



**Department of Health Care Finance
Government of the District of Columbia
Office of Contracts and Compliance
825 North Capitol Street NE, Suite 5135
Washington, DC 20002
Phone: 202-442-5988**

REQUEST FOR PROPOSALS

SOLICITATION NO.: DHCF-OCLTC-2009-P-20005

DATE OF ISSUANCE: October 28, 2009

PRE-PROPOSAL CONFERENCE DATE: November 6, 2009 at 10:00 a.m.

PROPOSAL RECEIPT DATE: December 1, 2009

POINT OF CONTACT: Lillian J. Beavers, Contract Specialist

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TITLE: Long-Term Care Housing Consultant for the Money Follows the Person Demonstration

The District of Columbia Department of Health Care Finance (DHCF), Office of Chronic and Long Term Care (OCLTC) is seeking a firm and/or professional to develop and facilitate the implementation of plan for long-term housing.

All offerors shall visit the Department of Health Care Finance website www.dhcf.dc.gov and click "Procurement Opportunities" to download solicitation and required compliance documents.

SECTION B
SUPPLIES OR SERVICES AND PRICE

- B.1** Supplies or Services and Price/Cost
- B.2** Contract Type
- B.3** Price Schedule - Firm Fixed Price

SECTION B

SUPPLIES OR SERVICES AND PRICE

B.1 Supplies or Services and Price/Cost

B.1.1 The Department of Health Care Finance (DHCF) is seeking a firm and/or professional to develop and facilitate the implementation of a plan for long-term care housing. The contractor shall (1) examine the housing landscape for low-income individuals seeking long-term care services in the community including our work and opportunities to-date; (2) identify areas of opportunity for collaboration among D.C. programs serving the target population, Public Housing Agencies, and other housing providers; (3) assist D.C. in developing a Housing Strategic Plan that addresses the needs of individuals with long term care needs that can be included in the Money Follows the Person (MFP) Operational Protocols; and (4) implement the strategic plan across our three Operational Protocols.

B.2 Contract Type

B.2.1 The District intends to award a Fixed Price contract.

B.3 Price Schedule – Firm Fixed Price

B.3.1 Offerors shall submit a price proposal that reflects its most competitive rates (and shall set forth both fixed, fully-loaded hourly rates per labor category and its process for pricing certain work on a firm, fixed-fee basis) for each Requirement/Contract Line Item (CLIN) for which it submits a technical proposal. Each CLIN below corresponds with requirements stated in the SOW. For each CLIN in which the contractor proposes capabilities and expertise thereto, Offerors shall provide: (1) Labor categories; (2) A description of the proposed labor category to include years of experience, education level, and certifications; and (3) “Best Customer Pricing” in the format of fully-loaded, fixed hourly rates. Any exclusions from fully-loaded hourly rates must be expressly stated or will not be considered at any point hereafter. The term “fully-loaded, fixed hourly rate” shall mean an hourly rate that includes the base labor rate, overhead costs, fringe benefits, general and administrative expenses (G&A), and profit.

B.3.2 Price Schedule is as follows:

Contract Line Item No. (CLIN)	Item Description	Cost
0101	Work Assessment Activities	\$
0201	Housing Strategic Plan	\$
0301	Ongoing Housing Assistance	\$

SECTION C

DESCRIPTIONS, SPECIFICATIONS, STATEMENT OF WORK

C.1 Scope

C.2 Background

C.3 Requirements

SECTION C

DESCRIPTIONS, SPECIFICATIONS, STATEMENT OF WORK

C.1 Scope

C.1.1 The Department of Health Care Finance (DHCF) is seeking a firm and/or professional to develop and facilitate the implementation of a plan for long-term care housing. The contractor shall (1) examine the housing landscape for low-income individuals seeking long-term care services in the community including our work and opportunities to-date; (2) identify areas of opportunity for collaboration among State programs serving the target population, Public Housing Agencies, and other housing providers; (3) assist the State in developing a Housing Strategic Plan that addresses the needs of individuals with long term care needs that can be included in the MFP Operational Protocols; and (4) implement the strategic plan across our three Operational Protocols.

C.1.2 Applicable Documents

C.1.2.1 All documents applicable to this solicitation and the resulting Contract are listed in Section J.

C.1.3 Definitions

C.1.3.1 Home and Community Based Services (HCBS): An array of services for “people of all ages who depend on these supports to live in their homes and participate fully in community life.” A core belief is that home and community based services provide “real choice and independence for older Americans and people with disabilities.”¹ The federal Centers for Medicare and Medicaid Services (CMS) administer an HCBS Waiver program- Section 1915 (c). “States may offer a variety of services to consumers under an HCBS waiver program and the number of services that can be provided is not limited. These programs may provide a combination of both traditional medical services (i.e. dental services, skilled nursing services) as well as non-medical services (i.e. respite, case management, environmental modifications). Family members and friends may be providers of waiver services if they meet the specified provider qualifications. However, in general spouses and parents of minor children cannot be paid providers of waiver services. States have the discretion to choose the number of consumers to serve in a HCBS waiver program. Once approved by CMS, a state is held to the number of persons

¹ hcbs.org

estimated in its application but has the flexibility to serve greater or fewer numbers of consumers by submitting an amendment to CMS for approval.”²

C.1.3.2 Money Follows the Person Advisory Commission (HFPAC): A public/private advisory group comprised of approximately twenty (20) stakeholders from the long-term care community. Members represent government agencies, advocacy organizations, service providers, and self-advocates with knowledge and experience relative to the three target populations of DC’s MFP Project: people with Intellectual and Developmental Disabilities (I/DD), people with Mental Health (MH) diagnoses, and people who are eligible to receive services under the District’s Elderly and People with Physical Disabilities (EPD) waiver.

C.1.3.3 Money Follows the Person Demonstration (MFPD): A system of flexible financing for long-term services and supports that enables available funds to move with the individual to the most appropriate and preferred setting as the individual’s needs and preferences change.”⁵ This approach has two major components. One component is a financial system that allows Medicaid funds budgeted for institutional services to be spent on home and community services when individuals move to the community. The second component is a transition program that identifies consumers in institutions (Intermediate Care Facilities for People with Mental Retardation (ICFs/MR, nursing homes, St. Elizabeth’s Hospital, other hospitals) who wish to transition to the community and helps them do so.

C.1.3.4 Partner Agencies: The District Agencies that are involved with the transition of people with long-term care needs who also are facility residents into HCBS setting. These include:

C.1.3.4.1 Department on Disability Services/Developmental Disabilities Administration (DDA)

C.1.3.4.2 Department of Mental Health (DMH);

C.1.3.4.3 District of Columbia Office on Aging/Aging and Disability Resource Centers (DCOA/ADRC);

C.1.3.4.4 District of Columbia Housing Authority (DCHA);

C.1.3.4.5 District of Columbia Housing and Community Development (DHCD);

² cms.hhs.gov

C.1.3.4.6 District of Columbia Housing Finance Agency (DHFA); and

C.1.3.4.7 District of Columbia Office of Disability Rights (ODR).

C.1.3.5 Operational Protocol (OP): Outlines the processes by which the program will operate in the District of Columbia. The Centers for Medicare and Medicaid Services (CMS) approved the protocol for implementation through the Department of Disabilities Services/Developmental Disabilities Administration for people with intellectual and developmental disabilities. Amendments to the protocol that outline viable Money Follows the Person strategies for people with mental health diagnoses and people who are eligible for services under the District's Elderly and People with Disabilities waiver will be submitted to CMS in Fall 2009.

C.1.3.6 Qualified Housing (QH): CMS limits the types of qualified for the demonstration to:

C.1.3.6.1 A home owned or leased by the individual or the individual's family member;

C.1.3.6.2 An apartment with an individual lease, with lockable access and egress, and which includes living, sleeping, bathing and cooking areas over which the individual or the individual's family has domain and control; and

C.1.3.6.3 A residence, in a community-based residential setting, in which no more than four (4) unrelated individuals reside.

C.1.3.7 Stakeholders: People or groups who have a stake, or an interest, in expanding access to community-based long-term care. Such parties will be designated by DHCF, and shall include but not be limited to: Partner Agencies, DHCF staff, and contractor key personnel and staff.

C.2 Background

C.2.1 Department of Health Care Finance (DHCF), formerly the Medical Assistance Administration (MAA), is the single state agency responsible for the implementation and administration of the District of Columbia's Medicaid Program (Title XIX of the Social Security Act) and Children's Health Insurance Program (CHIP, Title XXI of the Social Security Act). DHCF is also responsible for administering: (1) the D.C. Health Care Alliance Program (Alliance), a health benefits program for low-income individuals who do not qualify for Medicaid; (2) the Immigrant Children's program, which covers undocumented children up to age 21 who do not qualify for Medicaid or CHIP; (3) the District's Child and Adolescent Supplemental Security Income Program (CASSIP), the

District's managed care program for children and adolescents with special health care needs; and (4) the Healthy DC Program.

C.2.2 The District of Columbia was chosen by the Centers for Medicare and Medicaid Services to be among the first states to participate in the Money Follows the Person (MFP) Demonstration which was authorized as part of the Deficit Reduction Act of 2005 as an opportunity for states to rebalance long-term care systems. With this demonstration, the District of Columbia has the opportunity to address the institutional bias in long-term care by improving the availability and quality of community-based services, while providing people in institutions the option to be served in the community.

C.2.3 The Department of Health Care Finance (DHCF) is required to develop Operational Protocols (OP) and is working closely with CMS, our sister agencies, and various stakeholders to develop these protocols. One area in which there is particular concern among stakeholders is in identifying accessible and affordable housing. Because Medicaid recipients have limited incomes, qualified housing opportunities are limited. In addition, individuals with disabilities may require certain accessibility features in order to successfully live in the community.

C.2.4 The District of Columbia currently has 50 housing vouchers, 460 units of elderly and disabled housing units, and a listing of accessible rental housing units all coordinated between DHCF and its partner agencies.

C.2.5 By executing the requirements of the Contract resulting from this RFP, Contractor shall work together with the District to accomplish the following goals:

C.2.5.1 Develop a sustainable blueprint for maintaining a supply of affordable and accessible housing for persons with long-term care needs;

C.2.5.2 Serve as the District of Columbia's day-to-day housing resource related to OP implementation; and

C.2.5.3 Preclude redundancy and build on existing MFP work.

C.3 Requirements

The Contractor shall provide services as described below:

C.3.1 Work Assessment Activities

C.3.1.1 Contractor shall conduct a desk audit of OPs, to include a review of all current MFP materials and related housing activities to date.

C.3.1.2 Contractor shall conduct interviews with the DHCF, Department of Disability Services/Developmental Disabilities Administration (DDS/DDA), Office on Aging/Aging and Disability Resource Centers (DCOAADRC), Commission on Aging, Department of Mental Health (DMH), Office of Disability Rights (ODR), Department of Housing and Community Development (DHCD),

District of Columbia Housing Authority (DCHA), District of Columbia's Housing Finance Agency (DCHFA), and community partner organizations to:

C.3.1.2.1 Determine whether existing strategies are adequate and are working and, if not, develop new approaches; and

C.3.1.2.2 Explore policy options and potential areas for collaboration among District agencies and other long-term care stakeholders.

C.3.2 Housing Strategic Plan

C.3.2.1 Contractor shall develop a three (3) year housing strategic plan for the District of Columbia that includes:

C.3.2.1.1 Strategies for enhancing housing assistance for recipients of long-term care services and participants in the MFP demonstration;

C.3.2.1.2 Strategies for the establishment and maintenance of a centralized housing assistance resource. The plan will identify the roles and responsibilities of the entity that provides assistance. It will build on existing work and include strategies to integrate housing planning into MFP transition service coordination; and

C.3.2.1.3 Strategies for the development and maintenance of accessible public and private housing resources and opportunities.

C.3.3 Ongoing Housing Assistance

C.3.3.1 Contractor shall participate in quarterly Advisory Commission meetings to provide work updates and discuss plans for alleviating housing barriers.

C.3.3.2 Contractor shall participate in weekly MFP project team planning calls.

C.3.3.3 Contractor shall develop policies and procedures for the delivery of housing assistance to be provided to individuals living in facilities seeking community residences.

C.3.3.4 Contractor shall provide a description of short-, mid-, and long-term priorities for enhancing the landscape of affordable and accessible housing in District of Columbia.

C.3.3.5 Contractor shall coordinate operation of an existing housing database among MFP partner agencies.

C.3.3.6. Reporting Tasks

C.3.3.6.1 Contractor shall be responsible for a variety of reporting tasks including, at a minimum, the maintenance of information and the creation of reports necessary to identify existing long-term care housing units, place long-term care recipients in housing and cultivate new long-term care housing units. The creation of reports and maintenance of information shall include, at a minimum:

C.3.3.6.2 A report on the number and location of accessible and affordable housing units in DC.

C.3.3.6.3 A report on the number and identifying information of long-term care recipients who are seeking accessible and affordable housing units in the community.

C.3.3.6.4 A report on the number and location of prospective units of accessible and affordable housing in DC that can enter the pool of available units given proper modifications of environment, rent rate, or other factors.

C.3.3.6.5 A report on the number and contact information for partner housing providers in DC.

C.3.3.6.6 Contractor shall be responsible for the following general reporting tasks:

C.3.3.6.6.1 Provide effective program management and reports to improve the housing identification and transition processes, and meet all federal standards and Medicaid guidelines; and

C.3.3.6.6.2. Provide reports on trending to demonstrate the effectiveness of housing identification and transition of long-term care recipients from institutions to community-based housing on a timeline established by DHCF.

C.4 Key Personnel

C.4.1 Contractor shall maintain all Key Personnel to carry out essential functions as defined in Section C. Key Personnel are considered to be essential to the work being performed under the provisions the Contract.

C.4.2 Contractor shall not reassign Key Personnel or appoint replacements, without written permission from DHCF.

C.4.3 Key Personnel shall include:

C.4.3.1 Project Manager; and

C.4.3.2. Housing Assistance Resource Coordinator

C.4.4 Contractor shall identify the individuals who are Key Personnel.

C.5 Organizational Structure

C.5.1 Contractor shall have an organizational structure sufficient to ensure that the organization:

C.5.1.1 Can produce written materials as required by the Contract;

C.5.1.2 Attend meetings as directed by DHCF and required by the Contract;
and

C.5.1.3 Has sufficient resources and staff to fulfill its obligations in a timely manner and of quality that is acceptable to DHCF.

C.6 Performance Management

C.6.1 Corrective Action Plan

C.6.1.1 Contractor shall create a Corrective Action Plan (CAP) in the event that DHCF determines that Contractor has fallen more than five (5) days behind schedule for any of the tasks, unless an interim schedule adjustment was agreed upon.

C.6.1.2 Contractor shall submit the CAP to DHCF for prior approval within one (1) day of the five (5) day delay.

C.6.1.3 A CAP shall include, at a minimum, the following requirements:

C.6.1.3.1 Detailed project schedule with milestones that address activities required to accomplish the required tasks in the new timeframe;

C. 6.1.3.2 Method to recoup lost time and any expenses incurred by DHCF as a result of Contractor's delay in performance;

C. 6.1.3.3 Risk management plan to identify and assess project and risk mitigation strategies;

C. 6.1.3.4 System for internal quality control monitoring to produce the required deliverables accurately, efficiently, and in a timely manner; and

C. 6.1.3.5 Communication plan detailing Contractor's method for keeping all project stakeholders informed about the progress of the project in a timely manner.

C.6.2 Performance Measures

C. 6.2.1. Contractor shall provide evidence that it can:

C.6.2.1.1. During the Work Assessment Activities:

C.6.2.1.1.1 Demonstrate the capability to:

C.6.2.1.1.1.1 Successfully include all previous DC MFP and other DC long-term care housing efforts in the assessment.

C.6.2.1.1.1.2 Successfully interview all identified stakeholders and incorporate feedback in the assessment.

C.6.2.1.1.1.3 Successfully incorporate promising national long-term care housing strategies into analyses, recommendations and plans.

C.6.2.1.1.1.4 Successfully incorporate promising DC housing strategies into analyses, recommendations and plans.

C.6.2.1.1.1.5 Successfully develop a Housing Strategic Plan that includes C.6.2.1.1.3.1-4.

C.6.2.1.2. During the Housing Plan Activities:

C.6.2.1.2.1 Demonstrate the capability to:

C.6.2.1.2.1.1 Successfully develop comprehensive criteria for the identification of long-term care housing.

C.6.2.1.2.1.2 Successfully identify factors that determine appropriate providers of housing for long-term care recipients.

C.6.2.1.3 During the Ongoing Housing Assistance Activities:

C.6.2.1.3.3 Demonstrate the capability to:

C.6.2.1.3.3.1 Successfully identify existing units of housing in DC that are accessible, affordable and safe for people with long-term care needs.

C.6.2.1.4.3.2 Successfully place people with long-term care needs in identified housing within reasonable timeframes as outlined in the Housing Strategic Plan.

C.6.2.1.4.3.3 Successfully cultivate new units of housing in DC that are accessible, affordable and safe for people with long-term care needs.

C.6.2.1.4.3.4 On an ongoing basis, successfully identify units of housing in DC that are accessible, affordable and safe for people with long-term care needs.

C.6.2.1.4.3.5 On an ongoing basis, successfully place people with long-term care needs in identified housing within reasonable timeframes as outlined in the Housing Strategic Plan.

C.6.2.1.4.3.6 On an ongoing basis, successfully cultivate new units of housing in DC that are accessible, affordable and safe for people with long-term care needs.

C.7 DHCF Responsibilities

DHCF will provide information on long-term care housing efforts to date, governmental and community stakeholders and MFP OP's.

SECTION D
PACKAGING AND MARKING

D.1 PACKAGING AND MARKING

D.1.1 The packaging and marking requirements for the resultant contract shall be governed by clause number (2), Shipping Instructions-Consignment, of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated March 2007.

SECTION E

INSPECTION AND ACCEPTANCE

- E.1** Inspection and Acceptance – Governance
- E.2** Inspection and Acceptance – Destination
- E.3** Right to Enter Premises
- E.4** Monitoring of Performance

SECTION E

INSPECTION AND ACCEPTANCE

E.1 INSPECTION AND ACCEPTANCE – GOVERNANCE

E.1.1 The inspection and acceptance requirements for the Contract shall be governed by Clause Number Six (6), Inspection of Services of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated March 2007.

E.2 INSPECTION AND ACCEPTANCE – DESTINATION

E.2.1 Inspection and acceptance of the supplies/services to be furnished hereunder shall be made at destination by the Contracting Officer's Technical Representative (COTR) or his or her duly authorized representative.

E.3 RIGHT TO ENTER PREMISES

E.3.1. DHCF or any authorized representative of the District of Columbia, the U.S. Department of Health and Human Services, the U.S. Comptroller General, the U.S. Government Accountability Office, or their authorized representatives shall, at all reasonable times, have the right to enter Contractor's premises or such other places where duties under the Contract are being performed to inspect, monitor, or otherwise evaluate (including periodic systems testing) the work being performed. Contractor and all subcontractors shall provide reasonable access to all facilities. All inspections and evaluations shall be performed in such a manner as will not unduly delay work.

E.4 MONITORING OF PERFORMANCE

E.4.1 The District will utilize a variety of methods to determine compliance with the Contract requirements and measure Contractor's quality of performance.

E.4.2 The District may employ corrective action, remedies, and liquidated damages to address issues of non-compliance and poor performance with Contractor. These methods include but are not limited to:

E.4.2.1 Corrective Action as described in sections C.6.1; and

E.4.2.2 Termination of Contract.

E.4.3 The District may terminate without liability, the contract, and may deduct the contract price or otherwise recover the full amount of any fee, percentage, or consideration paid. The District may also employ liquidated damages to address issues of non-compliance or poor performance, including but not limited to the following reasons:

E.4.3.1 Breach or violation of the terms and conditions

- E.4.3.2 Poor performance under the Contract;
- E.4.3.3 Violation of applicable law or policy;
- E.4.3.4 Failure to take correction action or adhere to a Corrective Action Plan in the time prescribed in the Corrective Action Plan;
- E.4.3.5 Failure to comply with reporting requirements, including but not limited to:
 - E.4.3.5.1 Failure to submit information or a report at DHCF's request;
 - E.4.3.5.2 Failure to submit information or a report in a timely manner and in compliance with Contractor submitted and DHCF approved plans; and
 - E.4.3.5.3 Failure to submit a report as described in Section C.6.3 and Section F on time.
- E.4.3.6 Misrepresenting or falsifying information provided to the District, DHCF, HHS, or CMS; and
- E.4.3.7 Failure to comply with applicable court orders.

E.4.4 As detailed in Section C.6.3, measuring Contractor's performance for high quality is an important component of DHCF's overall strategy to improve the quality of care in the Medicaid system.

- E.4.4.1 DHCF may, at its discretion, prospectively modify the type of performance measures used over the course of the Contract Period.
- E.4.4.2 Contractor shall submit any information showing evidence of compliance with Section C.6.3 as requested by DHCF.

E.4.5 Auditing and Monitoring

E.4.5.1 The District, DHCF, the federal government and its contractors may perform off-site and on-site audits to ensure that the Contractor is in compliance with the requirements set forth in the Contract. The reviews and audits may include: on-site visits; staff interviews; medical record reviews; review of claims and other supporting data information; and corrective actions and follow-up plans.

SECTION F

PERIOD OF PERFORMANCE AND DELIVERABLES

- F.1** Terms of the Contract
- F.2** Option to Extend the Term of the Contract
- F.3** Deliverables

SECTION F

PERIOD OF PERFORMANCE AND DELIVERABLES

F.1 TERM OF THE CONTRACT

F.1.1 The term of the Contract shall be for twelve months from Date of Award.

F.2 OPTION TO EXTEND THE TERM OF THE CONTRACT

F.2.1 The District may extend the term of the Contract for a period of four (4) one (1) year Option Periods by written notice to Contractor before the expiration of the Contract; provided that the District shall give the Contractor preliminary written notice of its intent to exercise the option to extend the term of the contract Close. The preliminary notice does not commit the District to an extension. Contractor may waive the thirty (30) day notice requirement by providing a written waiver to the Contracting Office prior to expiration of the Contract.

F.2.2. The price for the Option Period shall be specified in the Contract. The exercise of the option to extend the contract is subject to the availability of funds at the time of the exercise of the option.

F.2.3 The option to extend the term of the contract, as described above in section F.2.1 shall be included in each option contract

F.2.4 The total duration of the contract, including the exercise of any options under Section F.2 shall not exceed five (5) years.

F.3 DELIVERABLES

F.3.1 Contractor shall perform the required services and tasks and develop and submit three (3) hard copies and one (1) electronic copy of the following deliverables to the COTR identified in Section G.6 in accordance with the due dates identified in the Deliverable Schedule, as follows:

F.3.2 Deliverable Schedule

Deliverable Number	Deliverable Name	Due Date
1.	Analysis of previous and existing DC community-based long-term care housing strategies.	December 31, 2009
2.	Recommendations on new approaches to community-based long-term housing	January 15, 2009

Deliverable Number	Deliverable Name	Due Date
3.	Three Year Housing Strategic Plan	January 31, 2009
4.	Policies and Procedures for delivery of housing assistance	February 28, 2010
5.	One-page progress report that reflects monthly housing statistics and major developments.	Monthly beginning March 31, 2010

F.3.3 Contractor shall prominently label all reports with Contractor’s name and business address, along with the Contract Number, on the cover of the report.

F.3.4 If any documents contain confidential information, the outer and inner contents of the package shall be prominently labeled “Confidential.”

F.3.5 Notice of Disapproval of Deliverables – Resubmission of Deliverables

F.3.5.1 The COTR (or designee) shall provide written notice of disapproval of a Deliverable or report to Contractor within fifteen (15) business days of submission if it is disapproved. The notice of disapproval shall state the reasons for disapproval as specifically as is reasonably necessary and the nature and extent of the corrections required for meeting the Contract requirements.

F.3.5.2 Contractor shall make the corrections and resubmit the Deliverable within ten (10) business days unless otherwise specifically noted in the notice of disapproval.

F.3.6 Any reports required pursuant to Section H.11 of the Fifty One Percent (51%) District Residents New Hires Requirements and First Source Employment Agreement are to be submitted to the District as a deliverable. If the report is not submitted as part of the deliverables, final payment to Contractor shall not be paid.

SECTION G

CONTRACT ADMINISTRATION DATA

- G.1** Invoice Payment
- G.2** Invoice Submittal
- G.3** Payments
- G.4** Recoupment
- G.5** Contracting Officer
- G.6.** Contracting Officer Technical Representative (COTR)
- G.7.** Stoppage of Work
- G.8.** Sub-Contracts
- G.9** Patents
- G. 10** Cost & Pricing Data

SECTION G

CONTRACT ADMINISTRATION DATA

G.1 INVOICE PAYMENT

G.1.1 The District will make payments to Contractor upon the submission of proper invoices, at the prices stipulated in the Contract, for supplies delivered and accepted or services performed and accepted, less any discounts, allowances or adjustments provided for in the Contract.

G.1.2 The District will pay Contractor on or before the thirtieth (30th) business day after receiving a proper invoice from Contractor.

G.2 INVOICE SUBMITTAL

G.2.1 Contractor shall submit proper invoices on a monthly basis or as otherwise specified in Section G.3. Invoices shall be prepared in duplicate and submitted to the agency Chief Financial Officer (CFO) with concurrent copies to the Contracting Officer's Technical Representative (COTR) specified in Section G.7 below. The address of the CFO is:

Darrin Shaffer

Department of Health Care Finance

825 North Capitol St, NE

Suite 5135

Washington, DC 20002

G.2.2 To constitute a proper invoice, Contractor shall submit the following information on the invoice:

G.2.2.1 Contractor's name, federal tax ID and invoice date (Contractor shall date invoices as of the date of mailing or transmittal);

G.2.2.2 Contract number and invoice number;

G.2.2.3 Description, price, quantity and the date(s) that the supplies or services were delivered or performed;

G.2.2.4 Other supporting documentation or information, as required by the Contracting Officer;

G.2.2.5 Name, title, telephone number and complete mailing address of the responsible official to whom payment is to be sent;

G.2.2.6 Name, title, phone number of person preparing the invoice;

G.2.2.7 Name, title, phone number and mailing address of person (if different from the person identified in Section G.2.2.6 above) to be notified in the event of a defective invoice; and

G.2.2.8 Authorized signature.

G.3 PAYMENTS

G.3.1 Payment Schedule

G.3.1.1 The District will pay the Contractor on a monthly basis 1/12th of the total price described in B.3.2.1 in accordance with the terms of the Contract upon presentation of a properly executed invoice and authorized by the COTR.

G.3.2 First Source Agreement Request for Final Payment

G.3.2.1 For contracts subject to the fifty-one percent (51%) District Residents New Hires Requirements and First Source Employment Agreement requirements, final request for payment shall be accompanied by the report or a waiver of compliance discussed in Section H.11.5.2.

G.3.2.2 No final payment will be made to Contractor until the Chief Financial Officer has received the Contracting Officer's final determination or approval of waiver of Contractor's compliance with fifty-one percent (51%) District Residents New Hires Requirements and First Source Employment Agreement requirements.

G.3.3 Assignment of Contract Payments

G.3.3.1 In accordance with 27 D.C.M.R. § 3250, unless otherwise prohibited by the Contract, Contractor may assign funds due or to become due as a result of the performance of the Contract to a bank, trust company, or other financing institution.

G.3.3.2 Any assignment shall cover all unpaid amounts payable under the Contract, and shall not be made to more than one (1) party.

G.3.3.3 Notwithstanding an assignment of contract payments, Contractor, not the assignee, shall prepare invoices. Where such an assignment has been made, the original copy of the invoice shall refer to the assignment and shall show that payment of the invoice is to be made directly to the assignee as follows:

Pursuant to the instrument of assignment dated _____, make payment of this invoice to _____ (name and address of assignee).

G.3.4 Electronic Payments

G.3.4.1 The District reserves the option to make payments to Contractor by wire, NACHA, or electronic transfer and will provide Contractor at least thirty (30) days notice prior to the effective date of any such change.

G.3.4.2 Where payments are made by electronic funds transfer, the District will not be liable for any error or delay in transfer or indirect or consequential damages arising from the use of the electronic funds transfer process. Any changes or expenses imposed by the bank for transfers or related actions shall be borne by Contractor.

G.3.5 Compliance by Contractor

G.3.5.1 Payments made by the District to Contractor are conditioned upon receipt by the District of applicable, accurate and complete reports, documentation, claims, encounters, and any other information due from Contractor, unless written approval waiving such requirement(s) is obtained from the District. The submission of late deliverables will be subject to payments being withheld pending receipt of completed reports and/or documentation due for the reporting period.

G.3.6 Quick Payment Clause

G.3.6.1 Interest Penalties to Contractors

G.3.6.1.1 The District will pay interest penalties on amounts due to Contractor under the Quick Payment Act, D.C. Official Code § 2-221.01 *et seq.*, for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of (1%) per month. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before the fifteenth (15th) day after the required payment date.

G.3.6.1.2 Any amount of an interest penalty which remains unpaid at the end of any thirty (30) day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

G.3.7 Payments to Sub-contractors

G.3.7.1 Contractor shall take one of the following actions within seven (7) days of receipt of any amount paid to Contractor by the District for work performed by any subcontractor under the Contract:

G.3.7.1.1 Pay the subcontractor for the proportionate share of the total payment received from the District that is attributable to the subcontractor for work performed under the Contract; or

G.3.7.1.2 Notify the District and the subcontractor, in writing, of Contractor's intention to withhold all or part of the subcontractor's payment and state the reason for the nonpayment.

G.3.7.1.3 Contractor shall pay any lower-tier subcontractor or supplier interest penalties on amounts due to the subcontractor or supplier beginning on the day after the payment is due and ending on the date on which the payment is made. Interest shall be calculated at the rate of one percent (1%) per month. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before the fifteenth (15th) day after the required payment date for any other item.

G.3.7.2 Any amount of an interest penalty which remains unpaid by Contractor at the end of any thirty (30) day period shall be added to the principal amount of the debt to the subcontractor and thereafter interest penalties shall accrue on the added amount.

G.3.7.3 A dispute between Contractor and subcontractor relating to the amounts or entitlement of a subcontractor to a payment or a late payment interest penalty under the Quick Payment Act does not constitute a dispute to which the District of Columbia is a party. The District may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

G.3.8 Contractor Obligation to Flow Down Interest Provision

G.3.8.1 The Contractor is required to include in any subcontract a provision that requires each subcontractor to include the payment and interest clauses required under paragraphs (1) and (2) of the Quick Payment Act in each subcontractor's contract with any lower-tier subcontractor or supplier.

G.3.9 Right to Withhold Payment

G.3.9.1 The District reserves the right to withhold or recoup funds from Contractor in addition to any other remedies allowed under the Contract or any policies and procedures.

G.3.9.2 Payment will be withheld for Contractor late submissions of deliverables. Contractor shall receive payment when each deliverable is completed and approved by DHCF. If the deliverable has not been completed and submitted to DHCF by the deliverable due date and/or it is submitted, but DHCF does not approve the submission, DHCF may impose a penalty of 5% per day until deliverable is complete and approved.

G.4 RECOUPMENT

G.4.1 Contractor shall be responsible for any fines levied against the District by the Department of Health and Human Services (HHS), the Centers for Medicare and

Medicaid Services (CMS) or any other applicable administrative body. Contractor shall also be responsible for the reimbursement of any funds that must be paid back to these bodies as a result of Contractor's performance under the Contract.

G.4.2 Contractor shall be responsible for any recoupment of funds or sanctions imposed by the federal government to the District that are related to Contractor's non-compliance of any part of the Contract.

G.5 CONTRACTING OFFICER

G.5.1 Contracts may be entered into and signed on behalf of the District Government only by Contracting Officers.

G.5.2 The name, address and telephone number of the Contracting Officer is:

Julie Hudman, Director

Department of Health Care Finance

825 North Capitol St, NE

Suite 5135

Washington, DC 20002

G.5.3 Authorized Changes by the Contracting Officer

G.5.3.1 The Contracting Officer is the only person authorized to approve changes in any of the requirements of the Contract.

G.5.3.2 Contractor shall not comply with any order, directive or request that changes or modifies the requirements of the Contract, unless issued in writing and signed by the Contracting Officer.

G.5.3.3 In the event Contractor effects any change at the instruction or request of any person other than the Contracting Officer, 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 TECHNICAL REPRESENTATIVE (COTR)

G.6.1 The COTR is responsible for general administration of the Contract and advising the Contracting Officer as to Contractor's compliance or noncompliance with the contract. In addition, the COTR is responsible for the day-to-day monitoring and supervision of the Contract, of ensuring that the work conforms to the requirements of the Contract and such other responsibilities and authorities as may be specified in the contract.

G.6.2 The COTR for the Contract is:

Leyla Sarigol, MFP Project Director

Department of Health Care Finance

825 North Capitol St, NE

Suite 5135

Washington, DC 20002

202-442-5918

G.6.3 The COTR shall not have authority to make any changes in the specifications, scope of work, or terms and conditions of the Contract.

G.6.4 Contractor may be held fully responsible for any changes not authorized in advance, in writing, by the Contracting Officer; 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.

G.7 STOPPAGE OF WORK

G.7.1 If the Contractor fails to abide by any, or all, of the provisions of the contract, the CO reserves the right to stop all the work, or any portion thereof, affected by the Contractor's failure to comply with the contract requirements. This stoppage will remain in effect until the Contractor has taken action to meet the contract requirements, or any separable part thereof. After written notification and work stoppage, the District may terminate the right of the Contractor to proceed as provided in TERMINATION-DELAYS, of Standard Contract Provisions For Use With Supplies and Services Contract set forth in Section I.

G.8 SUBCONTRACTS

G.8.1 Nothing contained in the contract shall be construed as creating any contractual relationship between any subcontractor and the Government of the District of Columbia.

G.8.2 The divisions or sections of any requirements related herein are not intended to control the Contractor in dividing the work among the subcontractors or to limit the work performed by any trade.

G.8.3 The Contractor shall be as fully responsible to the Government of the District of Columbia for the acts and omissions of subcontractor and of persons employed by them as he is for the acts and omissions of persons directly employed by him.

G.8.4 The Contractor shall coordinate the trades, subcontractor and material persons engaged upon his work.

G.8.5 The Contractor shall, without additional expense to the Government of the District of Columbia, utilize the services of specialty subcontractors for those parts of the work which are specified to be performed by specialty subcontractors.

G.8.6 The Government of the District of Columbia will not undertake to settle any differences between the Contractor and his subcontractors or between subcontractors.

G.8.7 The Contractor shall not subcontract any portion of the contract except with the prior written consent of the CO, or his authorized representatives, and such consent, when given, shall not be construed to relieve the Contractor of any responsibility for the fulfillment of the contract. Request(s) for permission to subcontract any portion of the contract shall be in writing and accompanied by: (a) a showing that the organization which will perform the work is particularly experienced and equipped for such work, and (b) an assurance by the Contractor that the Labor Standards Provisions set forth in this contract shall apply to labor performed on all work encompassed by the request(s). The request(s) also shall provide the following information:

G.8.7.1 Subcontractors name, address, telephone number, and Federal Social Security Number used on the Employers Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

G.8.7.2 Estimated dollar amount of the subcontract.

G.8.7.3 Estimated starting and completion dates of the subcontract.

G.8.7.4 The subcontractor approval request form included herein should be used to request approval of subcontractor on this project. The form should be completed for each subcontractor requested for approval and submitted to the CO. Copies of these forms are available upon request from the COTR.

G.8.8 Any work or service so subcontracted shall be performed pursuant to a subcontract agreement, which the District will have the right to review and approve prior to its execution by the Contractor. Any such subcontract shall specify that the Contractor and the subcontractor shall be subject to every provision of this contract. Notwithstanding any such subcontract approved by the District, the Contractor shall remain liable to the District for all Contractor's work and services required hereunder.

G.9 PATENTS

G.9.1 The Contractor shall hold and save the Government, its officers, agents, servants and employees, harmless for liability of, any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, article or appliance manufactured or used in the performance of this contract, including their use by the Government of the District of Columbia.

G.10 COST AND PRICING DATA (applicable to a Change Order or Modification)

G.10.1 Unless otherwise provided in the solicitation, the Contractor shall, before negotiating any price adjustments pursuant to a change order or modification, submit cost or pricing data and certification that, to the best of the Contractor's knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of the date of negotiation of the change order or modification.

G.10.2 If any price, including profit or fee, negotiated in connection with any change order or contract modification, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified by the Contractor, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified by the Contractor, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

G.10.3 Cost or pricing data includes all facts as of the time of price agreement that prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective Contractor's judgment about estimated future costs or projections, cost or pricing data do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred.

G.10.4 The following specific information should be included as cost or pricing data, as applicable:

G.10.4.1 Vendor quotations;

G.10.4.2 Nonrecurring costs;

G.10.4.3 Information on changes in production methods or purchasing volume;

G.10.4.4 Data supporting projections of business prospects and objectives and related operations costs;

G.10.4.5 Unit cost trends such as those associated with labor efficiency;

G.10.4.6 Make or buy decisions;

G.10.4.7 Estimated resources to attain business goals;

G.10.4.8 Information on management decisions that could have a significant bearing on costs.

G.10.5 If the Contractor is required to submit cost or pricing data in connection with pricing any change order or modification of this contract, the CO or representatives of the CO shall have the right to examine all books, records, documents and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the change order or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. Contractor shall make available at its office at all reasonable times the materials described above for examination, audit, or reproduction until three years after the later of:

G.10.5.1 Final payment under the contract;

G.10.5.2 Final termination settlement; or

G.10.5.3 Final disposition of any appeals under the disputes clause or of litigation or the settlement of claims arising under or relating to the contract.

SECTION H
SPECIAL CONTRACT REQUIREMENTS

- H.1** District Responsibilities
- H.2** Recipients Held Harmless
- H.3** General Subcontract Requirements
- H.4** Conflict of Interest
- H.5** Records Retention
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- H.10** Hiring of District Residents as Apprentices and Trainees
- H.11** 51% District Residents New Hire Requirements & First Source Employment Agreement
- H.12** Way to Work Amendment Act of 2006
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- H.20** Energy Efficiency
- H.21** HIPAA Compliance – Business Associate Agreement
- H.22** Key Personnel

SECTION H

SPECIAL CONTRACT REQUIREMENTS

H.1 DISTRICT RESPONSIBILITIES

H.1.1 DHCF will provide a template for the one-page progress report that reflects monthly housing statistics and major developments set forth in Section F.

H.1.2 If DHCF disapproves any of the items set forth in Section F, Contractor shall correct any deficiency and resubmit to DHCF.

H.2 RECIPIENTS HELD HARMLESS

H.2.1 Contractor shall hold harmless the District government and DHCF against any loss, damage, expense and liability of any kind that arises from any action of the organization or its subcontractors in the performance of the Contract.

H.3 GENERAL SUBCONTRACT REQUIREMENTS

H.3.1 Subcontracting

H.3.1.1 Contractor shall ensure that all activities carried out by any subcontractor conform to the provisions of the Contract and are clearly specified in the subcontract.

H.3.1.2 Contractor shall include in all of its contracts and subcontracts a requirement that Contractor or subcontractor look solely to Contractor for payment for services rendered.

H.3.1.3 It is the responsibility of Contractor to ensure its subcontractors are capable of meeting the reporting requirements under the Contract and, if they cannot, Contractor is not relieved of the reporting requirements.

H.3.2 Termination of Subcontract

H.3.2.1 Contractor shall notify the Contracting Officer, in writing, of the termination of any subcontract for the provision or administration of medical services, including the arrangements made to ensure continuation of the services covered by the terminated subcontract, not less than forty-five (45) days prior to the effective date of the termination, unless immediate termination of the Contract is necessary to protect the health and safety of Enrollees or prevent fraud and abuse. In such an event, Contractor shall notify the COTR and Contracting Officer immediately upon taking such action.

H.3.2.2 If the District determines that the termination or expiration of a subcontract materially affects the ability of Contractor to carry out its responsibility under this contract, the District may terminate the Contract.

H.3.3 Review and Approval of Subcontracts

H.3.3.1 Contractor shall submit copies of subcontracted agreements to the Contracting Officer and the COTR prior to execution of the Contract by Contractor.

H.4 CONFLICT OF INTEREST

H.4.1 In accordance with 45 C.F.R. § 74.42, no employee, officer, or agent of Contractor shall participate in the selection, award, or administration of the Contract if a real or apparent conflict of interest would be involved.

H.4.1.1 A Conflict of Interest arises when the employee, officer, or agent, or any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award.

H.4.1.2 The officers, employees, and agents of Contractor shall neither solicit nor accept gratuities, favors, or anything of monetary value from Contractors, or parties to subcontracts. However, Contractor may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employers, or agents of the recipients.

H.4.2 In accordance with the District of Columbia Code § 27-2220, DHCF shall avoid any potential organization conflict of interest by an Offeror that may arise in the award of this procurement.

H.4.2.1 An organizational conflict of interest may result from an actual or potential conflict of interest on an instant contract, or when the nature of the work to be performed on the instant contract creates an actual or potential conflict of interest on a previous or future contract. (Federal Acquisitions Regulation, 45 C.F.R. §9.5).

H.4.2.2 Contractor shall identify any previous management support services; consultant or other professional services; contractor performance of or assistance in technical evaluations; and systems engineering and technical direction work performed by Contractor that are related in any manner to the services, goods, or supplies being acquired in this procurement (CDCR 27-2220).

H.4.2.3 Specifically, Contractor shall not be currently involved with or connected to any Contractor or subcontractor that is contracted by DHCF as an adjudicator of claims or billing agent for DHCF and shall attest to such (See Conflict of Interest Attestation, Attachment J.14).

H.4.3 Contractor represents and covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree

with the performance of its services hereunder. Contractor further covenants that, in the performance of the Contract, no person having any such known interests shall be employed.

H.4.4 No official or employee of the District or the federal government who exercises any functions or responsibilities in the review of approval of the undertaking or carrying out of the Contract shall, prior to the termination of the Contract, voluntarily acquire any personal interest, direct or indirect, in the Contract or proposed Contract (D.C. Procurement Practices Act of 1985, D.C. Law 6-85 and Chapter 18 of the D.C. Personnel Regulations).

H.5 RECORDS RETENTION

H.5.1 Contractor shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Contract for the length of the Contract in addition to a period of six (6) years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report. The only exceptions are the following:

H.5.1.1 If any litigation, claim, financial management review, or audit is started before the expiration of the record retention period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken;

H.5.1.2 Records for real property and equipment acquired with federal funds shall be retained for six (6) years after final disposition; and

H.5.1.3 When records are transferred to or maintained by the HHS awarding agency, the record retention requirement is not applicable to the recipient.

H.6 CONFIDENTIALITY OF INFORMATION

H.6.1 Contractor shall use and disclose such individually identifiable health information only in accordance with the privacy requirements in 45 C.F.R. Parts 160 and 164, subparts A and E, HIPAA, 42 C.F.R. Part 2, and the Mental Health Information Act to the extent that these requirements are applicable.

H.7 FREEDOM OF INFORMATION ACT

H.7.1 The District of Columbia Freedom of Information Act (FOIA), 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.

H.7.2 If Contractor receives a request for such information, Contractor shall immediately send the request to the COTR designated in Section G.7 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 Contractor pursuant to the Contract, the COTR will forward a copy to Contractor. In either event, 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. The District will reimburse Contractor for the costs of searching and copying the records in accordance with D.C. Official Code § 2-532 and Chapter 4 of Title 1 of the D.C. Municipal Regulations.

H.8 DEBARMENT AND SUSPENSION (E.O.S 12549 AND 12689)

H.8.1 In accordance with 45 C.F.R. Part 74 (Appendix A), certain contracts shall not be made to parties listed on the non-procurement portion of the General Services Administration's "Lists of Parties Excluded from Federal Procurement or Non-Procurement Programs" in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies and Contractors declared ineligible under statutory authority other than E.O. 12549.

H.8.2 Contractors with awards that exceed the simplified acquisition threshold of one hundred thousand dollars (\$100,000) shall provide the required certification regarding their exclusion status and that of their principals prior to the Date of Award of the Contract.

H.9 DEPARTMENT OF LABOR WAGE DETERMINATIONS

H.9.1 Contractor shall be bound by the Wage Determination No.: 2005-2103 Rev. No 5, dated May 8, 2008, issued by the U.S. Department of Labor in accordance with the Service Contract Act (41 U.S.C. § 351 *et seq.*) and incorporated herein as Section J.2 of this solicitation. Contractor shall be bound by the wage rates for the term of the Contract.

H.9.2 If an option is exercised, Contractor shall be bound by the applicable wage rate at the time of the option. If the option is exercised and the Contracting Officer obtains a revised wage determination, the revised wage determination is applicable for the option periods and Contractor may be entitled to an equitable adjustment.

H.10 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES

H.10.1 For all new employment resulting from this contract or subcontracts hereto, as defined in Mayor's Order 83-265 and implementing instructions, Contractor shall use its best efforts to comply with the following basic goal and objectives for utilization of bona fide residents of the District in each project's labor force:

H.10.1.1 At least fifty-one percent (51%) of apprentices and trainees employed shall be residents of the District of Columbia registered in programs approved by the District of Columbia Apprenticeship Council.

H.10.2 Contractor shall negotiate an Employment Agreement with the Department of Employment Services (DOES) for jobs created as a result of this contract. DOES shall be Contractor's first source of referral for qualified applicants, trainees, and other workers in the implementation of employment goals contained in this clause.

H.11 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT

H.11.1 Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code, sec. 2-219.01 et seq. ("First Source Act").

H.11.2 Contractor shall enter into and maintain, during the term of the Contract, a First Source Employment Agreement, (Attachment J.5) in which Contractor shall agree that:

H.11.2.1 The first source for finding employees to fill all jobs created in order to perform this contract shall be the DOES; and

H.11.2.2 The first source for finding employees to fill any vacancy occurring in all jobs covered by the First Source Employment Agreement shall be the First Source Register.

H.11.3 Contractor shall submit to DOES, no later than the tenth (10th) of each month following execution of the Contract, a First Source Agreement Contract Compliance Report (contract compliance report) verifying its compliance with the First Source Agreement for the preceding month. The contract compliance report for the Contract shall include the:

H.11.3.1 Number of employees needed;

H.11.3.2 Number of current employees transferred;

H.11.3.3 Number of new job openings created;

H.11.3.4 Number of job openings listed with DOES;

H.11.3.5 Total number of all District residents hired for the reporting period and the cumulative total number of District residents hired; and

H.11.3.6 Total number of all employees hired for the reporting period and the cumulative total number of employees hired, including:

H.11.3.6.1 Name;

H.11.3.6.2 Social Security number;

H.11.3.6.3 Job title;

H.11.3.6.4 Hire date;

H.11.3.6.5 Residence; and

H.11.3.6.6 Referral source for all new hires.

H.11.4 If the Contract amount is equal to or greater than one hundred thousand dollars (\$100,000), Contractor agrees that fifty-one percent (51%) of the new employees hired for the Contract shall be District residents.

H.11.5 With the submission of Contractor's final request for payment from the District, Contractor shall:

H.11.5.1 Document in a report to the Contracting Officer its compliance with Section H.11.4 of this clause; or

H.11.5.2 Submit a request to the Contracting Officer for a waiver of compliance with Section H.11.4 and include the following documentation:

H.11.5.2.1 Material supporting a good faith effort to comply;

H.11.5.2.2 Referrals provided by DOES and other sources;

H.11.5.2.3 Advertisement of job openings listed with DOES and other referral sources; and

H.11.5.2.4 Any documentation supporting the waiver request pursuant to Section H.11.6.

H.11.6 The Contracting Officer may waive the provisions of Section H.11.4 if the Contracting Officer finds:

H.11.6.1 A good faith effort to comply is demonstrated by Contractor;

H.11.6.2 Contractor is located outside the Washington Standard Metropolitan Statistical Area and none of the contract work is performed inside the Washington Standard Metropolitan Statistical Area which includes the District of Columbia; the Virginia Cities of Alexandria, Falls Church, Manassas, Manassas Park, Fairfax, and Fredericksburg, the Virginia Counties of Fairfax, Arlington, Prince William, Loudoun, Stafford, Clarke, Warren, Fauquier, Culpeper, Spotsylvania, and King George; the Maryland Counties of Montgomery, Prince Georges, Charles, Frederick, and Calvert; and the West Virginia Counties of Berkeley and Jefferson;

H.11.6.3 Contractor enters into a special workforce development training or placement arrangement with DOES; or

H.11.6.4 DOES certifies that there are insufficient numbers of District residents in the labor market possessing the skills required by the positions created as a result of the Contract.

H.11.7 Upon receipt of Contractor's final payment request and related documentation pursuant to Sections H.11.5 and H.11.6, the Contracting Officer shall determine whether Contractor is in compliance with Section H.11.4 or whether a waiver of compliance pursuant to Section H.11.6 is justified. If the Contracting Officer determines that Contractor is in compliance, or that a waiver of compliance is justified, the Contracting Officer shall, within two (2) business days of making the determination forward a copy of the determination to the Agency Chief Financial Officer and the COTR.

H.11.8 Willful breach of the First Source Employment Agreement, or failure to submit the report pursuant to Section H.5.5, or deliberate submission of falsified data, may be enforced by the Contracting Officer through imposition of penalties, including monetary fines of five percent (5%) of the total amount of the direct and indirect labor costs of the contract. Contractor shall make payment to DOES. Contractor may appeal to the D.C. Contract Appeals Board as provided in the Contract any decision of the Contracting Officer pursuant to this Section H.11.8.

H.11.9 The provisions of Sections H.11.4 through H.11.8 do not apply to nonprofit organizations.

H.12 WAY TO WORK AMENDMENT ACT OF 2006

H.12.1 Except as described in Section H.12.8 below, 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 twelve (12) month period.

H.12.2 Contractor shall pay its employees and subcontractors who perform services under the Contract no less than the current living wage published on the OCP website at www.ocp.dc.gov.

H.12.3 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 Contract no less than the current living wage rate.

H.12.4 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.

H.12.5 Contractor shall provide a copy of the Fact Sheet attached as Attachment J.7 to each employee and subcontractor who performs services under the Contract. Contractor shall also post the Notice attached as Attachment J.6 in a conspicuous place in its place of business. 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.12.6 Contractor shall maintain its payroll records under the Contract in the regular course of business for a period of at least three (3) years from the payroll date,

and shall include this requirement in its subcontracts for fifteen thousand dollars (\$15,000) or more under the Contract.

H.12.7 The payment of wages required under the Living Wage Act of 2006 shall be consistent with and subject to the provisions of D.C. Official Code § 32-1301 et seq.

H.12.8 The requirements of the Living Wage Act of 2006 do not apply to:

H.12.8.1 Contracts or other agreements that are subject to higher wage level determinations required by federal law;

H.12.8.2 Existing and future collective bargaining agreements, provided, that the future collective bargaining agreement results in the employee being paid no less than the established living wage;

H.12.8.3 Contracts for electricity, telephone, water, sewer or other services provided by a regulated utility;

H.12.8.4 Contracts for services needed immediately to prevent or respond to a disaster or eminent threat to public health or safety declared by the Mayor;

H.12.8.5 Contracts or other agreements that provide trainees with additional services including, but not limited to, case management and job readiness services; provided that the trainees do not replace employees subject to the Living Wage Act of 2006;

H.12.8.6 An employee under twenty-two (22) years of age employed during a school vacation period, or enrolled as a full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than twenty-five (25) hours per week; provided that he or she does not replace employees subject to the Living Wage Act of 2006;

H.12.8.7 Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia; provided, that the tenant or retail establishment did not receive direct government assistance from the District;

H.12.8.8 Employees of nonprofit organizations that employ not more than fifty (50) individuals and qualify for taxation exemption pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3));

H.12.8.9 Medicaid provider agreements for direct care services to Medicaid recipients, provided, that the direct care service is not provided through a home care agency, a community residence facility, or a group home for mentally retarded persons as those terms are defined in Section 2 of the Health-Care and

Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501); and

H.12.8.10 Contracts or other agreements between MCOs and the DHCF to provide health services.

H.12.9 The Mayor may exempt a contractor from the requirements of the Living Wage Act of 2006, subject to the approval of Council, in accordance with the provisions of Section 109 of the Living Wage Act of 2006.

H.13 PUBLICITY

H.13.1 Contractor shall at all times obtain the prior written approval from the Contracting Officer 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.14 PROTECTION OF PROPERTY

H.14.1 Contractor shall be responsible for any damage to the building, interior, or their approaches in delivering equipment covered by this contract.

H.15 AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)

H.15.1 During the performance of the Contract, 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.16 SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED

H.16.1 During the performance of the contract, 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 program and activities. See 29 U.S.C. 794 *et seq.*

H.17 CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT, AS AMENDED

H.17.1 In accordance with 45 C.F.R. § 74 Appendix A, contracts and sub-grants of amount in excess of one-hundred thousand dollars (\$100,000) shall contain a provision that requires Contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, Pollution Control Act, 42 U.S.C. §§ 7401 *et seq.*, and the Federal Water Pollution Control Act, as amended 33 U.S.C. §§ 1251 *et seq.*

H.17.2 Violations shall be reported to the Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. Contractor shall comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. § 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. § 15).

H.18 BYRD ANTI-LOBBYING AMENDMENT

H.18.1 In accordance with 45 C.F.R. Appendix A, Contractors who apply or bid for an award of more than one hundred thousand dollars (\$100,000) shall file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress or an employee of a member of Congress in connection with obtaining any federal contract, grant or other award covered by 31 U.S.C. § 1352.

H.18.2 Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to Contractor.

H.19 INTELLECTUAL PROPERTY

H.19.1 In accordance with 45 C.F.R. § 74, Contractor shall comply with notice of grantor agency requirements and regulations pertaining to reporting and patient rights under any contract involving research development, experimental or demo work with respect to any discovery of invention which arises or is developed in the course of the Contract, and if grantor agency requirements and regulations pertaining to copyrights and rights in data.

H.20 ENERGY EFFICIENCY

H.20.1 Contractor shall recognize mandatory standards and policies related to energy efficiency which are contained in the District's energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-165, 42 U.S.C. §§ 6-201 *et seq.*).

H.21 HIPAA COMPLIANCE – BUSINESS ASSOCIATE AGREEMENT

H.21.1 DHCF is a “Covered Entity” as that term is defined in the Privacy Rule and Security Rules and Contractor, as a recipient of Protected Health Information and/or Electronic Protected Health Information from DHCF, is a “Business Associate” as that term is defined in the Privacy and Security Rules.

H.21.2 Definitions

The following definitions shall apply to this Section:

H.21.2.1 Administrative Safeguards: administrative actions, policies, and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic protected health information and to manage the conduct of the Covered Entity's workforce in relation to the protection of that information.

H.21.2.2 Business Associate: a person or entity, who performs, or assists in the performance of a function or activity on behalf of a Covered Entity or an organized health care organization in which the Covered Entity participates, involving the use or disclosure of individually identifiable health information, other than in the capacity of a workforce member of such Covered Entity or organization. A business associate is also any person or organization that provides, other than in the capacity of a workforce member of such Covered Entity, legal, actuarial, accounting, consulting, data aggregation, management, administration, accreditation, or financial services to or for the Covered Entity and receives individually identifiable health information from a Covered Entity or another business associate on behalf of a Covered Entity. In some instances, a Covered Entity may be a business associate of another Covered Entity.

H.21.2.3 Covered Entity: a health plan, a health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a transaction covered by 45 C.F.R. Parts 160 and 164 of the Privacy and Security Rules. Covered Entity is also referred to as Covered Agency within this HIPAA Compliance Clause. With respect to this HIPAA Compliance Clause, Covered Entity shall also include the designated health care components of a hybrid entity.

H.21.2.4 Data Aggregation: with respect to Protected Health Information created or received by a business associate in its capacity as the business associate of a Covered Entity, the combining of such Protected Health Information by the business associate with the Protected Health Information received by the business associate in its capacity as a business associate of another Covered Entity, to permit data analyses that relate to the health care operations of the respective covered entities.

H.21.2.5 Designated Record Set: a group of records maintained by or for the Covered Entity that is:

H.21.2.5.1 The medical records and billing records about individuals maintained by or for a covered health care provider;

H.21.2.5.2 The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or

H.21.2.5.3 Used, in whole or in part, by or for the Covered Entity to make decisions about individuals.

H.21.2.6 HIPAA: the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, codified at 42 USCA 1320d, et.seq. and its implementing regulations at 45 C.F.R. Parts 160, 162, and 164.

H.21.2.7 Electronic Media:

H.21.2.7.1 Electronic storage media including memory devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or

H.21.2.7.2 Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media, because the information being exchanged did not exist in electronic form before the transmission.

H.21.2.8 Electronic Protected Health Information: Protected Health Information which is transmitted by Electronic Media (as defined herein) or maintained in Electronic Media.

H.21.2.9 Health Care: care services, or services, or supplies related to the health of an individual. Health care includes, but is not limited to, the following:

H.21.2.9.1 Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and

H.21.2.9.2 Sale or dispensing of a drug, device, equipment, or other item in accordance with the prescription.

H.21.2.10 Health Care Components: a component or a combination of components of a hybrid entity designated by a hybrid entity in accordance with 45 C.F.R. § 164.105(a)(2)(iii)(C). Health Care Components must include non-covered functions that provide services to the covered functions for the purpose of facilitating the sharing of Protected Health Information with such functions of the hybrid entity without business associate agreements or individual authorizations.

H.21.2.11 “Health Care Operations: shall have the same meaning as the term “health care operations” in 45 C.F.R. § 164.501.

H.21.2.12 Hybrid Entity: a single legal entity that is a Covered Entity and whose business activities include both covered and non-covered functions, and that designates health care components in accordance with 45 C.F.R. § 164.105(a)(2)(iii)(C). A Hybrid Entity is required to designate as a health care component, any other components of the entity that provide services to the covered functions for the purpose of facilitating the sharing of Protected Health Information with such functions of the hybrid entity without business associate agreements or individual authorizations.

H.21.2.13 Individual: the person who is the subject of protected health information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

H.21.2.14 Individually Identifiable Health Information: a subset of health information, including demographic information collected from an individual, and:

H.21.2.14.1 Is created or received by a health care provider, health plan, employer, or health care clearinghouse;

H.21.2.14.2 Relates to the past, present, or future physical or mental health or condition of an individual; or the past, present, or future payment for the provision of health care to an individual;

H.21.2.14.3 Identifies the individual; or

H.21.2.14.4 With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

H.21.2.15 National Provider Identifier (NPI) Rule: the Standard Unique Health Identifier for Healthcare Providers; Final Rule at 45 C.F.R. Part 162.

H.21.2.16 Physical Safeguards: security measures to protect a Covered Entity's electronic information systems and related buildings and equipment from natural and environmental hazards and unauthorized intrusion.

H.21.2.17 Privacy Official: person within the Office of Healthcare Privacy and Confidentiality designated by the District of Columbia, a Hybrid Entity, who is responsible for developing, maintaining, implementing and enforcing the District-wide Privacy Policies and Procedures, and for overseeing full compliance with the Privacy Rule, and other applicable federal and District of Columbia privacy laws.

H.21.2.18 Privacy Officer: person designated by the Privacy Official or one of the District of Columbia's designated health care components, who is responsible for enforcing the provisions of the District's Privacy policies and procedures as well as overseeing full compliance with the Covered Agency's Privacy Policies and Procedures, the Privacy Rule, and other applicable federal and District of

Columbia privacy laws. The Covered Agency's privacy officer will follow the guidance of the District's Privacy Official, and shall be responsive to and report to the District's Privacy Official.

H.21.2.19 Privacy Rule: Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.

H.21.2.20 Protected Health Information: individually identifiable health information that is:

H.21.2.20.1 Transmitted by electronic media;

H.21.2.20.2 Maintained in electronic media;

H.21.2.20.3 Transmitted or maintained in any other form or medium;

H.21.2.20.4 Limited to the information created or received by the Business Associate from or on behalf of the Covered Entity; and

H.21.2.20.5 Excluding information in the records listed in subsection (2) of the definition in 45 C.F.R. §160.103.

H.21.2.21 Record: any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or for the Covered Entity.

H.21.2.22 Required By Law: same meaning as the term "required by law" in 45 C.F.R. § 164.103.

H.21.2.23 Secretary: the Secretary of the United States Department of Health and Human Services or his or her designee.

H.21.2.24 Security Incident: attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

H.21.2.25 Security Official: person within the Office of Healthcare Privacy and Confidentiality designated by the District of Columbia, a Hybrid Entity, who is responsible for developing, maintaining, implementing and enforcing the District-wide Security policies and procedures as required by the Security Rule and oversee full compliance the District's Security policies and procedures, as well as other applicable federal and District of Columbia security law.

H.21.2.26 Security Officer: person designated by the Security Official or one of the District of Columbia's designated health care components, who is responsible for enforcing the provisions of the District Security Rule policies and procedures as well as overseeing full compliance with the Covered Agency's Security Policies and Procedures, the Security Rule, and other applicable federal and

District of Columbia security law(s). The Covered Agency's security officer will follow the guidance of the District's Security Official, and shall be responsive to and report to the District's Security Official.

H.21.2.27 Security Rule: the Standards for Security of Individually Identifiable Health Information at 45 C.F.R. part 164.

H.21.2.28 Technical Safeguards: the technology and the policies and procedures for its use that protect electronic protected health information and control access.

H.21.2.29 Workforce: employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a Covered Entity or business associate, is under the direct control of such entity, whether or not they are paid by the Covered Entity or business associate.

H.21.3 Obligations and Activities of Business Associate

H.21.3.1 The Business Associate agrees not to use or disclose Protected Health Information and Electronic Protected Health Information other than as permitted or required by this HIPAA Compliance Clause or as Required by Law.

H.21.3.2 The Business Associate agrees to use commercially reasonable efforts and appropriate safeguards to maintain the security of the Protected Health Information and Electronic Protected Health Information and to prevent use or disclosure of such Protected Health Information other than as provided for by this Compliance Clause.

H.21.3.3 The Business Associate agrees to establish procedures for mitigating, and to mitigate to the extent practicable, any deleterious effects that are known to the Business Associate of a use or disclosure of Protected Health Information and Electronic Protected Health Information by the Business Associate in violation of the requirements of this Compliance Clause.

H.21.3.4 The Business Associate agrees to report to Covered Entity, in writing, any use or disclosure of the Protected Health Information and Electronic Protected Health Information not permitted or required by this HIPAA Compliance Clause to the District Privacy Official or the DHCF Privacy Officer immediately, but no later than (10) days from the time the Business Associate becomes aware of such unauthorized use or disclosure.

H.21.3.5 The Business Associate agrees to ensure that any workforce member or any agent, including a subcontractor, agrees to the same restrictions and conditions that apply through this Compliance Clause with respect to Protected Health Information and Electronic Protected Health Information received from the Business Associate, Protected Health Information and Electronic Protected Health Information created by the Business Associate, or Protected Health

Information and Electronic Protected Health Information received by the Business Associate on behalf of the Covered Entity.

H.21.3.6 The Business Associate agrees to provide access, at the request of the Covered Entity or an Individual, at a mutually agreed upon location, during normal business hours, and in a format as directed by the District Privacy Official or the DHCF Privacy Officer, or as otherwise mandated by the Privacy Rule or applicable District of Columbia laws, rules and regulations, to Protected Health Information in a Designated Record Set, to the Covered Entity or an Individual, in compliance with applicable portions of the Department of Health Care Finance Privacy Policy Operations Manual, Policy Number IV.14. Individual's Information Rights - Access, attached hereto as Exhibit A and incorporated by reference, and within five (5) business days of the request to facilitate the District's compliance with the requirements under 45 C.F.R. §164.524.

H.21.3.7 The Business Associate agrees to make any amendment(s) to the Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 in a format or as directed by the District Privacy Official or the DHCF Privacy Officer, or as otherwise mandated by the Privacy Rule or applicable District of Columbia laws, in compliance with applicable portions of the Department of Health Care Finance Privacy Policy Operations Manual, Policy Number IV.15 Individual's Information Rights, attached hereto as Exhibit B and incorporated by reference, and within five (5) business days of the directive in order to facilitate the District's compliance with the requirements under 45 C.F.R. §164.526.

H.21.3.8 The Business Associate agrees to use the standard practices of the Covered Entity to verify the identification and authority of an Individual who requests the Protected Health Information in a Designated Record Set of a recipient of services from or through the Covered Entity. The Business Associate agrees to comply with the applicable portions of the Department of Health Care Finance Privacy Policy Operations Manual, Policy Number VII.25 Standard Procedure, attached hereto as Exhibit C and incorporated by reference.

H.21.3.9 The Business Associate agrees to record authorizations and log such disclosures of Protected Health Information and Electronic Protected Health Information and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528 and applicable District of Columbia laws, rules and regulations. The Business Associate agrees to comply with the applicable portions of the Department of Health Care Finance Administration Privacy Policy Operations Manual, Policy Number VII.27 Standard Procedures attached hereto as Exhibit D and incorporated by reference.

H.21.3.10 The Business Associate agrees to provide to the Covered Entity or an Individual, within five (5) business days of a request at a mutually agreed upon

location, during normal business hours, and in a format designated by the District Privacy Official or the DHCF Privacy Officer and the duly authorized Business Associate workforce member, information collected in accordance with Paragraph (i) of this Section above, to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information and Electronic Protected Health Information in accordance with 45 C.F.R. § 164.528, and applicable District of Columbia laws, rules and regulations. The Business Associate agrees to comply with the applicable portions of the Department of Health Care Finance Privacy Policy Operations Manual, Policy Number IV.16 Individual's Information Rights - attached hereto as Exhibit E and incorporated by reference.

H.21.3.11 The Business Associate agrees to make internal practices, books, and records, including policies and procedures, and Protected Health Information, relating to the use and disclosure of Protected Health Information received from the Business Associate, or created, or received by the Business Associate on behalf of the Covered Entity, available to the Covered Entity, or to the Secretary, within five (5) business days of their request and at a mutually agreed upon location, during normal business hours, and in a format designated by the District Privacy Official or the DHCF Privacy Officer and the duly authorized Business Associate workforce member, or in a time and manner designated by the Secretary, for purposes of the Secretary in determining compliance of the Covered Entity with the Privacy Rule and Security Rule.

H.21.3.12 The Business Associate may aggregate Protected Health Information in its possession with the Protected Health Information of other Covered Entities that Business Associate has in its possession through its capacity as a Business Associate to said other Covered Entities provided that the purpose of such aggregation is to provide the Covered Entity with data analyses to the Health Care Operations of the Covered Entity. Under no circumstances may the Business Associate disclose Protected Health Information of one Covered Entity to another Covered Entity absent the explicit written authorization and consent of the Privacy Officer or a duly authorized workforce member of the Covered Entity.

H.21.3.13 Business Associate may de-identify any and all Protected Health Information provided that the de-identification conforms to the requirements of 45 C.F.R. § 164.514(b). Pursuant to 45 C.F.R. § 164.502(d)(2), de-identified information does not constitute Protected Health Information and is not subject to the terms of this HIPAA Compliance Clause.

H.21.4 Permitted Uses and Disclosures by the Business Associate

H.21.4.1 Except as otherwise limited in this HIPAA Compliance Clause, the Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the Covered Entity as specified in the Contract, provided that such use or disclosure would not violate the Privacy Rule or the Security Rule if same activity were performed by the

Covered Entity or would not violate the minimum necessary policies and procedures of the Covered Entity.

H.21.4.2 Except as otherwise limited in this HIPAA Compliance Clause, the Business Associate may use Protected Health Information and Electronic Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

H.21.4.3 Except as otherwise limited in this HIPAA Compliance Clause, the Business Associate may disclose Protected Health Information and Electronic Protected Health Information for the proper management and administration of the Business Associate, provided that the disclosures are Required By Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used, or further disclosed, only as Required By Law, or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it has knowledge that the confidentiality and security of the information has been breached.

H.21.4.4 Except as otherwise limited in this HIPAA Compliance Clause, the Business Associate may use Protected Health Information and Electronic Protected Health Information to provide Data Aggregation services to the Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

H.21.4.5 Business Associate may use Protected Health Information and Electronic Protected Health Information to report violations of the Law to the appropriate federal and District of Columbia authorities, consistent with 45 C.F.R. § 164.502(j)(1).

H.21.5 Additional Obligations of the Business Associate

H.21.5.1 Business Associate shall submit a written report to the Covered Entity that identifies the files and reports that constitute the Designated Record Set of the Covered Entity. Business Associate shall submit said written report to the Privacy Officer no later than thirty (30) days after the commencement of the HIPAA Compliance Clause. In the event that Business Associate utilizes new files or reports which constitute the Designated Record Set, Business Associate shall notify the Covered Entity of said event within thirty (30) days of the commencement of the file's or report's usage. The Designated Record Set file shall include, but not be limited to the identity of the following:

H.21.5.1.1 Name of the Business Associate of the Covered Entity;

H.21.5.1.2 Title of the Report/File;

H.21.5.1.3 Confirmation that the Report/File contains Protected Health Information (Yes or No);

H.21.5.1.4 Description of the basic content of the Report/File;

H.21.5.1.5 Format of the Report/File (Electronic or Paper);

H.21.5.1.6 Physical location of Report/File;

H.21.5.1.7 Name and telephone number of current member(s) of the workforce of the Covered Entity or other District of Columbia Government agency responsible for receiving and processing requests for Protected Health Information; and

H.21.5.1.8 Supporting documents if the recipient/personal representative has access to the Report/File.

H.21.5.2 Business Associate must provide assurances to the Covered Entity that it will continue to employ sufficient administrative, technical and physical safeguards, as described under the Security Rule, to protect and secure (the Covered Entity's) EPHI entrusted to it. These safeguards include:

H.21.5.2.1 The Business Associate agrees to develop, maintain, implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that the Business Associate creates, receives, maintains or transmits on behalf of the Covered Entity.

H.21.5.2.2 The Business Associate agrees to ensure that any agents or subcontractors of the Business Associate also agree to implement the appropriate security safeguards.

H.21.5.2.3 The Business Associate agrees to report to the Covered Entity any security incident of which it becomes aware, including any attempts to access EPHI, whether those attempts were successful or not.

H.21.5.2.4 This Business Associate Agreement may be terminated if the Covered Entity determines that the business associate has materially breached this Compliance Clause, consistent with the terms and conditions outlined in Section 9, Term and Termination.

H.21.5.2.5 The Business Associate agrees to make all policies and procedures, and documents relating to security, available to the Covered Entity or Secretary of HHS for the purposes of determining the Covered Entity's compliance with the Privacy and Security Rules. Notwithstanding the above, Business Associate has identified some security policies and procedures as confidential and which do not get distributed to third parties. In the event the Covered Entity or Secretary of HHS makes a request for such security policies and procedures, Business Associate will work with the Covered Entity and the Secretary of HHS to arrange a meeting at the Business Associate's premises, at a time and

place mutually agreeable to the parties involved, to view such security policies and procedures.

H.21.5.2.6 This Compliance Clause continues in force for as long as the Business Associate retains any access to the Covered Entity's EPHI.

H.21.6 Sanctions

H.21.6.1 Business Associate agrees that its workforce members, agents and subcontractors who violate the provisions of the Privacy Rule, the Security Rule or other applicable federal or District of Columbia privacy law will be subject to discipline in accordance with Business Associate's disciplinary rules and applicable collective bargaining agreements. Business Associate agrees to impose sanctions consistent with Business Associate's personnel policies and procedures and applicable collective bargaining agreements with respect to its workforce members, agents, employees and subcontractors.

H.21.6.2 Members of the Business Associate Workforce who are not employed by Business Associate are subject to the policies and applicable sanctions for violation of District of Columbia Privacy and Security policies and procedures as set forth in this Compliance Clause.

H.21.6.3 In the event Business Associate imposes sanctions against any member of its workforce, agents and subcontractors for violation of the provisions of the Privacy and Security Rules or other applicable federal or District of Columbia Privacy and Security laws, regulations, and policies and procedures, the Business Associate shall inform the District Privacy and Security Officials or the DHCF Privacy and Security Officers of the imposition of sanctions.

H.21.7 Obligations of the Covered Entity

H.21.7.1 The Covered Entity shall notify the Business Associate of any limitation(s) in its Notice of Privacy Practices of the Covered Entity in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect the use or disclosure of Protected Health Information and Electronic Protected Health Information by the Business Associate.

H.21.7.2 The Covered Entity shall notify the Business Associate of any changes in, or revocation of, permission by the Individual to the use or disclosure of Protected Health Information and Electronic Protected Health Information, to the extent that such changes may affect the use or disclosure of Protected Health Information by the Business Associate.

H.21.7.3 The Covered Entity shall notify the Business Associate of any restriction to the use or disclosure of Protected Health Information and Electronic Protected Health Information that the Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect the use or

disclosure of Protected Health Information and Electronic Protected Health Information by the Business Associate.

H.21.8 Permissible Requests by Covered Entity

H.21.8.1 Covered Entity shall not request the Business Associate to use or disclose Protected Health Information and Electronic Protected Health Information in any manner that would not be permissible under the Privacy Rule and the Security Rule if done by the Covered Entity.

H.21.9 Representations and Warranties

H.21.9.1 The Business Associate represents and warrants to the Covered Entity:

H.21.9.1.1 That it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized or licensed, it has the full power to enter into this HIPAA Compliance Clause and it, its employees, agents, subcontractors, representatives and members of its workforce are licensed and in good standing with the applicable agency, board, or governing body to perform its obligations hereunder, and that the performance by it of its obligations under this HIPAA Compliance Clause has been duly authorized by all necessary corporate or other actions and will not violate any provision of any license, corporate charter or bylaws;

H.21.9.1.2 That it, its employees, agents, subcontractors, representatives and members of its workforce are in good standing with the District of Columbia, that it, its employees, agents, subcontractors, representatives and members of its workforce will submit a letter of good standing from the District of Columbia, and that it, its employees, agents, subcontractors, representatives and members of its workforce have not been de-barred from being employed as a contractor by the federal government or District of Columbia;

H.21.9.1.3 That neither the execution of this HIPAA Compliance Clause, nor its performance hereunder, will directly or indirectly violate or interfere with the terms of another agreement to which it is a party, or give any governmental entity the right to suspend, terminate, or modify any of its governmental authorizations or assets required for its performance hereunder. The Business Associate represents and warrants to the Covered Entity that it will not enter into any agreement the execution or performance of which would violate or interfere with this HIPAA Compliance Clause;

H.21.9.1.4 That it is not currently the subject of a voluntary or involuntary petition in bankruptcy, does not currently contemplate filing

any such voluntary petition, and is not aware of any claim for the filing of an involuntary petition;

H.21.9.1.5 That all of its employees, agents, subcontractors, representatives and members of its workforce, whose services may be used to fulfill obligations under this HIPAA Compliance Clause are or shall be appropriately informed of the terms of this HIPAA Compliance Clause and are under legal obligation to the Business Associate, by contract or otherwise, sufficient to enable the Business Associate to fully comply with all provisions of this HIPAA Compliance Clause. Modifications or limitations that the Covered Entity has agreed to adhere to with regard to the use and disclosure of Protected Health Information and Electronic Protected Health Information of any individual that materially affects or limits the uses and disclosures that are otherwise permitted under the Privacy Rule and Security Rule will be communicated to the Business Associate, in writing, and in a timely fashion;

H.21.9.1.6 That it will reasonably cooperate with the Covered Entity in the performance of the mutual obligations under this Agreement;

H.21.9.1.7 That neither the Business Associate, nor its shareholders, members, directors, officers, agents, subcontractors, employees or members of its workforce have been excluded or served a notice of exclusion or have been served with a notice of proposed exclusion, or have committed any acts which are cause for exclusion, from participation in, or had any sanctions, or civil or criminal penalties imposed under, any federal or District healthcare program, including but not limited to Medicare or Medicaid, or have been convicted, under federal or District law (including without limitation following a plea of *nolo contendere* or participation in a first offender deferred adjudication or other arrangement whereby a judgment of conviction has been withheld), of a criminal offense related to:

H.21.9.1.7.1 The neglect or abuse of a patient;

H.21.9.1.7.2 The delivery of an item or service, including the performance of management or administrative services related to the delivery of an item or service, under a federal or District healthcare program;

H.21.9.1.7.3 Fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in any program operated by or financed in whole or in part by any federal, District or local government agency;

H.21.9.1.7.4 The unlawful, manufacture, distribution, prescription or dispensing of a controlled substance, or

H.21.9.1.7.5 Interference with or obstruction of any investigation into any criminal offense described in H.21.9.1.7.1 through H.21.9.1.7.4 above.

H.21.9.2 The Business Associate further agrees to notify the Covered Entity immediately after the Business Associate becomes aware that any of the foregoing representations and warranties may be inaccurate or may become incorrect.

H.21.10 Term and Termination

H.21.10.1 Term

H.21.10.1.1 The requirements of this HIPAA Compliance Clause shall be effective as of the date of the contract award.

H.21.10.1.2 The requirements of this HIPAA Compliance Clause shall terminate when:

H.21.10.1.2.1 All of the Protected Health Information and Electronic Protected Health Information provided by the Covered Entity to the Business Associate, or created or received by the Business Associate on behalf of the Covered Entity, is confidentially destroyed or returned to the Covered Entity within five (5) business days of its request, with the Protected Health Information returned in a format mutually agreed upon by and between the Privacy and Security Officials and/or Privacy and Security Officers or their designees, when applicable, and the appropriate and duly authorized workforce member of the Business Associate; or,

H.21.10.1.2.2 If it is infeasible to return or confidentially destroy the Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section and communicated to the appropriate District personnel, whether the Privacy and Security Officials and/or Privacy and Security Officers or their designees, when applicable.

H.21.10.2 Termination for Cause

H.21.10.2.1 Upon the Covered Entity's knowledge of a material breach of this HIPAA Compliance Clause by the Business Associate, the Covered Entity shall either:

H.21.20.2.1.1 Provide an opportunity for the Business Associate to cure the breach or end the violation and terminate the Contract if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity;

H.21.20.2.1.2 Immediately terminate the Contract if the Business Associate breaches a material term of this HIPAA Compliance Clause and a cure is not possible; or

H.21.20.2.1.3 If neither termination nor cure is feasible, the Covered Entity shall report the violation to the Secretary.

H.21.10.3 Effect of Termination

H.21.10.3.1 Except as provided in paragraph (ii) of this section, upon termination of the Contract, for any reason, the Business Associate shall return in a mutually agreed upon format or confidentially destroy all Protected Health Information received from the Covered Entity, or created or received by the Business Associate on behalf of the Covered Entity within five (5) business days of termination. This provision shall apply to Protected Health Information that is in the possession of ALL subcontractors, agents or workforce members of the Business Associate. The Business Associate shall retain no copies of Protected Health Information and Electronic Protected Health Information in any media form.

H.21.10.3.2 In the event that the Business Associate determines that returning or destroying the Protected Health Information and Electronic Protected Health Information is infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make the return or confidential destruction infeasible.

H.21.10.3.3 Upon determination by the DHCF Privacy and Security Officer that the return or confidential destruction of the Protected Health Information is infeasible, the Business Associate shall extend the protections of this HIPAA Compliance Clause to such Protected Health Information and Electronic Protected Health Information and limit further uses and disclosures of such Protected Health Information and Electronic Protected Health Information to those purposes that make the return or confidential destruction infeasible, for so long as the Business Associate maintains such Protected Health Information and Electronic Protected Health Information. The obligations outlined in Section 2, Obligations and Activities of Business Associate, will remain in force to the extent applicable.

H.21.11 Miscellaneous

H.21.11.1 Regulatory References

H.21.11.1.1 A reference in this HIPAA Compliance Clause to a section of HIPAA, including the Privacy Rule or the Security Rule means the section as in effect or as amended.

H.21.11.2 Amendment

H.21.11.2.1 The Parties agree to take such action as is necessary to amend this HIPAA Compliance Clause from time to time as is necessary for the Covered Entity to comply with the requirements of the Privacy Rule, the Security Rule and HIPAA.

H.21.22.2.2 Except for provisions required by law as defined herein, no provision hereof shall be deemed waived unless in writing and signed by duly authorized representatives of the Parties. A waiver with respect to one (1) event shall not be construed as continuing, or as a bar to or waiver of any other right or remedy under this HIPAA Compliance Clause.

H.21.11.3 Survival

H.21.11.3.1 The respective rights and obligations of the Business Associate under Section 9, Term and Termination, of this HIPAA Compliance Clause and Sections 9 and 20 of the Standard Contract Provisions for use with the District of Columbia Government Supply and Services Contracts, effective April 2003, shall survive termination of the Contract.

H.21.11.4 Interpretation

H.21.11.4.1 Any ambiguity in this HIPAA Compliance Clause shall be resolved to permit the Covered Entity to comply with applicable federal and District of Columbia laws, rules and regulations, and the Privacy Rule and Security Rule, and any requirements, rulings, interpretations, procedures, or other actions related thereto that are promulgated, issued or taken by or on behalf of the Secretary; provided that applicable federal and District of Columbia laws, rules and regulations shall supersede the Privacy Rule and Security Rule if, and to the extent that they impose additional requirements, have requirements that are more stringent than or provide greater protection of patient privacy or the security or safeguarding of Protected Health Information and Electronic Protected Health Information than those of HIPAA and its Privacy Rule and Security Rule.

H.21.11.4.2 The terms of this HIPAA Compliance Clause amend and supplement the terms of the Contract, and whenever possible, all terms and conditions in this HIPAA Compliance Clause are to be harmonized. In the event of a conflict between the terms of the HIPAA Compliance Clause and the terms of the Contract, the terms of this HIPAA Compliance Clause shall control; provided, however, that this HIPAA Compliance

Clause shall not supersede any other federal or District of Columbia law or regulation governing the legal relationship of the Parties, or the confidentiality of records or information, except to the extent that the Privacy Rule preempts those laws or regulations.

H.21.11.4.3 In the event of any conflict between the provisions of the Contract (as amended by this HIPAA Compliance Clause) and the Privacy Rule and Security Rule, the Privacy Rule and Security Rule shall control.

H.21.11.5 No Third-Party Beneficiaries

H.21.11.5.1 The Covered Entity and the Business Associate are the only parties to this HIPAA Compliance Clause and are the only parties entitled to enforce its terms.

H.21.11.5.2 Except for the rights of Individuals, as defined herein, to access to and amendment of their Protected Health Information and Electronic Protected Health Information, and to an accounting of the uses and disclosures thereof, in accordance with Paragraphs (2)(f), (g) and (j), nothing in the HIPAA Compliance Clause gives, is intended to give, or shall be construed to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this HIPAA Compliance Clause.

H.21.11.6 Compliance with Applicable Law

H.21.11.6.1 The Business Associate shall comply with all federal, District of Columbia laws, regulations, executive orders and ordinances, as they may be amended from time to time during the term of this HIPAA Compliance Clause and the Contract; to the extent they are applicable to this HIPAA Compliance Clause and the Contract.

H.21.11.7 Governing Law and Forum Selection

H.21.11.7.1 The Contract shall be construed broadly to implement and comply with the requirements relating to the Privacy Rule, the Security Rule and other applicable laws and regulations. All other aspects of this Contract shall be governed under the laws of the District of Columbia.

H.21.11.7.2 The Covered Entity and the Business Associate agree that all disputes which cannot be amicably resolved by the Covered Entity and the Business Associate regarding this HIPAA Compliance Clause shall be litigated before the District of Columbia Contract Appeals Board, the District of Columbia Court of Appeals, or the United States District Court for the District of Columbia having jurisdiction, as the case may be.

H.21.11.7.3 The Covered Entity and the Business Associate expressly waive any and all rights to initiate litigation, arbitration, mediation, negotiations and/or similar proceedings outside the physical boundaries of the District of Columbia and expressly consent to the jurisdiction of the above tribunals.

H.21.11.8 Indemnification

H.21.11.8.1 The Business Associate shall indemnify, hold harmless and defend the Covered Entity from and against any and all claims, losses, liabilities, costs, and other expenses incurred as a result or arising directly or indirectly out of or in connection with:

H.21.11.8.1.1 Any misrepresentation, breach of warranty or non-fulfillment of any undertaking of the Business Associate under this HIPAA Compliance Clause; and

H.21.11.8.1.2 Any claims, demands, awards, judgments, actions and proceedings made by any person or organization, arising out of or in any way connected with the performance of the Business Associate under this HIPAA Compliance Clause.

H.21.11.9 Injunctive Relief

H.21.11.9.1 Notwithstanding any rights or remedies under this HIPAA Compliance Clause or provided by law, the Covered Entity retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of Protected Health Information and Electronic Protected Health Information by the Business Associate, its workforce, any of its subcontractors, agents, or any third party who has received Protected Health Information and Electronic Protected Health Information from the Business Associate.

H.21.11.10 Assistance in litigation or administrative proceedings

H.21.11.10.1 The Business Associate shall make itself and any agents, affiliates, subsidiaries, subcontractors or its workforce assisting the Business Associate in the fulfillment of its obligations under this HIPAA Compliance Clause and the Contract, available to the Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Covered Entity, its directors, officers or employees based upon claimed violation of HIPAA, the Privacy Rule, Electronic Protected Health Information or other laws relating to security and privacy, except where the Business Associate or its agents, affiliates, subsidiaries, subcontractors or its workforce are a named adverse party.

H.21.11.11 Notices

H.21.11.11.1 Any notices between the Parties or notices to be given under this HIPAA Compliance Clause shall be given in writing and delivered by personal courier delivery or overnight courier delivery, or by certified mail with return receipt requested, to the Business Associate or to the Covered Entity, to the addresses given for each Party below or to the address either Party hereafter gives to the other Party.

H.21.11.11.2 Any notice being address and mailed in the foregoing manner, shall be deemed given five (5) business days after mailing. Any notice delivered by personal courier delivery or overnight courier delivery shall be deemed given upon notice upon receipt.

If to the Business Associate, to:	If to the Covered Entity, to:
_____	Department of Health Care Finance
_____	825 North Capitol St., NE Suite 5135
_____	Washington, DC 20002
Attention: _____	Attention: DHCF General Counsel
Fax: _____	Fax: 202-442-4790

H.21.11.12 Headings

H.21.11.12.1 Headings are for convenience only and form no part of this HIPAA Compliance Clause and shall not affect its interpretation.

H.21.11.13 Counterparts; Facsimiles

H.21.11.13.1 This HIPAA Compliance Clause may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

H.21.11.14 Successors and Assigns

H.21.11.14.1 The provisions of this HIPAA Compliance Clause shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns, if any.

H.21.11.15 Severance

H.21.11.15.1 In the event that any provision of this HIPAA Compliance Clause is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this HIPAA Compliance Clause will remain in full force and effect.

H.21.11.15.2 In addition, in the event a Party believes in good faith that any provision of this HIPAA Compliance Clause fails to comply with the then-current requirements of the Privacy Rule, such party shall notify the other Party in writing, in the manner set forth in Section 10. Miscellaneous, Paragraph k. Notices.

H.21.11.15.3 Within ten (10) business days from receipt of notice, the Parties shall address in good faith such concern and amend the terms of this HIPAA Compliance Clause, if necessary to bring it into compliance. If, after thirty (30) days the HIPAA Compliance Clause fails to comply with the Privacy Rule and the Security Rule, then either Party has the right to terminate this HIPAA Compliance Clause upon written notice to the other Party.

H.21.11.16 Independent Contractor

H.21.11.16.1 The Business Associate will function as an independent contractor and shall not be considered an employee of the Covered Entity for any purpose.

H.21.11.16.2 Nothing in this HIPAA Compliance Clause shall be interpreted as authorizing the Business Associate workforce, its subcontractor(s) or its agent(s) or employee(s) to act as an agent or representative for or on behalf of the Covered Entity.

H.21.11.17 Entire Agreement

H.21.11.17.1 This HIPAA Compliance Clause, as may be amended from time to time pursuant to Section 10 Miscellaneous, Paragraph b. Amendment, which incorporates by reference the Contract, and specific procedures from the Medical Assistance Administration Privacy Policy Operations Manual, constitutes the entire agreement and understanding between the Parties and supersedes all prior oral and written agreements and understandings between them with respect to applicable District of Columbia and federal laws, rules and regulations, HIPAA and the Privacy Rule and Security Rule, and any rules, regulations, requirements, rulings,

interpretations, procedures, or other actions related thereto that are promulgated, issued or taken by or on behalf of the Secretary.

H.21.11.18 Attachments:

H.21.11.18.1 Exhibit A, Department of Health Care Finance Privacy Policy Operations Manual, Policy Number IV.14.a) Individual's Information Rights – Access

H.21.11.18.2 Exhibit B, Department of Health Care Finance Privacy Policy Operations Manual, Policy Number IV.15.a) Individual's Information Rights - Amendment

H.21.11.18.3 Exhibit C, Department of Health Care Finance Privacy Policy Operations Manual, Policy Number VII.25 Standard Procedures - Identity and Procedure Verification

H.21.11.18.4 Exhibit D, Department of Health Care Finance Privacy Policy Operations Manual, Policy Number VII.27 Standard Procedures - Logging Disclosures for Accounting

H.21.11.18.5 Exhibit E, Department of Health Care Finance Privacy Policy Operations Manual, Policy Number IV.16.a) Individual's Information Rights - Disclosure Accounting

H.22 KEY PERSONNEL

H.22.1 The Project Manager (PM) and/or other staff who are essential to the work specified in Section C.4 is considered to be essential to the work being performed hereunder. Prior to diverting the PM for any reason, Contractor shall notify the Contracting Officer at least thirty (30) days in advance and submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact upon the Contract.

H.22.2 Contractor shall obtain written approval from the Contracting Officer for any proposed substitution of the PM.

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SECTION I

STANDARD CONTRACT CLAUSES

I.1 COVENANT AGAINST CONTINGENT FEES

I.1.1 The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the District will have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of the commission, percentage, brokerage, or contingent fee.

I.2 SHIPPING INSTRUCTIONS - CONSIGNMENT

I.2.1 Unless otherwise specified in this Invitation for Bids/Request for Proposals, each case, crate, barrel, package, etc., delivered under this contract must be plainly stencil marked or securely tagged, stating the Contractor's name, contract number and delivery address as noted in the contract. In case of carload lots, the Contractor shall tag the car, stating Contractor's name and contract number. Any failure to comply with these instructions will place the material at the Contractor's risk. Deliveries by rail, water, truck or otherwise, must be within the working hours and in ample time to allow for unloading and if necessary, the storing of the materials or supplies before closing time. Deliveries at any other time will not be accepted unless specific arrangements have been previously

made with the contact person identified in the contract at the delivery point.

I.3 PATENTS

I.3.1 The Contractor shall hold and save the District, its officers, agents, servants, and employees harmless from liability of any nature or kind, including costs, expenses, for or on account of any patented or unpatented invention, article, process, or appliance, manufactured or used in the performance of this contract, including their use by the District, unless otherwise specifically stipulated in the contract.

I.4 QUALITY

I.4.1 Contractor's workmanship shall be of the highest grade, and all materials provided under this Contract shall be new, of the best quality and grade, and suitable in every respect for the purpose intended.

I.5 INSPECTION OF SUPPLIES

I.5.1 Definition. "Supplies," as used in this clause, includes, but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.

I.5.2 The Contractor shall be responsible for the materials or supplies covered by this contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notification of rejection. Upon the Contractor's failure to cure within ten (10) days after date of notification, the District may return the rejected materials or supplies to the Contractor at the Contractor's risk and expense.

I.5.3 The Contractor shall provide and maintain an inspection system acceptable to the District covering supplies under this contract and shall tender to the District for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Contractor to be in conformity with contract requirements. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the District during contract performance and for as long afterwards as the contract requires. The District may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under this contract.

I.5.4 The District has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The District will perform inspections and tests in a manner that will not unduly delay the work. The District assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in the contract.

I.5.5 If the District performs inspection or test on the premises of the Contractor or subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, the District will bear the expense of District inspections or tests made at other than Contractor's or subcontractor's premises; provided, that in case of rejection, the District will not be liable for any reduction in the value of inspection or test samples.

I.5.5.1 When supplies are not ready at the time specified by the Contractor for inspection or test, the Contracting Officer may charge to the Contractor the additional cost of inspection or test.

I.5.5.2 Contracting Officer may also charge the Contractor for any additional cost of inspection or test when prior rejection makes re-inspection or retest.

I.5.6 The District has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or otherwise not in conformity with contract requirements. The District may reject nonconforming supplies with or without disposition instructions.

I.5.7 The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for

acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and when required, shall disclose the corrective action taken.

I.5.8 If the Contractor fails to remove, replace, or correct rejected supplies that are required to be replaced or corrected within ten (10) days, the District may either (1) by contract or otherwise, remove, replace or correct the supplies and charge the cost to the Contractor or (2) terminate the contract for default. Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Contracting Officer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

I.5.9 If this contract provides for the performance of District quality assurance at source, and if requested by the District, the Contractor shall furnish advance notification of the time (i) when Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract, and (ii) when the supplies will be ready for District inspection.

I.5.10 The District request shall specify the period and method of the advance notification and the District representative to whom it shall be furnished. Requests shall not require more than 2 business days of advance notification if the District representative is in residence in the Contractor's plant, nor more than 7 business days in other instances.

I.5.11 The District will accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. District failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability upon the District, for non-conforming supplies.

I.5.12 Inspections and tests by the District do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

I.5.13 If acceptance is not conclusive for any of the reasons in subparagraph I.5.12 hereof, the District, in addition to any other rights and remedies provided by law, or under provisions of this contract, shall have the right to require the Contractor (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; provided, that the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Contractor of notice of defects or noncompliance, to repay such portion of the contract as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the District will have the right to return the rejected materials

at Contractor's risk and expense or contract or otherwise to replace or correct such supplies and charge to the Contractor the cost occasioned the District thereby.

I.6 INSPECTION OF SERVICES

I.6.1 Definition. "Services" as used in this clause includes services performed, workmanship, and material furnished or utilized in the performance of services.

I.6.2 The Contractor shall provide and maintain an inspection system acceptable to the District covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the District during contract performance and for as long afterwards as the contract requires.

I.6.3 The District has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The District will perform inspections and tests in a manner that will not unduly delay the work.

I.6.4 If the District 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.

I.6.5 If any of the services do not conform to the contract requirements, the District 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, the District 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.

I.6.6 If the Contractor fails to promptly perform the services again or take the necessary action to ensure future performance in conformity to contract requirements, the District may (1) by contract or otherwise, perform the services and charge the Contractor any cost incurred by the District that is directly related to the performance of such services, or (2) terminate the contract for default.

I.7 WAIVER

I.7.1 The waiver of any breach of the contract will not constitute a waiver of any subsequent breach thereof, or a waiver of the contract.

I.8 DEFAULT

I.8.1 The District may, subject to the provisions of section I.8.3 below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:

I.8.1.1 If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or

I.8.1.2 If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

I.8.2 In the event the District terminates this contract in whole or in part as provided in Section I.8.1 of this clause, the District may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or service similar to those so terminated, and the Contractor shall be liable to the District for any excess costs for similar supplies or services; provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

I.8.3 Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the District or Federal Government in either their sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without fault or negligence of the Contractor. If the failure to perform is caused by the default of the subcontractor, and if such default arises out of causes beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess cost for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

I.8.4 If this contract is terminated as provided in Section I.8.1 of this clause, the District, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the District, in the manner and to the extent directed by the Contracting Officer, (i) completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures plans, drawing information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the District has an interest. Payment for completed supplies delivered to and accepted by the District will be at the contract price. Payment for manufacturing materials delivered to and accepted by the District will be at the contract price. Payment for manufacturing materials delivered to and accepted by the District and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". The District may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the District against loss because of outstanding liens or claims of former lien holders.

I.8.5 If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination of convenience of the District, be the same as if the notice of termination had been issued pursuant to such clause. See Clause 20 for Termination for Convenience of the District.

I.8.6 The rights and remedies of the District provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

I.8.7 As used in Section I.8.3 of this clause, the terms “subcontractor(s) means subcontractor(s) at any tier.

I.9 INDEMNIFICATION

I.9.1 The Contractor agrees to defend, indemnify and hold harmless the District, its officers, agencies, departments, agents, and employees (collectively the “District”) from and against any and all claims, losses, liabilities, penalties, fines, forfeitures, demands, causes of action, suits, costs and expenses incidental thereto (including cost of defense and attorneys’ fees), resulting from, arising out of, or in any way connected to activities or work performed by the Contractor, Contractor’s officers, employees, agents, servants, subcontractors, or any other person acting for or by permission of the Contractor in performance of this Contract. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed in performance of this Contract. The Contractor shall also repair or replace any District property that is damaged by the Contractor, Contractor’s officers, employees, agents, servants, subcontractors, or any other person acting for or by permission of the Contractor while performing work hereunder.

I.9.2 The indemnification obligation under this section shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor, and shall survive the termination of this Contract. The District agrees to give Contractor written notice of any claim of indemnity under this section. Additionally, Contractor shall have the right and sole authority to control the defense or settlement of such claim, provided that no contribution or action by the District is required in connection with the settlement. Monies due or to become due the Contractor under the contract may be retained by the District as necessary to satisfy any outstanding claim which the District may have against the Contractor.

I.10 TRANSFER

I.10.1 No contract or any interest therein shall be transferred by the parties to whom the award is made; such transfer will be null and void and will be cause to annul the contract.

I.11 TAXES

I.11.1 The Government of the District of Columbia is exempt from and will not pay Federal Excise Tax, Transportation Tax, and the District of Columbia Sales and Use Taxes.

I.11.2 Tax exemption certificates are no longer issued by the District for Federal Excise Tax. The following statement may be used by the supplier when claiming tax deductions for Federal Excise Tax exempt items sold to the District.

I.11.2.1 “The District of Columbia Government is Exempt from Federal Excise Tax – Registration No. 52-73-0206-K, Internal Revenue Service, Baltimore, Maryland.”

I.11.2.2 Exempt From Maryland Sales Tax, Registered With The Comptroller Of The Treasury As Follows:

I.11.2.2.1 Deliveries to Glenn Dale Hospital – Exemption No. 4647

I.11.2.2.2 Deliveries to Children’s Center – Exemption No. 4648

I.11.2.2.3 Deliveries to other District Departments or Agencies – Exemption No. 09339

I.11.2.3 “The District of Columbia Government is Exempt from Sales and Use Tax – Registration No. 53-600, The District of Columbia Office of Tax and Revenue.”

I.12 APPOINTMENT OF ATTORNEY

I.12.1 The bidder/offeror or contractor (whichever the case may be) does hereby irrevocably designate and appoint the Clerk of the District of Columbia Superior Court and his successor in office as the true and lawful attorney of the Contractor for the purpose of receiving service of all notices and processes issued by any court in the District of Columbia, as well as service of all pleadings and other papers, in relation to any action or legal proceeding arising out of or pertaining to this contract or the work required or performed hereunder.

I.12.2 The bidder/offeror or contractor (whichever the case may be) expressly agrees that the validity of any service upon the said Clerk as herein authorized shall not be affected either by the fact that the contractor was personally within the District of Columbia and otherwise subject to personal service at the time of such service upon the said Clerk or by the fact that the contractor failed to receive a copy of such process, notice or other paper so served upon the said Clerk provided the said Clerk shall have deposited in the United States mail, registered and postage prepaid, a copy of such process, notice, pleading or other paper addressed to the bidder/offeror or contractor at the address stated in this contract.

I.13 DISTRICT EMPLOYEES NOT TO BENEFIT

I.13.1 Unless a determination is made as provided herein, no officer or employee of the District will be admitted to any share or part of this contract or to any benefit that may arise therefrom, and any contract made by the Contracting Officer or any District employee authorized to execute contracts in which they or an employee of the District will be

personally interested shall be void, and no payment shall be made thereon by the District or any officer thereof, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit. A District employee shall not be a party to a contract with the District and will not knowingly cause or allow a business concern or other organization owned or substantially owned or controlled by the employee to be a party to such a contract, unless a written determination has been made by the head of the procuring agency that there is a compelling reason for contracting with the employee, such as when the District's needs cannot reasonably otherwise be met. (DC Procurement Practices Act of 1985, D.C. Law 6-85, D.C. Official Code, section 2-310.01, and Chapter 18 of the DC Personnel Regulations)

I.13.2 The Contractor represents and covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants not to employ any person having such known interests in the performance of the contract.

I.14 DISPUTES

I.14.1 All disputes arising under or relating to this contract shall be resolved as provided herein.

I.14.2 Claims by a Contractor against the District.

I.14.2.1 Claim, as used in I.14.2 of this clause, means a written assertion by the Contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

I.14.2.2 All claims by a Contractor against the District arising under or relating to a contract shall be in writing and shall be submitted to the Contracting Officer for a decision. The contractor's claim shall contain at least the following:

I.14.2.2.1 A description of the claim and the amount in dispute;

I.14.2.2.2 Any data or other information in support of the claim;

I.14.2.2.3 A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and

I.14.2.2.4 The Contractor's request for relief or other action by the Contracting Officer.

I.14.2.3 The Contracting Officer may meet with the Contractor in a further attempt to resolve the claim by agreement.

I.14.2.4 For any claim of \$50,000 or less, the Contracting Officer shall issue a decision within sixty (60) days from receipt of a written request from a Contractor that a decision be rendered within that period.

I.14.2.5 For any claim over \$50,000, the Contracting Officer shall issue a decision within ninety (90) days of receipt of the claim. Whenever possible, the Contracting Officer shall take into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.

I.14.2.6 The Contracting Officer's written decision shall do the following:

I.14.2.6.1 Provide a description of the claim or dispute;

I.14.2.6.2 Refer to the pertinent contract terms;

I.14.2.6.3 State the factual areas of agreement and disagreement;

I.14.2.6.4 State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;

I.14.2.6.5 If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;

I.14.2.6.6 Indicate that the written document is the contracting officer's final decision; and

I.14.2.6.7 Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

I.14.2.7 Any failure by the Contracting Officer to issue a decision on a contract claim within the required time period will be deemed to be a denial of the claim, and will authorize the commencement of an appeal to the Contract Appeals Board as authorized by D.C. Official Code § 2-309.04.

I.14.2.8 If a Contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim.

I.14.2.9 Liability under I.14.2.8 shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.

I.14.2.10 The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor as authorized by D. C. Official Code § 2-309.04.

I.14.2.11 Pending final decision of an appeal, action, or final settlement, a Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

I.14.3 Claims by the District against a Contractor

I.14.3.1 Claim as used in I.14.3 of this clause, means a written demand or written assertion by the District seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

I.14.3.2 All claims by the District against a Contractor arising under or relating to a contract shall be decided by the Contracting Officer.

I.14.3.3 The Contracting Officer shall send written notice of the claim to the Contractor. The Contracting Officer's written decision shall do the following:

I.14.3.3.1 Provide a description of the claim or dispute;

I.14.3.3.2 Refer to the pertinent contract terms;

I.14.3.3.3 State the factual areas of agreement and disagreement;

I.14.3.3.4 State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;

I.14.3.3.5 If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;

I.14.3.3.6 Indicate that the written document is the Contracting Officer's final decision; and

I.14.3.3.7 Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

I.14.3.4 The decision shall be supported by reasons and shall inform the Contractor of its rights as provided herein.

I.14.3.5 The authority contained in this clause shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle, or determine.

I.14.3.6 This clause shall not authorize the Contracting Officer to settle, compromise, pay, or otherwise adjust any claim involving fraud.

I.14.3.7 The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor as authorized by D.C. Official Code §2-309.04.

I.14.3.8 Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

I.15 CHANGES

I.15.1 The Contracting Officer may, at any time, by written order, and without notice to the surety, if any, make changes in the contract within the general scope hereof. If such change causes an increase or decrease in the cost of performance of this contract, or in the time required for performance, an equitable adjustment shall be made. Any claim for adjustment under this paragraph must be asserted within ten (10) days from the date the change is offered; provided, however, that the Contracting Officer, if he or she determines that the facts justify such action, may receive, consider and adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in the Disputes clause at Section 18. Nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

I.16 TERMINATION FOR CONVENIENCE OF THE DISTRICT

I.16.1 The District may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the District's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and effective date.

I.16.2 After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

I.16.2.1 Stop work as specified in the notice.

I.16.2.2 Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

I.16.2.3 Terminate all contracts to the extent they relate to the work terminated.

I.16.2.4 Assign to the District, as directed by the Contracting Officer, all rights, title and interest of the Contractor under the subcontracts terminated, in which case the District will have the right to settle or pay any termination settlement proposal arising out of those terminations.

I.16.2.5 With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts. The approval or ratification will be final for purposes of this clause.

I.16.2.6 As directed by the Contracting Officer, transfer title and deliver to the District (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other materials produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract has been completed, would be required to be furnished to the District.

I.16.2.7 Complete performance of the work not terminated.

I.16.2.8 Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the District has or may acquire an interest.

I.16.2.9 Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in Section I.16.2.6 above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the District under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

I.16.3 After the expiration of ninety (90) days (or such longer period as may be agreed to) after receipt by the Contracting Officer of acceptable inventory schedules, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality of termination inventory not previously disposed of excluding items authorized for disposition by the Contracting Officer. The Contractor may request the District to remove those items or enter into an agreement for their storage. Within fifteen (15) days, the District will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within forty five (45) days from submission of the list, and shall correct the list, as necessary, before final settlement.

I.16.4 After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting

Officer. The Contractor shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this one year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after one year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due to the Contractor because of the termination and shall pay the amount determined.

I.16.5 Subject to I.16.4 above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under I.16.5 or I.16.6 below, exclusive of costs shown in subparagraph I.16.6.3 below, may not exceed the total contract price as reduced by (1) the amount of payment previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Contractor paid the agreed amount. Section I.16.6 below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

I.16.6 If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under I.16.5 above:

I.16.6.1 The contract price for completed supplies or services accepted by the District (or sold or acquired under I.16.2. 9 above) not previously paid for, adjusted for any saving of freight and other charges.

I.16.6.2 The total of :

I.16.6.2.1 The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under I.16.6.1 above;

I.16.6.2.2 The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in I.16.6.1 above; and

I.16.6.2.3 A sum, as profit on I.16.6.1 above, determined by the Contracting Officer to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under I.16.6.2.3 and shall reduce the settlement to reflect the indicated rate of loss.

I.16.6.3 The reasonable cost of settlement of the work terminated, including-

I.16.6.3.1 Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

I.16.6.3.2 The termination and settlement of subcontractors (excluding the amounts of such settlements); and

I.16.6.3.2 Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

I.16.7 Except for normal spoilage, and except to the extent that the District expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under I.16.6 above, the fair value as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the District or to a buyer.

I.16.8 The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under sections I.16.4, I.16.6 or I.16.10, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph I.16.5 or I.16.10, and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under section I.16.4, I.16.6 or I.16.10, except the District will pay the Contractor (1) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

I.16.9 In arriving at the amount due the Contractor under this clause, there shall be deducted:

I.16.9.1 All unliquidated advances or other payments to the Contractor under the termination portion of the contract;

I.16.9.2 Any claim which the District has against the Contractor under this contract; and

I.16.9.3 The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the District.

I.16.10 If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within ninety (90) days from the effective date of termination unless extended in writing by the Contracting Officer.

I.16.11 The District may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor shall be entitled.

If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the District upon demand together with interest computed at the rate of 10

percent (10%) per year. Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess payment is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

I.16.12 Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the District, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, micrographs, or other authentic reproductions may be maintained instead of original records and documents.

I.17 RECOVERY OF DEBTS OWED THE DISTRICT

I.17.1 The Contractor hereby agrees that the District may use all or any portion of any consideration or refund due the Contractor under the present contract to satisfy, in whole or part, any debt due the District.

I.18 RETENTION AND EXAMINATION OF RECORDS

I.18.1 The Contractor shall establish and maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting principles and practices which sufficiently and properly reflect all revenues and expenditures of funds provided by the District under the contract that results from this solicitation.

I.18.2 The Contractor shall retain all records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to the contract for a period of three (3) years after termination of the contract, or if an audit has been initiated and audit findings have not been resolved at the end of three (3) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of the contract.

I.18.3 The Contractor shall assure that these records shall be subject at all reasonable times to inspection, review, or audit by Federal, District, or other personnel duly authorized by the Contracting Officer.

I.18.4 The Contracting Officer, the Inspector General and the District of Columbia Auditor, or any of their duly authorized representatives shall, until three years after final payment, have the right to examine any directly pertinent books, documents, papers and records of the Contractor involving transactions related to the contract.

I.19 NON-DISCRIMINATION CLAUSE

I.19.1 The Contractor shall not discriminate in any manner against any employee or applicant for employment that would constitute a violation of the District of Columbia Human Rights Act, approved December 13, 1977, as amended (D. C. Law 2-38; D. C.

Official Code §2-1402.11) (2001 Ed.)("Act" as used in this Section). The Contractor shall include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials. In addition, Contractor agrees and any subcontractor shall agree to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause as provided in Section 251 of the Act.

I.19.2 Pursuant to rules of the Office of Human Rights, published on August 15, 1986 in the D. C. Register and Mayor's Order 2002-175 (10/23/02), 49 DCR 9883, the following clauses apply to this contract:

I.19.2.1 The Contractor shall not discriminate against any employee or applicant for employment because of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act.

I.19.2.2 The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, or place of residence or business.

The affirmative action shall include, but not be limited to the following:

- (a) employment, upgrading or transfer;
- (b) recruitment, or recruitment advertising;
- (c) demotion, layoff, or termination;
- (d) rates of pay, or other forms of compensation;
- and
- (e) selection for training and apprenticeship.

I.19.2.3 The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Agency, setting forth the provisions in subsections I.19.2.1 and I.19.2.2 concerning non-discrimination and affirmative action.

I.19.2.4 The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified

applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in subsection I.19.2.2.

I.19.2.5 The Contractor agrees to send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the contracting agency, advising the said labor union or workers' representative of that contractor's commitments under this nondiscrimination clause and the Act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

I.19.2.6 The Contractor agrees to permit access to his books, records and accounts pertaining to its employment practices, by the Chief Procurement Officer or designee, or the Director of Human Rights or designee, for purposes of investigation to ascertain compliance with this chapter, and to require under terms of any subcontractor agreement each subcontractor to permit access of such subcontractors' books, records, and accounts for such purposes.

I.19.2.7 The Contractor agrees to comply with the provisions of this chapter and with all guidelines for equal employment opportunity applicable in the District of Columbia adopted by the Director of the Office of Human Rights, or any authorized official.

I.19.2.8 The Contractor shall include in every subcontract the equal opportunity clauses, subsections I.19.2.1 through I.19.2.9 of this section, so that such provisions shall be binding upon each subcontractor or vendor.

I.19.2.9 The Contractor shall take such action with respect to any subcontract as the CO may direct as a means of enforcing these provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the District to enter into such litigation to protect the interest of the District.

I.20 DEFINITIONS

I.20.1 The terms Mayor, Chief Procurement Officer, Contract Appeals Board and District will mean the Mayor of the District of Columbia, the Chief Procurement Officer of the District of Columbia or his/her alternate, the Contract Appeals Board of the District of Columbia, and the Government of the District of Columbia respectively. If the Contractor is an individual, the term Contractor shall mean the Contractor, his heirs, his executor and his administrator. If the Contractor is a corporation, the term Contractor shall mean the Contractor and its successor.

I.21 HEALTH AND SAFETY STANDARDS

I.21.1 Items delivered under this contract shall conform to all requirements of the Occupational Safety and Health Act of 1970, as amended (“OSHA”), and Department of Labor Regulations under OSHA, and all Federal requirements in effect at time of bid opening/proposal submission.

I.22 APPROPRIATION OF FUNDS

I.22.1 The District’s liability under this contract is contingent upon the future availability of appropriated monies with which to make payment for the contract purposes. The legal liability on the part of the District for the payment of any money shall not arise unless and until such appropriation shall have been provided.

I.23 BUY AMERICAN ACT

I.23.1 The Buy American Act (41 U.S.C. §10a) provides that the District give preference to domestic end products. “Components,” as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

I.23.2 “Domestic end product,” as used in this clause, means, (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States, exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in paragraphs I.23.4.2 or I.23.4.3 of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

I.23.3 “End products,” as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

I.23.4 The Contractor shall deliver only domestic end products, except those-

I.23.4.1 For use outside the United States;

I.23.4.2 That the District determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

I.23.4.3 For which the District determines that domestic preference would be inconsistent with the public interest; or

I.23.4.4 For which the District determines the cost to be unreasonable.

I.24 SERVICE CONTRACT ACT OF 1965

I.24.1 Definitions.

I.24.1.1 “Act,” as used in this clause, means the Service Contract Act of B1965, as amended (41 U.S.C. §351, *et seq.*).

I.24.1. “Contractor,” as used in this clause, means the prime Contractor or any subcontractor at any tier.

I.24.3 “Service employee,” as used in this clause, means any person (other than a person employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR 541) engaged in performing a District contract not exempted under 41 U.S.C. §356, the principal purpose of which is to furnish services in the United States, as defined in section 22.1001 of the Federal Acquisition Regulation. It includes all such persons regardless of the actual or alleged contractual relationship between them and a contractor.

I.24.2 Applicability.

I.24.2.1 To the extent that the Act applies, this contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (20 CFR part 4). All interpretations of the Act in Subpart C of 29 CFR 4 are incorporated in this contract by reference. This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. §356, as interpreted in Subpart C of 29 CFR 4.

I.24.3 Compensation.

I.24.3.1 Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or the Secretary's authorized representative, as specified in any wage determination attached to this contract.

I.24.3.2 If a wage determination is attached to this contract, the Contractor shall classify any class of service employees not listed in it, but to be employed under this contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph. This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee.

I.24.3.2.1 The Contractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the

Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration (ESA), Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary;

I.24.3.2.2 The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contracting Officer with a written copy of such determination or it shall be posted as a part of the wage determination;

I.24.3.2.3 The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed;

I.24.3.2.4 In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds to a contract under which the classification in question was previously conformed pursuant to this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (*i.e.*, adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in this clause need not be followed;

I.24.3.2.5 No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended;

I.24.3.2.6 The wage rate and fringe benefits finally determined under this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract;

I.24.3.2.7 Upon discovery of failure to comply with this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

I.24.3.3 If the term of this contract is more than 1 year, the minimum wages and fringe benefits required for service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by ESA.

I.24.3.4 The Contractor can discharge the obligation to furnish fringe benefits specified in the attachment or determined under I.25.2.2 of this clause by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, in accordance with Subpart B and C of 29 CFR 4.

I.24.4 Minimum wage

I.24.4.1 In the absence of a minimum wage attachment for this contract, the Contractor shall not pay any service or other employees performing this contract less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §206). Nothing in this clause shall relieve the Contractor of any other legal or contractual obligation to pay a higher wage to any employee.

I.24.5 Successor contracts

I.24.5.1 If this contract succeeds a contract subject to the Act under which substantially the same services were furnished and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, then, in the absence of a minimum wage attachment to this contract, the Contractor may not pay any service employee performing this contract less than the wages and benefits, including those accrued and any prospective increases, provided for under that agreement. No Contractor may be relieved of this obligation unless the limitations of 29 CFR 4.1c(b) apply or unless the Secretary of Labor or the Secretary's authorized representative:

I.24.5.1.1 Determines that the agreement under the predecessor was not the result of arms-length negotiations; or

I.24.5.1.2 Finds, after a hearing under 29 CFR 4.10, that the wages and benefits provided for by that agreement vary substantially from those prevailing for similar services in the locality or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and 4.11 and parts 6 and 8 that some or all of the wages and fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

I.24.6 Notification to employees

I.24.6.1 The Contractor shall notify each service employee commencing work on this contract of a minimum wage and any fringe benefits required to be paid, or shall post a notice of these wages and benefits in a prominent and accessible place at the worksite, using such poster as may be provided by the Department of Labor.

I.24.7 Safe and sanitary working conditions

I.45.7.1 The Contractor shall not permit services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor that are unsanitary, hazardous, or dangerous to the health or safety of service employees. The Contractor shall comply with the health standards applied under 29 CFR Part 1925.

I.24.8 Records

I.24.8.1 The Contractor shall maintain for 3 years from the completion of work, and make available for inspection and transcription by authorized ESA representatives, a record of the following:

I.24.8.1.1 For each employee subject to the Act:

I.24.8.1.1.1 Name and address;

I.24.8.1.1.2 Work classification or classifications, rate or rates of wages and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

I.24.8.1.1.3 Daily and weekly hours worked; and

I.24.8.1.1.4 Any deductions, rebates, or refunds from total daily or weekly compensation.

I.24.8.2 For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by ESA under the terms of I.24.3.3 of this clause. A copy of the report required by I.24.5 of this clause will fulfill this requirement.

I.24.8.3 Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by this clause. The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division. Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases. The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

I.24.9 Pay periods

I.24.9.1 The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

I.24.10 Withholding of payments and termination of contract

I.24.10.1 The Contracting Officer shall withhold from the prime Contractor under this or any other District contract with the prime contractor any sums the Contracting Officer, or an appropriate officer of the Labor Department, decides may be necessary to pay underpaid employees. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination for default. In such event, the District may enter into other

contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

I.24.11 Subcontracts

I.24.11.1 The Contractor agrees to insert this clause in all subcontracts.

I.24.11.1.1 Contractor's report:

1.24.11.1.1.1 If there is a wage determination attachment to this contract and any classes of service employees not listed on it are to be employed under the contract, the Contractor shall report promptly to the Contracting Officer the wages to be paid and the fringe benefits to be provided each of these classes, when determined under I.25.3 of this clause.

I.24.11.1.1.2 If wages to be paid or fringe benefits to be furnished any service employees under the contract are covered in a collective bargaining agreement effective at any time when the contract is being performed, the Contractor shall provide to the Contracting Officer a copy of the agreement and full information on the application and accrual of wages and benefits (including any prospective increases) to service employees working on the contract. The Contractor shall report when contract performance begins, in the case of agreements then in effect, and shall report subsequently effective agreements, provisions, or amendments promptly after they are negotiated.

I.24.12 Contractor's Certification

I.24.12.1 By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded District contracts by virtue of the sanctions imposed under section 5 of the Act. No part of this contract shall be subcontracted to any person or firm ineligible for award of a District contract under section 5 of the Act. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. §1001.

1.24.13 Variations, tolerances, and exemptions involving employment

I.24.13.1 Notwithstanding any of the provisions in I.24.3.1 of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions authorized by the Secretary of Labor.

I.24.13.1.1 In accordance with regulations issued under Section 14 of the Fair Labor Standards Act of 1938 by the Administrator of the Wage and Hour Division, ESA (29 CFR 520, 521, 524, and 525), apprentices, student learners, and workers whose earning capacity is impaired by age or by

physical or mental deficiency or injury, may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act, without diminishing any fringe benefits or payments in lieu of these benefits required under section 2(a)(2) of the Act.

1.24.13.1.2 The Administrator will issue certificates under the Act for employing apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages, but without changing requirements concerning fringe benefits or supplementary cash payments in lieu of these benefits.

1.24.13.1.3 The Administrator may also withdraw, annul, or cancel such certificates under 29 CFR 525 and 528.

I.24.13.2 An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips shall be credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with regulations in 29 CFR 531. However, the amount of credit shall not exceed 40 percent of the minimum rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 as amended.

I.25 COST AND PRICING DATA

I.25.1 This section and sections I.25.2 through I.25.5 below shall apply to contractors or offerors in regards to: (1) any procurement in excess of \$100,000, (2) any contract awarded through competitive sealed proposals, (3) any contract awarded through sole source procurement, or (4) any change order or contract modification. By entering into this contract or submitting this offer, the Contractor or offeror certifies that, to the best of the Contractor's or offeror's knowledge and belief, any cost and pricing data submitted was accurate, complete and current as of the date specified in the contract or offer.

I.25.2 Unless otherwise provided in the solicitation, the offeror or Contractor shall, before entering into any contract awarded through competitive sealed proposals or through sole source procurement or before negotiating any price adjustments pursuant to a change order or modification, submit cost or pricing data and certification that, to the best of the Contractor's knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of the date of award of this contract or as of the date of negotiation of the change order or modification.

I.25.3 If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified by the Contractor, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified by the Contractor, or (3) any of these parties furnished data of any

description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

I.25.4 Any reduction in the contract price under paragraph c above due to defective data from a prospective subcontractor that was not subsequently awarded, the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided that the actual subcontract price was not itself affected by defective cost or pricing data.

I.25.5 Cost or pricing data includes all facts as of the time of price agreement that prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective Contractor's judgment about estimated future costs or projections, cost or pricing data do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred.

I.25.6 The following specific information should be included as cost or pricing data, as applicable:

- I.25.6.1 Vendor quotations;
- I.25.6.2 Nonrecurring costs;
- I.25.6.3 Information on changes in production methods or purchasing volume;
- I.25.6.4 Data supporting projections of business prospects and objectives and related operations costs;
- I.25.6.5 Unit – cost trends such as those associated with labor efficiency;
- I.25.6.6 Make or buy decisions;
- I.25.6.7 Estimated resources to attain business goals;
- I.25.6.8 Information on management decisions that could have a significant bearing on costs.

I.25.7 If the offeror or contractor is required by law to submit cost or pricing data in connection with pricing this contract or any change order or modification of this contract, the Contracting Officer or representatives of the Contracting Officer shall have the right to examine all books, records, documents and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the contract, change order or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary

to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. Contractor shall make available at its office at all reasonable times the materials described above for examination, audit, or reproduction until three years after the later of: (1) final payment under the contract; (2) final termination settlement; or (3) the final disposition of any appeals under the disputes clause or of litigation or the settlement of claims arising under or relating to the contract.

I.26 MULTIYEAR CONTRACT

I.26.1 If this contract is a multiyear contract, then the following provision is made part of this contract:

I.26.1.1 If funds are not appropriated or otherwise made available for the continued performance in a subsequent year of a multiyear contract, the contract for the subsequent year shall be terminated, either automatically or in accordance with the termination clause of the contract. Unless otherwise provided for in the contract, the effect of termination is to discharge both the District and the Contractor from future performance of the contract, but not from the existing obligations. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract.

I.27 TERMINATION OF CONTRACTS FOR CERTAIN CRIMES AND VIOLATIONS

I.27.1 The District may terminate without liability any contract and may deduct from the contract price or otherwise recover the full amount of any fee, commission, percentage, gift, or consideration paid in violation of this title if:

I.27.1.1 The Contractor has been convicted of a crime arising out of or in connection with the procurement of any work to be done or any payment to be made under the contract; or

I.27.1.2 There has been any breach or violation of:

I.27.1.2.1 Any provision of the Procurement Practices Act of 1985, as amended, or

I.27.1.2.2 The contract provision against contingent fees.

I.27.2 If a contract is terminated pursuant to this section, the Contractor:

I.27.2.1 May be paid only the actual costs of the work performed to the date of termination, plus termination costs, if any; and

I.27.2.2 Shall refund all profits or fixed fees realized under the Contract.

I.27.3 The rights and remedies contained in this are in addition to any other right or remedy provided by law, and the exercise of any of them is not a waiver of any other right or remedy provided by law.

SECTION J

LIST OF ATTACHMENTS

The following list of attachments are incorporated into the RFP by reference and made a part of the RFP in the order of priority described in Section I.12. Listed attachments are documents herein included in the RFP and/or found on website www.dhcf.dc.gov under “Procurement Opportunities”. Sections J.4, J.5, J.6, and J.8 through J-16 are to be completed and submitted with proposal. All listed documents can be downloaded from the www.dhcf.dc.gov website.

Attachment Number	Document
J.1	Government of the District of Columbia Standard Contract Provisions for Use with the Supply and Service Contract, dated March 2007
J.2	U.S. Department of Labor Wage Determination No.2005-2104, Revision No. 10 Dated May 26, 2009
J.3	HIPAA Security and Privacy Regulations
J.4	Certification as to Compliance with Equal Opportunity Obligations including (Equal Employment Opportunity Information Report and Mayor’s Order 85-85)
J.5	Government of the District of Columbia Department of Employment Services First Source Employment Agreement
J.6	Office of Tax and Revenue Tax Certification Affidavit (Including 2848 Power of Attorney and Declaration of Representation)
J.7	District of Columbia Living Wage Notice and Fact Sheet
J.8	Drug Free Workplace Certification
J.9	Past Performance Evaluation Form
J.10	Cost/Price Data Package

Attachment Number	Document
J.11	Certification of Eligibility
J.12	Certification Regarding Debarment Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transaction
J.13	Payment to Subcontractor and Supplies Certificate
J.14	Subcontracting Plan
J.15	Certification of Independent Price Determination

SECTION K

REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS

As part of their offers in response to this RFP, all offers shall provide the following statements:

- K.1** Authorized Negotiators
- K.2** Type of Business Organization
- K.3** Certification as to Compliance with Equal Opportunity Obligations
- K.4** District Employees Not To Benefit Certification
- K.5** Certification of Independent Price Determination
- K.6** Tax Certification
- K.7** Certification Regarding a Drug-Free Workplace
- K.8** Certificate of Eligibility
- K.9** Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusive-Lower Tier Covered Transaction
- K.10** Payment to Subcontractor and Suppliers Certification
- K.11** Subcontracting Plan

SECTION K

REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS

K.1 AUTHORIZED NEGOTIATORS

K.1.1 The Offeror represents that the following persons are authorized to negotiate on its behalf with the District in connection with this request for proposals: (list names, titles, and telephone numbers of the authorized negotiators).

K.2 TYPE OF BUSINESS ORGANIZATION

K.2.1 The Offeror, by checking the applicable box, represents that it operates as:

A corporation incorporated under the laws of the State of: _____;

An individual;

A partnership;

A nonprofit organization; or

A joint venture.

K.2.2 The Offeror, by checking the applicable box, represents that the Offeror is a foreign entity, it operates as:

An individual;

A joint venture; or

A corporation registered for business in (Country).

K.3 CERTIFICATION AS TO COMPLIANCE WITH EQUAL OPPORTUNITY OBLIGATIONS

K.3.1 Mayor's Order 85-85, "Compliance with Equal Opportunity Obligations in Contracts," dated June 10, 1985 and the Office of Human Rights' regulations, Chapter 11, "Equal Employment Opportunity Requirements in Contracts," promulgated August 15, 1986 (4 DCMR Chapter 11, 33 DCR 4952) are included as a part of this solicitation and require the following certification for contracts subject to the order. Failure to

complete the certification may result in rejection of the Offeror for a contract subject to the order.

I hereby certify that I am fully aware of the content of the Mayor's Order 85-85 and the Office of Human Rights' regulations, Chapter 11, and agree to comply with them in performance of this contract.

Date, Name, Title, Signature.

K.3.2 Offeror ____ has ____ has not participated in a previous contract or subcontract subject to the Mayor's Order 85-85. Offeror ____ has ____ has not filed all required compliance reports, and representations indicating submission of required reports signed by proposed subofferors. The above representations need not be submitted in connection with contracts or subcontracts which are exempt from the Mayor's Order..

K.4 DISTRICT EMPLOYEES NOT TO BENEFIT CERTIFICATION

K.4.1 Each Offeror shall check one of the following:

_____ No person listed in Clause 13 of the SCP, "District Employees Not to Benefit" will benefit from this contract.

_____ The following person(s) listed in Clause 13 may benefit from this contract. For each person listed, attach the affidavit required by Clause 13 of the SCP.

K.5 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

K.5.1 Each signature of the Offeror is considered to be a certification by the signatory that:

K.5.1.1 The prices in the Contract have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any Offeror or competitor relating to:

K.5.1.1.1 Those prices;

K.5.1.1.2 The intention to submit a contract; or

K.5.1.1.3 The methods or factors used to calculate the prices in the Contract.

K.5.1.2 The prices in the Contract have not been and will not be knowingly disclosed by the Offeror, directly or indirectly, to any other Offeror or competitor before contract opening unless otherwise required by law; and

K.5.1.3 No attempt has been made or will be made by the Offeror to induce any other concern to submit or not to submit a contract for the purpose of restricting competition.

K.5.2 Each signature on the offer is considered to be a certification by the signatory that the signatory:

K.5.2.1 Is the person in the Offeror's organization responsible for determining the prices being offered in this contract, and that the signatory has not participated and will not participate in any action contrary to Section K.5.1 above; or

K.5.2.2 Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to Section K.5.1 above:

(Insert full name of person(s) in the organization responsible for determining the prices offered in the Contract and the title of his or her position in the Offeror's organization);

K.5.2.3 As an authorized agent, does certify that the principals named in subdivision:

K.5.2.3.1 Have not participated, and will not participate, in any action contrary to Section K.5.1 above; and

K.5.2.3.2 As an agent, has not participated, and will not participate, in any action contrary to Section K.5.1 above.

K.5.3 If the Offeror deletes or modifies Section K.5.1.2 above, the Offeror shall furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

K.6 TAX CERTIFICATION

K.6.1 Each Offeror shall submit with its offer, a sworn Tax Certification Affidavit, found in Attachment J.6.

K.7 CERTIFICATION REGARDING A DRUG-FREE WORKPLACE (JULY 1990)

K.7.1 Each Offeror shall submit with its offer a sworn Drug Free Workplace Act Certification found in Attachment J.8.

K.8 CERTIFICATION OF ELIGIBILITY

K.8.1 Each Offeror shall submit with its offer a completed form entitled Certification of Eligibility found in Attachment J.11.

K.9 CERTIFICATION REGARDING DEBARMENT SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTION

K.9.1 Each Offeror shall submit with its offer a completed form entitled “Certification Regarding Department Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transaction” found in J.12.

K.10 PAYMENT TO SUBCONTRACTOR AND SUPPLIERS CERTIFICATE

K.10.1 Each Offeror shall submit with its offer a completed form entitled “Payment to Subcontractor and Suppliers Certificate” listed in J.13.

K.11 SUBCONTRACTING PLAN

K.11.1 Each Offeror shall submit with its offer a completed “Subcontracting Plan” listed in J.14.

K.12. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

K.12.1 Each Offeror agrees hereto that each signature of the Offeror is considered to be a certification by the signatory in accordance with the requirements found in “Certification of Independent Price Determination” listed in J.15.

SECTION L

INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS

- L.1** Contract Award
- L.2** General Proposal Submission Requirements
- L.3** Proposal Content and Organization
- L.4** Proposal Submission Date and Time, Late Submissions, Late Modifications, Withdrawal or Modification of Proposals, and Late Proposals
- L.5** Explanation to Prospective Offerors
- L.6** Failure to Submit Offer
- L.7** Restriction on Disclosure and Use of Data
- L.8** Proposal Protests
- L.9** Signing of Offers
- L.10** Retention of Proposals
- L.11** Proposal Costs
- L.12** Electronic Copy of Proposals for Freedom of Information Act Requests
- L.13** Certificates of Insurance
- L.14** Acknowledgment of Amendments
- L.15** Best and Final Offers
- L.16** Legal Status of Offeror
- L.17** Familiarization with Conditions
- L.18** Standards of Responsibility
- L.19** Pre-Proposal Conference
- L.20** Reference Library
- L.21** Key Personnel
- L.22** Acceptance Period

SECTION L

INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS

L.1 CONTRACT AWARD

L.1.1 Most Advantageous to the District

L.1.1.1 The District intends to award one (1) contract resulting from this solicitation to the responsible Offeror whose offer conforming to the solicitation will be the best value to the District, cost or price, technical and other factors, specified elsewhere in this solicitation considered.

L.1.1.2 A description of evaluation factors is found in Section M.

L.1.2 Initial Offers

L.1.2.1 The District may award a contract on the basis of initial offers received, without discussion. Therefore, each initial offer should contain the Offeror's best terms from a standpoint of cost or price, technical and other factors.

L.2 GENERAL PROPOSAL SUBMISSION REQUIREMENTS

L.2.1 Offerors shall provide **one (1) original and seven (7) copies** of the written proposal and one electronic CD. The proposal shall be prepared and submitted in two (2) separate volumes, Volume I Technical and Volume II Cost and Price. Each volume of the proposal shall be submitted in a sealed envelope conspicuously marked:

“Proposal in Response to Solicitation No. DHCF-OCLTC-2009-P-20005”

L.2.2 The Technical and Cost and Price Volumes shall contain written narratives and attachments as described in Section L.3, Proposal Content and Organization. The narrative sections of each volume shall be formatted as follows:

L.2.2.1 Typewritten (8.5” by 11” bond paper);

L.2.2.2 Single spaced;

L.2.2.3 One (1) sided;

L.2.2.4 Pages of each proposal volume shall be numbered and identified with the Offeror's name, RFP number, and date (Subsequent revisions, if any, shall be similarly identified to show revision number and date);

L.2.2.5 One (1)-inch (or greater) margins;

L.2.2.6 Six (6) lines (or less) per inch, the equivalent of twelve (12) point font (or larger), charts and graphics may be no less than eight (8) point font;

L.2.2.7 Technical Proposal narratives shall not exceed thirty (30) pages. The Cost and Price Proposal narratives shall not exceed twenty-five (25) pages.

Each proposal shall be submitted in two (2) separate volumes;

L.2.2.8 Attachments are not included in the page limits for the narrative and shall be attached in the Appendix to Volume I; and

L.2.2.9 Proposal narratives shall be logically ordered and provide cross-references to the requirement being addressed.

L.2.3 The Offeror shall prepare a Cover Letter to accompany its Technical Proposal and Price Proposal. The Cover Letter shall state the Offeror's address and phone number for a contact person, and a statement regarding acceptance of the Contract provisions as described in Sections A – K of the solicitation. The Cover Letter shall be signed by an authorized representative of the Offeror's organization. The Cover Letter is not included in the total page count of the technical and price proposal narrative limits described in Section L.2.2.7.

L.2.4 The Offeror shall prepare a Table of Contents for each volume indicating the location of the title of the subheadings and page numbers for each subheading. The Table of Content pages are not included in the total page count of the technical and price proposal narrative limits described in Section L.2.2.7.

L.2.5 Offerors are directed to Section M of this solicitation, Evaluation Factors and Sections M.1, Evaluation For Award, M.2, Technical Rating Scale, M.3, Evaluation Standards and M.4 Evaluation Criteria and the interdependent relationship that exists between the Evaluation Factors described in Section M, the requirements described in Section C of the solicitation and the instructions to Offerors that follow in Section L.3. The Offeror shall respond to each factor in a way that will allow the District to evaluate the Offeror's response. The Offeror shall submit information in a clear, concise, factual, and logical manner providing a comprehensive description of program supplies and services delivery thereof. The information requested below for the technical proposal shall facilitate evaluation and greatest value source selection for all proposals. The technical proposal must contain sufficient detail to provide a clear and concise representation of the requirements described in Section C, Specifications/Work Statement.

L.2.6 The information requested in Section L.3 has been determined to be essential and will allow the District to assess the Offeror's knowledge, capabilities, and capacity to perform the requirements of the Contract as described in Section C in accordance with Section M of the solicitation. The Offeror shall respond in a comprehensive manner to each evaluation factor by submitting the information described below in Section L.3 in a logical order consistent with the RFP, providing reference to the requirement being addressed.

L.2.7 Proposal Information Submission

L.2.7.1 When responding to the instructions in Section L.3, below, Offeror shall provide information, as applicable, regarding:

L.2.7.1.1 Services provided by the Offeror similar in size and scope as those described in the relevant section of Section C; and

L.2.7.1.2 When relevant, the qualifications, training, education, years of experience, and capability of Offeror's Key Personnel, as defined in section C.4, to perform the required services.

L.3 PROPOSAL CONTENT AND ORGANIZATION

L.3.1 Volume I - Technical Proposal Content Instructions

The Offeror's Technical Proposal shall be organized and presented in the following clearly marked separate sections:

L.3.1.1 Technical Capability

The information contained in this section shall facilitate the evaluation of the Offeror's technical capability. The Offeror shall provide at a minimum the following information described below.

L.3.1.1.1 Technical Capability Narratives

The Offeror shall provide the following narratives:

L.3.1.1.1.1 Describe the Offeror's understanding of the District's requirements found in Section C.3 and the Offeror's overall technical approach and methodology to complete the required tasks described in C.3.

L.3.1.1.1.2 Describe the Offeror's approach to assessing and planning for a major metropolitan area's long-term care housing; assessing and planning for a state's long-term care housing; and integrating a long-term housing plan within Medicaid programming.

L.3.1.1.1.3 Describe how the Offeror would determine qualifications for accessible, affordable and safe long-term care housing and identify criteria to select a pool of housing providers for Medicaid long-term care programming.

L.3.1.1.1.4 Describe the Offeror's approach to creating a multi-agency long-term care housing system for major metropolitan area, state, county, or city.

L.3.1.1.5 Describe the Offeror's approach to building collaborative multi-agency relationships as the foundation for a long-term care housing system and establishing formal protocols/regulations to support an efficient long-term care housing system.

L.3.1.2 Corporate Qualifications

The information requested in this section shall facilitate the evaluation of the Offeror's Corporate Qualifications, including Offeror's Past Performance and Previous Experience to perform the required services as described in Section C and Section H.

L.3.1.2.1 Past Performance

L.3.1.2.1.1 Past Performance Narratives

L.3.1.2.1.1.1 Describe the Offeror's experience working with long term-care issues related to housing as demonstrated through research, analyses and/or housing coordination over the past five years.

L.3.1.2.1.1.2 Describe the Offeror's experience working with housing as demonstrated through research, analyses, and/or housing coordination in the District of Columbia (if not already described above).

L.3.1.2.1.2 Past Performance Attachments

L.3.1.2.1.2.1 List three (3) references related to the Offeror's experience in long-term care housing systems and Medicaid programming.

L.3.1.2.1.2.2 List the following information for contracts and subcontracts under which the Offeror has performed work similar to that identified in this RFP (please list in order of largest to smallest contract or subcontract value):

L.3.1.2.1.2.2.1 Name of contracting activity;

L.3.1.2.1.2.2.2 Contract number;

L.3.1.2.1.2.2.3 Contract type;

- L.3.1.2.1.2.2.4 Contract duration (or Period);
- L.3.1.2.1.2.2.5 Total contract value;
- L.3.1.2.1.2.2.6 Type of work performed;
- L.3.1.2.1.2.2.7 Contracting Officer's Name, Address and Telephone;
- L.3.1.2.1.2.2.8 Project Manager's Name, Address and Telephone; and
- L.3.1.2.1.2.2.9 A description of any major problems encountered in performing the contract and corrective actions taken/

L.3.1.2.1.2.3 Offeror shall request that each business reference listed in Section L.3.1.2.1.2.1 complete the Past Performance Evaluation Form attached in Section J.12 and forward the completed to the Contact Person identified in Section L.2 prior to the closing date established for the solicitation and described in Section L.4.

L.3.1.2.2 Organization and Staffing

Offeror shall provide a narrative to describe the Offeror's proposed staffing plan and staffing pattern to fulfill the required services described in Section C.3.

L.3.1.2.2.1 Organizational Structure Narratives

This section requests information about the Offeror's organizational and management structure

L.3.1.2.2.1.1 Include an overview of the organizational structure in the proposal narrative, indicating the responsibilities of each department for the functions delineated in this statement of work.

L.3.1.2.2.1.2 Describe the Offeror's process for project management and identify the expected level of on-site involvement.

L.3.1.2.2.2 Organization and Staffing Attachments:

L.3.1.2.2.2.1 An organizational chart showing:

L.3.1.2.2.2.1.1 The names and positions of the Offeror's employees who will provide or contribute to the services to be performed under the Contract, including, at a minimum;

L.3.1.2.2.2.1.2 Subcontractors that will be performing services for the Offeror under the Contract; and

L.3.1.2.2.2.1.3 The reporting lines and accountability among the Offeror's staff and subcontractors as applicable.

L.3.1.2.2.2.2 The resume of the Program Manager and Housing Assistance Resource Coordinator as described in Section C.4.3. If the position of Project Manager is currently vacant, please provide a job description.

L.3.1.2.2.2.3 The resumes of the staff and subcontractors Offeror considers to be relevant additional personnel, as defined in sections C.4. If a position is currently vacant, provide a job description.

L.3.1.2.2.2.4 A list of all members of the Board of Directors and current officers of the corporation and list any financial interests in the corporation.

L.3.1.2.2.2.5 Documentation of judgments and licensing actions involving Offeror in other states or jurisdictions

L.3.1.2.3 Representations and Certifications

Offeror shall complete the following representations and certifications:

L.3.1.2.3.1 Completed information in the Equal Employment Opportunity Forms, Attachment J.4;

L.3.1.2.3.2 First Source Employment Agreement, Attachment J.5.;

L.3.1.2.3.3 Tax Certification, Attachment J.11; and

L.3.1.2.3.4 Completed information in Section K, Representations, Certification and Other Statements of Offerors.

L.3.2 Volume II: Price Proposal

L.3.2.1 Offeror's Price Proposal shall be organized and presented in the following clearly marked separate sections.

L.3.2.1.1 Table of Contents

L.3.2.1.2 Contract Budget and Cost and Price Data

L.3.2.1.3 Offeror may provide their total budget worksheets in whatever formats they believe will convey the data clearly, so long as the specified minimum level of detail in the Cost/Price tables in Attachment J.15 is met. This pro-forma contract budget will show the "total costs" that Offeror anticipates incurring in the performance of the contract requirements

L.3.2.1.4 Price Proposal Narrative

Offeror shall provide a narrative of the Price Proposal to include at a minimum the following;

L.3.2.1.4.1 Cost and price justifications to support the Contract Pricing and Contract Budget information provided in Section L.3.2.2;

L.3.2.1.4.2 Description of Offeror's plans to maintain sufficient financial resources to perform the required services and contingency plans should costs be greater than expected

L.3.2.1.5 Cost/Price Data and Certification

L.3.2.1.5.1 Offeror shall complete and provide the Cost/Price Data Certification provided in Attachment J.15.

L.4 PROPOSAL SUBMISSION DATE AND TIME, LATE SUBMISSIONS, LATE MODIFICATIONS, WITHDRAWAL OR MODIFICATION OF PROPOSALS AND LATE PROPOSALS

L.4.1 Proposal Submission

L.4.1.1 Proposals must be submitted no later than **2:00 P.M. EST** by **December 1, 2009** Proposals are to be mailed and/or hand delivered to:

Department of Health Care Finance

Office of Contracts and Compliance

825 North Capitol Street, NE, Suite 5135

Washington, DC 20002

Attention: Lillian J. Beavers, Contract Specialist

Solicitation No. DHCF-OCLTC-2009-P-20005

L.4.1.2 Proposals, modifications to proposals, or requests for withdrawals that are received in the designated District office after the exact local time specified above, are "late" and shall be considered only if they are received before the award is made and one (1) or more of the following circumstances apply:

L.4.1.2.1 The proposal or modification was sent by registered or certified mail not later than the fifth (5th) day before the date specified for receipt of offers;

L.4.1.2.2 The proposal or modification was sent by mail and it is determined by the Contracting Officer that the late receipt at the location specified in the solicitation was caused by mishandling by the District, or

L.4.1.2.3 The proposal is the only proposal received.

L.4.2 Withdrawal or Modification of Proposals

L.4.2.1 An Offeror may modify or withdraw its proposal upon written, telegraphic notice, or facsimile transmission if received at the location designated in the solicitation for submission of proposals, but not later than the closing date for receipt of proposals.

L.4.3 Postmarks

L.4.3.1 The only acceptable evidence to establish the date of a late proposal, late modification or late withdrawal sent either by registered or certified mail shall be a U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service.

L.4.3.2 If neither postmark shows a legible date, the proposal, modification or request for withdrawal shall be deemed to have been mailed late. When the postmark shows the date but not the hour, the time is presumed to be the last minute of the date shown. If no date is shown on the postmark, the proposal shall be considered late unless Offeror can furnish evidence from the postal authorities of timely mailing.

L.4.4 Late Modifications

L.4.4.1 A late modification of a successful proposal, which makes its terms more favorable to the District, shall be considered at any time it is received and may be accepted.

L.4.5 Late Proposals

L.4.5.1 A late proposal, late modification or late request for withdrawal of an offer that is not considered shall be held unopened, unless opened for identification, until after award and then retained with unsuccessful offers resulting from this solicitation.

L.5 EXPLANATION TO PROSPECTIVE OFFERORS

L.5.1 If a prospective Offeror has any questions relative to this solicitation, the prospective Offeror shall submit the question in writing to the contact person, identified on page one (1).

L.5.2 The prospective Offeror shall submit questions no later than fifteen (15) days prior to the closing date and time indicated for this solicitation. The District will not consider any questions received less than fifteen (15) days before the date set for submission of proposals.

L.5.3 The District will furnish responses promptly to all other prospective Offerors. An amendment to the solicitation will be issued if that information is necessary in submitting offers, or if the lack of it would be prejudicial to any other prospective Offerors. Oral explanations or instructions given before the award of the Contract will not be binding.

L.6 FAILURE TO SUBMIT OFFER

L.6.1 Recipients of this solicitation not responding with an offer should not return this solicitation. Instead, they should advise the Contracting Officer identified in Section G, by letter or postcard whether they want to receive future solicitations for similar requirements.

L.6.2 It is also requested that such Recipients advise the Contracting Officer of the reason for not submitting a proposal in response to this solicitation. If a Recipient does not submit an offer and does not notify the Contracting Officer that future solicitations are desired, the Recipient's name may be removed from the applicable mailing list.

L.7 RESTRICTION ON DISCLOSURE AND USE OF DATA

L.7.1 Offerors who include in their proposal data that they do not want disclosed to the public or used by the District except for use in the procurement process shall mark the title page with the following legend:

"This proposal includes data that shall not be disclosed outside the District and shall not be duplicated, used or disclosed in whole or in part for any purpose except for use in the procurement process."

L.7.1.1 If, however, a contract is awarded to this Offeror as a result of or in connection with the submission of this data, the District will have the right to

duplicate, use, or disclose the data to the extent consistent with the District's needs in the procurement process. This restriction does not limit the District's rights to use, without restriction, information contained in this proposal if it is obtained from another source. The data subject to this restriction are contained in sheets (insert page numbers or other identification of sheets).

L.7.2 Mark each sheet of data it wishes to restrict with the following legend:

"Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal."

L.8 PROPOSAL PROTESTS

L.8.1 Any actual or prospective Offeror who is aggrieved in connection with the solicitation or award of a contract must file with the District of Columbia Contract Appeals Board (Board) a protest no later than ten (10) business days after the basis of protest is known or should have been known, whichever is earlier. A protest based on alleged improprieties in a solicitation which are apparent at the time set for receipt of initial proposals shall be filed with the Board prior to the time set for receipt of initial proposals.

L.8.2 In procurements in which proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, must be protested no later than the next closing time for receipt of proposals following the incorporation.

L.8.3 The protest shall be filed in writing, with the Contract Appeals Board, 717 14th Street, N.W., Suite 430, Washington, D.C. 20004. The aggrieved person shall also mail a copy of the protest to the Contracting Officer for the solicitation.

L.9 SIGNING OF OFFERS

L.9.1 Offeror shall sign the offer and print or type its name on the proposal.

L.9.2 Offers signed by an Agent shall be accompanied by evidence of that Agent's authority, unless that evidence has been previously furnished to the Contracting Officer.

L.10 RETENTION OF PROPOSALS

L.10.1 All proposal documents will be the property of the District and retained by the District, and therefore will not be returned to Offerors.

L.11 PROPOSAL COSTS

L.11.1 The District is not liable for any costs incurred by Offerors in submitting proposals in response to this solicitation or in implementing a contract awarded under this solicitation.

L.12 ELECTRONIC COPY OF PROPOSALS FOR FREEDOM OF INFORMATION ACT REQUESTS

L.12.1 In addition to other proposal submission requirements, Offeror must submit an electronic copy of its proposal, including all narratives and attachments for Volumes 1 and 2, redacted in accordance with any applicable exemptions from disclosure in D.C. Official Code § 2-534, for the District to comply with Section 2-536(b) that requires the District to make available electronically copies of records that must be made public.

L.12.2 The District's policy is to release documents relating to District proposals following award of the Contract, subject to applicable FOIA exemption under Section 2-534(a)(1).

L.13 CERTIFICATES OF INSURANCE

L.13.1 The Offeror shall submit certificates of insurance giving evidence of the required coverage as specified in Section H.8 prior to commencing work.

L.13.2 Evidence of insurance shall be submitted within fourteen (14) days of Contract award to:

Lillian J. Beavers

Department Health Care Finance

Office of Contracts & Compliance

825 North Capitol Street, NE

Suite 5135

Washington, DC 20002

L.14 ACKNOWLEDGEMENT OF AMENDMENTS

L.14.1 Offeror shall acknowledge receipt of any amendment to this solicitation by the following:

L.14.1.1 Signing and returning the amendment;

L.14.1.2 Identifying the amendment number and date in the space provided for this purpose in Section A, Solicitation, Offer and Award form; or

L.14.1.3 Letter.

L.14.2 The District must receive the acknowledgment by the date and time specified for receipt of offers. Offeror's failure to acknowledge an amendment may result in rejection of the offer.

L.15 BEST AND FINAL OFFERS

L.15.1 If, subsequent to receiving original proposals, negotiations are conducted, all Offerors within the competitive range will be so notified and will be provided an opportunity to submit written best and final offers at the designated date and time. Best and Final Offers will be subject to the Late Submissions, Late Modifications and Late Withdrawals of Proposals provision of the solicitation.

L.15.2 After receipt of best and final offers, no discussions will be reopened unless the Contracting Officer determines that it is clearly in the District's best interest to do so, e.g., it is clear that information available at that time is inadequate to reasonably justify Broker selection and award based on the best and final offers received. If discussions are reopened, the Contracting Officer shall issue an additional request for best and final offers to all Offerors still within the competitive range.

L.16 LEGAL STATUS OF OFFEROR

L.16.1 Each proposal must provide the following information:

L.16.1.1 Name, address, telephone number and federal tax identification number of Offeror;

L.16.1.2 A copy of each District of Columbia license, registration or certification that the Offeror is required by law to obtain. This mandate also requires the Offeror to provide a copy of the executed "Clean Hands Certification" that is referenced in D.C. Official Code §47-2862 (2001), if the Offeror is required by law to make such certification. If the Offeror is a corporation or partnership and does not provide a copy of its license, registration or certification to transact business in the District of Columbia, the offer shall certify its intent to obtain the necessary license, registration or certification prior to Contract award or its exemption from such requirements; and

L.16.1.3 If Offeror is a partnership or joint venture, the names and addresses of the general partners or individual Recipients of the joint venture, and copies of any joint venture or teaming agreements.

L.17 FAMILIARIZATION WITH CONDITIONS

L.17.1 Offerors shall thoroughly familiarize themselves with the terms and conditions of this solicitation, acquainting themselves with all available information regarding difficulties which may be encountered, and the conditions under which the work is to be accomplished.

L.17.2 Brokers will not be relieved from assuming all responsibility for properly estimating the difficulties and the cost of performing the services required herein due to their failure to investigate the conditions or to become acquainted with all information, schedules and liability concerning the services to be performed.

L.18 STANDARDS OF RESPONSIBILITY

L.18.1 Offeror must demonstrate to the satisfaction of the District the capability in all respects to perform fully the Contract requirements; therefore, the Offeror must submit the documentation listed below, within five (5) days of the request by the District. Any Offeror that fails to submit the documentation will be deemed non-responsible and ineligible to receive a contract under this RFP.

L.18.1.1 Evidence of adequate financial resources, credit or the ability to obtain such resources as required during the performance of the Contract.

L.18.1.2 Evidence of the ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.

L.18.1.3 Evidence of the necessary organization, experience, accounting and operational control, technical skills or the ability to obtain them.

L.18.1.4 Evidence of compliance with the applicable District licensing and tax laws and regulations.

L.18.1.5 Evidence of a satisfactory performance record, record of integrity and business ethics.

L.18.1.6 Evidence of the necessary technical equipment and facilities or the ability to obtain them.

L.18.1.7 Evidence that Offeror does not have any judgments against it that may negatively affect or preclude satisfactory performance.

L.18.1.8 Evidence that Offeror maintains a license (if applicable) and is in good standing in the other jurisdictions where Offeror operates.

L.18.2 If Offeror fails to supply the information requested, the Contracting Officer shall make the determination of responsibility or non-responsibility based upon available information. If the available information is insufficient to make a determination of responsibility, the Contracting Officer shall determine the prospective Offeror to be non-responsible.

L.19 PRE-PROPOSAL CONFERENCE

L.19.1 Prospective Offerors will be given an opportunity to ask questions regarding this solicitation at the conference on **November 6, 2009 from 10:00 am to 12:00pm at 825 N. Capitol St, NE Washington, DC Conference Room 4131 (4th Floor)**. The purpose of the conference is to provide a structured and formal opportunity for the District to accept questions from Offerors on the solicitation document as well as to clarify the contents of the solicitation. Attending Offerors must complete the pre-proposal conference Attendance Roster at the conference so that their attendance can be properly recorded.

L.19.2 Impromptu questions will be permitted and spontaneous answers will be provided at the District's discretion. Verbal answers given at the pre-proposal conference are only intended for general discussion and do not represent the Department's final position. All oral questions will be submitted in writing following the close of the pre-proposal conference but no later than five business days after the pre-proposal conference in order to generate an official answer. Official answers will be provided in writing to all prospective Offerors who are listed on the official Offerors' list as having received a copy of the solicitation. Answers will be posted on the DHCF website at www.dhcf.dc.gov.

L.20 REFERENCE LIBRARY

L.20.1 This solicitation will not contain or utilize a reference library.

L.20.2 Additional program background information will be available electronically via the websites included throughout the RFP or as documents attached to the RFP.

L.21 KEY PERSONNEL

L.21.1 The District considers the positions described in Sections C.4 and H.22 as Key Personnel for this Contract.

L.21.2 In accordance with this RFP, Offeror shall set forth in its proposal the names and reporting relationships of the Key Personnel identified in Section H.22 that Offeror will use to perform the work under the Contract. Offeror shall attach their resumes and describe the hours that each will devote to the Contract, in total and broken down by task.

L.22 ACCEPTANCE PERIOD

L.22.1 The Offeror agrees that its offer remains valid for a period of 120 calendar days from the submission of proposal date of **December 1, 2009**. However, if for administrative reasons, the District is unable to make an award within this time period, the Contracting Officer will request the Contractor and his/her surety to extend the proposal guarantee for an additional thirty (30) days.

SECTION M

EVALUATION FACTORS FOR AWARD

- M.1** Evaluation for Award
- M.2** Technical Rating Scale
- M.3** Evaluation Standards
- M.4** Evaluation Criteria
- M.5** Open Market Clauses with No Subcontracting Set-Aside

SECTION M

EVALUATION FACTORS FOR AWARD

M.1 EVALUATION FOR AWARD

M.1.1 The Contract will be awarded to the responsible Offeror whose offer is most advantageous to the District, based upon the evaluation criteria specified below. Thus, while the points in the evaluation criteria indicate their relative importance, the total scores will not necessarily be determinative of the award. Rather, the total scores will guide the District in making an intelligent award decision based upon the evaluation criteria.

M.2 TECHNICAL RATING SCALE

M.2.1 The Offeror's technical proposal response for each technical factor will be evaluated by the District and assigned a technical rating based on the quality of the Offeror's response.

M.2.2 The Technical Rating Scale follows:

Numeric Rating	Adjective	Description
0	Unacceptable	Fails to meet minimum requirements, e.g., no demonstrated capacity, major deficiencies which are not correctable; Offeror did not address the factor.
1	Poor	Marginally meets minimum requirements; major deficiencies which may be correctable.
2	Minimally Acceptable	Marginally meets minimum requirements; minor deficiencies which may be correctable.
3	Acceptable	Meets requirements; no deficiencies
4	Good	Meets requirements and exceeds some requirements; no deficiencies
5	Excellent	Exceeds most, if not all requirements; no deficiencies.

M.2.3 The technical rating is a weighting mechanism that will be applied to the point value for each evaluation factor and significant sub-factor to determine the Offeror's score for each factor. The Offeror's total technical score will be determined by adding the Offeror's score in each evaluation factor. For example, if an evaluation factor has a point value of zero (0) to forty (40) points, utilizing the Technical Rating Scale above the District evaluates the Offeror's response as "Good," the score for that evaluation factor is 4/5 of 40 or 32.

M.3 EVALUATION STANDARDS

M.3.1 In accordance with Section M.1, the District will make a best value award to the responsible Offeror(s) whose offer conforms to the solicitation and is most advantageous to the District, cost or price and technical factors listed below considered.

M.3.2 Proposals will be evaluated based on the following technical evaluation factors which are listed in descending order of importance:

M.3.2.1 Technical Capability

M.3.2.1.1 Technical Approach and Methodology

M.3.2.2 Past Performance

M.3.2.2.1 Expertise in long-term care housing systems and Medicaid programming.

M.3.2.2.2 Letters of Reference

M.3.2.3 Organization and Project Staffing

M.3.2.3.1 Overview of Offerors Organizational Structure

M.3.2.3.2 Project Team/Staffing Structure

M.3.2.3.3 Resumes of Key Personnel

M.3.2.3.4 Skill Level and Expertise of Proposed Staffing

M.4 EVALUATION CRITERIA

M.4.1 The technical evaluation criteria set forth below have been developed by agency technical personnel and have been tailored to the requirements of this particular solicitation. Contractor is informed that these criteria will serve as the standard against which all proposals will be evaluated and serve to establish the evaluation criteria including the evaluation factors and significant sub factors which Contractor should specifically address in complying with the requirements of the solicitation as described in Section C and instructions and notices to Offerors described in Section L.

M.4.2 The relative probabilities of the Offeror to accomplish the requirements of the solicitation will be evaluated based on the specific information requested in Section L.3 in accordance with the evaluation factors described below. Contractor should respond to each factor and significant sub factor in a way that will allow the District to evaluate Contractor’s response. The scoring for each evaluation factor will be based on the District’s determination of the degree to which the Offeror satisfies the requirements within the evaluation factor and significant sub factors. Deficiencies and weaknesses identified in the proposal as well as the District’s risk will also be considered.

M.4.3	Factor 1 – Technical Capability	35	Points
	Factor 2 – Past Performance	15	Points
	Factor 3 – Organization and Project Staffing	15	Points
	Factor 4 - Price	10	Points

M.4.4 Price Criteria

M.4.4.1 Price evaluations will account for up to ten (10) points of the total score. Unlike the technical evaluation, the price evaluation will be objective. Hence, the Offeror with the lowest price within an acceptable range will receive the maximum points. All other proposals will receive a proportionately lower total score.

M.4.4.2 Actual points assigned to each Offeror in this category will be based on the Offeror’s total price as provided in the Offeror’s Price Proposal (Section L.3.2 and information the Offeror provides in the Table in Section B.5) in accordance with the following formula.

$$\frac{\text{Lowest Price Proposal} \times (20)}{\text{Price of Proposal Being Evaluated}} = \text{Evaluated Price Score}$$

M.4.5 Preference Points will be awarded in accordance with Section M.5 below for a total six (6) preference points on a one hundred point (100) point scale.

M.4.6 Total Points

M.4.6.1 The total points awarded under the solicitation are one hundred.

Technical Evaluation Factors

0 – 100 Points

Evaluation Factor/ Significant Subfactor	Point Value	Point Assigned
Factor 1 - Technical Capability	0 – 40	
<p>Scoring of this factor will be based on the overall technical capabilities relative to sub-factors as described in each Segment L.3.1.1.1 and L.3.1.1.</p> <ul style="list-style-type: none"> a) Offeror’s understanding, technical approach, methodology, experience and proven capability of assessing and planning for a major metropolitan area’s long-term care housing; assessing and planning for a state’s long-term care housing; integrating a long-term housing plan within Medicaid programming. b) Offeror’s understanding, technical approach, methodology, experience and proven capability of determining qualifications for accessible, affordable and safe long-term care housing; identifying criteria to select a pool of housing providers for Medicaid long-term care programming. c) Offeror’s understanding, technical approach, methodology, experience and proven capability of creating a multi-agency long-term care housing system for major metropolitan area, state, county, or city. d) Offeror’s understanding, technical approach, methodology, experience and proven capability of building collaborative multi-agency relationships as the 		

<p>foundation for a long-term care housing system; establishing formal protocols/regulations to support an efficient long-term care housing system.</p> <p>e) Offeror’s understanding, technical approach, methodology, experience and proven capability of: facilitating the implementation of a long-term care housing plan in a major metropolitan area, state, county, or city; facilitating the implementation of a Medicaid program across a major metropolitan area, state, county, or city.</p>		
Factor 2 - Past Performance	0 – 25	
<p>Scoring of this factor will be based on the Offeror’s expertise and past performance and Letters of Reference using the following subfactors as described in Section L.3.1.2.1.</p> <p>a) Offeror’s demonstrated expertise and quality of performance in long-term care housing systems and Medicaid programming.</p> <p>b) Three (3) letters of reference from the most recent clients with respect to similar services that the Offeror has provided. Offeror letters should be formatted to communicate the Offeror’s specialized experience in understanding and executing the proposed services to exemplify the Offeror’s approach to the development of a long-term care housing system. Letters should reflect the following:</p> <ol style="list-style-type: none"> 1. Project Name; 2. Project Location; 3. Nature or Type of System Development and/or 		

<p>implementation;</p> <p>4. Project Estimate or Completed Price;</p> <p>5. Current Project Status (Completed or on-going);</p> <p>6. Project Owner’s Name, Address & Contact Phone Number; and</p> <p>7. Summation of Offeror’s overall performance.</p>		
<p>Factor 3 - Organization and Staffing</p>	<p>0 – 20</p>	
<p>Scoring of this factor will be based on the Offeror’s organization and proposed staffing to subfactors as described in Section L.3.1.2.2.</p> <p>a) Overview of Offeror’s organizational structure (including an organizational chart);</p> <p>b) Team/Staffing Structure (including labor categories to include years of experience, education level and certifications);</p> <p>c) Resumes of Key Personnel as described in H.22; and</p> <p>d) Skill level and expertise of proposed staffing.</p>		
<p>Price Evaluation</p> <p>0 – 10 Points</p>		
<p>Price</p>	<p>0 – 15</p>	
<p>Preference Points</p>		

0 – 12 Points		
Preference Points	0 - 12	Preference Points as described in M.5.1.2
Small Business Enterprise (SBE)	3	
Resident Owned Business (ROB)	3	
Longtime Resident Business (LRB)	10	
Local Business Enterprise (LBE)	2	
Disadvantaged Business Enterprise located in an Enterprise Zone	2	
Disadvantaged Business Enterprise (DBE)	2	

M.5 OPEN MARKET CLAUSES WITH NO SUBCONTRACTING SET-ASIDE (SUPPLIES AND SERVICES)

M.5.1 Preferences for Local Businesses, Disadvantaged Businesses, Resident-owned Businesses, Small Businesses, Longtime Resident Businesses, or Local Businesses with Principal Offices Located in an Enterprise Zone

M.5.1.1 Under the provisions of the “Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005” (the Act), Title II, Subtitle N, of the “Fiscal Year 2006 Budget Support Act of 2005”, D.C. Law 16-33, effective October 20, 2005, the District shall apply preferences in evaluating bids or proposals from businesses that are small, local, disadvantaged, resident-owned, longtime resident, or local with a principal office located in an enterprise zone of the District of Columbia.

M.5.1.2 General Preferences

For evaluation purposes, the allowable preferences under the Act for this procurement are as follows:

M.5.1.2.1 Three percent (3%) reduction in the bid price or the addition of three (3) points on a one hundred (100) point scale for a small business enterprise (SBE) certified by the Small and Local Business Opportunity

Commission (SLBOC) or the Department of Small and Local Business Development (DSLBD), as applicable;

M.5.1.2.2 Three percent (3%) reduction in the bid price or the addition of three (3) points on a one hundred (100) point scale for a resident-owned business enterprise (ROB) certified by the SLBOC or the DSLBD, as applicable;

M.5.1.2.3 Ten percent (10%) reduction in the bid price or the addition of ten (10) points on a one hundred (100) point scale for a longtime resident business (LRB) certified by the SLBOC or the DSLBD, as applicable;

M.5.1.2.4 Two percent (2%) reduction in the bid price or the addition of two (2) points on a one hundred (100) point scale for a local business enterprise (LBE) certified by the SLBOC or the DSLBD, as applicable;

M.5.1.2.5 Two percent (2%) reduction in the bid price or the addition of two (2) points on a one hundred (100) point scale for a local business enterprise with its principal office located in an enterprise zone (DZE) and certified by the SLBOC or the DSLBD, as applicable; and

M.5.1.2.6 Two percent (2%) reduction in the bid price or the addition of two (2) points on a one hundred (100) point scale for a disadvantaged business enterprise (DBE) certified by the SLBOC or the DSLBD, as applicable.

M.5.2 Application of Preferences

M.5.2.1 The preferences shall be applicable to prime Contractors as follows:

M.5.2.1.1 Any prime Contractor that is an SBE certified by the SLBOC or the DSLBD, as applicable, will receive a three percent (3%) reduction in the bid price for a bid submitted by the SBE in response to an Invitation for Bids (IFB) or the addition of three (3) points on a one hundred (100) point scale added to the overall score for proposals submitted by the SBE in response to a Request for Proposals (RFP).

M.5.2.1.2 Any prime Contractor that is an ROB certified by the SLBOC or the DSLBD, as applicable, will receive a three percent (3%) reduction in the bid price for a bid submitted by the ROB in response to an IFB or the addition of three (3) points on a one hundred (100) point scale added to the overall score for proposals submitted by the ROB in response to an RFP.

M.5.2.1.3 Any prime Contractor that is an LRB certified by the SLBOC or the DSLBD, as applicable, will receive a ten percent (10%) reduction in the bid price for a bid submitted by the LRB in response to an IFB or the

addition of ten (10) points on a one hundred (100) point scale added to the overall score for proposals submitted by the LRB in response to an RFP.

M.5.2.1.4 Any prime Contractor that is an LBE certified by the SLBOC or the DSLBD, as applicable, will receive a two percent (2%) reduction in the bid price for a bid submitted by the LBE in response to an IFB or the addition of two (2) points on a one hundred (100) point scale added to the overall score for proposals submitted by the LBE in response to an RFP.

M.5.2.1.5 Any prime Contractor that is a DZE certified by the SLBOC or the DSLBD, as applicable, will receive a two percent (2%) reduction in the bid price for a bid submitted by the DZE in response to an IFB or the addition of two (2) points on a one hundred (100) point scale added to the overall score for proposals submitted by the DZE in response to an RFP.

M.5.2.1.6 Any prime Contractor that is a DBE certified by the SLBOC or the DSLBD, as applicable, will receive a two percent (2%) reduction in the bid price for a bid submitted by the DBE in response to an IFB or the addition of two (2) points on a one hundred (100) point scale added to the overall score for proposals submitted by the DBE in response to an RFP.

M.5.3 Maximum Preference Awarded

M.5.3.1 Notwithstanding the availability of the preceding preferences, the maximum total preference to which a certified business enterprise is entitled under the Act for this procurement is twelve percent (12%) for bids submitted in response to an IFB or the equivalent of twelve (12) points on a one hundred (100) point scale for proposals submitted in response to an RFP.

M.5.3.2 There will be no preference awarded for subcontracting by the prime Contractor with certified business enterprises.

M.5.4 Preferences for Certified Joint Ventures

M.5.4.1 When the SLBOC or the DSLBD, as applicable, certifies a joint venture, the certified joint venture will receive preferences as a prime Contractor for categories in which the joint venture and the certified joint venture partner are certified, subject to the maximum preference limitation set forth in the preceding paragraph.

M.5.5 Vendor Submission for Preferences

M.5.5.1 Any vendor seeking to receive preferences on this solicitation must submit at the time of, and as part of its bid or proposal, the following documentation, as applicable to the preference being sought:

M.5.5.1.1 Evidence of the vendor's or joint venture's certification by the SLBOC as an SBE, LBE, DBE, DZE, LRB, or RBO, to include a copy of all relevant letters of certification from the SLBOC; or

M.5.5.1.2 Evidence of the vendor's or joint ventures provisional certification by the DSLBD as an SBE, LBE, DBE, DZE, LRB, or RBO, to include a copy of the provisional certification from the DSLBD.

M.5.5.2 Any vendor seeking certification or provisional certification in order to receive preferences under this solicitation should contact the:

Department of Small and Local Business Development

ATTN: LSDBE Certification Program

441 Fourth Street, NW, Suite 970N

Washington, DC 20001

M.5.5.3 All vendors are encouraged to contact the DSLBD at 202-727-3900 if additional information is required on certification procedures and requirements.