

**DETERMINATION AND FINDINGS
FOR A
SOLE SOURCE PROCUREMENT
UNDER GSA FEDERAL SUPPLY SCHEDULE**

CONTRACT NO: GS-23F-0003J/DCJM-2012-T-0006
CAPTION: Consumer Account Reconciliation Review for CY 2011
PROPOSED CONTRACTOR: Bert W. Smith, Jr. & Co., Chartered
1090 Vermont Avenue, NW, Suite 920
Washington, DC 20005
Telephone: (202)-393-5600
PROGRAM AGENCY: Department on Disability Services

FINDINGS

1. AUTHORIZATION:

D.C. Official Code § 2-354.04 (2011 Repl.); 27 DCMR §§ 1304 and 1702.

2. MINIMUM NEED:

The Department on Disability Services (“DDS”), Developmental Disabilities Administration (“DDA”) is responsible for the provision of community-based care for approximately 2,075 individuals with intellectual and other developmental disabilities. Some of these individuals previously resided in the now closed District facility known as Forest Haven, and are known as *Evans* class members. Currently, there are 562 remaining *Evans* class members known to DDS/DDA. DDS/DDA has an immediate need for consumer account reconciliation services for calendar year 2011 for approximately 522 *Evans* class members in order for the District of Columbia (“District”) to achieve compliance with the requirements of the 2001 Plan for Compliance and Conclusion of *Evans v. Williams* (“2001 Exit Plan”), the 2010 Revision to the 2001 Plan for Compliance and Conclusion of *Evans v. Fenty* (“2010 Revision”), and the related court orders in the *Evans* class action litigation. The first phase of this review will cover the examination of the Office of the Chief Financial Officer’s (“OCFO”) internal operations and accounting procedures related to the management of the consumer funds. The second phase of the review will examine the DDS/DDA *Evans* consumers’ accounting and banking records held by the various residential providers. In addition, the vendor will provide consumer account reconciliation services for calendar year 2011 for approximately ten percent of the non-class member individuals, or approximately 150 consumers, who do not reside at the residential settings already reviewed in the context of the *Evans* class member reviews. The District intends to certify compliance with the Goal C, Personal Possessions, of the 2010 Revision in October 2012, and these account reconciliation services must be fully rendered prior to certification. The vendor must be intimately familiar and knowledgeable about the DDS/DDA residential providers and the

requirements for safeguarding personal possessions, must be able to fully perform the work from April to July 2012, and must provide the final report for the Evans class members on or before July 2, 2012.

3. ESTIMATED REASONABLE PRICE:

The estimated fair and reasonable price is \$220,000, with approximately \$150,000 needed for the consumer account reconciliation services for the 522 *Evans* class members, and an approximately \$70,000 needed for the consumer account reconciliation services for the non-class members served by DDS/DDA.

4. FACTS THAT JUSTIFY SOLE SOURCE PROCUREMENT:

Under Goal C, the 2010 Revision requires the District to ensure that (1) individuals have consolidated, interest-bearing accounts; (2) individuals are remunerated in full for all monies to which they are entitled; (3) individual's funds and personal possessions are safeguarded; (4) ISPs contain an Individual Financial Plan ("IFP"); and (5) annual audits are performed for each account and shared with the Court Monitor and the Quality Trust. Under prior contracts awarded competitively to Bert Smith & Co. ("Bert Smith"), the District obtained audits (*i.e.* a review of a sample of providers and consumers' community accounts for a percentage of *Evans* class members) for the period October 1, 2001, through December 31, 2006, in three separate audits in May 2006, May 2007, and March 2009. Bert Smith had been conducting. Most recently, however, Bert Smith's contract was modified to require a 100% review of 545 *Evans* class member's personal funds accounts for the four calendar years 2007 through 2010, which satisfies one of the five outcome criteria for Goal C. The Bert Smith reports also serve to partially satisfy three other Goal C outcome criteria in determining whether individuals have consolidated, interest-bearing accounts, individuals' accounts are remunerated in full for monies to which they are entitled on the basis of the review, and individuals' account funds are safeguarded.

For this latest review, in February 2011, residential providers serving *Evans* class members were notified that Bert Smith would be conducting the four-year review for the calendar years 2007 through 2010, of the 545 consumers' accounts agreed-upon with the plaintiffs in the *Evans* litigation. Bert Smith's on-site review began two weeks later, the initial on-site reviews were completed in June 2011, and Bert Smith's draft reports were distributed to the provider agencies for review in August 2011. The provider agencies were given an opportunity to refute Bert Smith's draft findings related to their compliance with the *Evans* requirements or to make remuneration to the class members for disbursements which were determined unallowable or not properly documented. Beginning in September 2011, Bert Smith revisited each of the providers who attempted to refute the draft findings and concluded its follow-up reviews on October 16, 2011. On November 29, 2011, Bert Smith sent to DDS five final reports dated as of October 16, 2011, which is the last day that Bert Smith conducted field work.

On December 15, 2011, DDS provided the *Evans* stakeholder with a complete copy of each of the five final Bert Smith reports. In addition, on the same date, DDS provided each of 32 residential providers serving *Evans* class members with a copy of Bert Smith's final report of the findings and recommendations related to that provider's review. Bert Smith's final report is updated to indicate whether the noted dollar amount deficiency from the draft report already has been cleared (based on additional documentation) or been paid by the provider. For each of the six host home providers serving *Evans* individuals (three of which also serve class members in other residential settings), Bert Smith was unable to review the consumer accounts because the records were incomplete. DDS worked with Bert Smith and these providers to rectify these record-keeping deficiencies. For the other non-host home residential providers, the Bert Smith final report shows that (1) no amount was determined deficient for nine providers, (2) less than the amount determined deficient in the draft report had been either cleared or paid for seven providers, and (3) the remaining twelve providers had either fully remunerated the class members for the noted deficiency or the amount had been cleared. Each provider was given five (5) business days by which to reimburse the class members' account for any amounts found deficient by Bert Smith and not yet paid or cleared, and to immediately provide DDS/DDA and Bert Smith with documentary evidence of the payment. If the payment to the class member would have resulted in an over-resourcing of the individual, thereby making him or her ineligible for Medicaid, then the provider was to have been working with the assigned Service Coordinator and the other members of the individual's interdisciplinary team ("IDT") to develop either a spend down plan or to work on establishing a Vinner Trust for the class member. DDS has worked with the providers to establish that all funds identified as deficient in the Bert final report have been remunerated to the class members.

DDS also revised its Consumer Funds Policy and Procedure based on Bert Smith's final report findings and recommendations. The draft policy and procedure was shared with the Policy Review Group in November 2011, and DDS received extensive comments in December 2011, from the D.C. Coalition of Disability Service Providers, the Quality Trust, University Legal Services, My Own Place, and the Arc of the District of Columbia. DDS intends to publish the revised Consumer Funds Policy and Procedure in April 2012.

Based on the foregoing, Bert Smith is uniquely qualified to deliver these consumer account reconciliation services to the District in circumstances where the government intends to certify compliance with the Goal C, Personal Possessions, in October 2012, and these account reconciliation services must be fully rendered prior to certification. Because of its prior extensive work with the individuals, the provider agencies, and the OCFO, Bert Smith alone possesses the familiarity and intricate knowledge of the DDS/DDA residential providers and the requirements for safeguarding personal possessions, the ability to fully perform the work from April to July 2012, and the ability to provide the final report for the *Evans* class members on or before July 2, 2012.

5. CERTIFICATION OF FINDINGS:

I hereby certify that the above findings are true, correct and complete to the best of my knowledge, information and belief. I also certify that the notice of intent to award a sole source contract was published in accordance with 27 DCMR § 1304. I recommend that the DDS Chief Procurement Officer approve the use of the sole source procurement method for this proposed contract.

Date

Nicole Starwood
Contract Specialist

DETERMINATION

Based on the above findings and in accordance with the cited authority, I hereby determine that it is not feasible or practical to invoke the competitive solicitation process under either Section 402 or 403 of the District of Columbia Procurement Practices Reform Act of 2010 (D.C. Law 18-371; D.C. Official Code § 2-354.02 or 2-354.03). Accordingly, I determine that the District is justified in using the sole source method of procurement.

Date

Janice Parker Watson
DDS Chief Procurement Officer