE.)

A. All Offers which require a bid guarantee, as stated in the Statement of Work, shall be accompanied by one of the following:

- (1) A One-Time Bid Bond; or
- (2) An Annual Bid Bond which must be on file at the time of Offer receipt; or
- (3) A certified check, bank cashier's check or bank treasurer's check.

B. All bid guarantees (unless otherwise noted) shall be computed at two percent (2%) of the total bid amount.

C. All bid guarantees shall be made payable to the "Director of Finance" and submitted in accordance with the submittal instructions.

D. Where an award is made, this Contract, insurance and bond requirements (including but not limited to performance, payment, fidelity, and demolition bonds) shall be promptly and properly executed and delivered to the City. The requirements of prompt execution and delivery will be considered as fulfilled if accomplished within ten (10) calendar days after receipt. Bid guarantees shall be forfeited to the City as liquidated damages, as required by Article VI, Section II of the City Charter, as amended, for failure to comply with this requirement. Upon execution of this Contract and performance bond, and receipt of current insurance certification, the City shall refund to the Contractor the amount deposited or release the amount charged against the bond as bid guarantee.

E. Bid guarantee(s) posted by unsuccessful Offeror(s) shall be refunded or released promptly after an award is made. The City reserves the right, at any time, to hold unsuccessful Offeror(s) bid guarantee(s) for a longer period of time, including but not limited to sufficient time to allow for the Contractor's delivery of the required documents in accordance with paragraph D of this section.

GC4. PERFORMANCE GUARANTEE.

A. If required by the Statement of Work, the Contractor(s) shall promptly supply a performance guarantee warranting that the Contractor shall comply in all respects with the terms and conditions of this Contract and its obligations thereunder.

(1) The performance guarantee shall be as specified in the Statement of Work, or as otherwise determined by the City, in its sole discretion,

Acceptable coverage shall be under a Performance Bond on a City-supplied form, or under an Irrevocable Letter of Credit.

(2) Additional Bonds: The Contractor shall obtain a Payment Bond and/or Fidelity Bond, or other specified bond, if required by the Statement of Work, in the amount specified therein.

B. For Awards not exceeding \$200,000, the Contractor may utilize the Self-Insurance Program for Commodity, Service and Construction Contracts (the "Self-Insurance Program"). The Contractor shall be required to pay to the Director of Finance at the established rate per thousand on the full amount of this Contract.

(1) For Self-Insurance Program coverage, the Contractor certifies by signing the Offer that:

(a) The Contractor and/or any previously owned business is/are not to and have never been in bankruptcy or in the hands of a receiver;

(b) The Contractor and/or any previously owned business is/are not to and have never been in default to the City under the terms of any City contract (default meaning a Contractor's failure where the City had to take legal action to obtain remedy, or where a bonding company had to reimburse the City or where the City or where the Contractor was declared in default by the Board of Estimates).

(2) Exceptions – The Contractor will be required to post either a Performance Bond, or an Irrevocable Letter of Credit, if any of the following applies:

(a) The Contractor is unable to certify as required above;

(b) Substantial warranty coverage extends beyond one (1) year; and/or

(c) The award period for the work to be done extends beyond twenty-four (24) months.

C. Whenever the performance guarantee furnished shall be deemed by the City to be insufficient or unsatisfactory, the Contractor, within ten (10) calendar days after notice to that effect, shall furnish and deliver a new and/or additional performance guarantee to the City whenever and as often as the City shall require.

D. Unless fully or partially released by the City, in its sole discretion, performance and payment guarantees will remain in effect until completion of this Contract and final acceptance of materials and/or services and/or expiration of all warranties for materials

and/or services, whichever is longer. Release must be in writing and signed by the City Purchasing Agent.

E. The City will issue a Purchase Order as the notice to proceed with delivery of materials and/or services covered by this Contract, upon receipt of all Contract documents, if determined to be acceptable to the City.

GC5. RESERVATIONS. The Board of Estimates reserves the right to:

A. Increase or decrease award(s) as necessary to meet the City's requirements;

B. Reject any or all Offers and/or waive technical defects if, in its judgment, the interest of the City shall so require;

C. Retain all Offer documents whether rejected or not; and/or

D. Enter into additional contracts near the date of Contract expiration to ensure continuity of service to the City.

GC6. AFFIDAVITS AND BID/PROPOSAL FORMS.

A. All Offers will be completed and submitted on the attached Bid/Proposal forms in duplicate. Any additional information and/or deviations to the specifications will be in the form of attachments thereto.

B. An authorized person must sign the Bid/Proposal forms and affidavit signature page. If an Offer is submitted on behalf of any corporation, any authorized officer as agent must sign it in the name of the corporation thereof. If practicable, the seal of the corporation shall be applied.

C. Failure to comply may be cause for rejection of the Offer.

GC7. INDEMNIFICATION.

A. The Contractor shall indemnify, save, defend and hold harmless: (i) the City, its elected/appointed officials, municipal agencies and departments, agents, employees, and volunteers; and (ii) any agency, department or entity and its elected/appointment officials, municipal agencies and departments, agents, employees, and volunteers, ("Other Indemnified Party"), for which the Bureau of Procurement procures commodities and/or services for the Other Indemnified Party, whether or not the Other Indemnified Party is a State or quasi-City agency, against any and all claims, liabilities or expenses, including attorneys' fees and court costs, brought against the City, its elected/appointed officials, municipal agencies and departments, agents, employees, and volunteers as result of any (a) breach of the Contractor's

obligations under this Contract; (b) breach of the Contractor's compliance with the law; (c) breach of the Contractor's confidential obligations, including data security and privacy obligations; or (d) any direct or indirect, willful, negligent, tortious, intentional, or reckless action, error, or omission of the Contractor, its officers, directors, employees, agents, or volunteers in connection with the performance of this Contract and/or related to any software intellectual property rights, whether such claims are based upon contract, warranty, tort, strict liability or otherwise. This requirement shall be included in all subcontractor or subconsultant agreements. This requirement shall survive the termination of this Contract.

B. The Contractor's obligation to indemnify the City and/or the Other Indemnified Party as provided in this Section shall not be limited by or to the level of liability insurance required under the provisions of this Contract, or by any provision, document or instrument which may be contained in, incorporated in, or attached, or otherwise made a part of this Contract.

GC8. WORK FOR HIRE AND INFRINGEMENT PROTECTION.

A. Any software, system interfaces, design materials, documentation, graphics, images, maps, guides, operating manuals, designs, data, processes, plans, procedures and information developed or prepared by the Contractor in performance of services under this Contract shall be considered as specifically commissioned by the City, and they shall be deemed "work for hire" as such term is defined under U.S. copyright law.

B. To the extent any of the materials may not, by operation of law, be a work made for hire in accordance with the terms of this Contract, the Contractor hereby assigns to the City all right, title, and interest in and to any copyright, and the City shall have the right to obtain and hold in its own name any copyrights, trademarks, registrations and other proprietary rights which may be available. To the extent any materials may not, by operation of law, be a work made for hire on behalf of the City for any subcontractor who provides materials in accordance with the terms of this Contract, the Contractor shall secure an assignment to the City of the subcontractor's right, title, and interest in and to any copyrights, registrations and other proprietary rights which may be available.

C. The Contractor retains no ownership in any software or materials considered "work for hire". The Contractor is not granted a license to use, and may not modify, adapt, create derivative works from, decompile, disassemble, reverse engineer or otherwise

reuse the source code version without City's prior written permission.

D. The Contractor warrants that any software developed or used in accordance with this Contract (the "Software") does not infringe or otherwise violate any intellectual property rights, including patent, copyright, trademark, or trade secret. The Contractor agrees to defend at its expense any action brought against the City to the extent based on a claim that the Software violates an intellectual property right. The Contractor will indemnify the City, and Other Indemnified Party (if applicable), and pay any costs and damages finally awarded against the City, and Other Indemnified Party (if applicable), in such action that are attributable to such claim, provided that the City notifies the Contractor in writing of the claim (provided, however, that the failure to so notify shall not relieve the Contractor of its indemnification obligations provide in this Section and elsewhere in this Contract), allows the Contractor to control the defense, provides the Contractor with the information and assistance necessary for the defense and/or settlement of the claim, and does not agree to any settlement without the Contractor's prior written consent. Should the Software become, or in the Contractor's opinion be likely to become, the subject of any intellectual property claim, the City may at its sole option direct the Contractor, at the Contractor's sole expense, to (i) procure for the City the right to continue using the Software; (ii) replace or modify the Software so as to make it non-violating, or, if (i) and (ii) are not commercially reasonable, (iii) terminate this Contract and the City shall be entitled an equitable adjustment in accordance with this Contract.

GC9. DATA BREACH PROTECTION.

A. "Confidential Information" includes all City information designated as such in the Solicitation and/or by applicable laws. The Contractor shall maintain all Confidential Information in compliance with the stricter of: (i) applicable laws, or (ii) this Solicitation. If the Contractor becomes aware of any unauthorized access to, disclosure of, use of, or damage to the Confidential Information, the Contractor shall within forty-eight (48) hours notify the City of all facts known to it concerning such unauthorized access, disclosure, use, or damage.

B. Additionally, the Contractor shall use diligent efforts to remedy such breach of security or unauthorized access that is caused by or attributed to the Contractor or its officers, directors, employees, subcontractors, agents, or volunteers in a timely manner, be responsible for any remedial measures required by statute, assist and cooperate with the City and Other Indemnified Party in any litigation against third parties that the City and Other Indemnified Party undertakes to protect the security and integrity of the Confidential

Information, and deliver to the City, if requested, the root cause assessment and future incident mitigation plan with regard to any such breach of security or unauthorized access. The Contractor shall comply with all applicable U.S. and international laws governing or relating to privacy, data security and the handling of data security breaches.

GC10. FAIR COMPETITION.

A. Competition is encouraged even though a particular manufacturer's name or brand is specified to indicate the level of quality desired. Offers will be considered on other brands as a functional equivalent when the Offeror indicates clearly the product (brand and model number) which is being offered. A sample or sufficient data in detail to enable a proper comparison to be made with the particular material specified shall be included. The City Purchasing Agent, considering equality of design, construction and function will make the determination of the acceptability of an equivalent product.

B. No Offeror will be allowed to offer more than one price on each item. If said Offeror should submit more than one price on any item, all prices for that item will be rejected at the discretion of the City Purchasing Agent. This paragraph is not intended to restrict the Offeror's ability to offer alternate products that meet the requirements of a single item.

C. To better ensure fair competition and to permit a determination of the lowest responsive and responsible Offeror, Offers may be rejected if they show any irregularities, conditions, non-conformities, or bids determined to be unbalanced, at the sole discretion of the City.

D. Samples, where required, shall be delivered to the Bureau of Procurement, 7 East Redwood Street, 10th Floor, Baltimore, Maryland 21202, unless otherwise stated in the specifications. Packages shall be marked "Samples for Bureau of Procurement", with the name of the Offeror, Contract Number and Item Number. Failure of the Offeror to furnish an itemized packing list and clearly identified samples as indicated may be considered sufficient reason for rejection of the Offer. The City Purchasing Agent reserves the right to retain or destroy the samples submitted for the purpose of evaluation and will be free from any redress or claim on the part of the Offeror, if any samples are lost or destroyed. Upon notification by the City Purchasing Agent that a sample is available for pickup, it shall be removed within thirty (30) calendar days, at the Offeror's expense, or the City Purchasing Agent will dispose of same at his/her discretion, at the Offeror's expense. All deliveries under this Contract shall conform in all respects with samples and/or data as submitted and accepted as a basis for the award.

E. This Solicitation does not commit the City to award a contract or reimburse an Offeror for any cost incurred in the preparation and submission of the Offer or for the cost of samples which were submitted as an Offer requirement.

GC11. CONFLICT OF INTEREST. By submitting an Offer in response to this Solicitation, and/or executing the resulting agreement that incorporates this Contract, the Contractor asserts that it has not engaged in any practice or entered into any past or ongoing contract that would be considered a conflict of interest with this Contract. The Contractor agrees to refrain from entering into all such practices or contracts during the term of this Contract (and any renewals or extensions thereto), including any agreements and/or practices that could give rise to even the appearance of a conflict of interest. Furthermore, the Contractor asserts that it has fully disclosed to the City any and all practices and/or contracts of whatever nature or duration that could give rise to even the appearance of a conflict of interest with the parties or subject matter of this Contract and will continue to do so during the term of this Contract and any renewals or extensions thereto. Additionally, the Contractor warrants that it has not employed or retained any company or persons, other than a bona fide employee working solely for the Contractor, to or secure this Contract and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of this Contract.

GC12. CHANGES TO OR DEVIATIONS FROM SPECIFICATIONS.

A. All deviations from the specifications must be noted in detail by the Offeror, in writing, at the time of submittal of the Offer. In the absence of a written list of specification deviations at the time of submittal of the Offer, the Offeror shall be held strictly accountable to the City for the specifications as written. Any deviation from the specifications as written, not previously submitted and accepted by the City, is ground for rejection of the Offer, and if award has been made, of the material, equipment and/or services when delivered or performed.

B. Any person contemplating submitting an Offer in response to this Solicitation, and requesting a change in the Solicitation or a clarification as to the true meaning of the Solicitation or other Contract documents or any part thereof, must submit to the City a written request for said change or interpretation, to the Buyer named on the solicitation in writing with supporting documents if necessary or requested by the City, shall be received by the City on or

before the date specified in the Solicitation for final questions.

C. Any clarifications that are non-substantive in nature will be made by Buyer response. These clarifications shall not modify the Solicitation terms, and do not become part of this Contract. Any substantive change or interpretation of the components of the Solicitation or other contract documents or specifications, if made by the City, will be made only by addendum duly issued. A copy of such addendum will be furnished to each known person receiving a set of such documents. The City will not be responsible for any explanations, changes, or interpretations to the Solicitation that are not made by addendum issued. The City is not responsible for any verbal or written communications made in advance of the solicitation process. The Offeror agrees that it will not attempt to have any communications about this Solicitation, or the subject of this Solicitation, with the City outside of the process as described by this Solicitation.

D. Any Offeror who intends to submit an Offer must submit a complete response, including all addenda issued by the Bureau of Procurement, signed by the Offeror. Offerors must register on Workday to ensure receipt of addenda issued, and are fully responsible for checking the Solicitation posting on Workday regularly for such addenda. Offerors are also responsible for maintaining their Workday account information, including but not limited to user contact information, so that all appropriate notices are received or accessible.

GC13. CONDITIONAL, QUALIFIED OR NON-RESPONSIVE OFFERS. Offers shall be submitted in a form and manner as indicated by the components of the Solicitation. Any proposal, which is not submitted in a form and manner indicated by the components of the Solicitation and proposal forms or which contains information, statements, conditions, or qualifications which place conditions or qualifications on the proposals submittal for purposes of making an award, or which alter any proposal terms, conditions, specifications on the Offer for purposes of making an award, or which alter any proposal terms, conditions, specifications, or forms, which had not previously been approved by written addendum issued by the City Purchasing Agent, or which does not meet legal requirements shall be declared as a qualified, conditional, or non-responsive Offer and shall be rejected without further consideration. Any Offer that does not fully respond to and comply with all the detailed specifications or other requests for information including execution of proposal forms may be declared “non-responsive” by the City and recommended for rejection. The City shall not be responsible for any errors or omissions of the Offeror.

GC14. WAIVER OF TECHNICALITIES IN SPECIFICATIONS. Minor differences in specifications or other minor technicalities may be waived at the discretion of the Board of Estimates upon the recommendation of the City Purchasing Agent.

GC15. OMISSIONS OF SPECIFICATIONS. The omission by the City of any specifications or details of any specification within the Solicitation which would normally apply to the product or service specified herein, shall not relieve the Contractor from fulfilling those required specifications needed to provide an end product or service best suited to the intended purpose of this Contract as determined by the City Purchasing Agent.

GC16. CLARIFICATION OF OFFERS.

A. If during the evaluation process, the City (which for this purpose includes the Evaluation Committee convened for the purpose of evaluating the Offer, as stated in the Method of Award) determines that it needs clarification on a non-material portion(s) of the Offer, the City may require the Offeror to clarify that non-material portion(s) of the Offer which is in question, by responding in writing by the time and date specified in the request, and/or by appearing before the City at a time and place to be specified by the City; however, the City is under no obligation to do so. The term clarification used herein shall simply mean the Offeror may explain and/or make clear the meaning or understanding of some specified portion of the Offer, but shall in no event materially change any portion of the Offer.

B. Offerors may also request clarification of the requirements of a Solicitation and may request deviations from those requirements, in the manner(s) stated in GC12.

C. The cut-off for submission of questions or deviations shall be at the City's sole discretion, on or about the fifth (5th) calendar day prior to the due date for Offer submission (as amended by written addenda, if any). Questions or requests for deviations from specifications will not be accepted after that time.

D. Failure of the City to respond to questions or requests for deviations shall be construed as confirming that the terms and conditions of the Solicitation remain as issued or formally amended.

E. In the event the Offer submitted contains clarifications or deviations not accepted or submitted previously, see GC13.

GC17. DELIVERY AND F.O.B. POINT.

A. Each Offeror shall guarantee that it will deliver materials, equipment and/or perform services in accordance with the delivery schedule as outlined in this Contract.

B. All materials, equipment and/or services shall be bid F.O.B. Destination (delivered) unless otherwise clearly specified by the City.

C. If delivery or execution of this Contract shall be delayed or suspended and if such failure arises out of causes beyond the control and without fault or negligence by the Contractor, the Contractor shall notify the City Purchasing Agent, in writing, within fifteen (15) calendar days after the cause of the delay. Such causes may be included, but are not restricted to: acts of God, acts of the public enemy, acts of any governmental entity in its sovereign or contractual capacity, fires, floods, epidemics, restrictions, strikes, freight embargoes, and unusually severe weather, but in no event shall include riots, protests, or acts of public unrest. The City Purchasing Agent shall ascertain the facts and extent of each failure and if s/he determines that failure was occasioned by excusable causes, may increase delivery time by a period equal to the aggregate time lost due to such causes.

GC18. BILLS OF LADING/DELIVERY TICKETS.

A. All deliveries shall be accompanied by a delivery ticket or packing slip containing the following information for each item delivered:

(1) The Supplier Contract number, the Contract Draw, Purchase Order number, description/name of article, item number, quantity and name of the Contractor; and

(2) All bills of lading must state the name of the Contractor.

B. Failure to comply with the above shall be sufficient reason for the City's rejection of the shipment.

GC19. INSPECTION.

A. All materials, supplies and/or services delivered or performed for the City shall be subject to final inspection by the City and/or other independent testing laboratories as may be designated by the City Purchasing Agent. If the result of such tests indicates that any part of the materials and supplies are deficient in any respect, the City Purchasing Agent may reject all or any part of the materials and supplies to be provided under this Contract. The City Purchasing Agent may waive minor variances in materials, supplies and/or services upon approval.

GC20. INVOICES. All invoices are to be submitted via email to the Bureau of Accounting and Payroll Services (City-Payables@baltimorecity.gov), in accordance with instructions in the Statement of Work.

GC21. PAYMENTS.

A. Partial or full payment will be made upon receipt and final acceptance of services, materials and/or equipment invoiced, in accordance with the Purchase Order, Solicitation milestones, or as agreed upon by both parties in this Contract.

B. Provided that the City shall have approved the Contractor's invoices, the Department of Finance will make payment thirty (30) days after receipt by the City of the signed payment request of the Offeror. Should the thirtieth (30th) day fall on a non-working day, then payment shall be made the first working day thereafter. The Contractor's submission of an invoice to the City for payment shall be the Contractor's certification that the goods and/or services were provided to the City by the Contractor in accordance with the terms and conditions of the Contract.

C. No partial payments will be made where the time required to completion of the order/contract is less than forty-five (45) days. In these cases, only the final payment will be invoiced.

D. Final payment will be made after the completion and final acceptance of each order under this Contract.

GC22. LABOR, WAGES, AND WORK SCHEDULE.

A. Service Offerors shall comply with all legally mandated wages as follows:

(1) For construction or building maintenance services contracts, the provisions of Article 5, Subtitle 26 of the Baltimore City Code, as amended, relative to hours of labor, overtime, wages, apprenticeship and payroll reporting. The Prevailing Wage Rate Schedules for these contracts are included in the Solicitation, or may be found on the Wage Commission website at: <http://archive.baltimorecity.gov/Government/BoardsandCommissions/OfficeofCivilRightsandWageEnforcement.aspx>; and

(2) For all other services contracts, in accordance with all current minimum wage rates applicable throughout this Contract period at no increase in Contract price in excess of the actual change in wages, if increase required by law and/or the Escalation Clause in this Solicitation, and the City's Living Wage provision when applicable.

B. All work schedules shall be coordinated with the City based on a normal work week being Monday through Friday.

(1) No work requiring the City to pay premium rates (including but limited to overtime, holiday or emergency time) shall be permitted, except in cases of emergency, and then only to such extent as is

absolutely necessary and with written permission of the Project Manager, as designated by the City from time to time;

(2) The Contractor should check with the contracting agency for dates of legal holidays; and

(3) In the event the City declines to permit work that would incur premium rates charged to the City, and the Contractor elects to do so at its own cost, the Contractor shall remain responsible for complying with the provisions of Article 11, § 3 of the Baltimore City Code, as amended, pertaining to premium pay for overtime, Sunday and holiday work.

GC23. INSURANCE. The Contractor shall procure and maintain the following specified insurance coverage during the entire life of this Contract, including any extensions thereof:

A. **COMMERCIAL GENERAL LIABILITY INSURANCE**, at limits not less than One Million Dollars (\$1,000,000) per occurrence for all damages arising out of bodily injuries or death and property damage, including products and completed operations coverage, and with those policies with aggregate limits, a Three Million Dollar (\$3,000,000) aggregate limit is required. Such insurance shall include contractor's liability insurance.

B. **BUSINESS AUTOMOBILE LIABILITY INSURANCE**. If automobiles are used under this Contract at a limit of not less than \$1,000,000 per occurrence for all damages arising out of bodily injuries or deaths and property damages. Such insurance shall apply to any owned, non-owned, or hired vehicle used in the performance of this Contract.

C. **WORKERS COMPENSATION INSURANCE**. As required by the State of Maryland, as well as any similar coverage required for this work by applicable Federal or "Other States" State Law.

D. The Mayor and City Council of Baltimore, its elected/appointed officials, and its employees are hereby named as additional insureds and shall be covered, by endorsement, as additional insureds as respects to liability arising out of activities performed by and/or on behalf of the Contractor in connection with this Contract.

E. The Contractor's insurance shall apply separately to each insured against whom claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

F. To the extent of the Contractor's negligence, the Contractor's insurance coverage shall be primary insurance as respects the City, its elected/appointed officials, employees and agents. Any insurance and/or self-insurance maintained by the City,

its elected/appointed officials, employees or agents should not contribute with the Contractor's insurance or benefit the Contractor in any way.

G. Required insurance coverage shall not be suspended, voided, cancelled, or reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written notice has been given to the City, per Annotated Code of Maryland 27-603 through 605. There will be an exception for non-payment of premium, which is ten (10) days' notice of cancellation.

H. Unless otherwise approved by the City, insurance is to be placed with insurers with a Bests' rating of no less than A:VII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VII and must be licensed/approved to do business in the State of Maryland.

I. The Contractor shall furnish the City a Certificate of Insurance with a copy of the additional insured endorsement as verification that coverage is in force or will be provided at the time of contract execution. The City reserves the right to require complete copies of insurance policies with endorsements at any time.

J. Failure to obtain insurance coverage as required or failure to furnish a Certificate(s) of Insurance as required may render this Contract null and void; provided, however, that no act or omission of the City shall in any way limit, modify, or affect the obligations of the Contractor under any provision of this Contract.

K. Notwithstanding anything to the contrary in any applicable insurance policy, the Contractor expressly warrants, attests and certifies that there are no carve outs or exclusions to the policy coverage and limitations stated herein, except as required by law.

L. These requirements are general, and shall be considered a minimum and may be reduced, increased, expanded or modified by the Statement of Work (Pt. 1).

GC24. TAXES. No State Sales or Federal Excise Taxes apply. Maryland Sales and Use Tax Exemption Certificate #30000055 9 is applicable (or applies). The City is exempt from Federal Excise Tax per Chapter 32 Int. Rev. Code, Certificate No. A-112136.

GC25. REQUIREMENT FOR MINORITY BUSINESS ENTERPRISE PARTICIPATION.

A. Article 5, Subtitle 28 of the Baltimore City Code, as amended, is incorporated into this Contract by reference. The failure of the Contractor to comply with this Subtitle is a material breach of contract. The

Contractor agrees that it shall make every good faith effort to equitably utilize the services of minority business enterprises ("MBE's") and women's business enterprises ("WBE's").

B. During the term of this Contract, the Contractor agrees to fulfill the MBE and WBE commitment submitted with the Contractor's Offer. Failure to comply with the levels of MBE and WBE participation identified in the bid is a material breach of contract, if applicable. In identifying available MBE's and WBE's, the Contractor is encouraged to use the MBE/WBE Directory available from the Minority and Women's Business Directory Office, (410) 396-4355.

C. The Contractor understands that authorized representatives of the City may examine, from time to time, the Contractor's books, records and files to the extent that such material is relevant to a determination of whether the Contractor is complying with the MBE and WBE participation requirements of this Contract.

D. The Contractor agrees to pay all subcontractors within seven (7) days of receipt of payment from the City. Beginning with the second pay request from the Contractor to the City, the Contractor agrees to provide the City with written evidence that all subcontractors have been paid out of the proceeds of the prior payment, unless a bona fide dispute, documented in writing, exists between the Contractor and the unpaid subcontractor. The Contractor agrees to submit the following to the Minority and Women's Business Opportunity Office (MWBOO) when requested:

(1) Copies of signed agreements with the business enterprises being utilized to achieve the contract goals;

(2) Reports and documentation, including canceled checks, verifying payments to the business enterprises being used to achieve the contact goals; and

(3) Reports and documentation on the extent to which the Contractor has awarded subcontractors to Minority and Women's Business Enterprises under contracts not affected by Article 5, Subtitle 28.

E. If the Contractor is unable to meet any contract goal by utilizing the certified business enterprises specified at bid opening, the Contractor must seek a substitute certified business enterprise to fulfill its commitment. All substitutions must receive prior written approval by the Minority and Women's Business Enterprise Opportunity Office (MWBOO). If, after good faith efforts, the Contractor is unable to find a substitute, the Contractor may request a waiver of the goal(s). Before final payment may be made under this Contract, the Contractor must submit a list of all subcontractors

utilized on the contract, both MBE/WBE and non-MBE/WBE. The list must include, as to each subcontractor:

- (1) Company name;
- (2) Total amount paid to subcontractor; and
- (3) Owner's race/ethnicity and sex.

F. A Contractor who fails to comply with the requirements of Article 5, Subtitle 28 of the Baltimore City Code, when applicable, is subject to the following penalties; suspension of this Contract; withholding of funds; rescission of this Contract based on material breach; disqualification of the Contractor from eligibility for providing goods or services to the City for a period not to exceed two (2) years; and payment of liquidated damages.

G. The City requires all data regarding subcontractor payments to be submitted by the Contractor to the MBE/WBE Coordinator.

GC26. NOTIFICATION OF AWARD.

A. After award by the Board of Estimates, the Contractor will receive an Award Notification from the City Purchasing Agent, or designee, enclosing Contract documents (including but not limited to the formal agreement that incorporates the Contract, and any required bonds) which must be executed and returned to the City Purchasing Agent, along with current Insurance Certificate, within ten (10) calendar days after receipt of the notification. When these documents are received by the City Purchasing Agent, a Purchase Order (or notice/order to proceed) will be issued, which will permit payment for services rendered. See also, GC1(B) and GC3(D).

B. The City may, at its discretion, send the above-referenced Contract documents via email to the person(s) and addresses noted in the Offer documents, and/or in the vendor registration account in Workday.

C. The City may, at its discretion, require a recommended awardee to obtain and submit bonding, insurance or other documents prior to making an award.

GC27. BOARD OF ESTIMATES AGENDA.

A. Offerors will be notified by the Bureau of Procurement of the expected date that an award will be considered by the Board of Estimates, via email. Any vendors who did not submit Offers will not be notified prior to award. Information pertaining to scheduled Board of Estimates action may also be obtained via the Internet at www.comptroller.baltimorecity.gov. The Board of

Estimates meets every Wednesday at 9 a.m., except holidays. Dates the Board of Estimates will be in recess are posted on the Board of Estimates website, at the URL above.

B. From time to time, a Board of Estimates meeting may be cancelled with very short notice. In that event, any Offer that is due on the cancelled meeting date shall still be due and submitted as originally scheduled, except for holidays, and any Offer that is due to be opened on the cancelled meeting date shall be held by the Comptroller's Office to be opened on the next scheduled Board of Estimates meeting date without any additional public notice or notice to vendors.

C. In the event that the City elects to retract or defer an item that has been placed on a Board of Estimates agenda, the Bureau of Procurement may attempt to notify awardee(s) and/or Offeror(s). However, the awardee(s) and/or Offeror(s) are responsible for determining whether an agenda item has been retracted or deferred.

GC28. ENTIRE CONTRACT. The Contract resulting from this Solicitation, shall be formalized by the agreement that incorporates this Solicitation and all addenda issued thereto, the Offer and all approved amendments thereto as accepted by the City, all closing documents executed as a result of award resulting from this Solicitation, and any/all other documents either issued by the City alone, or as fully executed by both parties, that are directly related to this Contract. This Contract shall be binding upon the parties hereto and their successors and permitted assigns. See GC1.

GC29. NO WAIVER/CUMULATIVE REMEDIES. No failure by the City to exercise, and no delay in exercising any right, power or privilege as provided to the City hereunder in this Solicitation or as otherwise granted by law shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege as provided hereunder in this Solicitation or as otherwise granted by law preclude any other or further exercise thereof by the City or the exercise of any other right, power or privilege granted to the City by law.

GC30. SEVERABILITY. The provisions of this Contract are severable. If any paragraph, section, subsection, sentence, clause, word, or phrase of this Contract is for any reason held to be contrary to any law, rule or regulation, said paragraph, section, subsection, sentence, clause, word or phrase may be removed from this Contract at the sole discretion of the City Purchasing Agent and/or the Board of Estimates. Such decision shall not affect the legality of the remaining portions of this Contract unless otherwise determined by and at the sole discretion of the City Purchasing Agent and/or the Board of Estimates.

GC31. SUBLET OR ASSIGN.

A. The Contractor shall give its full personal attention constantly to the faithful execution of this Contract, and shall keep the same under its control. Assigning or subletting any part after the award of this Contract shall require advance approval in writing from the City Purchasing Agent, and the Board of Estimates if necessary. Unless otherwise approved by the City, the Contractor shall complete at least fifty-one percent (51%) of the work under this Contract with its own employees.

B. The Contractor shall not assign any of the monies payable under this Contract, or its claims thereto, without first giving written notification to the City Purchasing Agent. Such notice shall be hand delivered with receipt obtained therefore, or mailed by certified mail, return receipt requested.

C. Nothing contained in this Contract shall create any contractual relationship between any subcontractor and the City. The City shall not be responsible for any failure by the Contractor to remit payments to any third party.

GC32. CONTRACTOR'S COOPERATION.

A. The Contractor shall actively cooperate in all matters pertaining to its performance under this Contract, and shall come to the office of the City Purchasing Agent, whenever requested in connection with the performance of this Contract.

B. The Contractor shall cooperate with the City and any other contractor, in order to successfully complete the Contract requirements, or in order to successfully and expeditiously transition responsibilities from or to other contractors. This requirement includes transitioning from either an incumbent contractor previously performing the services under an expiring contract, or transitioning from this Contractor to a subsequent contractor who is the successful awardee of a subsequent solicitation. Purchase Orders for both contractors may overlap in term by as much as six (6) months, at the City's discretion, unless otherwise stated in the Statement of Work.

GC33. GENERAL RESPONSIBILITY OF CONTRACTOR.

A. All equipment, materials and/or services to be provided or performed under this Contract shall be in complete compliance with all Federal, State, City and local municipal regulations, standards, laws, ordinances, statutes and rules, including those now in effect and hereafter adopted, in any matter affecting performance and pricing under this Contract and must meet or exceed specification requirements.

B. The Contractor shall, at any time upon request, provide to the City copies of all licenses or

certificates required for the performance of the work referred to herein.

C. In the event the Scope of Work requires that a permit(s) be obtained, the Contractor shall be responsible for obtaining any/all permits and providing copies to the City, prior to the commencement of work.

D. The Contractor shall inform the City Purchasing Agent, in writing, of any and all circumstances which may impede the progress of the work or inhibit the performance of this Contract including, but not limited to: replacement of key personnel named in the Offer, or assigned responsibility for the Contractor's performance under this Contract, bankruptcy, dissolution or liquidation, merger, sale of business and/or assignment. The Contractor's failure to do so may be considered a material default under this Contract.

E. The signatory for the Contractor certifies and warrants that the Contractor's name in the Offer and the one-page agreement incorporating this Contract is its full legal name, as designated in its corporate charter or other organizational document, that he/she is empowered to act and contract for the Contractor, and that this Contract has been approved by the board of directors or other governing body of the Contractor.

GC34. CONTRACTOR'S SUPERVISION. The Contractor shall be fully responsible for supervision and the actions of its officers, directors, employees, agents, volunteers, and subcontractors. The City shall exercise no supervision or control over the Contractor's officers, directors, employees, agents, volunteers, or subcontractors.

GC35. CONTRACTOR IS NOT AN AGENT OR EMPLOYEE OF THE CITY.

A. No language or wording contained in this Contract shall be used to construe the Contractor as an agent or employee of the City, nor shall any such language or wording be used to construe the City as an agent or employer of the Contractor, any of the Contractor's employees, subcontractors, or subcontractors' employees. The Contractor shall have the entire responsibility and liability for any and all damage or injury of any kind or nature, whatsoever, to all persons, whomsoever, whether employees of the Contractor or otherwise, and to all property, or loss of use thereof, caused by, resulting from, arising out of, or occurring in connection with the execution of the work provided for in this Contract. Nothing contained in this Contract shall create any contractual relationship between any subcontractor and the City.

B. It is understood and agreed that the Contractor is an independent contractor, and shall not be

entitled to any City benefits. Additionally, the Contractor shall not be covered under any insurance coverage maintained by the City. The terms and conditions of this Contract shall not be deemed or construed in any way to create or constitute a general partnership, joint venture, or other such entity between the City and the Contractor.

GC36. CHANGES TO CONTRACT.

A. After the Contract award, the City will have the unilateral right to order changes to this Contract and the Contractor may request changes to this Contract. In either case, the City Purchasing Agent shall have the undisputed right to decide on such changes provided the Contractor provides the City Purchasing Agent with a careful lump sum estimate made under generally accepted accounting principles of the cost effect of proposed additions or deductions, schedule changes, and a written proposal submitted by the Contractor. If the proposal is accepted, the changes must be by written change order of the City Purchasing Agent. No variations from this Contract price and/or schedule either by addition or deduction shall be made without this written order. Should a change become necessary and the Contractor and City Purchasing Agent fail to agree upon a lump sum, the City Purchasing Agent shall have the right to issue an order for the work to be changed, and a correct account kept of the actual cost thereof, and an amount not exceeding fifteen percent (15%) shall be added to cover the Contractor's overhead and profit, which total amount shall stand as the price to be deducted or added for changes. No such changes shall invalidate this Contract. Unless an extension of time for completion is specifically stated in such order, it shall be considered that no additional time is to be allowed.

B. Notwithstanding the foregoing, material modifications, alterations, or amendments to the provisions of this Contract must be by means of a written amendment that refers to and incorporates this Contract, is duly executed by an authorized representative of each party, and is approved by the Board of Estimates, if necessary.

C. The parties agree that they will, from time to time, execute and deliver, or cause to be delivered, such amendments hereto and such further instruments as may be required by Federal or State law to comply with any existing or future Federal or State regulations, directives, policies, procedures, and other requirements, or to further the general purposes of this Contract.

GC37. GUARANTEE / WARRANTY.

A. Unless indicated otherwise by another provision of this Contract, all work, supplies, materials and requirements described in the specifications, including any modifications thereto, shall

be guaranteed/warranted for a period of one (1) year from the date of delivery and/or final acceptance by the City. Such guarantee/warranty shall include, but not be limited to the following:

(1) Against any and all material and/or equipment damage; or imperfect, careless or unskilled workmanship, as determined by the City Purchasing Agent; and/or

(2) Against any injury or undue deterioration resulting from proper and normal use of goods and/or services, as determined by the City Purchasing Agent.

B. The Contractor shall remove and replace with proper materials, equipment or services and shall re-execute, correct or repair without cost to the City, any materials, equipment or services found to be improper, imperfect, defective or unable to perform as specified, and shall repair all damages caused by any such removal, replacement or repair.

C. Any warranties, whether expressed or implied, shall not reduce the Contractor's, seller's, and/or manufacturer's obligations to the City against any latent defect which may be found during the rated life of the supplies and/or materials and requirements described in the specifications, including improved modifications.

GC38. TERMINATION FOR DEFAULT / CONVENIENCE.

A. Upon recommendation of the City Purchasing Agent, the Board of Estimates reserves the right to terminate any contract, if in its opinion there shall be a failure at any time, to promptly and faithfully perform any of its terms or in case of any willful attempt to impose upon the City materials, services, products and/or workmanship inferior to that required by the contract. Any action taken by the Board of Estimates shall not affect or impair any rights or claims of the City to damages for the breach of any requirements or terms of the contract by the Contractor.

B. Any cost and/or expense incurred under the section above shall be deducted from and paid by the City out of such monies as may be due or become due to the Contractor. In the event said expenses shall exceed the amount which would have been payable under this Contract, if the same had been completed by the Contractor, it or its surety shall pay the amount of any excess to the City. In the event that a Contractor exempted from posting a bid or performance guarantee fails to execute and perform any Contract, it shall forfeit the right to bid on any future City contract(s) for a period of time determined by the Board of Estimates and shall be liable for any costs incurred by the City as a result of its default.

C. The City in accordance with this clause may terminate the performance of work under this Contract, in whole or in part, whenever the City Purchasing Agent shall determine that such termination is in the best interest of the City. The City shall mail to the Contractor a Notice of Termination specifying the extent and conditions under which performance of work under this Contract is terminated and the date upon which such termination becomes effective. Upon termination of this Contract in accordance with this section, the Contractor is entitled to an equitable adjustment hereunder. Said equitable adjustment may include any costs reasonably incurred by the Contractor as a direct result of early termination, but shall not include, under any circumstance, anticipated but unearned profits.

GC39. NONDISCRIMINATION.

A. The Contractor shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, gender identity or expression, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, suppliers, or commercial customers. The Contractor shall provide equal opportunity for subcontractors to participate in all of its public sector and private sector subcontracting opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace, such as those specified in Article 5, Subtitle 28 of the Baltimore City Code, as amended from time to time. The Contractor understands and agrees that violation of this clause is a material breach of this Contract and may result in contract termination, debarment, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

B. The Contractor shall comply fully with all provisions of Executive Order 11246, as amended; the Rehabilitation Act of 1973; and the Vietnam Veteran's Readjustment Act of 1974. In addition, the Contractor shall complete, when required, Immigration and Naturalization Form 1-9 for each employee hired. For assistance in compliance, contact: United States Department of Labor, Office of Federal Contract Compliance Programs, 103 South Gay Street, Room 202, Baltimore, Maryland 21202. Phone: (410) 962-3572, Fax (410) 962-0159.

GC40. COOPERATIVE PURCHASING.

A. Subject to the Contractor's approval, the prices, terms and conditions of this Contract may be extended to the regional public schools, colleges, libraries the Baltimore Regional Cooperative Purchasing Committee (BRPC), and other governmental entities. Any participating entity will issue its own purchasing

documents. The City assumes no authority, liability or obligation on behalf of these governmental or quasi-governmental bodies. There shall be no obligation on the part of any named entity to utilize the resultant contract. The entities shall have the unilateral right, during the contract period, to contract directly with the Contractor to place orders, arrange deliveries, reconcile discrepancies and invoices and issue payments.

B. The Contractor's willingness to participate will not affect consideration of its Offer.

GC41. ACCESS AND RETENTION OF RECORDS.

A. At any time during business hours, and as often as the City may deem necessary, there shall be made available to the City for examination, the Contractor's records with respect to the Contractor's services under the Offer and any ensuing contract, and the Contractor's compliance with any City programs, regulations or laws. The Contractor shall permit the City to audit, examine, and make copies, excerpts or transcripts from such records, and make audits of data relating to matters covered by the Offer and this Contract. The Contractor shall maintain and retain all records and other documents related to this Contract for a period of three (3) years from the date of the final payment, except in cases where unresolved audit questions require a longer period of time for resolution, as determined by the City.

B. The Contractor shall be responsible for repayment of any and all applicable audit exceptions, including any City expenses related thereto, which the City, State or Federal auditors or their designated representatives may identify and are material and adverse in nature to the City as to create an audit disallowance. The City will bill the Contractor for the amount of such audit disallowance, including any City expenses related thereto, and the Contractor shall promptly pay such stated amount.

GC42. QUALITY ASSURANCE. The supplies, materials, work and services shall be of the best quality of the kinds herein specified. Should any supplies, materials, work and services other than those specified be substituted, the City Purchasing Agent and/or his/her authorized representative shall have full power to reject them, and the substituted supplies, materials, work and services shall be removed from the premises by the Contractor within twenty-four (24) hours after notification. Should the Contractor continue utilizing defective and inferior workmanship or utilizing rejected materials which may cause rejection and remove of same, the City Purchasing Agent shall have full power and authority to employ a superintendent or inspector at the Contractor's sole expense to ensure compliance. Said superintendent or inspector shall be paid from time to time out of any money due or becoming due to the

Contractor. The City Purchasing Agent shall have the power to continue the employment of said superintendent or inspector until final completion and acceptance of all work under this Contract or to take any other legal remedies under this Contract.

GC43. AUTHORITY OF THE CITY PURCHASING AGENT.

A. The parties to this contract agree that the City Purchasing Agent is hereby vested with the power and authority to determine the amount and quantity, quality and acceptability of the work, materials, supplies and services provided under this Contract. The City Purchasing Agent shall decide any and all questions that may arise regarding the Contractor's obligations and the fulfillment of the Contract terms.

B. The City Purchasing Agent shall act as the referee if any dispute arises between the Contractor and the City regarding this contract. The determination of the City Purchasing Agent may be appealed to Board of Estimates in writing, and further appealed on the record to a court of competent jurisdiction in the City. The Contractor may appeal any adverse determination of the City Purchasing Agent in writing within ten (10) calendar days of the determination, or it is forever waived. Final payment by the City will not be made unless and until all issues in dispute have been fully and finally settled and/or adjudicated.

GC44. SUBCONTRACTOR BONDING.

A. No Contractor shall require a Performance Bond from any subcontractor unless prior approval authorizing the Contractor to require such a bond has been granted in writing by the City Purchasing Agent, and in connection with contracts subject to MBE and WBE requirements, concurred in by the Chief of the Minority and Business Opportunity Office ("MWBOO").

B. All requests by a Contractor for prior approval to allow the Contractor to require a Performance Bond from a subcontractor shall be made in writing to the City Purchasing Agent. In such a request, the Contractor shall particularize the reasons supporting the request and shall explain why there are not options other than requiring the Performance Bond to protect its interests.

C. The City Purchasing Agent, and if concurrence is required, the Chief of the MWBOO have the sole discretion to determine whether a request by a Contractor for prior approval to authorize the Contractor to require a Performance Bond from a subcontractor will be granted and concurred in, and their decisions shall be final.

GC45. DEBRIEFING OF UNSUCCESSFUL OFFEROR.

A. When a contract is to be awarded on some basis other than price alone, unsuccessful Offeror(s) shall be debriefed upon written request submitted to the City Purchasing Agent within a reasonable time. Debriefings shall be provided at the earliest feasible time after contract award and shall be conducted by a procurement official familiar with the rationale for the selection decision and contract award.

B. Debriefing will:

(1) Be limited to discussion of the unsuccessful Offeror's proposal and may not include specific discussion of a competing Offeror's proposal;

(2) Be factual and consistent with the evaluation or the unsuccessful Offeror's proposal; and/or

(3) Provide information on areas in which the unsuccessful Offeror's technical proposal was deemed weak or deficient.

C. Debriefing will not include discussion or dissemination of the notes or rankings of individual members of an evaluation committee, but may include a summary of the procurement officer's rationale for the selection decision and recommended contract award.

D. A summary of the debriefing shall be made a part of this Contract's file.

GC46. PROTESTS.

A. The Board of Estimates approves all contracts over \$25,000 in value and is the final contracting authority for the City. Any interested party may protest the City Purchasing Agent's recommendation of award to the Board of Estimates. All protests must be in writing and filed with the Clerk to the Board of Estimates, Room 204 City Hall, 100 North Holliday Street, Baltimore, Maryland 21202, no later than noon on the Tuesday preceding the Wednesday meeting of the Board of Estimates or by an alternative date and time specified in the agenda for the next scheduled meeting.

B. A copy of the protest letter must be forwarded to the City Purchasing Agent, 7 East Redwood Street, 10th Floor, Baltimore, Maryland 21202.

C. Parties protesting shall contact the Clerk to the Board of Estimates to determine the date when this Contract will be placed on the Agenda of the Board of Estimates.

D. The written protest should include the following information:

(1) Whom the author of the protests represents and the entity that authorized the representation (including the name, address and telephone number of the business entity protesting);

(2) Identification of the Solicitation number, the City agency for whom this Contract is being solicited (if known) and the name of the Bureau of Procurement's Buyer;

(3) A detailed statement of the factual grounds of the protest;

(4) How the protestant will be harmed by the proposed Board of Estimates action; and

(5) The form of relief requested.

E. Matters may be protested by a person or any entity directly and specifically affected by a pending matter or decision of the Board of Estimates. In order for a protest to be considered, the protestant must be present at the Board of Estimates meeting.

GC47. NOTICE.

A. Except as specified otherwise by another provision of this Solicitation or this Contract, any notice to the Offeror/Contractor required or permitted hereunder shall be in writing and shall be deemed to have been given upon being properly stamped, addressed and posted via first class mail, or upon being sent via email to the Offeror/Contractor at the address designated in the bid or contract documents, or in the Offeror's/Contractor's vendor registration in Workday.

B. At the sole discretion of the City, notice may be transmitted by hand delivery with receipt obtained therefore, or by telephone or facsimile followed by written confirmation by first class mail or email.

GC48. GENDER. Words of gender used in this Solicitation and this Contract may be construed to include any gender, and words in the singular may include plural, and words in the plural, singular.

GC49. COMPLIANCE WITH LAW. The Contractor shall be in complete compliance with all Federal, State, City and local municipal regulations, standards, laws, ordinances, statutes and rules, including those now in effect and hereafter adopted, in any matter relating to the goods or services provided under this Contract and/or affecting performance and pricing under this Contract.

GC50. GOVERNING LAW AND VENUE. This Contract and all documents related thereto shall be governed by and construed under the laws of the State of Maryland. Furthermore, the parties agree that any suits or actions brought by either party against the other shall be brought in a court of competent jurisdiction in Baltimore City.

GC51. APPROPRIATION OF FUNDS. This Contract is contingent upon the proper appropriation of funds by the Baltimore City Council in accordance with the Baltimore City Charter and Code, as amended. If the terms of this Contract exceed a budget as adopted by the Baltimore City Council, then that portion of this Contract which exceeds a properly adopted budget shall be contingent upon further appropriation by the City. In the event of such non-appropriation of funds at any time during the term of this Contract as would prevent the City from making payment under the terms and conditions of this Contract, the City may terminate this Contract without the assessment of any termination charges or financial penalties against the City by providing written notice of intent to terminate to the Contractor. If the City terminates this Contract due to the non-appropriation of funds, the City will pay the Contractor for work currently in progress, and the Contractor shall not begin any additional work on the effected contract upon receipt of notification of intent to terminate by the City.

GC52. FORCE MAJEURE. Neither party will be liable for its non-performance or delayed performance if caused by a "Force Majeure" which means an event, circumstance, or act of a third party that is beyond a party's reasonable control, such as an act of God, an act of the public enemy, an act of a government entity, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, or any other similar cause, but in no event shall include riots, protests, or acts of public unrest. Each party will notify the other if it becomes aware of any Force Majeure that will significantly delay performance. The notifying party will give such notice promptly (but in no event later than fifteen (15) calendar days) after it discovers the Force Majeure. If a Force Majeure occurs, the City, at its sole discretion, will execute a change order to extend the Performance Schedule for a time period that is reasonable under the circumstances.

GC53. MOST FAVORED CUSTOMER. If any other customer of the Contractor obtains aggregate pricing and/or rebate terms with respect to any goods and/or services of the Contractor which is more favorable (taking into account all credits, discounts, rebates, adjustments, bonuses, allowances or any other incentives offered) than those terms provided to the City at any time during the term of this Contract, the Contractor will retroactively adjust the pricing and/or rebate terms under the Contract for each such good or service to conform to the more favorable terms and the Contractor shall promptly pay the City any amounts it owes to the City therefrom. The City shall have the right to conduct periodic reviews of the Contractor's books and records with respect to such goods and/or services to confirm the Contractor's compliance with the provisions of this section.

GC54. PUBLICITY/USE OF CITY NAME OR IMAGES.

A. Prior to the release of any advertising, publicity, or other promotional materials initiated by the Contractor related to this Agreement, including but not limited to use of the City's name, images or logos, the Contractor shall first submit the materials to the City Purchasing Agent, for review and written approval.

B. Notwithstanding the foregoing, the Contractor is prohibited from using the City Seal for any purpose.

GC55. BOARD OF ESTIMATES RESOLUTIONS. Certain resolutions of the Board of Estimates shall apply to City contracts as follows.

A. **WORKER-SPONSORED BENEFITS.** For contracts for non-professional services, contractors shall provide a system permitting those workers employed pursuant to the instant contract to enroll in a worker-sponsored benefits plan through voluntary payroll deduction, if authorized in writing by the employee.

B. **FAIR LABOR PRACTICES.**

(1) Contractors, subcontractors, and their agents and employees may not engage in unfair labor practices as defined under The National Labor Relations Act and applicable federal regulations and state laws.

(2) Contractors, subcontractors, and their agents may not threaten, harass, intimidate, or in any way impede persons employed by them who on their own time exercise their rights to associate, speak, organize, or petition governmental officials with their grievances.

(3) If the Board of Estimates determines that a contractor, subcontractor, or their agents have violated the policy set forth in this Resolution said contractor, or subcontractor will be disqualified from bidding on City contracts, and if they are currently completing contracts, they will be found in default of their contracts

GC56. CITY COUNCIL RESOLUTIONS. Certain resolutions of the Baltimore City Council shall apply to City contracts as follows.

A. **WORKER-SPONSORED BENEFITS PLAN.** The Contractor shall provide a system permitting those workers employed pursuant to this Contract to enroll in a worker-sponsored benefits plan through voluntary payroll deduction, if authorized in writing by the employee.

B. **UNLAWFUL EMPLOYMENT PRACTICES.**

(1) Except where a particular occupation or position reasonably requires, as an essential qualification thereof, the employment of a person or persons of a particular race, color, religion, national origin, ancestry or sex and such qualification is not adopted as a means of circumventing the purpose of this subtitle, it shall be an unlawful practice

(a) For any employer to discriminate against an individual with respect to hire, tenure, promotion, terms, conditions or privileges of employment or any matter directly or indirectly related to employment;

(b) For any employer, employment agency or labor organization to practice discrimination by denying or limiting through a quota system or otherwise, employment or membership opportunities to any group or individual;

(c) For an employer, employment agency or labor organization prior to employment or admission to membership to

i. Make any inquiry concerning, or record, the race, color, religion, national origin or ancestry of any applicant for employment or membership except when authorized by the Commission;

ii. Use any form of application for employment of personnel or membership blank containing questions or entries regarding race, color, religion, national origin or ancestry except when authorized or ordered by the Com-mission;

iii. Cause to be printed, published or circulated any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon race, color, religion, national origin, ancestry or sex.

(d) For any employment agency to practice discrimination by failing or refusing to classify an individual or to refer him/her for employment;

(e) For any labor organization to discriminate against any individual by limiting, segregating or classifying its membership in any way which would deprive or tend to deprive such individual of employment opportunities or would limit his/her employment opportunities or otherwise adversely affect his/her status as an employee or as an applicant for employment or would affect adversely his/her wages, hours or employment conditions;

(f) For any employer, employment agency or labor organization to penalize or discriminate in any manner against any individual because s/he has opposed any practice forbidden by this

subtitle or because s/he has made a complaint, testified, or assisted in any manner in any investigation, proceeding or hearing hereunder;

(g) For any labor organization or employers' association established for the purpose of training apprentice candidates, acting individually or jointly, to discriminate against any person with respect to admission or membership, or with respect to terms, conditions or employment or training, placement or any other benefit; and/or.

(h) For any employer, employment agency, or labor organization to discriminate against any individual because s/he has sought psychiatric help.

C. ASSURANCE OF NON-SEGREGATED FACILITIES.

(1) The Contractor assures the City of Baltimore and the U. S. Department of Labor that s/he does not and will not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that s/he does not and will not permit his/her employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The Contractor understands that the phrase "segregated facilities" includes facilities, which are, in fact, segregated on the basis of race, color, sex, or national origin because of habit, local custom, or for any other reason.

(2) The Contractor also understands and agrees that maintaining or providing segregated facilities for his/her employees or permitting his/her employees to perform their services at any locations, under his/her control, where segregated facilities exist is a violation of the requirements appearing in Executive Order 11246 as amended by Executive Order 11375.

(3) The Contractor further understands and agrees that a breach of this Contract subjects him/her to the provisions of the rules and regulations issued by the Office of Federal Contract Compliance dated May 21, 1968, and the provisions of the Equal Opportunity Clause incorporated in the contract between Contractor and the City of Baltimore. Whoever knowingly and willfully makes any false, fictitious, or fraudulent representation may be liable to criminal prosecution under 18 USC, Item 1001.

GC57. PREVIOUS COMPLIANCE. If an Offeror failed to comply with all of the terms and conditions of a prior City contract, including but not limited to bid prices or failure to satisfy MBE/WBE participation goals, then the Board of Estimates may, in its discretion, reject his/her/its bid for this Contract.

GC58. CONTRACT DISCLOSURE REQUIREMENT. Upon the City's request, and only after filing a complaint against the Contractor pursuant to Article 5, Subtitle 29, of the Baltimore City Code, as amended from time to time, the Contractor agrees to provide the City within sixty (60) calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken with the Baltimore City Market Area as defined in Article 5, §28-1(d) of the Baltimore City Code, as amended from time to time, including the total dollar amount paid by the Contractor for each subcontract or supply contract. The Contractor agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Commercial Non – Discrimination Policy, as contained in Article 5, Subtitle 29, of the Baltimore City Code as amended from time to time. The Contractor understands and agrees that violation of this clause is a material breach of this Contract and may result in Contract termination, debarment, and other sanctions.