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**GENERAL CONDITIONS AND INSTRUCTIONS FOR BIDDERS OR OFFERORS**

1. **COMPLIANCE WITH COMMISSION PROCUREMENT MANUAL:** Unless stated elsewhere in this Contract, the policies and procedures established in the Commission's Procurement Manual are hereby incorporated into and made a part of this Contract by reference. The Procurement Manual is available in the Commission's Acquisition Office.
  
2. **DEFINITIONS:** Whenever the following words occur in this Contract, they shall have the following meanings:
  - A. COMMISSION or WSSC shall mean the Washington Suburban Sanitary Commission.
  - B. GENERAL MANAGER shall mean the General Manager of the Washington Suburban Sanitary Commission or any duly authorized agent, acting within the scope of the particular duties entrusted to such agent. Notwithstanding anything to the contrary that may be contained in this Contract, the General Manager shall be the final authority in the exercise of responsibility and in the interpretation of all provisions of this Contract.
  - C. ACQUISITION DIRECTOR shall mean the Acquisition Director of the Washington Suburban Sanitary Commission, having the authority to enter into, administer, and/or terminate contracts, as the agent of the General Manager of the Commission.
  - D. CONTRACTOR or CONSULTANT shall mean any individual, company, firm, corporation, partnership, or other organization to whom contract award is made by the Commission.
  - E. When the word DIRECTED, REQUIRED, ORDERED, DESIGNATED, PRESCRIBED, or any word of like import is used, it shall be understood that the direction, requirement, order, designation, or prescription of the General Manager is intended. Similarly, when the word, APPROVED, ACCEPTED, SATISFACTORY, PERMITTED, or any word of like import is used, it shall mean approved by, accepted by, satisfactory to, or permitted by the General Manager.
  - F. INVITATION, INVITATION FOR BIDS, or IFB shall mean the Commission's Invitation for Bids, which becomes a part of this Contract upon award by the Commission.
  - G. REQUEST, REQUEST FOR PROPOSALS, or RFP shall mean the Commission's Request for Proposals, which becomes a part of this Contract upon award by the Commission.
  - H. SOLICITATION shall mean the written or oral manner in which a procurement process is initiated. An Invitation for Bids (IFB), Request for Proposals (RFP), or a telephonic request for Bids is each a form of solicitation.
  
3. **IFB/RFP TERMINOLOGY:** Whenever any one or more of the General Conditions and Instructions for Bidders or Offerors applies to a Request for Proposals, the words INVITATION FOR BIDS, IFB, BID, BIDDER, or words of like import are used, they shall mean REQUEST FOR PROPOSALS, RFP, PROPOSAL, or OFFEROR, respectively.
  
4. **PREPARATION OF BIDS:** Each Bidder shall submit his Bid using the Invitation for Bids form provided by the Commission. Each Bidder shall state in his Bid, a unit price typewritten or written in ink for each of the separate items called for in the Invitation. Erasures or other changes to a Bid must be initialed by the person signing the Bid. For the Bid to be responsive, there must be no question about what the Bidder intended.

Each Bidder is required to fill out the "Total Price" column and total his Bid, so that the total Bid figure is evident. Any error in computation will be corrected by the Acquisition Director or his representative. In case of an error between the unit price and its extension, the unit price shall govern.

Each Bid must be signed by the Bidder or his agent, and must include the address and telephone number of the Bidder.
  
5. **EXPLANATION OF SOLICITATION PROVISIONS TO PROSPECTIVE BIDDERS:** Any prospective Bidder must carefully examine the solicitation, its terms and General Conditions, etc. In case doubt shall arise as to the meaning or intent of anything contained in the Invitation, inquiry shall be made of the Contract Administrator before the Bid is submitted.

Any information given to a prospective Bidder by the Commission will be furnished to all prospective Bidders through the issuance of an amendment to the solicitation, if that information is necessary in submitting Bids, or if the lack of such information would be prejudicial to other prospective Bidders. Submission of a Bid shall be considered prima facie evidence that the Bidder has familiarized himself with and understands the solicitation, its terms and General Conditions, etc., under which this Contract will be awarded, administered, and performed.

6. **SUBMISSION OF BIDS:** Each Bid, with guaranty if required, must be received by the Acquisition Office in a sealed envelope prior to the time set for the receipt of Bids. The Bid shall be so marked as to clearly indicate its contents without requiring it to be opened. If submitted by mail, this sealed envelope shall be enclosed in another envelope addressed to the Acquisition Office at the address specified in the Invitation. The Bid must be delivered to the exact location designated in the IFB, including floor and/or room number, if indicated.

Upon receipt by the Acquisition Office, each bid shall be stamped with the time and date received; but it shall not then be opened. The only acceptable evidence to establish the time of receipt is the time/date stamp on the envelope or other documentary evidence of receipt maintained by the Acquisition Office. Each Bid shall be stored unopened in a secure place until the time set for bid opening.

Any Bid received after the exact time for receipt will not be considered for award. However, an exception may be made when a late Bid would have been timely but for the action or inaction of Acquisition Office personnel.

7. **MODIFICATION OR WITHDRAWAL OF BIDS:** A Bidder may modify or withdraw his Bid after it has been received by or deposited with the Commission any time prior to the exact time set for receipt of such Bids. The withdrawal must be made in person by the Bidder or an authorized representative, who must sign a receipt for the Bid.

8. **ACKNOWLEDGEMENT OF AMENDMENTS TO INVITATIONS FOR BIDS:** Each Bidder shall acknowledge receipt of any amendment to this solicitation (a) by signing and returning the amendment(s) or (b) by letter. Failure of the Commission to receive acknowledgement of the amendment(s) prior to the time and place specified for receipt of Bids may render the Bid nonresponsive.

9. **OPENING OF BIDS:** This General Condition is not applicable to Requests for Proposals.) Bids will be received until the date and time for receipt stated in the Invitation for Bids. Bids will be publicly opened and read at the place, time, and date stated. No responsibility will attach to the Commission for the premature opening of a Bid not properly addressed and identified. Bidders and their authorized agents are invited to be present at the opening of the Bids.

10. **IRREGULAR BIDS:** This General Condition is not applicable to Requests for Proposals.) Bids made on other than the documents furnished by the Commission will not be considered.

A Bid which contains minor informalities or irregularities, as determined by the Acquisition Director, may be deemed responsive. A minor informality or irregularity is one that is merely a matter of form and not of substance. It also pertains to some immaterial defect in the Bid or a variation of the Bid from the exact requirements of the Invitation that can be corrected or waived without being prejudicial to other Bidders. The Acquisition Director either may give the Bidder an opportunity to cure the informality or irregularity or waive the informality or irregularity, whichever is to the advantage of the Commission.

Irregularities which affect price, performance, quality, quantity or delivery aspects of the Bid or which limit the Bidder's liability, as determined by the Acquisition Director, shall not be deemed minor and will render the Bid nonresponsive.

11. **PERIOD FOR ACCEPTANCE OF BIDS:** In compliance with the solicitation, the Bidder agrees, if his Bid is accepted within 60 calendar days (or any extension thereof agreed to by the parties) from the date specified in the solicitation for opening of bids or the receipt of proposals, to furnish any and all goods and services upon which prices are bid at the price set opposite each item, delivered to the designated point(s), within the time specified. No bids may be withdrawn during this 60-day period.

12. **RESPONSIBILITY OF BIDDERS:** The Commission may require any Bidder to present satisfactory evidence that he has the necessary competency, capability, capacity, credit, integrity, perseverance and tenacity to complete this Contract.

13. **RIGHT TO ACCEPT OR REJECT BIDS:** The Commission hereby reserves the right to accept or reject all or part of any or all Bids, item by item, and to advertise for new Bids, as the interests of the Commission may require.
14. **DEBRIEFING:** Any unsuccessful Bidder may obtain a debriefing from the WSSC Contracting Officer. This will only be done after award of the contract and in response to a written request from the Bidder. All requests for a debriefing shall be sent to the Director of Acquisition.
15. **DELIVERY TO BE MADE A BASIS FOR AWARD:** Award may be based upon delivery as well as price, whichever serves the best interests of the Commission.
16. **SMALL, LOCAL AND MINORITY BUSINESS STATUS MAY BE A BASIS FOR AWARD:** Award may be based upon small, local and minority status in accordance with the Commission's Small, Local and Minority Business Enterprise policies, which is hereby incorporated into and is a part of this IFB/Contract by reference.
17. **SUBMISSION OF BIDDER LITERATURE AND ANY COMMISSION QUESTIONNAIRE:** Failure to submit published literature and specifications as called for in the Invitation may be cause for rejection of the Bid. Any questionnaire provided in the Invitation must be filled out completely and in a neat, legible manner. The failure to do so may cause the rejection of the Bid.
18. **ECONOMIC PRICE ADJUSTMENT:**
  - A. Any language contained in the Invitation for Bids addressing "economic price adjustment" or "price escalation" shall be considered to mean price increases as well as price decreases, unless otherwise stipulated.
  - B. Where an Invitation for Bids does not contain a price escalation provision:
    - 1) Any Bid received which contains a provision for price escalation with a ceiling limitation shall be evaluated at the maximum possible escalation of the bid price;
    - 2) Any Bid received which contains a provision for price escalation without a ceiling limitation shall be rejected unless, in the judgment of the Acquisition Director, a clear basis for evaluation exists;
    - 3) Bids received which provide for price escalation based upon a method other than a percentage factor shall be rejected unless, in the judgment of the Acquisition Director, a clear basis for evaluation exists.
  - C. Where an Invitation for Bids contains a price escalation provision:
    - 1) Bids shall be evaluated on the basis of the bid prices without consideration of the allowable escalation;
    - 2) Bids which increase the ceiling limitation stipulated in the IFB or limit the deescalation provisions of the IFB shall be rejected as nonresponsive;
    - 3) Bids which delete the escalation clause shall be rejected as nonresponsive;
    - 4) Bids which decrease the ceiling limitation stipulated in the IFB shall be evaluated at the base price in the same manner as those Bids which do not reduce the stipulated ceiling limitation. If the Bidder offering a decreased ceiling limitation is ultimately awarded the Contract, the lower ceiling shall be incorporated into the Contract.
19. **PROMPT PAYMENT DISCOUNTS:** Prompt payment discounts offered will be considered in evaluating Bid prices. After award, the time for discount purposes shall be computed from the date of inspection and acceptance at destination or from the date a correct invoice is received from the Contractor, whichever date is later. Discounts for a period of less than twenty (20) days shall not be considered in determining the low Bid.
20. **MULTIPLE BIDS:** No Bidder will be permitted to offer more than one price for each item even though he believes he has two or more products that will meet specifications. If a Bidder submits more than one price for any item, all prices for that item may be rejected at the discretion of the Acquisition Director. Further, the Bid may be considered nonresponsive in its entirety and not considered for award.
21. **ALTERNATE BID:** (This General Condition is not applicable to Requests for Proposals.) Bidders who have other items they wish to offer in lieu of or in addition to that required by this proposed Contract, may submit a separate Bid. Such Bid shall be marked "ALTERNATE BID FOR CONTRACT NO. \_\_\_\_" on the face of

the envelope(s) and on the Pricing Page in the area indicated for exceptions. Alternate Bids shall be automatically deemed nonresponsive and may not be considered for award of this Contract. Alternate Bids will, however, be examined prior to awarding this Contract and may result in either (a) cancellation of the Invitation and rejection of all Bids to permit modification of this Invitation to include the alternate item in a rebid, or (b) the alternate item may be considered for future requirements.

22. **BID GUARANTY:** If required by the Invitation, each Bid must be accompanied by a certified check or a satisfactory Bidder's bond for the amount stated in the Invitation, payable to the Washington Suburban Sanitary Commission. If the required Bid guaranty is not submitted with the Bid, the Bid may be deemed nonresponsive.
23. **CORPORATIONS LEGALLY OPERATING WITHIN MARYLAND:** All Maryland corporations contracting with the Commission must be properly formed in accordance with Section 2-102 of the Corporation and Associations Article of the Annotated Code of Maryland. Foreign corporations must be registered to do business in accordance with Section 7-202 of the Corporation and Associations Article of the Annotated Code of Maryland in order to contract with the Commission.
24. **AFFIDAVIT OF NON-CONVICTION:** Article 16-202 of the State Finance and Procurement Article of the Annotated Code of Maryland requires each Bidder to complete an affidavit of non-conviction, stating whether or not the individual or business entity has ever been convicted of bribery. This is included on the Contractor Certification Form which must be completed and returned with bid.
25. **AFFIDAVIT OF NON-COLLUSION:** The Commission is cooperating with the U.S. Department of Justice in a program designed to preclude collusive bidding and to enforce the antitrust laws in the area of public procurement. The Bidder must complete form and submit it with his Bid.
26. **FALSE STATEMENTS AND FRAUDULENT MISREPRESENTATIONS:** Bidders must provide full, accurate and complete information as required by the solicitation and its attachments. False statements and fraudulent misrepresentations by the Bidder will render any resultant Contract voidable by the Commission.
- The remedy set forth herein is in addition to any other rights and remedies provided by law or under any other provision of the resultant Contract.
27. **CONTRACT AWARD--IFB:** After Bid opening, a Contract will be awarded by the Commission, by written acceptance within the time for acceptance specified in the Bid or in any extension thereof agreed to by the parties. Unless all Bids are rejected or the solicitation is canceled, the Contract is to be awarded to the lowest responsible and responsive Bidder whose Bid meets the requirements and criteria set forth in the solicitation. The Bid as submitted shall serve as the final Contract acceptance document. No Bid shall be considered binding upon the Commission until a Contract has been awarded. A written acceptance of a Bid mailed or otherwise furnished to the successful Bidder shall result in a binding Contract, without further action by either party.
28. **FURNISHING OF (a) COST OR PRICING DATA AND (b) RELATED CERTIFICATE:** Each Contractor shall submit cost or price information to the Acquisition Director for (a) any negotiated Contract over \$100,000 or (b) any change order or modification in any amount of any Contract over \$100,000. Such Contractor shall also certify that, to the best of his knowledge and belief, the information submitted is current, accurate, and complete. Such "Certificate of Current Cost or Pricing Data" shall be effective as of the date the parties reach agreement on price.
- If a negotiated Contract, or any covered Contract change order or modification, was increased in price because the Contractor furnished cost or pricing data that was not current, accurate, and complete as certified in the Certificate of Current Cost or Pricing Data, then the price or costs shall be reduced accordingly and the Contract shall be modified to reflect the reduction.
- The remedies provided in this General Condition are in addition to any other rights and remedies provided by law or under any other provision of this Contract.
- The Contractor shall complete the form, "Certification for Cost or Pricing Data," if applicable, as found in Part Two of this solicitation.
29. **BOND SUBMISSION:** The Bidder to whom this Contract is awarded shall submit any required Bond(s) to the Acquisition Office within 14 calendar days after notification of award by the Commission. Failure to submit the required bond(s) within the time period specified may be cause for termination for default.
30. **CONTRACT SOLE AGREEMENT:** This Contract constitutes the sole and entire agreement with the Contractor.

31. **CONTRACT MODIFICATIONS:** No modifications, alterations or changes to the terms of this Contract shall be valid or binding upon the Commission unless made in writing and signed by the Acquisition Director. Such modifications shall be made by formal Contract Amendment.
32. **SUBCONTRACTING OR ASSIGNMENT:** The benefits and obligations hereunder shall inure to and be binding upon the parties hereto and neither this Contract nor the obligations or services to be performed thereunder shall be subcontracted, assigned, or otherwise disposed of, either in whole or in part, except with the prior written consent of the Acquisition Director. Written consent of the Commission's Acquisition Director is also necessary for substitution of a previously approved subcontractor or assignee.
33. **UNIFORM COMMERCIAL CODE APPLICATION:** The parties to this Contract recognize that the provisions of the Uniform Commercial Code do not normally apply to the performance of services as distinguished from transactions in goods. However, the parties explicitly agree that for purposes of this Contract the provisions of the Uniform Commercial Code shall apply and any dispute arising under this Contract shall be resolved in accordance with the provisions of the Code, unless the UCC provisions are in conflict with the General Conditions and Instructions set forth herein or any documents or provisions incorporated by reference.
34. **PATENTED DEVICES, MATERIALS AND PROCESSES:** If the Contractor is required or desires to use any design, device, material, or process covered by letters of patent or copyright, he shall provide for such use by suitable legal agreement with the patentee or owner and a copy of such agreement shall be filed with the Commission. The Contractor shall indemnify and save harmless the Commission and its officers, agents and employees against liability, including costs, for infringement of any patent, trademark or copyright arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification or construction work (i.e., repair of real property), under this Contract, or out of the use and disposal by or for the account of such supplies or construction work.
35. **PROTESTS AND DISPUTES:** Any protest concerning the solicitation or the Contract award, and any dispute concerning performance under this Contract which is not disposed of by agreement shall be decided by the Acquisition Director.

A. Protests

Protests shall be made in writing to the Acquisition Director and shall be filed within 15 calendar days after the protestor knows or should have known of the facts giving rise thereto. Protests based upon solicitation improprieties, however, will not be accepted after the time and date for bid opening or the closing date for the receipt of proposals.

A protest is considered filed when received by the Acquisition Director. The written protest shall include the name and address of the protestor, identification of the Acquisition, a statement of the specific reasons for the protest and supporting exhibits, unless not available within the filing time, in which case the expected availability date shall be indicated.

B. Disputes

All claims relating to this Contract shall be submitted to and decided by the Acquisition Director. A "claim," as used in this General Condition, means a written demand seeking the payment of money, the adjustment or interpretation of Contract provisions, or other relief relating to the Contract.

The Contractor shall proceed diligently with the performance of this Contract pending final resolution of any claim or appeal relating to the Contract and will comply with any decision of the Acquisition Director.

C. Decision on The Protest or Dispute

The Acquisition Director's decision on the protest or dispute shall be evidenced in writing and mailed via certified mail or otherwise furnished to the Bidder or Contractor. The decision of the Acquisition Director shall be final and conclusive unless within 15 calendar days from receipt of the decision, the Bidder or Contractor mails or otherwise furnishes a written appeal to the Mission Support Team Chief. The decision of the Mission Support Team Chief shall be final and binding. The Commission may suspend award of a solicitation or performance of the Contract pending its decision on a protest if it believes that it is in the Commission's best interests to do so.

D. Appeal of the Acquisition Director's Decision

Appeals of the Acquisition Director's decision should be addressed to: Mission Support Team Chief, Washington Suburban Sanitary Commission, c/o Acquisition Director, 14501 Sweitzer Lane, Laurel, Maryland 20707.

This Protests and Disputes General Condition does not preclude consideration of legal questions in connection with the decision provided.

- 36. CHANGES:** The Acquisition Director may, at any time, without prior consent of the Contractor, and without notice to sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of this Contract.

If the Contractor intends to assert a claim for an equitable adjustment under this General Condition he must submit his claim for adjustment within thirty (30) calendar days after receipt of a written change order.

If the change order causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Contract, the Acquisition Director, upon receipt of the Contractor's claim, may make an equitable adjustment in the Contract price, the delivery schedule, or both, and shall modify the Contract in writing.

Failure of the parties to agree to an adjustment shall be a dispute under the "Protests and Disputes" General Condition. However, nothing in this General Condition shall excuse the Contractor from proceeding with the Contract as changed. By proceeding with the work, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

- 37. MATERIAL AND WORKMANSHIP:** All equipment, materials, and components incorporated into the work covered by this Contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this Contract. References in the specifications to equipment, materials, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, as his option, use any equipment, material, article, or process that, in the judgment of the Acquisition Director, is equal to that named in the specifications, unless otherwise specifically provided in this Contract.

All work under this Contract shall be performed in a workmanlike manner. The Acquisition Director may require, in writing, that the Contractor remove from work any employee the Acquisition Director deems incompetent, careless, or otherwise objectionable.

- 38. AUTHORITY OF THE GENERAL MANAGER AND THE ACQUISITION DIRECTOR:** The General Manager, with the assistance of the Acquisition Director, shall decide all questions in relation to this Contract and the Contractor's obligations and performance thereunder.

- 39. PAYMENTS:** Payment will be made upon receipt of a properly executed invoice(s) and in accordance with the provisions of this Contract.

- 40. TAXES:** The Commission is exempt from all federal excise and state sales and use taxes, including the District of Columbia Sales and Use Taxes. Tax exemption documentation will be furnished to the Contractor as necessary.

- 41. DELAY OF WORK:** If the performance of all or any part of the work of this Contract is delayed or interrupted (a) by an act of the Acquisition Director in the administration of this Contract that is not explicitly or implicitly authorized by this Contract, or (b) by a failure of the Acquisition Director to act within the time specified in this Contract, or within a reasonable time if not specified, an adjustment (excluding profit) shall be made for any increase in the cost of performance of this Contract caused by the delay or interruption and the Contract shall be modified in writing accordingly. Adjustment shall also be made in the delivery or performance dates and any other Contractual provision affected by the delay or interruption.

However, no adjustment shall be made under this General Condition for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an adjustment is provided or excluded under any other provision of this Contract.

A claim under this General Condition shall not be allowed (a) for any costs incurred more than twenty (20) calendar days before the Contractor shall have notified the Acquisition Director in writing of the act

or failure to act involved, and (b) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption, but not later than the day of final payment under the Contract.

- 42. SUSPENSION OF WORK:** The Commission may, at any time, suspend, delay, interrupt or stop the performance of any or all of the work of this Contract by written notice to the Contractor. Suspension of work orders shall not exceed ninety (90) calendar days and, as soon as feasible after a suspension of work order is issued, either the Contract will be terminated or the suspension of work order will be canceled or extended in writing for a reasonable time beyond the period specified in the order. If an extension of the suspension of work order is necessary, it must be evidenced by a unilateral written modification to the Contract issued by the Commission.

In the event of such suspension of work for an unreasonable period of time, all allowable costs (excluding profit) which are deemed by the Acquisition Director as reasonably and necessarily incurred by the Contractor in suspending the work shall be paid by the Commission, including all costs incurred during the period of suspension and additional costs incurred in reactivating the work. Such payment shall not duplicate costs included under any prior progress payments. The Contractor must (a) itemize the costs involved, (b) provide satisfactory documentation as required by the Commission, and (c) demonstrate that such work as was provided during the suspension was in direct support of overall work to be performed.

Both parties also recognize that the Commission may implicitly suspend the work by reasonable delays in its review, comment and action on the submitted data, plans, reports and other documents transmitted to the Commission, for which there shall be no additional compensation.

The Commission's right to suspend this Contract is in addition to and not in substitution for the Commission's right to terminate as stated herein.

- 43. ETHICS:** Personnel of the Acquisition Office shall be guided in their actions by the WSSC Code of Ethics; Resolution No. 2003-1669 adopted June 11, 2003. Additionally, standards for ethical, professional procurement behavior as established by the Institute for Supply Management (formally NAPM) entitled Principles and Standards of "Ethical Supply Management Conduct" are to be followed. Both documents are available for review in the Acquisition Office. See abstract in the attachment section entitled "Ethics in Public Contracting".

- 44. COMMISSION EMPLOYEES NOT TO BENEFIT:** No officer or employee of the Commission shall be admitted to any share or part of this Contract or any benefit that may arise therefrom. Also, any Contract entered into by the Commission in which any officer or employee of the Commission shall be personally interested shall be void, and no payment shall be made thereon by the Commission or any officer thereof.

- 45. BRIBERY:** A bribe or attempt to bribe any officer or employee of the Commission by the Contractor shall be considered as execution of this Contract in bad faith, and shall thus empower the Commission to (a) terminate the Contract and/or have the work completed by another Contractor and (b) deduct the entire cost thereof from any monies due or to become due the Contractor under this Contract.

Similarly, it shall be considered an execution of this Contract in bad faith for a person to be retained, or to retain a person, to solicit or secure a Commission Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

The rights and remedies of the Commission provided in this General Condition are non-exclusive and are in addition to any other rights or remedies provided by law or under any other provision of the Contract.

- 46. HOLIDAYS:** The Commission observes the following holidays: New Year's Day, Martin Luther King Jr.'s Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day and the day after, Christmas Day, General Election Day (even numbered years) and Inauguration Day. Access to Commission facilities will be denied on these days. It is the responsibility of the Contractor to determine on which dates these holidays are observed by the Commission.

- 47. FAILURE TO PERFORM:** Failure of the Contractor to (a) deliver or perform the required goods or services within the time specified or within a reasonable time as interpreted by the Acquisition Director or (b) to make replacements of rejected articles immediately or as directed by the Acquisition Director shall constitute authority for the Acquisition Director to purchase in the open market goods or services of comparable grade to replace the goods or services not delivered or rejected. On all such purchases, the Contractor shall reimburse the Commission within a reasonable time as specified by the Acquisition Director for any expense incurred in excess of Contract prices, including any administrative costs.

Should public necessity demand it, the Commission reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the Acquisition Director. The Contractor shall not be liable for any excess costs if acceptable evidence has been submitted to the Acquisition Director that failure to perform this Contract was due to causes beyond the control and without the failure or negligence of the Contractor.

The remedies provided in this General Condition are in addition to any other rights and remedies provided by law or under any other provisions of this Contract.

**48. TERMINATION OF CONTRACT:**

- A. Termination for Default: The performance of work under this Contract may be terminated by the Acquisition Director in accordance with this General Condition, in whole or in part, in writing whenever the Commission shall determine that the Contractor has failed to meet the performance requirement(s) of this Contract.

The Commission has the right to terminate for default if:

- 1) the Contractor fails to make delivery of acceptable supplies or to perform the services in an acceptable manner within the time specified in this Contract; or
- 2) the Contractor fails to satisfactorily perform any other term or condition of this Contract; or
- 3) the Contractor fails to make progress so as to endanger performance of this Contract.

Any termination for default shall be effected by written notice to the Contractor of the termination, specifying the acts or omissions of the Contractor constituting the default, that the Contractor will be held liable for any excess costs for those supplies or services, that the Contractor has the right to appeal such decision under the Protests and Disputes General Condition, and the effective date of the termination.

Termination for default under this Contract may result in debarment not to exceed three (3) years.

The Contractor shall not be liable if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. The Contractor will be liable for default of any subcontractor, regardless of tier. However, if the cause is beyond the control of both the Contractor and subcontractor and without the fault of either, the Contractor will not be liable for the failure to perform, unless the supplies or services could have been obtained from other sources in sufficient time for the Contractor to meet the required delivery or performance schedule.

After a termination for default, the Commission may acquire, under the terms and in the manner the Acquisition Director considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Commission for the excess cost of those supplies or services. However, the Contractor shall continue the work not terminated.

All finished or unfinished supplies or services provided by the Contractor and not yet delivered, rendered, and accepted by the Commission shall, at the Commission's option, become the Commission's property. The Commission shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the Contractor fails to agree with the Acquisition Director's decision of what is fair and equitable compensation, the Contractor may appeal the Acquisition Director's decision under the "Protests and Disputes" General Condition. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the Commission can affirmatively collect such damages. The term "damages" as used in this paragraph includes, but is not limited to, attorney's fees of fifteen percent (15%).

If after termination it is found that the Contractor was not in default under the provisions of this General Condition, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the "Termination for Convenience" sub-paragraph of this General Condition.

The rights and remedies of the Commission in this General Condition are in addition to any other rights and remedies provided by law or under any other provision of this Contract.

- B. Termination for Convenience: The performance of work under this Contract may be terminated by the Acquisition Director in accordance with this General Condition, in whole or in part, whenever, in his sole discretion, it is in the Commission's best interests. Any such termination shall be effected by a written notice of termination to the Contractor specifying the extent to which performance of the work under the Contract is terminated and the effective date of the termination.
- 1) After receipt of a notice of termination and except as otherwise directed, the Contractor shall:
    - a) stop all work on the date indicated and to the extent specified;
    - b) place no further orders or subcontracts for materials, services or facilities except as necessary for the completion of such portion(s) of the work not terminated;
    - c) terminate any and all vendors' and subcontractors' agreements and, with the approval of the Commission, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts;
    - d) if directed by the Commission, transfer title and deliver to the Commission the Contractor's work in process, finished supplies and other material produced or acquired for the work terminated and any completed or partially completed plans, drawings, information and other property that, if the Contract had been completed, would be required to be furnished to the Commission. If the Commission does not exercise this right, the Contractor shall use his best efforts to sell such supplies and materials in accordance with the standards of Uniform Commercial Code Section 2-706;
    - e) complete performance of the work not terminated;
    - f) submit to the Acquisition Director a termination claim in the form prescribed by the Acquisition Director. The Contractor shall not be reimbursed for and waives any right to receive anticipatory profits not earned up to the effective date of termination. The Contractor shall have the right to appeal under the General Condition of this Contract entitled, "Protests and Disputes," any determination made by the Acquisition Director except the right to terminate for convenience or lack of appropriation.
  - 2) The Contractor shall be entitled to recover the following costs as a result of termination for convenience:
    - a) the Contract price for completed supplies or services accepted by the Commission but not previously paid for;
    - b) costs already incurred in the performance of the work terminated;
    - c) a fair and reasonable profit on the costs incurred in the performance of the work terminated;
    - d) the reasonable costs of settlement expenses for the work terminated; and
    - e) the cost of settling and paying any termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract.
  - 3) In arriving at the amount due the Contractor, the following shall be deducted:
    - a) all unliquidated, advance or other payments to the Contractor under the terminated portion of the Contract; and
    - b) any claim which the Commission has against the Contractor under this or any other Contract.
- C. Termination for Lack of Appropriation: If funds are not appropriated or if funds are not otherwise made available to the Commission for continued performance of this Contract for any fiscal period covered by this Contract, this Contract shall be automatically terminated as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available;

however, this will not affect either the Commission's rights or the Contractor's rights under any other termination provision in this Contract. The effect of termination of this Contract under this General Condition will be to discharge both the Commission and the Contractor from future performance of this Contract, but not from their obligations existing at the time of termination. The Contractor shall be reimbursed for any nonrecurring costs incurred but not amortized in the price of the commodities and/or services delivered under this Contract.

49. **GOVERNING LAW:** This Contract shall be governed by and construed according to the laws of the State of Maryland.
50. **RIGHT TO AUDIT:** The Contractor shall retain and maintain all books, accounting records and documents relating to the supplies or services to be delivered or rendered under this Contract and shall make them available at all reasonable times for inspection and audit for compliance with the requirements of this Contract, including those concerning the Commission's Minority Procurement Policy, if applicable. The accounting records and all supportive documentation shall be maintained in such a manner that they will provide for a separation between direct and indirect costs. Should the Commission permit subcontracting, a similar "Right to Audit" provision, approved by the Commission, shall be included in all subcontracts. Such records and access thereto shall be maintained for a period of four (4) years following completion and acceptance of the work performed under this Contract.
51. **COMPLIANCE WITH LAWS:** The Contractor hereby represents and warrants:
- A. that it is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
  - B. that it is not in arrears with respect to the payment of any monies due and owing the Commission, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
  - C. that it shall comply with all Federal, State and local laws, ordinances, rules, and regulations applicable to its activities and obligations under this Contract; and
  - D. that it shall procure, at its own expense, all licenses, permits, insurance, bonding, and governmental approval, if any, necessary to the performance of its obligations under this Contract.
52. **WARRANTY FOR PROFESSIONAL SERVICES:** To the extent that professional services are provided under this Contract, the Contractor acknowledges that he is aware that the services provided herein are furnished to the Commission with the understanding that the Commission, in accepting these services, relies upon the Contractor's particular skill and expertise. Accordingly, the Contractor warrants that the services provided are of a professional quality and that such services meet or exceed the prevailing practices and standards of the trade from which the services are provided.
53. **INDEMNIFICATION:** The Contractor shall defend, indemnify and save harmless the Commission from all suits, actions and damages or costs of every name and description to which the Commission may be subject or put by reason of injury to persons (bodily injury including death, or any personal injury) or property damage as a result of the work, to the extent caused or alleged to be caused, by the negligence, carelessness or willfulness on the part of the Contractor, his servants or agents, or other cause. Monies due, or to become due, the Contractor under the Contract as may be considered necessary by the Commission shall be retained by the Commission until such suits or claims for damages shall have been settled or otherwise disposed of and satisfactory evidence to that effect has been furnished to the Commission.
54. **CONTRACTOR DAMAGE:** Should any damage to property be caused by the Contractor or his employees or agents, the Contractor will be required to make repairs immediately. The Commission may, however, elect to make repairs or replacement of damaged property and deduct the cost of such from monies due or to become due the Contractor under this or any other Contract with the Commission.
55. **FORCE MAJEURE:** Neither party shall be considered in default in the performance of its obligations hereunder to the extent that performance of such obligations is delayed, hindered or prevented by any cause which is beyond the reasonable control of such party (hereinafter called "Force Majeure"). Force Majeure includes but is not limited to any of the following, if reasonably beyond the control of the party claiming Force Majeure: delays caused by the other party, war (declared or undeclared), blockades, hostilities, riots, strikes, lockouts or other labor disturbances, epidemics, fires, storms, delays or interruptions in transportation, or any laws, regulations or ordinances of any government, governmental agency or court having or claiming to have jurisdiction over any part of the Contract, or any other causes (whether or not of kinds specifically mentioned herein). Notwithstanding anything in this Contract, Force Majeure does

not include the Contractor's failure to obtain the necessary permits, licenses, exceptions, or other authorizations required to perform this Contract.

Either party hereto shall give notice promptly within seven (7) calendar days of the nature and extent of any Force Majeure claimed to delay, hinder, or prevent performance under this Contract. Failure to do so shall constitute a waiver of any claim hereunder.

56. **PUNITIVE DAMAGES:** In any action by the Contractor against the Commission or its agents, there shall be no liability for punitive damages.
57. **PUBLIC INFORMATION ACT NOTICE:** Bidders must specifically identify those portions of their bids, if any, which they deem to contain confidential or proprietary information or trade secrets and must provide any justification why such materials, upon request, should not be disclosed by the Commission under the Maryland Public Information Act, State Government Article, Sections 10-611, et. seq., of the Annotated Code of Maryland.
58. **PROVISION FOR OTHER AGENCIES:** Unless expressly stated otherwise in his Bid, the Bidder agrees that he will make available to other governmental agencies, as indicated below, the goods and/or services indicated herein at the same prices, terms and conditions. This provision may be exercised by Montgomery County, Montgomery College, Maryland-National Capital Park and Planning Commission, municipalities and agencies of Montgomery County, Montgomery County Public Schools, Prince George's County, Prince George's County Public Schools, municipalities and agencies of Prince George's County, State of Maryland, agencies of the State of Maryland, and any participating members of the Metropolitan Washington Council of Governments.
59. **CONTRACTOR ABUSE, USE, SALE OR POSSESSION OF DRUGS OR INTOXICANTS:** The use, possession, sale or distribution of drugs or intoxicants by the Contractor, Subcontractor, or any of their employees while on Commission premises or while actively representing or performing work for the Commission is prohibited. It shall be the responsibility of the Contractor to prevent such activities and to remove any employee or subcontractor employee whose ability to perform appears to be affected by the use of drugs or intoxicants. Failure of the Contractor to comply with this provision may result in termination of the Contract.
60. **SMOKING:** It shall be the responsibility of the Contractor to observe the conditions of the Commission's Smoking Policy within Commission-operated facilities and within Commission-owned motor vehicles. The Project Manager will indicate to the Contractor the restricted areas. Failure to comply with the provisions of the policy may result in removal of the Contractor's employees or termination of the contract.
61. **LEGAL ADDRESS:** The address given in the Bid shall be the legal address of the Contractor. Such address may be changed at any time by notice in writing delivered to the Acquisition Director. The mailing of any notice to this legal address, postage pre-paid to the Contractor, shall be deemed to be a legal and sufficient service upon the Contractor.
62. **SECURITY:** Prior to beginning work on any Washington Suburban Sanitary Commission project, Contractor must complete and submit to the Commission a completed background investigation, to include work, driving and criminal history, for all participants in the project, regardless of whether subjects will be participating in the project at Commission facilities or off-site. Contractor shall submit original results of background investigations to the Commission's Contract Administrator. Copies will not be accepted. Background investigations shall be completed by investigative agencies, which have been approved by the Commission in advance. Investigative results will be reviewed by the Commission to determine the suitability to work on Commission property or projects. Like investigations must be submitted for all replacement participants prior to beginning work. The Commission reserves the right to reject any employee, sub-contractor or the Contractor as a result of the findings of background investigations.

Commission will additionally be provided with the name, address, home phone number, and date of birth for all the Contractor's project participants prior to the project's commencement. The list shall be updated regularly to accurately reflect the current complement.

The Contractor's project participants shall be issued photo identification cards. Identification cards must be worn at all times while on any Commission property. Contractor employees found on-site without proper identification will be immediately removed from Commission property. The design of identification cards shall be reviewed and approved by the Commission prior to issuance. Identification cards for employees who are no longer associated with the project, for any reason, will be immediately recovered by the Contractor. The Contractor is responsible to control and inventory all identification cards issued so that cards are not obtained or used by unauthorized individuals.

All project participants needing either electronic or hardcopy documents dealing with critical facilities or sensitive information will be required to make application with, and receive approval from the Commission prior to receiving this information. Permission to receive said documents (herein referred to as "sensitive") will pertain only to the individual approved. Sensitive documents received from the Commission must be handled consistent with the terms of non-disclosure required for application. Contractor is responsible to restrict use of sensitive documents to project participants only and shall take appropriate measures to prevent distribution of sensitive documents to anyone inside or outside of the Contractor's company except Contractor's project participants. After completion of project, all sensitive documents remaining in the Contractor's possession shall continue to be governed under the terms of non-disclosure and must continue to be stored in a secure manner.

- 63. EQUAL OPPORTUNITY EMPLOYER:** Contractor and Consultant hereby represents and warrants: (A) that it is an Equal Opportunity Employer and does not discriminate in any manner against any employee or applicant for employment on the basis of sex, race, creed, color, age, mental or physical handicap, sexual orientation, or national origin; and (B) that a similar non-discrimination clause will be included in any subcontract executed as a result of this Contract.
- 64. ORDER OF PRECEDENCE:** In the event of a conflict between or among the provisions of this Contract, the following order of precedence shall govern:
- A. The Signature Page
  - B. The Pricing Page(s)
  - C. The Small Local Business Enterprise Policy; or
  - D. The Minority Business Enterprise Policy
  - E. The Special Provisions
  - F. The Specifications
  - G. The General Conditions
  - H. The Procurement Manual