

<b>REQUEST FOR PROPOSALS</b> <i>(THIS IS NOT AN ORDER)</i>		The Notice of Small Business Purchase Set-Aside on the reverse of this form <input type="checkbox"/> is <input checked="" type="checkbox"/> is not applicable.			PAGE OF PAGES 1   17	
1. REQUEST NO.	2. DATE ISSUED <b>7/2/2010</b>	3. REQUEST/PURCHASE REQUEST NO.	4. COMMODITY GROUP AND CLASS <b>952-77-00</b>		RATING	
5A. ISSUED BY			6. DELIVER BY (Date)			
5B. FOR INFORMATION CALL: (Name and telephone no.) (No collect calls)			7. DELIVERY FOB DESTINATION <input type="checkbox"/> OTHER (See Schedule)			
8. TO: NAME AND ADDRESS, INCLUDING ZIP CODE <b>ALL PROSPECTIVE OFFERORS</b>			9. DESTINATION (Consignee and address, including ZIP code) <b>Dr. Taresa Lawrence District Department of the Environment 1200 First Street, NE, 5<sup>th</sup> Floor Washington, DC 20002</b>			
8a. Vendor Tax ID #						
8b. Dun and Bradstreet#						
10. PLEASE FURNISH PROPOSALS TO ISSUING OFFICE ON OR BEFORE <b>5:00 PM (Date)</b> <b>September 1, 2010</b>		11. BUSINESS CLASSIFICATION (Check appropriate boxes) <input type="checkbox"/> SMALL <input type="checkbox"/> LOCAL <input type="checkbox"/> DISADVANTAGED <input type="checkbox"/> RESIDENT-OWNED				
<b>IMPORTANT:</b> This is a request for information, and proposals furnished are not offers. If you are unable to quote, please so indicate on this form and return it. This request does not commit the Government to pay any costs incurred in the preparation of the submission of this proposal or to contracts for supplies or services. Supplies are of domestic origin unless otherwise indicated by bidder. Any representations and/or certifications attached to this Request for Proposals must be completed by the bidder.						
<b>12. SCHEDULE (Include applicable Federal, State and local taxes)</b>						
ITEM NO. (a)	SUPPLIES/SERVICES (b)	QUANTITY (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	
				Total	\$	
13. DISCOUNT FOR PROMPT PAYMENT		10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %	
14. NAME AND ADDRESS OF BIDDER (Street, city, county, State and ZIP Code) Government Tax ID number			15. SIGNATURE OF PERSON AUTHORIZED TO SIGN PROPOSAL		16. DATE OF PROPOSAL	
			17. NAME AND TITLE OF SIGNER (Type or print) B		18. TELEPHONE NO. (Include area code)	

**SECTION B: CONTRACT TYPE, SUPPLIES OR SERVICES AND PRICE**

**B.1 Price Schedule – Firm Fixed Price**

The District contemplates an award of a fixed fee type of contract. There is also at-risk compensation. The size of the fee and the split between the fixed fee and the compensation at risk is subject to negotiation between DDOE and the Contractor.

**B.2 Base Year**

<b>Contract Line Item No. (CLIN)</b>	<b>Item Description</b>	<b>Total Price</b>
0001	Sustainable Energy Utility (SEU) Contractor	\$7,500,000
Grand Total		<b>\$7,500,000</b>

**B.3 Option Year 1**

<b>Contract Line Item No. (CLIN)</b>	<b>Item Description</b>	<b>Total Price</b>
0001	Sustainable Energy Utility (SEU) Contractor	\$15,000,000
Grand Total		<b>\$15,000,000</b>

**B.4 Option Year 2**

<b>Contract Line Item No. (CLIN)</b>	<b>Item Description</b>	<b>Total Price</b>
0001	Sustainable Energy Utility (SEU) Contractor	\$17,500,000
Grand Total		<b>\$17,500,000</b>

**B.5 Option Year 3**

<b>Contract Line Item No. (CLIN)</b>	<b>Item Description</b>	<b>Total Price</b>
0001	Sustainable Energy Utility (SEU) Contractor	\$20,000,000
Grand Total		<b>\$20,000,000</b>

**B.6 Option Year 4**

<b>Contract Line Item No. (CLIN)</b>	<b>Item Description</b>	<b>Total Price</b>
0001	Sustainable Energy Utility (SEU) Contractor	\$20,000,000
Grand Total		<b>\$20,000,000</b>

**B.7 Option Year 5**

<b>Contract Line Item No. (CLIN)</b>	<b>Item Description</b>	<b>Total Price</b>
0001	Sustainable Energy Utility (SEU) Contractor	\$20,000,000

Grand Total		<b>\$20,000,000</b>
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**B.8 Option Year 6**

<b>Contract Line Item No. (CLIN)</b>	<b>Item Description</b>	<b>Total Price</b>
0001	Sustainable Energy Utility (SEU) Contractor	\$20,000,000
Grand Total		<b>\$20,000,000</b>

**SECTION C: SPECIFICATIONS/WORK STATEMENT**

**C.1 Statement Of Work**

The District Department of the Environment (DDOE) is seeking to contract with a private company to be known as a Sustainable Energy Utility (“SEU” or “Contractor”) to administer sustainable energy programs in the District of Columbia. The SEU is the private contractor selected to develop, coordinate, and provide programs for the purpose of promoting the sustainable use of energy in the District of Columbia.

See Attachment J.1 for a detailed Statement of Work.

**C.2 Applicable Documents**

<b>Item No.</b>	<b>Document Type</b>	<b>Title</b>	<b>Date</b>
1		Clean and Affordable Energy Act of 2008	Most Recent

**C.3 Definitions**

See Attachment J1.

**C.4 Background**

Section 205 of the Clean and Affordable Energy Act (CAEA) of 2008 requires that DDOE be responsible for the procurement and monitoring of contracts for the Sustainable Energy Utility. The purpose of the RFP is to solicit competitive proposals from private entities to develop, coordinate, and deliver programs for the purpose of promoting the sustainable use of energy in the District of Columbia.

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

**D.1** Not Applicable.

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

- (a) Definition. "Services" as used in this clause includes services performed, workmanship, and material furnished or utilized in the performance of services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to DDOE covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to DDOE during contract performance and for as long afterwards as the contract requires.
- (c) The DDOE has the right to inspect and test all services called for by the contract at reasonable times and places during the term of the contract. The DDOE will perform inspections and tests in a manner that will not unduly delay the work.
- (d) If DDOE performs inspections or tests on the premises of the Contractor or subcontractor, the Contractor shall furnish, without additional charge, all reasonable facilities and assistance for the safety and convenient performance of these duties.
- (e) If any of the services do not conform to the contract requirements, DDOE may require the Contractor to perform these services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by performance, DDOE may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect value of services performed.
- (f) If the Contractor fails to promptly perform the services again or take the necessary action to ensure future performance in conformity with contract requirements, DDOE may (1) by contract or otherwise, perform the services and charge the Contractor any cost incurred by DDOE that is directly related to the performance of such services, or (2) terminate the contract for default.

## **SECTION F: PERIOD OF PERFORMANCE AND DELIVERABLES**

### **F.1 Term of Contract**

The term of the contract shall be from date of award through September 30, 2011, and renewable annually thereafter for six more years, at a minimum, as specified in Section B of this Request for Proposals.

### **F.2 Deliverables**

The Contractor shall perform the activities required to successfully complete DDOE's requirements and submit each deliverable to the Contracting Officer identified in section G.6 in accordance with the following:

<b>Item No.</b>	<b>Deliverable</b>	<b>Due Date</b>
0001	Monthly, Quarterly, and Annual Reports (Section 3.3 of Attachment J.1)	30 days from date of award to the end of contract period
0002	Program documentation for first subset of programs	30 to 60 days from

	(Sections 3.2.3, 3.2.6, and 6.3.1 of Attachment J.1)	date of award
0003	Program documentation for second subset of programs (Sections 3.2.3, 3.2.6, and 6.3.1 of Attachment J.1)	60 to 90 days from date of award
0004	Program documentation for third subset of programs (Sections 3.2.3 3.2.6, and 6.3.1 of Attachment J.1)	90 to 120 days from date of award
0005	Protocols to track and resolve complaints about the Contractor, subcontractors, trade allies, and Implementation Contractors (Section 3.1.4 of Attachment J.1)	90 days from date of award
0006	Resource guide for potential Implementation Contractors (“ICs”) and SEU employees that will list workforce training requirements, educational opportunities, and related information that will assist potential SEU employees and ICs in responding to RFPs (Sections 3.2.4 and 3.2.5 of Attachment J.1)	90 days from date of award
0007	Analysis and proposed benchmark and performance incentive for the requirement to reduce the growth of energy demand of the District of Columbia’s largest energy users (Section 2.3.5. of Attachment J.1)	9 months from date of award
0008	A comprehensive strategic planning analysis to support program planning for the SEU contract	9 months from date of award
0009	Data collection protocols that facilitate the evaluation, measurement, and verification (“EM&V”) of the energy saved by the SEU’s programs (Sections 3.4 of Attachment J.1)	90 days from date of award
0010	Annual Plan that analyzes data and information from the Annual Report, EM&V reports, and strategic planning analyses to review and assess the impacts and effectiveness of SEU programs. The Plan makes any recommendations for improvements and modifications to programs and summarizes the SEU's program design strategies, service offerings, emerging markets initiatives, and other planned implementation activities, including competitive solicitations, for the following year (Section 3.5 of Attachment J.1)	60 days prior to the end of the contract year.
0011	Technical Reference Manual (“TRM”) that contains current documentation on all measure and program assumptions (Section 3.4 of Attachment J.1)	By end of contract period

## **SECTION G: CONTRACT ADMINISTRATION**

### **G.1 Invoice Payment**

The District will make payments to the Contractor, upon the submission of proper invoices, at the prices stipulated in this contract, for supplies delivered and accepted or services performed and accepted, less any discounts, allowances or adjustments provided for in this contract. The District will pay the Contractor on or before the 30<sup>th</sup> day after receiving a proper invoice from the Contractor.

Only costs determined in writing to be reimbursable in accordance with the cost principles set forth in rules issued pursuant to Title VI of the D.C. Procurement Practices Act of 1985 shall be reimbursable.

## **G.2 Invoice Submittal**

The Contractor shall submit proper invoices on a monthly basis or as otherwise specified. Invoices shall be prepared in duplicate and submitted to:

Office of the Chief Financial Officer  
Government Services Cluster - Accts Pay Div.  
2000 14th Street, NW, 6th Floor  
Washington, DC 20009  
United States

The Contractor shall also send a copy of the invoices to:

Dr. Taresa Lawrence  
District Department of the Environment  
1200 First Street, NE, 5th Floor  
Washington, DC, 20002  
Phone: 202-535-2600

To constitute a proper invoice, the Contractor shall submit the following information on the invoice:

- G.2.1** Contractor's name, federal tax ID and invoice date (date invoices as of the date of mailing or transmittal);
- G.2.2** Contract number and invoice number;
- G.2.3** Description, price, quantity and the date(s) that the supplies or services were delivered or performed;
- G.2.4** Other supporting documentation or information, as required by the Contracting Officer;
- G.2.5** Name, title, telephone number and complete mailing address of the responsible official to whom payment is to be sent;
- G.2.6** Name, title, phone number of person preparing the invoice;
- G.2.7** Name, title, phone number and mailing address of person (if different from the person identified in G.2.2.6 above) to be notified in the event of a defective invoice; and
- G.2.8** Authorized signature.

## **G.3 Payment**

The District will make payments to the Contractor, upon the submission of proper invoices, at the prices stipulated in this contract, for supplies delivered and accepted or services performed and accepted, less any discounts, allowances or adjustments provided for in this contract. The District will pay the Contractor on or before the 30<sup>th</sup> day after receiving a proper invoice from the Contractor. The Contractor shall invoice monthly based upon the tasks completed to date throughout the contract period.

## **G.4 Contracting Officer (CO)**

Contracts will be entered into and signed on behalf of the District only by contracting officers. The contact information for the Contracting Officer is:

Rosalind R. Inge  
1200 First Street, NE, 5th Floor  
Washington, DC 20002  
202-535-2263 (office)  
Email: rosalind.inge@dc.gov

**G.5 Authorized Changes By The Contracting Officer**

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

**G.6 Contracting Officer's Technical Representative (COTR)**

**G.6.1** The COTR is responsible for general administration of the contract and advising the CO as to the Contractor's compliance or noncompliance with the contract. The COTR has the responsibility of ensuring the work conforms to the requirements of the contract and such other responsibilities and authorities as may be specified in the contract. These include:

- G.6.1.1** Keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the contract;
- G.6.1.2** Reviewing invoices for completed work and recommending approval by the CO if the Contractor's costs are consistent with the negotiated amounts and progress is satisfactory and commensurate with the rate of expenditure;
- G.6.1.3** Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions; and
- G.6.1.4** Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.

**G.6.2** The address and telephone number of the COTR is:

Dr. Taresa Lawrence  
District Department of the Environment  
1200 First Street, NE, 5<sup>th</sup> Floor  
Washington, DC 20002  
Email: taresa.lawrence@dc.gov

**G.6.3** The COTR shall NOT have the authority to:

1. Award, agree to, or sign any contract, delivery order or task order. Only the CO shall make contractual agreements, commitments or modifications;
2. Grant deviations from or waive any of the terms and conditions of the contract;

3. Increase the dollar limit of the contract or authorize work beyond the dollar limit of the contract,
4. Authorize the expenditure of funds by the Contractor;
5. Change the period of performance; or
6. Authorize the use of District property, except as specified under the contract.

**G.6.4** The Contractor will be fully responsible for any changes not authorized in advance, in writing, by the CO; may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.

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

### **H.1 Small, Local, and Disadvantaged Business Enterprise Development and Assistance**

Under the provisions of the “Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005,” as amended, D.C. Official Code § 2-218.01 *et seq.* (the Act), the District shall apply preferences in evaluating proposals from businesses that are small, local, disadvantaged, resident-owned, longtime resident, veteran-owned, local manufacturing, or local with a principal office located in an enterprise zone of the District of Columbia. A minimum of 35% of the dollar volume of Implementation Contracts (including subcontracts that are part of any teaming arrangement in an RFP bid) must be attributable to contracts with Certified Business Enterprises (“CBE”). See 1.6.6 and 3.2.3.2 of Attachment J.1.

### **H.2 51% District Residents New Hires Requirements and First Source Employment Agreement**

The Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code §2-219.01 *et seq.* (“First Source Act”). See 1.6.5 of Attachment J.1.

### **H.3 Publicity**

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

### **H.4 Freedom Of Information Act**

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

## **H.5 AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)**

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

## **H.6 SECTION 504 OF THE REHABILITATION ACT OF 1973, as amended.**

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

## **H.7 DIVERSION, REASSIGNMENT AND REPLACEMENT OF KEY PERSONNEL**

The key personnel specified in the contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified key personnel for any reason, the Contractor shall notify the CO at least thirty (30) calendar days in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact upon the contract. The Contractor shall obtain written approval of the CO for any proposed substitution of key personnel.

## **H.8 WAY TO WORK AMENDMENT ACT OF 2006**

**H.8.1** Except as described in Section H.10.8, the Contractor shall comply with Title I of The Way to Work Amendment Act of 2006, effective June 9, 2006 (D.C. Law 16-118, D.C. Official Code §2-220.01 *et seq.*) (“**Living Wage Act of 2006**”), for contracts for services in the amount of One Hundred Thousand Dollars (\$100,000) or more in a 12-month period.

**H.8.2** The Contractor shall pay its employees and subcontractors who perform services under the contract no less than the current living wage published on the Office of Contracting and Procurement (“**OCP**”) website at [www.ocp.dc.gov](http://www.ocp.dc.gov).

**H.8.3** The Contractor shall include in any subcontract for Fifteen Thousand Dollars (\$15,000) or more a provision requiring the subcontractor to pay its employees who perform services under the one contract no less than the current living wage rate.

**H.8.4** DOES may adjust the living wage annually and the OCP will publish the current living wage rate on its website at [www.ocp.dc.gov](http://www.ocp.dc.gov).

**H.8.5** The Contractor shall provide a copy of the Fact Sheet attached as Attachment J.4 to each employee and subcontractor who performs services under the contract. The Contractor shall also post the Notice attached as Attachment J.4 in a conspicuous place in its place of business. The Contractor shall include in any subcontract for Fifteen Thousand Dollars (\$15,000) or more a provision requiring the subcontractor to post the Notice in a conspicuous place in its place of business.

## **H.9 EQUAL EMPLOYMENT OPPORTUNITY**

In accordance with the District of Columbia Administrative Issuance System, Mayor's Order 85-85 dated June 10, 1985, the forms for completion of the Equal Employment Opportunity Information Report are incorporated herein as Section J.3. An award cannot be made to any offeror who has not satisfied the equal employment requirements.

## **SECTION I: CONTRACT CLAUSES**

### **I.1 Insurance**

The Contractor shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to DDOE giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, DDOE. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A-VIII or higher. The Contractor shall require all of its subcontractors to carry the same insurance required herein. The Contractor shall ensure that all policies provide that DDOE shall be given thirty (30) days prior written notice in the event the stated limit in the declarations page of the policy is reduced via endorsement or the policy is canceled prior to the expiration date shown on the certificate. The Contractor shall provide DDOE with ten (10) days prior written notice in the event of non-payment of premium. The Contractor shall maintain this insurance for five (5) years following the District's final acceptance of the work performed under this contract.

#### **I.1.1 Commercial General Liability Insurance**

The Contractor shall provide evidence satisfactory to DDOE with respect to the services performed that it carries \$2,000,000 per occurrence limits; \$2,000,000 aggregate; bodily injury and property damage including, but not limited to: premises-operations; broad form property damage; products and completed operations; personal and advertising injury; contractual liability and independent contractors. The policy coverage shall include the District of Columbia as an additional insured, shall be primary and non-contributory with any other insurance maintained by the District of Columbia, and shall contain a waiver of subrogation. The Contractor shall maintain completed operations coverage for five (5) years following final acceptance of the work performed under this contract.

#### **I.1.2 Automobile Liability Insurance**

The Contractor shall provide automobile liability insurance to cover all owned, hired or non-owned motor vehicles used in conjunction with the performance of this contract. The policy shall provide a \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

#### **I.1.3 Workers' Compensation Insurance**

The Contractor shall provide Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

#### **I.1.4 Employer's Liability Insurance**

The Contractor shall provide employer's liability insurance as follows: \$500,000 per accident for injury; \$500,000 per employee for worker's compensation; and \$500,000 for worker's compensation insurance.

#### **I.1.5 Umbrella or Excess Liability Insurance**

The Contractor shall provide umbrella or excess liability (which is excess over employer's liability, general liability, and automobile liability) insurance as follows: \$ 3,000,000 per occurrence, including the District of Columbia as additional insured.

#### **I.1.6 Duration**

The Contractor shall carry all required insurance until all contract work is accepted by the District, and shall carry the required General Liability; any required Professional Liability; and any required Employment Practices Liability insurance for five (5) years following final acceptance of the work performed under this contract.

#### **I.1.7 Liability**

These are the required minimum insurance requirements established by the District of Columbia. However, the required minimum insurance requirements provided above will not in any way limit the Contractor's liability under this contract.

#### **I.1.8 Contractor's Property**

The Contractor and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia.

#### **I.1.9 Measure Of Payment**

The District shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price.

#### **I.1.10 Notification**

The Contractor shall immediately provide the contracting officer with written notice in the event that its insurance coverage has or will be substantially changed, canceled or not renewed, and provide an updated certificate of insurance to the contracting officer.

#### **I.1.11 Certificates of Insurance**

The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Evidence of insurance shall be submitted to: Dr. Taresa Lawrence, District Department of the Environment, 1200 First Street, NE, 5<sup>th</sup> Floor, Washington, DC 20002

#### **I.1.12 Disclosure Of Information**

The Contractor agrees that the District may disclose the name and contact information of its insurers to any third party which presents a claim against the District for any damages or claims resulting from or arising out of work performed by the Contractor, its agents, employees, servants or subcontractors in the performance of this contract.

### **I.2 Confidentiality of Information**

The Contractor shall keep all information relating to any employee or customer of the District in absolute confidence and shall not use the information in connection with any other matters; nor shall it disclose any such information to any other person, firm or corporation, in accordance with the District and federal laws governing the confidentiality of records.<sup>1</sup>

### **I.3 Time**

Time, if stated in a number of days, will include Saturdays, Sundays, and holidays, unless otherwise stated herein.

### **I.5 Rights In Data**

**I.5.1** "Data," as used herein, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term

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<sup>1</sup> CAEA §207(d)(3) and §208(c)

does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

**I.5.2** The term “Technical Data,” as used herein, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work, or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.

**I.5.3** The term “Computer Software”, as used herein means computer programs and computer databases. “Computer Programs”, as used herein means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. "Computer Programs" include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort merge programs, and automated data processing equipment maintenance diagnostic programs, as well as applications programs such as payroll, inventory control and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general purpose in nature or designed to satisfy the requirements of a particular user.

**I.5.4** The term "computer databases", as used herein, means a collection of data in a form capable of being processed and operated on by a computer.

**I.5.5** All data first produced in the performance of this Contract shall be the sole property of the District. The Contractor hereby acknowledges that all data, including, without limitation, computer program codes, produced by Contractor for the District under this Contract, are works made for hire and are the sole property of the District; but, to the extent any such data may not, by operation of law, be works made for hire, Contractor hereby transfers and assigns to the District the ownership of copyright in such works, whether published or unpublished. The Contractor agrees to give the District all assistance reasonably necessary to perfect such rights including, but not limited to, the works and supporting documentation and the execution of any instrument required to register copyrights. The Contractor agrees not to assert any rights in common law or in equity in such data. The Contractor shall not publish or reproduce such data in whole or in part or in any manner or form, or authorize others to do so, without written consent of the District until such time as the District may have released such data to the public.

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

**I.5.6.1** Use the computer software and all accompanying documentation and manuals or instructional materials with the computer for which or with which it was acquired,

including use at any District installation to which the computer may be transferred by the District;

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

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

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

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

**RESTRICTED RIGHTS LEGEND**

Use, duplication, or disclosure is subject to restrictions stated in Contract

No. \_\_\_\_\_ with (Contractor's Name); and

(ii) If the data is computer software, the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software.

The Contractor may not place any legend on the computer software indicating restrictions on the District's rights in such software unless the restrictions are set forth in a license or agreement made a part of the contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the District of liability with respect to such unmarked software.

**I.5.8** In addition to the rights granted in Section I.5.6 above, the Contractor hereby grants to the District a nonexclusive, paid-up license throughout the world, of the same scope as restricted rights set forth in Section I.5.6 above, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the District under this contract. Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the District under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the District any rights necessary to perfect a copyright license of the scope specified in the first sentence of this paragraph.

**I.5.9** Whenever any data, including computer software, are to be obtained from a subcontractor under this contract, the Contractor shall use this clause, I.5, Rights in Data, in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the District's or the Contractor's rights in that subcontractor data or computer software which is required for the District.

**I.5.10** For all computer software furnished to the District with the rights specified in Section I.5.5, the Contractor shall furnish to the District, a copy of the source code with such rights of the scope specified in Section I.5.5. For all computer software furnished to the District with the restricted rights specified in Section I.5.6, the District, if the Contractor, either directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided the District under this contract or any paid-up maintenance agreement, or if Contractor should be declared bankrupt or insolvent by a court of competent jurisdiction, shall have the right to obtain, for its own and sole use only, a single copy of the then current version of the source code supplied under this contract, and a single copy of the documentation associated

therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.

**I.5.11** Notwithstanding any additional indemnification provisions contained in the contract, the Contractor shall indemnify and save and hold harmless the District, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or (ii) based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.

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

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

## **I.6 Other Contractors**

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

## **I.7 Governing Law**

This contract, and any disputes arising out of or related to this contract, shall be governed by, and construed in accordance with, the laws of the District of Columbia.

## **I.8 Continuity of Services**

**I.8.1** The Contractor recognizes that the services provided under this contract are vital to the District and must be continued without interruption and that, upon contract expiration or termination, a successor, either the District or another contractor, at the District's option, may continue to provide these services. To that end, the Contractor agrees to:

**I.8.1.1** Furnish phase-out, phase-in (transition) training; and

**I.8.1.2** Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

**I.8.2** The Contractor shall, upon the CO's written notice:

**I.8.2.1** Furnish phase-in, phase-out services for up to 90 days after this contract expires and

**I.8.2.2** Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the CO's approval.

**I.8.3** The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

**I.8.4** The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The

Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

- I.8.5** Only in accordance with a modification issued by the Contracting Officer, the Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) specified in Attachment J.1, Request For Proposals For Sustainable Energy Utility Contractor.

**SECTION J: ATTACHMENTS**

The following list is attached:

<b>Attachment Number</b>	<b>Document</b>
<b>J.1</b>	Request For Proposals For Sustainable Energy Utility Contractor, From: The District of Columbia Department of the Environment, July 2, 2010

The following list of attachments is incorporated into the solicitation by reference:

<b>Attachment Number</b>	<b>Document</b>
<b>J.2</b>	Titles I and II of the Clean and Affordable Energy Act of 2008 are codified in D.C. Code § 8-1773.01, et seq.
<b>J.3</b>	Way to Work Amendment Act of 2006 - Living Wage Notice, <a href="http://www.does.dc.gov/does/cwp/view,a,1233,q,636800,doesNav,%7C32064%7C.asp">www.does.dc.gov/does/cwp/view,a,1233,q,636800,doesNav,%7C32064%7C.asp</a>
<b>J.4</b>	Department of Employment Services First Source Employment Agreement available at <a href="http://does.dc.gov/does/cwp/view,a,1232,q,537680.asp">http://does.dc.gov/does/cwp/view,a,1232,q,537680.asp</a>
<b>J.5</b>	“Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005”, details available at <a href="http://dslbd.dc.gov/olbd/">http://dslbd.dc.gov/olbd/</a>
<b>J.6</b>	ENERGY STAR Performance Ratings Methodology for Incorporating Source Energy Use, <a href="http://www.energystar.gov/ia/business/evaluate_performance/site_source.pdf">http://www.energystar.gov/ia/business/evaluate_performance/site_source.pdf</a>
<b>J.7</b>	PJM Manual 18 B. <a href="http://www.pjm.com/documents/manuals.aspx">http://www.pjm.com/documents/manuals.aspx</a>
<b>J.8</b>	Eight programs currently administered by DDOE with funding from the Sustainable Energy Trust Fund. <a href="http://www.green.dc.gov">www.green.dc.gov</a>
<b>J.9</b>	Pepco’s energy efficiency programs, <a href="http://www.pepco.com/energy/conservation/dcprogram/">http://www.pepco.com/energy/conservation/dcprogram/</a> and <a href="http://www.pepco.com/business/services/programs/overview/">www.pepco.com/business/services/programs/overview/</a> .

<b>Attachment Number</b>	<b>Document</b>
<b>J.10</b>	How Energy Efficiency May Bid into PJM's RPM, <a href="http://www.pjm.com/markets-and-operations/~media/markets-ops/rpm/20090406-dr-ee-in-rpm-collateral.ashx">http://www.pjm.com/markets-and-operations/~media/markets-ops/rpm/20090406-dr-ee-in-rpm-collateral.ashx</a>
<b>J.11</b>	Northeast Energy Efficiency Partnerships' ("NEEP") EM&V Forum, <a href="http://neep.org/emv-forum/forum-products-and-guidelines">http://neep.org/emv-forum/forum-products-and-guidelines</a>
<b>J.12</b>	Energy Efficiency Financing Act of 2009 (B18-580).