

<b>SOLICITATION, OFFER, AND AWARD</b>		1. Caption <b>Preferred Drug List and Supplemental Rebate Program</b>			Page of Pages <b>1</b> / <b>110</b>	
		2. Contract Number	3. Solicitation Number <b>DCHT-2010-R-0004</b>	4. Type of Solicitation <input type="checkbox"/> Sealed Bid (IFB) <input checked="" type="checkbox"/> Sealed Proposals (RFP) <input type="checkbox"/> Sole Source	5. Date Issued <b>6/28/2010</b>	6. Type of Market <input checked="" type="checkbox"/> Open <input type="checkbox"/> Set Aside - See Section B.3 <input type="checkbox"/> Open with Subcontracting Set Aside
7. Issued by: Office of Contracting and Procurement Financial Legal and Consulting Commodity Group 441 4th Street, NW, Suite 700 South Washington, DC 20001			8. Address Offer to: Office of Contracting and Procurement Financial Legal and Consulting Commodity Group 441 4th Street, NW, Suite 703 South, Bid Room Washington, DC 20001			

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

**SOLICITATION**

9. Sealed offers in original and 7 copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if hand carried to the bid counter located at 441 4th Street NW, Suite 703S, Bid Room Washington, DC 20001 until 2:00 PM local time July 27, 2010  
(Hour) (Date)

CAUTION: Late Submissions, Modifications and Withdrawals: See 27 DCMR chapters 15 & 16 as applicable. All offers are subject to all terms & conditions contained in this solicitation.

10. For Information Contact	A. Name	B. Telephone		C. E-mail Address
	<b>Lillian Beavers</b>	(Area Code) <b>202</b>	(Number) <b>724-4349</b>	<a href="mailto:lillian.beavers3@dc.gov">lillian.beavers3@dc.gov</a>

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**OFFER**

12. In compliance with the above, the undersigned agrees, if this offer is accepted within 120 calendar days from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified herein.

13. Discount for Prompt Payment  10 Calendar days %     20 Calendar days %     30 Calendar days %     Calendar days %

14. Acknowledgement of Amendments (The offeror acknowledges receipt of amendments to the SOLICITATION):	Amendment Number	Date	Amendment Number	Date

15A. Name and Address of Offeror	16. Name and Title of Person Authorized to Sign Offer/Contract

15B. Telephone (Area Code) (Number) (Ext)	15 C. Check if remittance address is different from above - Refer to Section G	17. Signature	18. Offer Date

**AWARD (TO BE COMPLETED BY GOVERNMENT)**

19. Accepted as to Items Numbered	20. Amount	21. Accounting and Appropriation

22. Name of Contracting Officer (Type or Print)	23. Signature of Contracting Officer (District of Columbia)	24. Award Date



**SECTION B  
 SUPPLIES OR SERVICES AND PRICE**

**B.1 INTRODUCTION**

The Office of Contracting and Procurement (OCP) on behalf of the Department of Health Care Finance (DHCF), Health Care Accountability Administration (HCAA), Office of Pharmacy Management (OPM) (District) seeks a Contractor to develop and administer the District’s Preferred Drug List (PDL) and Supplemental Rebate (SR) Program for its 43,000 Fee-for-Service beneficiaries.

**B.2 CONTRACT TYPE**

The District contemplates the award of a fixed price contract.

**B.3 PRICE SCHEDULE – FIRM FIXED PRICE**

**B.3.1 BASE PERIOD OF PERFORMANCE – DATE OF AWARD TO 12 MONTHS THEREAFTER**

<b>Contract Line Item No. (CLIN)</b>	<b>Item Description</b>	<b>Total Price</b>
0001	Develop and administer the District’s Preferred Drug List (PDL) and Supplemental Rebate (SR) Program as described in Section C.3	\$ _____

**B.3.2 OPTION YEAR ONE**

<b>Contract Line Item No. (CLIN)</b>	<b>Item Description</b>	<b>Total Price</b>
0101	Develop and administer the District’s Preferred Drug List (PDL) and Supplemental Rebate (SR) Program as described in Section C.3	\$ _____

**B.3.3 OPTION YEAR TWO**

<b>Contract Line Item No. (CLIN)</b>	<b>Item Description</b>	<b>Total Price</b>
0201	Develop and administer the District’s Preferred Drug List (PDL) and Supplemental Rebate (SR) Program as described in Section C.3.	\$ _____

**B.3.4 OPTION YEAR THREE**

<b>Contract Line Item No. (CLIN)</b>	<b>Item Description</b>	<b>Total Price</b>
0301	Develop and administer the District's Preferred Drug List (PDL) and Supplemental Rebate (SR) Program as described in Section C.3.	\$ _____

**B.3.5 OPTION YEAR FOUR**

<b>Contract Line Item No. (CLIN)</b>	<b>Item Description</b>	<b>Total Price</b>
0401	Develop and administer the District's Preferred Drug List (PDL) and Supplemental Rebate (SR) Program as described in Section C.3.	\$ _____

**B.3.5 GRAND TOTAL**

<b>Period of Performance</b>	<b>Price</b>
Base Period of Performance Year One (B.3.1.1)	\$ _____
Option Year One Period of Performance (B.3.2)	\$ _____
Option Year Two Period of Performance (B.3.3)	\$ _____
Option Year Three Period of Performance (B.3.4)	\$ _____
Option Year Four Period of Performance (B.3.5)	\$ _____
<b>Grand Total</b>	<b>\$ _____</b>

**B.4 CBE REQUIREMENTS**

Any offeror responding to this solicitation must submit with its proposal, a notarized statement detailing any subcontracting plan required by law. Proposals responding to this RFP shall be deemed nonresponsive and shall be rejected if the offeror fails to submit a subcontracting plan that is required by law. For contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted in accordance with section H.9.

**SECTION C**  
**DESCRIPTION, SPECIFICATION, STATEMENT OF WORK**

**C.1 SCOPE**

The Office of Contracting and Procurement (OCP) on behalf of the Department of Health Care Finance (DHCF), Health Care Accountability Administration (HCAA), Office of Pharmacy Management (OPM) (District) seeks a Contractor to develop and administer the District's Preferred Drug List (PDL) and Supplemental Rebate (SR) Program for its 43,000 Fee-for-Service beneficiaries.

**C.1.1 APPLICABLE DOCUMENTS**

The following documents are applicable to this procurement and are hereby incorporated by this reference.

<b>Document</b>	<b>Document Type</b>	<b>Title</b>	<b>Date/Version</b>
1	Federal Law	Section 1927 of the Social Security Act Requirement for Rebate Agreement <a href="http://www.ssa.gov/OP_Home/ssact/title19/1927.htm">http://www.ssa.gov/OP_Home/ssact/title19/1927.htm</a>	Most Recent
2	Code of Federal Regulation	Title 42 Public Health Part 440 Services: General Provisions <a href="http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&amp;tpl=/ecfrbrowse/Title42/42cfr440_main_02.tpl">http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&amp;tpl=/ecfrbrowse/Title42/42cfr440_main_02.tpl</a>	Most Recent
3	Code of Federal Regulation	Title 42 Public Health Part 447 Payments for Services <a href="http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&amp;tpl=/ecfrbrowse/Title42/42cfr447_main_02.tpl">http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&amp;tpl=/ecfrbrowse/Title42/42cfr447_main_02.tpl</a>	Most Recent
4	D.C. State Plan Amendment	State Plan Under Title XIX of the Social Security Act - Section 3 Services: General Provisions Index, Attachments and Supplements 3.1 Amount, Duration and Scope of Services Supplement 1 to Attachment 3.1-A page 18, 19, 20 <a href="http://dhcf.dc.gov/dhcf/frames.asp?doc=/dhcf/lib/dhcf/information/state_health/attach3.1a.pdf">http://dhcf.dc.gov/dhcf/frames.asp?doc=/dhcf/lib/dhcf/information/state_health/attach3.1a.pdf</a>	02/01/07
5	D.C. State Plan Amendment	State Plan Under Title XIX of the Social Security Act Section 3 Services: General Provisions Index, Attachments and Supplements 3.1 Amount, Duration and Scope of Services Supplement 1 to Attachment 3.1-B Page 17, 18, 19 <a href="http://dhcf.dc.gov/dhcf/frames.asp?doc=/dhcf/lib/dhcf/information/state_health/attach3.1bcombined.pdf">http://dhcf.dc.gov/dhcf/frames.asp?doc=/dhcf/lib/dhcf/information/state_health/attach3.1bcombined.pdf</a>	02/01/07
6	Notice of Public Meeting	Mayor's Order 2007-46, dated January 23, 2007	1/23/07

**C.1.2 DEFINITIONS**

- C.1.2.1 Centers for Medicare and Medicaid Services (CMS):** The Centers for Medicare and Medicaid Services (formerly known as the Health Care Financing Administration) of the United States Department of Health and Human Services, or any successor or renamed agency carrying out the functions and duties heretofore carried out by such office.
- C.1.2.2 Department of Health Care Finance (DHCF):** the District of Columbia’s state Medicaid agency to improve health outcomes by providing access to comprehensive, cost-effective and quality healthcare services for residents of the District of Columbia.
- C.1.2.3 Drug Rebate and Dispute Resolution:** Process to identify and resolve issues with disputed calculations of drug rebate unit totals, invoiced amounts and prior period adjustments.
- C.1.2.4 Food and Drug Administration (FDA):** The agency of the United States Department of Health and Human Services responsible for the safety regulation of most types of foods, dietary supplements, drugs, vaccines, biological medical products, blood products, medical devices, radiation-emitting devices, veterinary products and cosmetics.
- C.1.2.5 Medical PDA Software:** Proprietary medical software that makes drug formularies and preferred drug lists accessible to clinicians and pharmacists via handheld and online references.
- C.1.2.6 Medicaid Management Information System (MMIS):** An integrated group of procedures and computer processing operations (subsystems) developed at the general design level to meet principal objectives. The objectives of this system and its enhancements include the Title XIX program control and administrative costs; service to recipients, providers and inquiries; operations of claims control and computer capabilities; and management reporting for planning and control.
- C.1.2.7 Multi-State Medicaid Pooling Agreement:** CMS approved Supplemental Drug Rebate program wherein several States combine or “pool” their respective Medicaid-covered beneficiary lives to enhance bargaining power in negotiating rebates with individual pharmaceutical manufacturers that are in addition to required national drug rebates.
- C.1.2.8 National Drug Code (NDC-11):** The identifying drug number maintained by the Food and Drug Administration (FDA). For the purposes of this contract, the complete eleven (11) digit NDC number will be used including labeler code (which is assigned by the FDA and identifies the manufacturer), product code (which identifies the specific product or formulation), and package size code.

- C.1.2.9 Personal Digital Assistant (PDA):** A personal digital assistant (PDA), also known as a palmtop computer, is a mobile device which functions as a personal information manager and has the ability to connect to the internet. The PDA has an electronic visual display enabling it to include a web browser, but some newer models also have audio capabilities, enabling them to be used as mobile phones or portable media players. Many PDAs can access the internet, intranet or extranets via WiFi, or Wireless Wide Area Networks (WWANs). Many PDAs employ touch screen technology.
- C.1.2.10 Pharmacy and Therapeutics Committee (P&T):** Established pursuant to the requirements of Mayor's Order 2007-46, dated January 23, 2007 for the purpose of consulting with the Department of Health Care Finance responsible for administering the Participating Medicaid Program toward adoption of a Preferred Drug List for the Participating Medicaid Program.
- C.1.2.11 Pharmacy Benefit Manager (PBM):** is a third party administrator of prescription drug programs. They are primarily responsible for processing and paying prescription drug claims. They also are responsible for developing and maintaining the formulary, contracting with pharmacies, and negotiating discounts and rebates with drug manufacturers.
- C.1.2.12 Prior Authorization (PA):** Process by which States may limit access to certain drugs through requirements that pharmacists or physicians receive prior authorization before the drug is dispensed to Medicaid enrollees.
- C.1.2.13 Preferred Drug List (PDL):** States may create a list of preferred drugs to which there is ready access. The preferred medications may be based on clinical efficacy and safety as well as cost to the Medicaid program. Drugs excluded from a state's preferred drug list may be available through a prior authorization process and/or at higher co-payments.
- C.1.2.14 Therapeutic Class:** A group of drugs that is similar in chemical structure, pharmacological effect, and/or clinical use.
- C.1.2.15 Supplemental Unit Rebate Amount (SURA):** Any cash rebate or other program that offsets the District's Medicaid expenditure and supplements a CMS National Rebate.
- C.1.2.16 Supplemental Drug Rebate:** Negotiated manufacturer rebate received by a State in addition to those required under the national drug rebate agreement.

## **C.2 BACKGROUND**

### **C.2.1 DHCF MISSION**

The Department of Health Care Finance (DHCF) is the District of Columbia's State Medicaid Agency. The mission of the DHCF is to improve health outcomes by providing access to comprehensive, cost-effective and quality healthcare services for residents of the District of Columbia. In addition to the Medicaid program, DHCF administers insurance programs for immigrant children, the State Child Health Insurance Program (S-CHIP or CHIP) and the Healthcare Safety Net Alliance (HSNA) (a locally funded program).

**C.2.1.1** DHCF and the Health Care Accountability Administration (HCAA) Office of Managed Care (OMC) intent via contract award of these services is to continue the Preferred Drug List (PDL) as a cost containment tool for the District Medicaid program to control pharmacy spending growth while providing beneficiaries with ready access to a clinically sound selection of therapeutically equivalent medications. PDLs and SR programs help contain the rising cost of pharmaceutical drugs in an approach that is clinically appropriate. The District's utilization of the PDL and its integrated SR program has been an effective tool to manage pharmacy costs and maintain access to pharmacy benefits for vulnerable, low-income populations. DHCF currently participates in the National Medicaid Pooling Initiative (NMPI) multi-state Medicaid pooling program that has been approved by the Centers for Medicare and Medicaid Services (CMS) for the purpose of qualifying for Medicaid level rebates.

### **C.2.2 CURRENT OPERATING ENVIRONMENT**

The Department of Health Care Finance currently contracts with First Health Services Corporation to negotiate state supplemental rebates with drug manufacturers for the District. Based on these negotiations, the District received \$2.2 million in supplemental rebates in FY 2008 and \$2.9 million in FY 2009. The PDL's current structure and relevant components impact and interact with both the MMIS and PBM Systems.

### **C.2.3 GOALS/OBJECTIVES**

DHCF goals and objectives for PDL and SR programs are to accomplish at a minimum the following:

- a. Continued reduction in drug costs for the affected programs through effective PDL management
- b. and negotiation of supplemental rebates;

- c. Continued ability to identify opportunities for new SR Agreements and negotiated strategies;
- d. Implementation of cost-effective services in a manner that causes the least amount of disruption to the program providers, prescribers, and clients;
- e. Maintain positive relationship between DHCF with the provider community; and
- f. Implementation of a medical PDA software system that makes drug formularies and preferred drug lists accessible to clinicians and pharmacists via handheld and on-line references.

### **C.3 REQUIREMENTS**

#### **C.3.1 PREFERRED DRUG LIST (PDL)**

**C.3.1.1** The Contractor shall develop and provide support, management, and coordination of all activities related to the management and maintenance of the PDL program in order to promote clinically appropriate utilization of pharmaceuticals in a cost-effective manner.

**C.3.1.2** The Contractor shall review and evaluate new US Food and Drug Administration (FDA) approved drugs for potential inclusion or exclusion on the District's current PDL (Attachment J.7) and present information at the next scheduled P&T Committee meeting (C.3.5).

#### **C.3.2 MAINTAIN PDL**

**C.3.2.1** The Contractor shall at a minimum develop and provide the following clinical review and related information in support of maintaining the PDL:

- a. Clinical review of new brand name drugs for clinical safety and efficacy;
- b. Clinical review of new generic drugs for clinical safety and efficacy;
- c. Clinical review of existing PDL drugs for new indications or changes to indications;
- d. Review of new product formulations and strengths; and
- e. Development of and changes to criteria based on new information;

#### **C.3.3 FINANCIAL ANALYSIS**

**C.3.3.1** The Contractor shall develop and provide financial analysis by therapeutic class to include at a minimum the fiscal and strategic impact to the District.

#### **C.3.4 PRIOR AUTHORIZATION (PA) CRITERIA SUPPORT SERVICES**

**C.3.4.1** The Contractor shall provide at a minimum the following in support of the PDL prior authorization services:

- a. Develop, maintain and electronically transmit to the PBM contractor, the list of drugs requiring prior authorization due to the level of participation on the PDL;
- b. Coordinate and cooperate with the DHCF PBM contractor to assure seamless transfer of information required to maintain optimal performance of the SR invoicing process in accordance with Section F.3 Deliverables; and
- c. Develop and provide policies and procedures for the prior authorization services.

**C.3.5 PHARMACY AND THERAPEUTICS (P&T) COMMITTEE ADMINISTRATION AND OPERATIONS**

**C.3.5.1 P&T Committee Meeting Administration**

**C.3.5.1.1** The Contractor shall attend and provide clinical pharmacist representation at P&T Committee meetings held on a quarterly basis.

**C.3.5.1.2** The Contractor shall develop and provide a “Notice of Public Meeting” 45 days prior to each scheduled P&T meeting (Attachment J.10)

**C.3.5.1.3** The Contractor shall prepare an agenda and meeting minutes for each P&T meeting.

**C.3.5.1.3.1** The Contractor shall prepare and distribute approved meeting minutes to P&T Committee members within five (5) business days of the P&T Committee meeting.

**C.3.5.1.4** The Contractor shall provide administrative and coordination assistance as requested by DHCF or the P&T Committee.

**C.3.5.1.5** The Contractor shall provide light refreshments to include but not limited to coffee, juice, assorted sandwiches and pastries to include paper products for the P&T Committee members, approximately 20, during the executive break-out session for each quarterly meeting.

**C.3.5.1.6** The Contractor shall provide a P&T Committee monthly progress reports which shall include meetings, classes reviewed, contracts with pharmaceutical manufacturers, with accompanying timeliness.

**C.3.5.2 P&T Committee Meeting Operations**

**C.3.5.2.1** The Contractor shall provide clinical pharmacists to review new medications as approved by the FDA.

**C.3.5.2.2** The Contractor shall formulate, develop and provide to the P&T Committee recommendations for preferred drug(s) in each reviewed therapeutic class

including any new drugs approved by the US Food and Drug Administration for possible inclusion on the District's PDL, typically 10 to 15 therapeutic classes per meeting. In cases where more than one drug in a therapeutic class has been determined to have equal effectiveness and therapeutic value, the Contractor shall review each drug and provide a recommendation based on the cost. The Contractor shall also include other brand name drugs in this class if an appropriate SR is obtained from the manufacturer.

**C.3.5.2.2.1** The Contractor shall develop and provide complete product information and review for each therapeutic class of drugs scheduled for review by the P&T Committee at a minimum 30 days prior to the P&T Committee meeting. The Contractor shall ensure that the information presented shall be accurate, medically sound, reflect recent cost and clinical outcomes information, and be based on acceptable clinical review protocols and nationally, peer review evidenced based research. The product information and review shall include at a minimum the following for each drug class to be reviewed:

- a. Description of products scheduled for review at the meeting;
- b. Clinical, safety and cost-effectiveness information for each drug class including a summary of relative safety and efficacy of each drug within the therapeutic class;
- c. Cost analysis from both a clinical and cost perspective;
- d. Savings estimations shall be included but coded to protect the confidentiality of rebate information, in a format agreed to by DHCF and the contractor;
- e. Monographs, SR negotiations, and savings analysis for each therapeutic class.

**C.3.5.2.3** The Contractor shall present information developed in C.3.5.2.2 at each scheduled P&T Committee meeting.

**C.3.5.2.4** The Contractor shall assist the P&T Committee in identifying which classes of drugs to include on the PDL, based on recipient utilization, health outcomes, and pricing data received from DHCF.

## **C.3.6 PDL REPORTING**

### **C.3.6.1 Quarterly Report**

The Contractor shall develop and provide a quarterly update and posting of the District's PDL on the Contractor's website in a PDF format that is readily accessible by beneficiaries, providers and the general public within 2 business days after adoption or amendment.

**C.3.6.2 Annual Report**

The Contractor shall develop and provide an annual report that details the compliance of Medicaid providers to the PDL.

**C.3.7 MEDICAL PDA SOFTWARE IMPLEMENTATION**

**C.3.7.1 Implementation**

**C.3.7.1.1** The Contractor shall customize DHCF PDL information and load it into medical PDA software permitting the downloading of the District's PDL to any prescriber's or pharmacist's Personal Digital Assistant (PDA). The Contractor shall develop and provide an implementation plan to include at a minimum the steps to complete this requirement and the Contractor's approach to complete the required service.

**C.3.7.1.2** The Contractor shall obtain on behalf of DHCF the required proprietary medical software licensing agreements required; ownership of the licensing agreements shall remain the property of the DHCF.

**C.3.7.2 Maintenance**

**C.3.7.2.1** The Contractor shall ensure that information on preferred drugs and prior authorization requirements is accessible via the internet on the Contractor's website and updated at a minimum quarterly.

**C.3.7.2.2** The Contractor shall provide medical software updates, following each scheduled P&T Committee meeting. Updating of handheld devices will be the responsibility of Providers to make sure that they have the most current version of the PDL.

**C.3.7.2.3** The Contractor shall provide and maintain licenses renewal and maintenance for the Medical PDA software.

**C.3.8 MULTI-STATE POOLING/SUPPLEMENTAL REBATE AGREEMENTS**

**C.3.8.1** The Contractor shall analyze and negotiate SR Agreements and implement a Multi-State Pooling/SR Program comparable in scope to and projected cost savings equal to or greater than the District's existing Medicaid pooling program as specified in C.2.3. The Contractor shall ensure that the Multi-State Pooling/SR Program shall at provide or include at a minimum:

**C.3.8.1.1** Multi-state pooling initiatives in accordance to guidelines established by CMS in State Medicaid Director's Letter (SMDL #04-006) (Applicable Document #7) and outlined in the District of Columbia Medicaid State Plan (Applicable Document #4). In addition, the Contractor shall maintain a clear understanding and

application of Federal and District statutes and regulations governing the Medicaid Program, Medicare Part D and state supplemental rebates;

- a. Ability to tailor final PDL determinations to reflect the District's needs;
- b. Acknowledges and provides for the fact that all policies, procedures, and criteria for the PDL, PA, and any other related issues will be determined by DHCF;
- c. Provide the capability to negotiate in a multi-state purchasing pool;
- d. Provides for the submission of 100% of all revenue generated from the Multi-State Pooling/SR Program to the District; and
- e. Approved by CMS.

### **C.3.9 SUPPLEMENTAL REBATE (SR) NEGOTIATION**

**C.3.9.1** The Contractor shall manage all aspects of the SR process, including but not limited to the following:

- a. Identify and provide list of pharmaceutical manufacturers that are potential candidates for SR agreements;
- b. Develop and provide a template for the review and approval of the CA to be used in the development of the SR agreements. The SR template shall meet CMS standards and include at a minimum the following:
  1. Methodology for calculating the District's supplemental rebates to be paid by pharmaceutical manufacturers;
  2. A predictive pricing methodology that incorporates rebate and administration cost algorithms to estimate DHCF net costs associated with individual PDL decisions;
  3. Instructions on the submission of rebates to the District of Columbia Treasury; and
  4. Approved by CMS.
- c. Negotiate and execute new SR agreements with pharmaceutical manufacturers on behalf of the District.
- d. Negotiate District SR Agreements for each therapeutic class selected for the PDL. In these negotiations, the preferred drug list may be adjusted to limit brand name drug products in each therapeutic class.
- e. Maintain or renegotiate existing SR agreements.
- f. Provide the CA a copy of each executed SR agreement within three (3) business days of execution of the agreement.

**C.3.9.2** The Contractor shall provide a process that provides manufacturers the opportunity to offer SR for products to DHCF based on the product's PDL position within a defined competitive class.

**C.3.10 SUPPLEMENTAL REBATE ADMINISTRATION**

- C.3.10.1** The Contractor shall provide administration of the SR program including but not limited to the following:
- a. Provide a detailed work plan to successfully place the District into a purchasing pool including milestones and time frames to identify significant events, District/Contractor responsibilities;
  - b. Provide the Supplemental Unit Rebate Amount (SURA) data in a DHCF approved text file format;
  - c. Coordinate the SR submission with submission of traditional Federal rebates;
  - d. Provide necessary documentation to DHCF to support the SR billings along with amounts to submit to the manufacturers at the National Drug Code NDC level in a format as specified in Attachment J.9 and the rebate agreements; and
  - e. Provide dispute resolution services with pharmaceutical manufacturers as they pertain to SURA calculations and to support the SR process.
- C.3.10.2** The Contractor shall provide quarterly reports that summarize manufacturers and labelers that been invoiced, rebates collected and outstanding rebates.
- C.3.10.3** Provide DHCF with a quarterly report listing all NDCs with zero (“0”) SURAs;
- C.3.10.4** Analyze current PDL and PA processes and provide recommendations for the implementation and transition to a comprehensive PDL within ten (10) days following the selection as DHCF contractor.
- C.3.10.5** Appear before the D.C. Council or other interested parties, as requested by the CA; the CA will provide the Contractor at a minimum 48 hours notification of the date, time, and subject matter of the meeting/presentation.
- C.3.10.6** Develop recommendations and provide detailed strategies for maximizing the DHCF’s annual savings resulting from the implementation of the PDL. These recommendations shall provide specific written suggestions for enhancing rebates and lowering net pharmacy costs through PDL products and other areas as requested by DHCF.
- C.3.10.7** Provide a report on the SR process on a quarterly basis that analyzes drug utilization for each contracted manufacturer and calculates the impact of aggregated lives associated with DHCF.
- C.3.10.8** Compile and distribute drug rebate invoices, maintain rate tables, reconcile payments, apply prior period adjustments, create reports upon request of DHCF and maintain rebate accounts receivable records, and support dispute resolution.

- C.3.10.9** Provide and place performance reports and Deliverables, in Section F to the District of Columbia on-line through the Contractor's secure web interface.
- C.3.10.10** Ensure that all rebates collected on behalf of the District of Columbia shall be collected for the sole benefit of the District of Columbia share of costs.
- C.3.10.11** Ensure manufacturers and labelers remit rebates to the District of Columbia Treasurer as specified in the approved standard SR agreements between the Contractor and each manufacturer.
- C.3.10.12** Maintain electronic copies of all executed SR Agreements in PDF format.
- C.3.10.13** The Contractor shall negotiate amendments to SR Agreements as necessary. The Contractor shall provide the CA with copies of executed amendments within three (3) days of execution of the amendment.
- C.3.10.14 SR Reports**
- C.3.10.14.1 SR – Monthly**
- The Contractor shall provide monthly SR Status Report showing the status of the District's SR Agreements with each manufacturer along with the therapeutic class, and national drug code (NDC) information effective dates and covered products, no later than 15 days after the end of each calendar month.
- C.3.10.14.2 SR Quarterly**
- The Contractor shall provide projections of quarterly savings broken down by Supplemental rebates and market shift.
- C.3.10.14.3 SR Annual Presentation**
- The Contractor shall provide to designated DHCF staff an on site annual presentation of the SR program to present utilization data, cost-effectiveness of PDL classes and specific suggestions for enhancing rebates and/or lowering net pharmacy costs.
- C.3.11 DATA FILE EXCHANGE CAPABILITY**
- C.3.11.1** The Contractor shall provide the data needed to maintain the effective operation of the PDL program in the software format specified by DHCF: e.g. Excel, rtf, Word or text file.
- C.3.11.2** The Contractor shall prepare quarterly NDC-11 level data claims extracts to include phase-in and phase-out dates, in a file format described in Attachment J.9, to be sent with the District's PBM contractor for SR invoicing purposes.

**C.3.12 STAFFING AND ORGANIZATION**

**C.3.12.1 Key Personnel**

**C.3.12.1.1 Contract Manager**

**C.3.12.1.1.1** The Contractor shall provide a licensed pharmacist to function as the full-time Contract Manager to provide overall project coordination between the program's clinical and operational aspects in support of DHCF's PDL.

**C.3.12.1.1.2** The Contract Manager's responsibilities shall include but are not limited to the development, enhancement and maintenance of the multi-state Medicaid pooling process and operational functions, program staffing, policy and clinical support, clinical therapeutic class review presentation at P&T Committee meetings. In addition, the Contract Manager shall:

- a. Communicate regularly, either by telephone or in person, with the CA to report program progress, establish priorities;
- b. Provide the required supervision and oversight of the PDL and SR Agreements/Multi-State Pooling services;
- c. Ensure the timely and accurate production of information to establish the PDL and Multi-State Pooling programs including the required reporting and analytical data required; and
- d. Meet or exceed the following education and experience requirements and be acceptable to DHCF:
  1. Doctorate in Pharmacy; or
  2. Bachelor's Degree in Pharmacy and a minimum of two (2) years experience in any of the following areas:
    - i. public sector pharmacy benefit administration;
    - ii. pharmacy benefit management;
    - iii. State Medicaid programs;
    - iv. healthcare insurance companies;
  3. Current District of Columbia pharmacist license; or
  4. DC licensure eligible or license obtained within 90 days of contract award;
  5. Excellent oral and written communication skills.

**C.3.12.2 Other Staff**

The Contractor shall maintain a complement of qualified staff to successfully perform the required services.

**C.3.12.3 Organization**

The Contractor shall develop and provide an Organizational Chart showing key staff and other staff to contribute to the successful performance of the required services.

**C.3.13 QUALITY ASSURANCE**

**C.3.13.1** The Contractor shall develop and implement a quality assurance plan that documents the Contractor's process to be used in assuring the quality of services provided for each requirement described in Section C.3. The quality assurance plan will be used to monitor the quality, impact, and effectiveness of services provided under the contract.

**C.3.13.2** The Contractor's Quality Assurance Plan shall be provided for the review and approval of the CA within (90) days from contract award.

**C.3.13.3** The Contractor shall ensure the Quality Assurance Plan is reviewed at a minimum annually to:

- a. Determine if the Contractor has met its goal for the year;
- b. Update and set goals and milestones for the next year;
- c. Analyze outcomes and effectiveness of services; and
- d. Identify areas and opportunities for improvements.

**C.3.14 TRANSITION**

**C.3.14.1** The Contractor recognizes that the services provided under this contract are vital to the District of Columbia and must be continued without interruption and that, upon contract expiration or termination, a successor, either the District Government or another Contractor, at the District's option, may continue to provide these services. In accordance therewith the Contractor shall cooperate fully with the District and/or the new Contractor in any transition activities that the Contracting Officer deems necessary during the term of the contract. To that end, the Contractor shall exercise its best efforts and cooperation to effect an orderly and efficient transition in accordance with the following transition tasks:

**C.3.14.2** The Contractor shall provide to DHCF a transition plan within one (1) month of Contract award for the transition of the PDL operations to DHCF and/or another contractor selected by DHCF. The plan should include, but not be limited to the following:

**C.3.14.3** The Contractor's Transition Plan shall, at a minimum, include the following:

- a. Detail the process for the continued provision of Contractor services during the transition and the process for working with a successor Contractor;

- b. Detail the process for the transition of 1) SR Information, 2) P&T Committee Meeting related information, 3) Invoicing Information, and 4) Savings and other material related to operations;
- c. Detail the Contract close out process and the level of Contractor services to be provided during the close out; and
- d. Detail how Contractor shall continue to fulfill responsibilities towards existing staff, facilities and other resources during the transition.

**C.3.14.4** The Contractor shall provide affirmative cooperation with any successor contractor.

**C.3.15 AD HOC REPORTS**

**C.3.15.1** The Contractor shall provide any additional ad hoc reports as necessary in a format agreed upon by DHCF and the Contractor.

**C.3.16 CORRECTIVE ACTION PLAN**

**C.3.16.1** The Contractor shall create a Corrective Action Plan (CAP) in the event DHCF determines Contractor is unable to meet contract objectives for any of the contract requirements in Section C.3 or meet due date for deliverables in Section F.3 within three (3) days of DHCF notification.

**C.3.16.2** Contractor shall submit the CAP to DHCF for prior approval within five (5) days of the three (3) day notification.

**C.3.16.3** A CAP shall include, at a minimum, the following:

- a. Detailed project schedule with milestones that address activities required to accomplish requirements and/or deliverables in the new timeframe;
- b. Method to recoup lost time and any expenses incurred by DHCF as a result of Contractor's delay in performance;
- c. Risk management plan to identify and assess project and risk mitigation strategies;
- d. System for internal quality control monitoring to produce the required deliverables accurately, efficiently, and in a timely manner; and
- e. Communication plan detailing Contractor's method for keeping DHFC informed about the progress of the project in a timely manner.

**SECTION D**  
**PACKAGING AND MARKING**

This section is not applicable to this procurement.

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**SECTION E  
INSPECTION AND ACCEPTANCE**

**E.1 INSPECTION AND ACCEPTANCE – GOVERNANCE**

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**

Inspection and acceptance of the supplies/services to be furnished hereunder shall be made at destination by the Contract Administrator (CA) or his or her duly authorized representative.

**E.3 INSPECTION AND ACCEPTANCE – RIGHT TO ENTER PREMISES**

The District of Columbia Department of Health Care Finance, Department of Health Care Finance, Office of Contracting and Procurement, 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 Contract requirements and measure the quality of performance.

**E.4.2** The District may employ corrective action, fines, remedies, and sanctions to address issues of non-compliance and performance with Contractor.

**E.4.3** Failure to submit timely, accurate deliverables will result in Contractor being out of compliance with the terms of the Contract and may result in sanctions and liquidated damages for this non-compliance as described in Sections G.3.

**SECTION F  
 PERIOD OF PERFORMANCE AND DELIVERABLES**

**F.1 TERM OF THE CONTRACT**

The term of the Contract shall be for twelve (12) 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. 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 for each option period.

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

**F.3 DELIVERABLES**

The Contractor shall perform the required services and tasks and develop and submit three (3) hard copies and one (1) electronic copy in the appropriate Microsoft Soft Word program of the following deliverables to the CA identified in Section G.9 in accordance with the due dates identified in the Deliverable Schedule, as follows:

<b>Number</b>	<b>Deliverable</b>	<b>Format and Method of Delivery</b>	<b>Due Date</b>
1	Clinical Review and Related Information (C.3.2.1)	1 Hard Copy and 1 Electronic Copy	10 days before the next scheduled P&T Committee meeting

<b>Number</b>	<b>Deliverable</b>	<b>Format and Method of Delivery</b>	<b>Due Date</b>
2	Financial Analysis (C.3.3)	1 Hard Copy and 1 Electronic Copy	10 days before the next scheduled P&T Committee meeting
3	Prior Authorization Services (C.3.4.1)	1 Hard Copy and 1 Electronic Copy	Within 30 days from contract award
4	Notice of Public Meeting (C.3.5.1.2)	1 Hard Copy and 1 Electronic Copy	45 days before the scheduled public meeting
5	P&T Committee Meeting Agenda (C.3.5.1)	1 Hard Copy and 1 Electronic Copy	10 days before the next scheduled P&T Committee
6	P&T Committee Meeting Minutes (C.3.5.3.1)	1 Hard Copy and 1 Electronic Copy	Within five (5) days of the P&T Committee meeting
7	P&T Committee Meeting Refreshments (C.3.5.1.5)	As Needed	Day of P&T Committee Meeting
8	P&T Committee Monthly Progress Report (C.3.5.1.6)	1 Hard Copy and 1 Electronic Copy	Monthly
9	Recommendations for additions to the Preferred Drug List (C.5.2.2)	1 Hard Copy and 1 Electronic Copy	10 days before the next scheduled P&T Committee
10	P&T Committee Meeting Presentations (C.3.5.2.3)	1 Hard Copy and 1 Electronic Copy	10 days before the next scheduled P&T Committee
11	PDL Quarterly Reports (C.3.6.1)	1 Hard Copy and 1 Electronic Copy	Quarterly
12	PDL Annual Report (C.3.6.2)	1 Hard Copy and 1 Electronic Copy	Annually
13	Medical PDA software License Renewals (C.3.7.2.3)	1 Hard Copy	Annually
14	List of pharmaceutical manufacturers that are potential candidates for SR agreements (C.3.9.1 a)	1 Hard Copy and 1 Electronic Copy	Within 30 days from contract award

<b>Number</b>	<b>Deliverable</b>	<b>Format and Method of Delivery</b>	<b>Due Date</b>
15	Supplemental Rebate Template (C.3.9.1 b)	1 Hard Copy and 1 Electronic Copy	Within 30 days from contract award
16	Supplemental Rebate Agreements	1 Hard Copy and 1 Electronic Copy	Within three (3) days of execution of agreement
17	Process Manufacturers the opportunity to offer SR for products to DHCF based on the product's PDL position within a defined competitive classes (C.3.9.2)	1 Hard Copy and 1 Electronic Copy	Within 30 days from contract award
18	Multi-State Pooling Work Plan (C.3.10.1 a)	1 Hard Copy and 1 Electronic Copy	Within 30 days from contract award
19	Supplemental Unit Rebate Amount (C.3.10.1 b)	1 Hard Copy and 1 Electronic Copy	Quarterly
20	SR Billings Information (C.3.10.1 d)	1 Hard Copy and 1 Electronic Copy	Monthly
21	SR Dispute Resolution Services Procedures	1 Hard Copy and 1 Electronic Copy	Within 30 days from contract award
22	SR Quarterly Summary Reports (C.3.10.2)	1 Hard Copy and 1 Electronic Copy	Quarterly
23	SR Quarterly NDCs with zero ("0") SURAs Report (C.3.10.3)	1 Hard Copy and 1 Electronic Copy	Quarterly
24	Analyze current PDL and PA processes and provide recommendations (C.3.10.4)	1 Hard Copy and 1 Electronic Copy	Within 30 days from contract award
25	Stakeholder Presentations (C.3.10.5)	1 Hard Copy and 1 Electronic Copy	As Needed; five (5) business days before presentation
26	Strategies for maximizing the DHCF's annual savings resulting from the PDL and SR Programs (C.3.10.6)	1 Hard Copy and 1 Electronic Copy	Within 30 days from contract award; On-going
27	SR process quarterly basis drug utilization analysis (C.3.10.7)	1 Hard Copy and 1 Electronic Copy	Quarterly
28	Distribute drug rebate invoices (C.3.10.8)	1 Hard Copy and 1 Electronic Copy	Quarterly

<b>Number</b>	<b>Deliverable</b>	<b>Format and Method of Delivery</b>	<b>Due Date</b>
29	Performance reports and Deliverables on Contractor's web site	1 Hard Copy and 1 Electronic Copy	Quarterly
30	SR Monthly Reports (C.3.10.14.1)	1 Hard Copy and 1 Electronic Copy	Monthly
31	SR Quarterly Reports (C.3.10.14.2)	1 Hard Copy and 1 Electronic Copy	Quarterly
32	SR Annual Presentation (C.3.10.14.3)	1 Hard Copy and 1 Electronic Copy	Annually
33	Quarterly NDC-11 level data claims extracts (C.3.11.2)	1 Hard Copy and 1 Electronic Copy	Quarterly
34	Contract Manager's Resume (C.3.12.1.1)	1 Hard Copy and 1 Electronic Copy	Within one month from date of award
35	Organizational Chart (C.3.12.3)	1 Hard Copy and 1 Electronic Copy	Within one month from date of award
36	Quality Assurance Plan (C.3.13.1)	1 Hard Copy and 1 Electronic Copy	Within 90 days from contract award
37	Transition Plan (C.3.14)	1 Hard Copy and 1 Electronic Copy	Within one month from date of award
38	Ad Hoc Reports (C.3.15)	1 Hard Copy and 1 Electronic Copy	Within five (5) days from receiving request
39	Corrective Action Plan (C.3.16)	1 Hard Copy and 1 Electronic Copy	Within three (3) days from receiving request

**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 CA (or designee) shall provide written notice of disapproval of a Deliverable or report to Contractor within five (5) business days of submission if it is disapproved. 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**

**G.1 INVOICE PAYMENT**

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

**G.1.2** The District will pay the Contractor on or before the 30<sup>th</sup> day after receiving a proper invoice from the Contractor.

**G.2 INVOICE SUBMITTAL**

**G.2.1** The Contractor shall submit proper invoices on a monthly basis or as otherwise specified in Section G.4. Invoices shall be prepared in duplicate and submitted to the agency Chief Financial Officer with concurrent copies to the Contract Administrator (CA) specified in Section G.9 below. The address of the CFO is:

Darrin Shaffer  
Department of Health Care Finance  
Office of the Controller/Agency CFO  
825 North Capitol St, NE Suite 5135  
Washington, DC 20002

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

**G.2.2.1** Contractor's name, federal tax ID and invoice date (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 G.2.2.6 above) to be notified in the event of a defective invoice; and

**G.2.2.8** Authorized signature.

**G.3 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT**

**G.3.1** For contracts subject to the 51% District Residents New Hires Requirements and First Source Employment Agreement requirements, final request for payment must be accompanied by the report or a waiver of compliance discussed in section H.5.5.

**G.3.2** No final payment shall be made to the Contractor until the agency CFO has received the Contracting Officer's final determination or approval of waiver of the Contractor's compliance with 51% District Residents New Hires Requirements and First Source Employment Agreement.

**G.4 PARTIAL PAYMENT**

The District will pay the Contractor monthly 1/12<sup>th</sup> the price provided in Section B.3 upon completion and acceptance of contract deliverables and performance of the required services.

**G.5 ASSIGNMENT OF CONTRACT PAYMENTS**

**G.5.1** In accordance with 27 DCMR 3250, the Contractor may assign to a bank, trust company, or other financing institution funds due or to become due as a result of the performance of this contract.

**G.5.2** Any assignment shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party.

**G.5.3** Notwithstanding an assignment of contract payments, the Contractor, not the assignee, is required to prepare invoices. Where such an assignment has been made, the original copy of the invoice must refer to the assignment and must 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.6 QUICK PAYMENT CLAUSE**

### **G.6.1 Interest Penalties to Contractors**

**G.6.1.1** The District will pay interest penalties on amounts due to the 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:

- a. the 3<sup>rd</sup> day after the required payment date for meat or a meat product;
- b. the 5<sup>th</sup> day after the required payment date for an agricultural commodity;  
or
- c. the 15<sup>th</sup> day after the required payment date for any other item.

**G.6.1.2** Any amount of an interest penalty which remains unpaid at the end of any 30-day period shall be added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

### **G.6.2 Payments to Subcontractors**

**G.6.2.1** The Contractor must take one of the following actions within seven (7) days of receipt of any amount paid to the Contractor by the District for work performed by any subcontractor under this contract:

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

**G.6.2.2** The Contractor must pay any 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 1% per month. No interest penalty shall be paid on the following if payment for the completed delivery of the item of property or service is made on or before:

- a. the 3<sup>rd</sup> day after the required payment date for meat or a meat product;
- b. the 5<sup>th</sup> day after the required payment date for an agricultural commodity;  
or
- c. the 15<sup>th</sup> day after the required payment date for any other item.

**G.6.2.3** Any amount of an interest penalty which remains unpaid by the Contractor at the end of any 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.6.2.4** A dispute between the 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 of Columbia may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

**G.6.3 Subcontract requirements**

**G.6.3.1** The Contractor shall include in each subcontract under this contract a provision requiring the subcontractor to include in its contract with any lower-tier subcontractor or supplier the payment and interest clauses required under paragraphs (1) and (2) of D.C. Official Code §2-221.02(d).

**G.7 CONTRACTING OFFICER (CO)**

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

James H. Marshall  
Contracting Officer  
Office of Contracting & Procurement  
441 – 4<sup>th</sup> Street, N.W., Suite 700 South  
Washington, D.C. 20001  
[jim.marshall@dc.gov](mailto:jim.marshall@dc.gov)  
202 724-4197

**G.8 AUTHORIZED CHANGES BY THE CONTRACTING OFFICER**

**G.8.1** The Contracting Officer (CO) is the only person authorized to approve changes in any of the requirements of this contract, notwithstanding provisions contained elsewhere in this contract.

**G.8.2** The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the Contracting Officer, or pursuant to specific authority otherwise included as part of this contract.

**G.8.3** In the event the Contractor effects any change at the direction 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.9 CONTRACT ADMINISTRATOR (CA)**

**G.9.1** The Contract Administrator (CA) will have the responsibility of ensuring the work conforms to the requirements of the contract and such other responsibilities and authorities as may be specified in the contract. These include:

**G.9.1.1** Keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the contract;

**G.9.1.2** Coordinating site entry for Contractor personnel, if applicable;

**G.9.1.3** Reviewing invoices for completed work and recommending approval by the CO if the Contractor's costs are consistent with the negotiated amounts and progress is satisfactory and commensurate with the rate of expenditure;

**G.9.1.4** Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions; and

**G.9.1.5** Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.

**G.9.2** The address and telephone number of the CA is:

Charlene Fairfax  
Senior Pharmacist  
Health Care Accountability Administration  
Department of Health Care Finance  
825 North Capitol Street, N.E.  
Washington, DC 20002

**G.9.3** It is understood and agreed, in particular, that the CA shall NOT have the authority to:

- a. Award, agree to, or sign any contract, delivery order or task order. Only the CO shall make contractual agreements, commitments or modifications;
- b. Grant deviations from or waive any of the terms and conditions of the contract;
- c. Increase the dollar limit of the contract or authorize work beyond the dollar limit of the contract,
- d. Authorize the expenditure of funds by the Contractor;
- e. Change the period of performance; or

- f. Authorize the use of District property, except as specified under the contract.

**G.9.4** The Contractor may be held fully responsible for any change 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.10 LIQUIDATED DAMAGES**

**G.10.4.1** In addition to any other remedies available to the District, the District shall recover any expense accrued from the late submission of a deliverable, or Contractor poor performance or noncompliance with Contract terms by Contractor or its subcontracted providers. Contractor shall be required to:

**G.10.4.1.1** At the discretion of DHCF, contract with a DHCF-approved contractor to study what has caused Contractor's breach of performance under the contract;

**G.10.4.1.2** Mitigate any further loss of productivity or expense to DHCF by taking corrective action, including implementing a CAP, upon approval by DHCF, as described in Section C.3.16;

**G.10.4.1.3** At the discretion of DHCF, require that, in accordance with Sections G.3 and G.4 Contractor pay a civil monetary penalty and liquidated damages either at a rate of \$1,000.00 per day to a limit of \$25,000 or an amount up to a limit of \$25,000, as applicable to the circumstances, for:

**G.10.4.1.3.1** Failing to adhere to acceptable financial practices and standards for operating claims submittal and related administrative functions for Medicaid in the District of Columbia;

**G.10.4.1.3.2** Failing to ensure that deliverables and reports are submitted within the time period specified in the contract;

**G.11 RECOUPMENT**

**G.11.1** 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.11.2** 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.

## **SECTION H SPECIAL CONTRACT REQUIREMENTS**

### **H.1 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES**

**H.1.1** For all new employment resulting from this contract or subcontracts hereto, as defined in Mayor's Order 83-265 and implementing instructions, the Contractor shall use its best efforts to comply with the following basic goal and objectives for utilization of bona fide residents of the District of Columbia in each project's labor force:

**H.1.1.1** At least fifty-one (51) percent 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.1.2** The Contractor shall negotiate an Employment Agreement with the Department of Employment Services ("DOES") for jobs created as a result of this contract. The DOES shall be the Contractor's first source of referral for qualified apprentices and trainees in the implementation of employment goals contained in this clause.

### **H.2 DEPARTMENT OF LABOR WAGE DETERMINATIONS**

The Contractor shall be bound by the Wage Determination No. 2005-2103 Rev. No. 10 dated 6-15-10 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. The Contractor shall be bound by the wage rates for the term of the contract subject to revision as stated herein and in accordance with Section 24 of the SCP. If an option is exercised, the Contractor shall be bound by the applicable wage rates at the time of the option. If the option is exercised and the CO obtains a revised wage determination, the revised wage determination is applicable for the option periods and the Contractor may be entitled to an equitable adjustment.

### **H.3 PUBLICITY**

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

### **H.4 FREEDOM OF INFORMATION ACT**

The District of Columbia Freedom of Information Act, at D.C. Official Code §2-532 (a-3), requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private contractor to perform a public function, to the same extent as if the record were

maintained by the agency on whose behalf the contract is made. If the Contractor receives a request for such information, the Contractor shall immediately send the request to the CA who will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by the Contractor pursuant to the contract, the CA will forward a copy to the Contractor. In either event, the Contractor is required by law to provide all responsive records to the CA within the timeframe designated by the CA. The FOIA Officer for the agency with programmatic responsibility will determine the releasability of the records. The District will reimburse the 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.5 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT**

**H.5.1** The Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code §2-219.01 *et seq.* (“First Source Act”).

**H.5.2** The Contractor shall enter into and maintain, during the term of the contract, a First Source Employment Agreement, (Section J.4) in which the Contractor shall agree that:

- (1) The first source for finding employees to fill all jobs created in order to perform this contract shall be the DOES; and
- (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.5.3** The Contractor shall submit to DOES, no later than the 10<sup>th</sup> of each month following execution of the contract, a First Source Agreement Contract Compliance Report (“contract compliance report”) to verify its compliance with the First Source Agreement for the preceding month. The contract compliance report for the contract shall include the:

- (1) Number of employees needed;
- (2) Number of current employees transferred;
- (3) Number of new job openings created;
- (4) Number of job openings listed with DOES;
- (5) Total number of all District residents hired for the reporting period and the cumulative total number of District residents hired; and
- (6) Total number of all employees hired for the reporting period and the cumulative total number of employees hired, including:
  - (a) Name;
  - (b) Social security number;

- (c) Job title;
- (d) Hire date;
- (e) Residence; and
- (f) Referral source for all new hires.

**H.5.4** If the contract amount is equal to or greater than \$100,000, the Contractor agrees that 51% of the new employees hired for the contract shall be District residents.

**H.5.5** With the submission of the Contractor's final request for payment from the District, the Contractor shall:

- (1) Document in a report to the CO its compliance with section H.5.4 of this clause; or
- (2) Submit a request to the CO for a waiver of compliance with section H.5.4 and include the following documentation:
  - i. Material supporting a good faith effort to comply;
  - ii. Referrals provided by DOES and other referral sources;
  - iii. Advertisement of job openings listed with DOES and other referral sources; and
  - iv. Any documentation supporting the waiver request pursuant to section H.5.6.

**H.5.6** The CO may waive the provisions of section H.5.4 if the CO finds that:

- (1) A good faith effort to comply is demonstrated by the Contractor;
- (2) The 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.
- (3) The Contractor enters into a special workforce development training or placement arrangement with DOES; or
- (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.5.7** Upon receipt of the contractor's final payment request and related documentation pursuant to sections H.5.5 and H.5.6, the CO shall determine whether the Contractor is in compliance with section H.5.4 or whether a waiver of compliance

pursuant to section H.5.6 is justified. If the CO determines that the Contractor is in compliance, or that a waiver of compliance is justified, the CO shall, within two business days of making the determination forward a copy of the determination to the agency Chief Financial Officer and the CA.

**H.5.8** 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 CO through imposition of penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract. The Contractor shall make payment to DOES. The Contractor may appeal to the D.C. Contract Appeals Board as provided in this contract any decision of the CO pursuant to this section H.5.8.

**H.5.9** The provisions of sections H.5.4 through H.5.8 do not apply to nonprofit organizations.

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

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

**H.7 AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)**

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

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

**H.8.1** Except as described in H.8.8 below, the Contractor shall comply with Title I of the Way to Work Amendment Act of 2006, effective June 8, 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 \$100,000 or more in a 12-month period.

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

**H.8.3** The Contractor shall include in any subcontract for \$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.8.4** The DOES may adjust the living wage annually and the OCP will publish the current living wage rate on its website at [www.ocp.dc.gov](http://www.ocp.dc.gov).
- H.8.5** The Contractor shall provide a copy of the Fact Sheet attached as J.6 to each employee and subcontractor who performs services under the contract. The Contractor shall also post the Notice attached as provided in Attachment J.5 in a conspicuous place in its place of business. The Contractor shall include in any subcontract for \$15,000 or more a provision requiring the subcontractor to post the Notice in a conspicuous place in its place of business.
- H.8.6** The 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 \$15,000 or more under the contract.
- H.8.7** 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.8.8** The requirements of the Living Wage Act of 2006 do not apply to:
- (1) Contracts or other agreements that are subject to higher wage level determinations required by federal law;
  - (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;
  - (3) Contracts for electricity, telephone, water, sewer or other services provided by a regulated utility;
  - (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;
  - (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;
  - (6) An employee under 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 25 hours per week; provided that he or she does not replace employees subject to the Living Wage Act of 2006;
  - (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;

- (8) Employees of nonprofit organizations that employ not more than 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));
- (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
- (10) Contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.

**H.8.9** 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. 9 MANDATORY SUBCONTRACTING REQUIREMENTS**

**H.9.1** For contracts in excess of \$250,000, at least 35% of the dollar volume shall be subcontracted to certified small business enterprises; provided, however, that the costs of materials, goods and supplies shall not be counted towards the 35% subcontracting requirement unless such materials, goods and supplies are purchased from certified small business enterprises.

**H.9.2** If there are insufficient qualified small business enterprises to completely fulfill the requirement of the preceding paragraph, then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any certified business enterprises; provided, however, that all reasonable efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall subcontracting work.

**H.9.3** A prime contractor which is certified as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of sections H.9.1 and H.9.2.

## **H.10 SUBCONTRACTING PLAN**

If the prime contractor is required by law to subcontract under this contract, it must subcontract at least 35% of the dollar volume of this contract in accordance with the provisions of section H.9.

The prime contractor responding to this solicitation which is required to subcontract shall be required to submit with its proposal, a notarized statement detailing its subcontracting plan. Proposals responding to this RFP shall be deemed nonresponsive and shall be rejected if the offeror is required to subcontract, but fails to submit a subcontracting plan with its proposal. Once the plan is approved by the contracting officer, changes to the plan will only occur with the prior written approval of the contracting officer and the Director of DSLBD. Each subcontracting plan shall include the following:

- H.10.1** A description of the goods and services to be provided by SBEs or, if insufficient qualified SBEs are available, by any certified business enterprises;
- H.10.2** A statement of the dollar value of the proposal that pertains to the subcontracts to be performed by the SBEs or, if insufficient qualified SBEs are available, by any certified business enterprises;
- H.10.3** The names and addresses of all proposed subcontractors who are SBEs or, if insufficient SBEs are available, who are certified business enterprises;
- H.10.4** The name of the individual employed by the prime contractor who will administer the subcontracting plan, and a description of the duties of the individual;
- H.10.5** A description of the efforts the prime contractor will make to ensure that SBEs, or, if insufficient SBEs are available, that certified business enterprises will have an equitable opportunity to compete for subcontracts;
- H.10.6** In all subcontracts that offer further subcontracting opportunities, assurances that the prime contractor will include a statement, approved by the contracting officer, that the subcontractor will adopt a subcontracting plan similar to the subcontracting plan required by the contract;
- H.10.7** Assurances that the prime contractor will cooperate in any studies or surveys that may be required by the contracting officer, and submit periodic reports, as requested by the contracting officer, to allow the District to determine the extent of compliance by the prime contractor with the subcontracting plan;
- H.10.8** A list of the type of records the prime contractor will maintain to demonstrate procedures adopted to comply with the requirements set forth in the subcontracting plan, and assurances that the prime contractor will make such records available for review upon the District's request; and
- H.10.9** A description of the prime contractor's recent effort to locate SBEs or, if insufficient SBEs are available, certified business enterprises and to award subcontracts to them.

## **H.11 COMPLIANCE REPORTS**

By the 21<sup>st</sup> of every month following the execution of the contract, the prime contractor shall submit to the contracting officer and the Director of DSLBD a compliance report detailing the contractor's compliance, for the preceding month, with the subcontracting requirements of the contract. The monthly compliance report shall include the following information:

- H.11.1** The dollar amount of the contract or procurement;
- H.11.2** A brief description of the goods procured or the services contracted for;
- H.11.3** The name and address of the business enterprise from which the goods were procured or services contracted;
- H.11.4** Whether the subcontractors to the contract are currently certified business enterprises;
- H.11.5** The dollar percentage of the contract or procurement awarded to SBEs, or if insufficient SBEs, to other certified business enterprises;
- H.11.6** A description of the activities the contractor engaged in, in order to achieve the subcontracting requirements set forth in section H.9; and
- H.11.7** A description of any changes to the activities the contractor intends to make by the next month to achieve the requirements set forth in section H.9.

## **H.12 ENFORCEMENT AND PENALTIES FOR BREACH OF SUBCONTRACTING PLAN**

- H.12.1** If during the performance of this contract, the contractor fails to comply with its approved subcontracting plan, and the contracting officer determines the contractor's failure to be a material breach of the contract, the contracting officer shall have cause to terminate the contract under the default clause of the Standard Contract Provisions.
- H.12.2** There shall be a rebuttable presumption that a contractor willfully breached its approved subcontracting plan if the contractor (i) fails to submit any required monitoring or compliance report; or (ii) submits a monitoring or compliance report with the intent to defraud.
- H. 12.3** A contractor that is found to have willfully breached its approved subcontracting plan for utilization of certified business enterprises in the performance of a contract shall be subject to the imposition of penalties, including monetary fines of \$15,000 or 5% of the total amount of the work that the contractor was to

subcontract to certified business enterprises, whichever is greater, for each such breach.

### **H.13 DISTRICT RESPONSIBILITIES**

#### **H.13.1 PDL**

DHCF and the Pharmacy and Therapeutics (P&T) Committee will make all decisions concerning the composition of PDL.

#### **H.13.2 P&T COMMITTEE**

**H.13.2.1** DHCF will schedule all quarterly P&T Committee meetings to meet DHCF's objectives and requirements and identify and secure venues for both P&T committee meetings and executive sessions.

**H.13.2.2** DHCF will chair P&T Committee meetings and preside at executive sessions and other meetings as required.

**H.13.2.3** District will submit Notice of Public Meetings for P&T Meetings to the District Register.

#### **H.13.3 DELIVERABLES**

DHCF will review and approve all deliverables prepared and submitted by Contractor.

### **H.14 CONTRACTOR RESPONSIBILITIES**

Contractor shall provide services on and/or off DHCF premises as required to meet the objectives of the contract.

### **H.15 DIVERSION, REASSIGNMENT AND REPLACEMENT OF KEY PERSONNEL**

The key personnel specified in the contract (C.3.12.1 is considered to be essential to the work being performed hereunder. Prior to diverting any of the specified key personnel for any reason, the Contractor shall notify the CO at least thirty (30) calendar days in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact upon the contract. The Contractor shall obtain written approval of the CO for any proposed substitution of key personnel.

### **H.16 ADVISORY AND ASSISTANCE SERVICES**

This contract is a "nonpersonal services contract". The Contractor and the Contractor's employees: (1) shall perform the services specified herein as

independent contractors, not as employees of the government; (2) shall be responsible for their own management and administration of the work required and bear sole responsibility for complying with any and all technical, schedule, financial requirements or constraints attendant to the performance of this contract; (3) shall be free from supervision or control by any government employee with respect to the manner or method of performance of the service specified; but (4) shall, pursuant to the government's right and obligation to inspect, accept or reject work, comply with such general direction of the CO, or the duly authorized representative of the CO as is necessary to ensure accomplishment of the contract objectives.

## **H.17 HIPAA PRIVACY COMPLIANCE POLICY**

### **H.17 HIPAA Compliance – Business Associate Agreement**

**H.17.1** 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.17.2 Definitions**

The following definitions shall apply to this Section:

**H.17.2.1 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.17.2.2 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.17.2.3 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.17.2.4 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.17.2.5 Designated Record Set:** a group of records maintained by or for the Covered Entity that is:
- H.17.2.5.1** The medical records and billing records about individuals maintained by or for a covered health care provider;
  - H.17.2.5.2** The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
  - H.17.2.5.3** Used, in whole or in part, by or for the Covered Entity to make decisions about individuals.
- H.17.2.6** 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.17.2.7 Electronic Media:**
- H.17.2.7.1** 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.17.2.7.2** 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.17.2.8** Electronic Protected Health Information: Protected Health Information which is transmitted by Electronic Media (as defined herein) or maintained in Electronic Media.
- H.17.2.9** **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.17.2.9.1** 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.17.2.9.2** Sale or dispensing of a drug, device, equipment, or other item in accordance with the prescription.
- H.17.2.10** **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.17.2.11** **Health Care Operations:** shall have the same meaning as the term “health care operations” in 45 C.F.R. § 164.501.
- H.17.2.12** **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.17.2.13** **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.17.2.14** **Individually Identifiable Health Information:** a subset of health information, including demographic information collected from an individual, and:
- H.17.2.14.1** Is created or received by a health care provider, health plan, employer, or health care clearinghouse;
- H.17.2.14.2** 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.17.2.14.3** Identifies the individual; or
- H.17.2.14.4** With respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- H.17.2.15** **National Provider Identifier (NPI) Rule:** the Standard Unique Health Identifier for Healthcare Providers; Final Rule at 45 C.F.R. Part 162.
- H.17.2.16** **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.17.2.17** **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.17.2.18** **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.17.2.19** **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.17.2.20** **Protected Health Information:** individually identifiable health information that is:
  - H.17.2.20.1** Transmitted by electronic media;
  - H.17.2.20.2** Maintained in electronic media;
  - H.17.2.20.3** Transmitted or maintained in any other form or medium;
  - H.17.2.20.4** Limited to the information created or received by the Business Associate from or on behalf of the Covered Entity; and

- H.17.2.20.5** Excluding information in the records listed in subsection (2) of the definition in 45 C.F.R. §160.103.
- H.17.2.21** **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.17.2.22** **Required By Law:** same meaning as the term "required by law" in 45 C.F.R. § 164.103.
- H.17.2.23** **Secretary:** the Secretary of the United States Department of Health and Human Services or his or her designee.
- H.17.2.24** **Security Incident:** attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- H.17.2.25** **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.17.2.26** **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.17.2.27** **Security Rule:** the Standards for Security of Individually Identifiable Health Information at 45 C.F.R. part 164.
- H.17.2.28** **Technical Safeguards:** the technology and the policies and procedures for its use that protect electronic protected health information and control access.
- H.17.2.29** **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.17.3** **Obligations and Activities of Business Associate**

- H.17.3.1** 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.17.3.2** 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.17.3.3** 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.17.3.4** 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.17.3.5** 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.17.3.6** 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.17.3.7** 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.17.3.8** 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.17.3.9** 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.17.3.10** 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.17.3.11** 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.17.3.12** 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.17.3.13** 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.17.4 Permitted Uses and Disclosures by the Business Associate**

**H.17.4.1** 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.17.4.2** 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.17.4.3** 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.17.4.4** 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.17.4.5** 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.17.5 Additional Obligations of the Business Associate**

**H.17.5.1** 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.17.5.1.1** Name of the Business Associate of the Covered Entity;

**H.17.5.1.2** Title of the Report/File;

**H.17.5.1.3** Confirmation that the Report/File contains Protected Health Information (Yes or No);

**H.17.5.1.4** Description of the basic content of the Report/File;

**H.17.5.1.5** Format of the Report/File (Electronic or Paper);

**H.17.5.1.6** Physical location of Report/File;

**H.17.5.1.7** 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.17.5.1.8** Supporting documents if the recipient/personal representative has access to the Report/File.

- H.17.5.2** 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.17.5.2.1** 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.17.5.2.2** The Business Associate agrees to ensure that any agents or subcontractors of the Business Associate also agree to implement the appropriate security safeguards.
- H.17.5.2.3** 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.17.5.2.4** 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.17.5.2.5** 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.17.5.2.6** This Compliance Clause continues in force for as long as the Business Associate retains any access to the Covered Entity's EPHI.
- H.17.6** **Sanctions**
- H.17.6.1** 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.17.6.2** 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.17.6.3** 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.17.7**        **Obligations of the Covered Entity**

**H.17.7.1**        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.17.7.2**        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.17.7.3**        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.17.8**        **Permissible Requests by Covered Entity**

**H.17.8.1**        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.17.9**        **Representations and Warranties**

**H.17.9.1**        The Business Associate represents and warrants to the Covered Entity:

- H.17.9.1.1** 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.17.9.1.2** 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.17.9.1.3** 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.17.9.1.4** 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.17.9.1.5** 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.17.9.1.6** That it will reasonably cooperate with the Covered Entity in the performance of

the mutual obligations under this Agreement;

**H.17.9.1.7** 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.17.9.1.7.1** The neglect or abuse of a patient;

**H.17.9.1.7.2** 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.17.9.1.7.3** 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.17.9.1.7.4** The unlawful, manufacture, distribution, prescription or dispensing of a controlled substance, or

**H.17.9.1.7.5** Interference with or obstruction of any investigation into any criminal offense described in H.17.9.1.7.1 through H.17.9.1.7.4 above.

**H.17.9.2** 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.17.10 Term and Termination**

**H.17.10.1** Term

**H.17.10.1.1** The requirements of this HIPAA Compliance Clause shall be effective as of the date of the contract award.

**H.17.10.1.2** The requirements of this HIPAA Compliance Clause shall terminate when:

**H.17.10.1.2.1** 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.17.10.1.2.2** 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.17.10.2 Termination for Cause**

**H.17.10.2.1** 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.17.2.2.1.1** 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.17.2.2.1.2** 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.17.2.2.1.3** If neither termination nor cure is feasible, the Covered Entity shall report the violation to the Secretary.

**H.17.10.3 Effect of Termination**

**H.17.10.3.1** 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.17.10.3.2** In the event that the Business Associate determines that returning or destroying the Protected Health Information and Electronic Protected Health Information are infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make the return or confidential destruction infeasible.

**H.17.10.3.3** 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.17.11 Miscellaneous**

**H.17.11.1 Regulatory References**

**H.17.11.1.1** 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.17.11.2 Amendment**

**H.17.11.2.1** 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.17.22.2.2** 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.17.11.3 Survival**

**H.17.11.3.1** 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.17.11.4 Interpretation**

**H.17.11.4.1** 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.17.11.4.2** 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.17.11.4.3** 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.17.11.5** No Third-Party Beneficiaries

**H.17.11.5.1** 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.17.11.5.2** 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.17.11.6** **Compliance with Applicable Law**

**H.17.11.6.1** 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.17.11.7** **Governing Law and Forum Selection**

**H.17.11.7.1** 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.17.11.7.2** 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.17.11.7.3** 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.17.11.8 Indemnification**

**H.17.11.8.1** 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.17.11.8.1.1** Any misrepresentation, breach of warranty or non-fulfillment of any undertaking of the Business Associate under this HIPAA Compliance Clause; and

**H.17.11.8.1.2** 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.17.11.9 Injunctive Relief**

**H.17.11.9.1** 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.17.11.10 Assistance in litigation or administrative proceedings**

**H.17.11.10.1** 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.17.11.11 Notices**

**H.17.11.11.1** 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.17.11.11.2** 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.17.11.12 Headings**

**H.17.11.12.1** Headings are for convenience only and form no part of this HIPAA Compliance Clause and shall not affect its interpretation.

**H.17.11.13 Counterparts; Facsimiles**

**H.17.11.13.1** 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.17.11.14 Successors and Assigns**

**H.17.11.14.1** 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.17.11.15 Severance**

- H.17.11.15.1** 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.17.11.15.2** 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.17.11.15.3** 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.17.11.16 Independent Contractor**

- H.17.11.16.1** The Business Associate will function as an independent contractor and shall not be considered an employee of the Covered Entity for any purpose.
- H.17.11.16.2** 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.17.11.17 Entire Agreement**

- H.17.11.17.1** 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.17.11.18 Attachments:**

- H.17.11.18.1** Exhibit A, Department of Health Care Finance Privacy Policy Operations Manual, Policy Number IV.14.a) Individual's Information Rights – Access

- H.17.11.18.2** Exhibit B, Department of Health Care Finance Privacy Policy Operations Manual, Policy Number IV.15.a) Individual's Information Rights - Amendment
- H.17.11.18.3** Exhibit C, Department of Health Care Finance Privacy Policy Operations Manual, Policy Number VII.25 Standard Procedures - Identity and Procedure Verification
- H.17.11.18.4** Exhibit D, Department of Health Care Finance Privacy Policy Operations Manual, Policy Number VII.27 Standard Procedures - Logging Disclosures for Accounting
- H.17.11.18.5** Exhibit E, Department of Health Care Finance Privacy Policy Operations Manual, Policy Number IV.16.a) Individual's Information Rights - Disclosure Accounting

**H.18 CONTINUITY OF SERVICES**

The Contractor recognizes that the services provided under this contract are vital to the District of Columbia and must be continued without interruption and that, upon contract expiration or termination, a successor, either the District Government or another Contractor, at the district's option, may continue to provide these services. If another Contractor is awarded a future contract for performance of the required services, the original Contractor shall cooperate fully with the District the new Contractor in any transition activities that the Contracting Officer deems necessary during the term of the contract. To that end, the Contractor agrees to exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

## **SECTION I CONTRACT CLAUSES**

### **I.1            APPLICABILITY OF STANDARD CONTRACT PROVISIONS**

The Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts dated March 2007 are incorporated as Attachment J.1.

### **I.2            CONTRACTS THAT CROSS FISCAL YEARS**

Continuation of this contract beyond the current fiscal year is contingent upon future fiscal appropriations.

### **I.3            CONFIDENTIALITY OF INFORMATION**

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

### **I.4            TIME**

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

### **I.5            RIGHTS IN DATA**

**I.5.1**        “Data,” as used herein, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

**I.5.2**        The term “Technical Data”, as used herein, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work, or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and computer

software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.

- I.5.3** The term “Computer Software”, as used herein means computer programs and computer databases. “Computer Programs”, as used herein means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. "Computer Programs" include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort merge programs, and automated data processing equipment maintenance diagnostic programs, as well as applications programs such as payroll, inventory control and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general purpose in nature or designed to satisfy the requirements of a particular user.
- I.5.4** The term "computer databases", as used herein, means a collection of data in a form capable of being processed and operated on by a computer.
- I.5.5** All data first produced in the performance of this Contract shall be the sole property of the District. Contractor hereby acknowledges that all data, including, without limitation, computer program codes, produced by Contractor for the District under this Contract, are works made for hire and are the sole property of the District; but, to the extent any such data may not, by operation of law, be works made for hire, Contractor hereby transfers and assigns to the District the ownership of copyright in such works, whether published or unpublished. Contractor agrees to give the District all assistance reasonably necessary to perfect such rights including, but not limited to, the works and supporting documentation and the execution of any instrument required to register copyrights. Contractor agrees not to assert any rights in common law or in equity in such data. Contractor shall not publish or reproduce such data in whole or in part or in any manner or form, or authorize others to do so, without written consent of the District until such time as the District may have released such data to the public.
- I.5.6** The District will have restricted rights in data, including computer software and all accompanying documentation, manuals and instructional materials, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, provided however, notwithstanding any contrary provision in any such license or agreement, such restricted rights shall include, as a minimum the right to:
- I.5.6.1** Use the computer software and all accompanying documentation and manuals or instructional materials with the computer for which or with which it was acquired, including use at any District installation to which the computer may be transferred by the District;

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

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

**I.5.7** The restricted rights set forth in Section I.5.6 are of no effect unless the data is marked by Contractor with the following legend:

**I.5.7.1** RESTRICTED RIGHTS LEGEND

Use, duplication, or disclosure is subject to restrictions stated in Contract No. \_\_\_\_\_ with \_\_\_\_\_ (Contractor's Name); and,

**I.5.7.2** If the data is computer software, the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. Contractor may not place any legend on the computer software indicating restrictions on the District's rights in such software unless the restrictions are set forth in a license or agreement made a part of the contract prior to the delivery date of the software. Failure of Contractor to apply a restricted rights legend to such computer software shall relieve the District of liability with respect to such unmarked software.

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

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

**I.5.10** For all computer software furnished to the District with the rights specified in Section I.5.5, Contractor shall furnish to the District, a copy of the source code

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

**I.5.11** Contractor shall indemnify and save and hold harmless the District, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, for:

**I.5.11.1** Violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or,

**I.5.11.2** Based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.

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

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

**I.6 OTHER CONTRACTORS**

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

**I.7 SUBCONTRACTS**

The Contractor hereunder shall not subcontract any of the Contractor's work or services to any subcontractor without the prior written consent of the CO. 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.

## **I.8 INSURANCE**

### **I.8.1 General Requirements**

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

#### **I.8.1.1 Commercial General Liability Insurance**

The Contractor shall provide evidence satisfactory to the Contracting Officer with respect to the operations performed, that it carries \$1,000,000.00 per occurrence limits; \$2,000,000.00 aggregate; Bodily injury and property damage including but not limited to: premises-operations; broad form property damage; Products and Completed Operations; Personal and Advertising Injury; contractual liability and independent contractors; The policy coverage shall include the District of Columbia as an additional insured, shall be primary and non-contributory with any other insurance maintained by the District of Columbia, and shall contain a waiver of subrogation. The Contractor shall maintain Completed Operations coverage for five (5) years following final acceptance of the work performed under this contract.

#### **I.8.1.2 Automobile Liability Insurance**

The Contractor shall provide automobile liability insurance to cover all owned, hired or non-owned motor vehicles used in conjunction with the performance of the contract. The policy shall provide a \$1,000,000.00 per occurrence combined single limit for bodily injury and property damage.

**I.8.1.3 Workers' Compensation Insurance**

**I.8.1.3.1 Workers' Compensation Insurance**

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

**I.8.1.3.2 Employer's Liability Insurance**

The Contractor shall provide employer's liability insurance as follows: \$1 million per accident for injury; \$1 million per employee for disease; and \$1 million for policy disease limit.

**I.8.1.4 Umbrella or Excess Liability Insurance**

The Contractor shall provide umbrella or excess liability insurance (which is excess over employer's liability, general liability, and automobile liability) insurance as follows: \$2,000,000.00 per occurrence with the District of Columbia as an additional insured.

**I.8.1.5 Professional Liability Insurance (Errors & Omissions)**

The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission caused by the performance of professional services under this Contract. The policy shall provide limits of \$1,000,000.00 per occurrence for each wrongful act and \$1,000,000.00 annual aggregate for each wrongful act.

The Contractor shall maintain this insurance for five (5) years following the District's final acceptance of the work.

**I.8.2 Duration**

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

**I.8.3 Liability**

These are the required minimum insurance limits required by the District of

Columbia. HOWEVER THE REQUIRED MINIMUM INSURANCE REQUIREMENTS WILL IN NO WAY LIMIT THE CONTRACTOR'S LIABILITY UNDER THIS CONTRACT.

**I.8.4 Contractor's Property**

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

**I.8.5 Measure of Payment**

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

**I.8.6 Notification**

The Contractor shall immediately provide the Contracting Officer with written notice in the event its insurance has or will be substantially changed, cancelled or not renewed, and provide an updated Certificate of Insurance to the Contracting Officer.

**I.8.7 Certificates of Insurance**

The Contractor shall submit Certificates of Insurance giving evidence of the required insurance coverage as specified in this section prior to commencing work. Evidence of insurance shall be submitted to:

James H. Marshall  
441 4<sup>th</sup> Street, NW, Room 700 South  
Washington, DC 20001  
Phone: 202 724-4197  
E-Mail: [jim.marshall@dc.gov](mailto:jim.marshall@dc.gov)

**I.9 EQUAL EMPLOYMENT OPPORTUNITY**

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

**I.10 ORDER OF PRECEDENCE**

The contract awarded as a result of this RFP will contain the following clause:

**“ORDER OF PRECEDENCE**

A conflict in language shall be resolved by giving precedence to the document in the highest order of priority that contains language addressing the issue in question. The following documents are incorporated into the contract by reference and made a part of the contract in the following order of precedence:

- (1) An applicable Court Order, if any
- (2) Contract document
- (3) Standard Contract Provisions
- (4) Contract attachments other than the Standard Contract Provisions
- (5) RFP, as amended
- (6) BAFOs (in order of most recent to earliest)
- (7) Proposal”

**I.11 CONTRACTS IN EXCESS OF ONE MILLION DOLLARS**

Any contract in excess of \$1,000,000 shall not be binding or give rise to any claim or demand against the District until approved by the Council of the District of Columbia and signed by the CO.

**I.12 GOVERNING LAW**

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

**SECTION J  
 ATTACHMENTS**

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

<b>Attachment Number</b>	<b>Document</b>
<b>J.1</b>	Government of the District of Columbia Standard Contract Provisions for Use with the Supplies and Services Contracts (March 2007) available at <a href="http://www.ocp.dc.gov">www.ocp.dc.gov</a> click on "Solicitation Attachments"
<b>J.2</b>	U.S. Department of Labor Wage Determination Rev. No. 10 dated June 15, 2010
<b>J.3</b>	Office of Local Business Development Equal Employment Opportunity Information Report and Mayor's Order 85-85
<b>J.4</b>	Department of Employment Services First Source Employment Agreement
<b>J.5</b>	Way to Work Amendment Act of 2006 - Living Wage Notice
<b>J.6</b>	Way to Work Amendment Act of 2006 - Living Wage Fact Sheet
<b>J.7</b>	District of Columbia Department of Health Care Finance Preferred Drug List, dated June 10, 2010
<b>J.8</b>	Cost/Price Certification and Data Package
<b>J.9</b>	Data File Exchange Format/Information
<b>J.10</b>	Notice of Public Meeting
<b>J.11</b>	Past Performance Evaluation Form
<b>J.12</b>	Tax Affidavit

DCHT-2010-R-0004  
Preferred Drug List (PDL) and Supplemental Rebate Program

<b>Attachment Number</b>	<b>Document</b>
<b>J.13</b>	Supplemental Rebate Return

**SECTION K**  
**REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS**

**K.1 AUTHORIZED NEGOTIATORS**

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).

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**K.2 TYPE OF BUSINESS ORGANIZATION**

**K.2.1** The offeror, by checking the applicable box, represents that:

a. It operates as:

- A corporation incorporated under the laws of the state of \_\_\_\_\_
- An individual,
- A partnership,
- A nonprofit organization, or
- A joint venture.

b. If 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**

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.

Offeror \_\_\_\_\_ Date \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_

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 BUY AMERICAN CERTIFICATION**

The offeror hereby certifies that each end product, except the end products listed below, is a domestic end product (See Clause 23 of the SCP, "Buy American Act"), and that components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.

\_\_\_\_\_ EXCLUDED END PRODUCTS  
\_\_\_\_\_ COUNTRY OF ORIGIN

**K.5 DISTRICT EMPLOYEES NOT TO BENEFIT CERTIFICATION**

Each offeror shall check one of the following:

- No person listed in Clause 13 of the SCP (Attachment J.1), "District Employees Not To Benefit" will benefit from this contract.
- The following person(s) listed in Clause 13 of the Standard Contract Provisions (Attachment J.1), "District Employees Not To Benefit" may benefit from this contract. For each person listed, attach the affidavit required by Clause 13.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**K.6 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION**

- (a) Each signature of the offeror is considered to be a certification by the signatory that:

- 1) The prices in this 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:
    - (i) those prices,
    - (ii) the intention to submit a contract, or
    - (iii) the methods or factors used to calculate the prices in the contract.
  - 2) The prices in this 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
  - 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.
- (b) Each signature of the offeror is considered to be a certification by the signatory that the signatory:
- 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 subparagraphs (a)(1) through (a)(3) above; or
  - 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 subparagraphs (a)(1) through (a)(3) above:  
  

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*(insert full name of person(s) in the organization responsible for determining the prices offered in this contract and the title of his or her position in the offeror's organization);*

As an authorized agent, does certify that the principals named in subdivision (b)(2) have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

As an agent, has not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.
- (c) If the offeror deletes or modifies subparagraph (a)(2) above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

**K.7 TAX CERTIFICATION**

Each offeror must submit with its offer, a sworn Tax Certification Affidavit, incorporated herein as Attachment J.12.

**K.8 CERTIFICATION OF ELIGIBILITY**

**K.8.1** The Offeror's signature shall be considered a certification by the signatory that the Offeror, or any person associated therewith in the capacity of owner, partner, director, officer, principal, or any position involving the administration of funds:

- a. is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility under any federal, District or state statutes;
- b. has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal, District or state agency within the past three (3) years;
- c. does not have a proposed debarment pending; and
- d. has not been indicted, convicted, or had a civil judgment rendered against it or them by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

**K.8.2** Indicate below any exception to your certification of eligibility and to whom it applies their position in the offeror's organization, the initiating agency, and dates of action. Exceptions will not necessarily result in denial of award, but will be considered in determining responsibility of the offeror. Providing false information may result in criminal prosecution or administrative sanctions.

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**SECTION L**  
**INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS**

**L.1 CONTRACT AWARD**

**L.1.1 Most Advantageous to the District**

The District intends to award **one** contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the District, cost or price, technical and other factors, specified elsewhere in this solicitation considered.

**L.1.2 Initial Offers**

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 PROPOSAL FORM, ORGANIZATION AND CONTENT**

**L.2.1** One original and [seven (7) copies of the written proposals shall be submitted in two parts, titled "Technical Proposal" and "Price Proposal". Proposals shall be typewritten in 12 point font size on 8.5" by 11" bond paper. Telephonic, telegraphic, and facsimile proposals will not be accepted. Each proposal shall be submitted in a sealed envelope conspicuously marked:

Proposal in Response to  
Solicitation No. DCHT-2010-R-0004  
Preferred Drug List (PDL) and Supplemental Rebate Program  
Name of Offeror

**L.2.2** Offerors are directed to the specific proposal evaluation criteria found in Section M of this solicitation, Evaluation Factors. 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 and delivery thereof. The information requested below for the technical proposal shall facilitate evaluation for all proposals. The technical proposal must contain sufficient detail to provide a clear and concise response fully reflecting the manner in which the offeror proposes to fully meet the requirements in Section C.

### **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 Approach and Methodology**

The information contained in this section shall facilitate the evaluation of the Offeror's technical approach and methodology to develop and administer the District's PDL and SR Program. The Offeror shall provide at a minimum the following information:

##### **L.3.1.1.1 Technical Approach and Methodology Narratives**

The Offeror shall provide the following narratives:

- a. A description of the Offeror's understanding of the District's objectives (C.2.3) and overall understanding of the District's requirements (C.3);
- b. A discussion of the Offeror's knowledge of the Applicable Documents referenced in C.1.1 and the application of these documents to the successful performance of the District's requirements (C.3);
- c. A discussion of the Offeror's technical approach and methodology to develop and administer the District's preferred drug list program including the following:
  1. Financial Analysis (C.3.3)
  2. Prior Authorization (PA) Criteria Support Services (C.3.4)
  3. Pharmacy and Therapeutics (P&T) Committee Administration and Operations (C.3.5)
  4. PDL Reporting (C.3.6)
  5. Medical PDA Software Implementation (C.3.7)
- d. A discussion of the Offeror's technical approach and methodology to develop and administer the District's SR program including the following:
  1. Multi-State Pooling/SR Agreements (C.3.8)
  2. SR (SR) Negotiations and Negotiation Process (C.3.9)
  3. SR Administration (C.3.10)

##### **L.3.1.1.2 Technical Approach and Methodology Attachments**

The Offeror shall provide the following attachments:

- a. Conceptual policies and procedures for the research and clinical review protocols, for the District's PDL;

- b. Conceptual presentation and supporting documentation for P&T Committee Meeting presentation (C.3.5.2) for three (3) different categories of drugs to include at a minimum the following:
  1. Review new medications approved by the FDA(C.3.5.2.1)
  2. P&T Committee recommendations for preferred drug(s) (C.3.5.2.2)
  3. Product information including:
    - i. Description of products scheduled for review at the meeting;
    - ii. Clinical, safety and cost-effectiveness information for each drug class including a summary of relative safety and efficacy of each drug within the therapeutic class;
    - iii. Cost analysis from both a clinical and cost perspective;
    - iv. Savings estimations shall be included but coded to protect the confidentiality of rebate information, in a format agreed to by DHCF and the contractor;
    - v. Monographs, SR negotiations, and savings analysis for each therapeutic class.
  4. Identify and recommend classes of drugs to include on the PDL and the supporting documentation to support the recommendation.
- c. Conceptual policies and procedures for the District's SR program including negotiation and administration;
- d. Potential pharmaceutical manufacturers that are candidates for SR agreements;
- e. Conceptual policies and procedures for the District's Multi-state pooling agreement;
- f. Conceptual Multi State Pooling Program

### **L.3.1.2 Technical Expertise and Capacity**

The information contained in this section shall facilitate the evaluation of the Offeror's technical expertise and capacity to administer the District's PDL and SR programs. The Offeror shall provide at a minimum the following information:

#### **L.3.1.2.1 Technical Expertise and Capacity Narratives**

- a. The Offeror shall provide a detailed description of the Offeror's technical expertise and capacity to deliver and administer the District's PDL and SR including the following:
  1. Data File Exchange Capability (C.3.11)
  2. Provide Staff Management Supervision and Organization (C.3.12)
    - i. Key Staff (C.3.2.1)

- ii. Other Staff (C.3.2.2)
- 3. Quality Assurance (C.3.1.3)
- 4. Transition (C.3.14)
- b. Describe the Offeror's approach to the preparation of quarterly NDC-11 level data claims extracts to include phase-in and phase-out dates, for exchange with the District's PBM contractor for SR invoicing purposes, to include proposed timeline and file format requirements as described in C.3.11.2.

#### **L.3.1.2.1 Technical Expertise and Capacity Narratives**

- a. Organization Chart (C.3.12.3) to include at a minimum:
  - 1. Key Staff (C.3.12.1)
  - 2. Other Staff (C.3.12.2)
  - 3. Reporting lines and accountability
- b. Resumes for each Key Staff (C.3.12.1) and identified other staff (C.3.12.2) appearing on the Offeror's Organization Chart
- c. Sample Position Descriptions for each position appearing on the
- d. Conceptual Quality Assurance Plan (C.3.13)
- e. Conceptual Transition Plan (C.3.14)
- f. Sample monthly rebate performance report
- g. Sample quarterly reports summarizing rebate resolution performance metrics; and
- h. Sample annual review of PDL utilization data and cost savings.

#### **L.3.1.3 Past Performance and Previous Experience**

The information contained in this section shall facilitate the evaluation of the Offeror's past performance and previous experience to develop and administer the District's PDL and SR programs. The Offeror shall provide at a minimum the following information:

- a. The Offeror shall describe its experience with developing and administering PDLs and SRs similar in size and scope as those described in Section C.3 including at a minimum the required services described in C.3:
- b. The Offeror shall provide a list of all PDL, multi-state pooling/SR programs the Offeror is or has been a party too in the last five (5) years. The Offeror shall provide the following for each multi-state pooling/SR program identified:
  - 1. Name of the multi-state pool;
  - 2. Participants in the pool;
  - 3. Name of the jurisdiction represented in the multi-state pooling/SR program;
  - 4. Annual savings for the past five (5) years;

- c. The Offeror shall provide a list of all contracts and subcontracts the Offeror has performed similar in size and scope as the required services described in Section C.3 within the past five (5) years. The Offeror's list shall include the following information for each contract or subcontract:
  - 1. Name of contracting activity;
  - 2. Contract number;
  - 3. Contract type;
  - 4. Contract duration (or Period);
  - 5. Total contract value;
  - 6. Description of work performed;
  - 7. Contact Person name, phone, and e-mail address
- d. Offeror shall submit at a minimum three completed (3) Past Performance Evaluation Forms provided as Attachment J.11 from the list of contracts identified in L.3.1.4 c above.
- e. The Offeror shall provide any third party evaluations of the Offeror's performance providing services similar in size and scope as those described in Section C.3.

#### **L.3.1.4 Representations and Certifications**

Offeror shall include the following representations and certifications:

- a. Completed information in the Equal Employment Opportunity Forms, Attachment J.3;
- b. First Source Employment Agreement, Attachment J.4.;
- c. Tax Certification, Attachment J.12;
- d. K.1 Authorized Negotiators
- e. K.2 Type of Organization
- f. K.3
- g. K.4
- h. K.8 Certification of Eligibility

#### **L.3.2 VOLUME II: PRICE PROPOSAL**

**L.3.2.1** Offeror's Price Proposal shall contain a Table of Contents and organized and presented in the following clearly marked separate sections.

##### **L.3.2.1.1 Price Schedule Section B**

The Offeror shall include a completed Section B.3 Price Schedule.

##### **L.3.2.1.2 Cost and Price Data/Price Certification**

The Offeror shall include a completed Cost/Price Data including the Price Certification (Attachment J.8). The Offeror may provide the Offeror's cost/price

data in any format that the 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.8 is met.

**L.3.2.1.3 Price Proposal Narrative**

The Offeror shall provide a price proposal narrative to include explanations and justifications of each of the Offeror's cost elements. The information provided shall clearly and logically show the rationale and methodology used by the Offeror to arrive at the proposed totals for each cost element

**L.3.2.1.4 The Offeror shall include a completed K. 6 Independent Price Determination**

This pro-forma contract budget will show the "total costs" that Offeror anticipates incurring in the performance of the contract requirements

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

**L.4.1 PROPOSAL SUBMISSION**

Proposals must be submitted no later than **2:00 pm July 27, 2010**. 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:

- (a) 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;
- (b) The proposal or modification was sent by mail and it is determined by the CO that the late receipt at the location specified in the solicitation was caused by mishandling by the District, or
- (c) The proposal is the only proposal received.

**L.4.2 WITHDRAWAL OR MODIFICATION OF PROPOSALS**

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 and time for receipt of proposals.

**L.4.3 POSTMARKS**

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. 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 the offeror can furnish evidence from the postal authorities of timely mailing.

**L.4.4 LATE MODIFICATIONS**

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**

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

**L.5 EXPLANATION TO PROSPECTIVE OFFERORS**

If a prospective offeror has any questions relating to this solicitation, the prospective offeror shall submit the question in writing to the contact person, identified on page one. The prospective offeror shall submit questions no later than 4:00pm July 14, 2010. The District will not consider any questions received after July 14, 2010. The District will furnish responses promptly to all prospective offerors. An amendment to the solicitation will be issued if the CO decides that information is necessary in submitting offers, or if the lack of it would be prejudicial to any prospective offeror. Oral explanations or instructions given by District officials before the award of the contract will not be binding.

**L.6 FAILURE TO SUBMIT OFFERS**

Recipients of this solicitation not responding with an offer should not return this solicitation. Instead, they should advise the CO, below by letter or postcard whether they want to receive future solicitations for similar requirements. It is also requested that such recipients advise the CO 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 CO that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

James H. Marshall  
441 4<sup>th</sup> Street, NW, Room 700 South  
Washington, DC 20001  
Phone: 202 724-4197  
E-Mail: [jim.marshall@dc.gov](mailto:jim.marshall@dc.gov)

**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.

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 PROPOSALS WITH OPTION YEARS**

The offeror shall include option year prices in its price/cost proposal. An offer may be determined to be unacceptable if it fails to include pricing for the option year(s).

**L.9 PROPOSAL PROTESTS**

Any actual or prospective offeror or contractor who is aggrieved in connection with the solicitation or award of a contract, must file with the D.C. 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. 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. 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.10            SIGNING OF OFFERS**

The offeror shall sign the offer and print or type its name on the Solicitation, Offer and Award form of this solicitation. 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.11            UNNECESSARILY ELABORATE PROPOSALS**

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective response to this solicitation are not desired and may be construed as an indication of the offeror's lack of cost consciousness. Elaborate artwork, expensive paper and bindings, and expensive visual and other presentation aids are neither necessary nor desired.

**L.12            RETENTION OF PROPOSALS**

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

**L.13            PROPOSAL COSTS**

The District is not liable for any costs incurred by the offerors in submitting proposals in response to this solicitation.

**L.14            ELECTRONIC COPY OF PROPOSALS FOR FREEDOM OF INFORMATION ACT REQUESTS**

In addition to other proposal submission requirements, the offeror must submit an electronic copy of its proposal, redacted in accordance with any applicable exemptions from disclosure in D.C. Official Code §2-534, in order for the District to comply with §2-536(b) that requires the District to make available electronically copies of records that must be made public. The District's policy is to release documents relating to District proposals following award of the contract, subject to applicable FOIA exemption under §2-534(a)(1).

**L.15 CERTIFICATES OF INSURANCE**

Prior to commencing work, the Contractor shall have its insurance broker or insurance company submit certificates of insurance giving evidence of the required coverage as specified in Section I.8 to:

James H. Marshall  
441 4<sup>th</sup> Street, NW Room 700 South  
Washington, DC 20001

**L.16 ACKNOWLEDGMENT OF AMENDMENTS**

The offeror shall acknowledge receipt of any amendment to this solicitation (a) by signing and returning the amendment; (b) by identifying the amendment number and date in the space provided for this purpose in Section A, Solicitation, Offer and Award form; or (c) by letter, telegram or e-mail from an authorized negotiator. The District must receive the acknowledgment by the date and time specified for receipt of proposals. An offeror's failure to acknowledge an amendment may result in rejection of its offer.

**L.17 BEST AND FINAL OFFERS**

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 provisions of the solicitation. After receipt of best and final offers, no discussions will be reopened unless the CO 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 contractor selection and award based on the best and final offers received. If discussions are reopened, the CO shall issue an additional request for best and final offers to all offerors still within the competitive range.

**L.18 LEGAL STATUS OF OFFEROR**

Each proposal must provide the following information:

**L.18.1** Name, address, telephone number and federal tax identification number of offeror;

**L.18.2** 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, 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.18.3** If the offeror is a partnership or joint venture, the names and addresses of the general partners or individual members of the joint venture, and copies of any joint venture or teaming agreements.

**L.19 FAMILIARIZATION WITH CONDITIONS**

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. Contractors 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.20 GENERAL STANDARDS OF RESPONSIBILITY**

The prospective contractor must demonstrate to the satisfaction of the District its capability in all respects to perform fully the contract requirements; therefore, the prospective contractor must submit the documentation listed below, within five (5) days of the request by the District.

**L.20.1** Evidence of adequate financial resources, credit or the ability to obtain such resources as required during the performance of the contract.

**L.20.2** 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.20.3** Evidence of the necessary organization, experience, accounting and operational control, technical skills or the ability to obtain them.

**L.20.4** Evidence of compliance with the applicable District licensing and tax laws and regulations.

**L.20.5** Evidence of a satisfactory performance record, record of integrity and business ethics.

**L.20.6** Evidence of the necessary production, construction and technical equipment and facilities or the ability to obtain them.

**L.20.7** Evidence of other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations.

**L.20.8** If the prospective contractor fails to supply the information requested, the CO 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 CO shall determine the prospective contractor to be nonresponsible.

## **L.21 PRE-PROPOSAL CONFERENCE**

A pre-proposal conference will be held at 10:00am July 8, 2010 at 825 North Capitol Street 6<sup>th</sup> Floor Conference Room. Prospective offerors will be given an opportunity to ask questions regarding this solicitation at the conference. 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.

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 District's final position. All oral questions must be submitted in writing following the close of the pre-proposal conference but no later than five working 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 OCP website at [www.ocp.dc.gov](http://www.ocp.dc.gov).

**SECTION M  
 EVALUATION FACTORS**

**M.1 EVALUATION FOR AWARD**

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**

**M.2.1** The Technical Rating Scale is as follows:

<b>Numeric Rating</b>	<b>Adjective</b>	<b>Description</b>
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.2.2** The technical rating is a weighting mechanism that will be applied to the point value for each evaluation 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 range of zero (0) to forty (40) points, using the Technical Rating Scale above, if the District evaluates the offeror’s response as “Good,” then the score for that evaluation factor is 4/5 of 40 or 32.

If sub-factors are applied, the offeror’s total technical score will be determined by adding the offeror’s score for each subfactor. For example, if an evaluation factor has a point value range of zero (0) to forty (40) points, with two sub-factors of twenty (20) points each, using the Technical Rating Scale above, if the District

evaluates the offeror's response as "Good" for the first subfactor and "Poor" for the second subfactor, then the total score for that evaluation factor is 4/5 of 20 or 16 for the first subfactor plus 1/5 of 20 or 4 for the second subfactor, for a total of 20 for the entire factor.

**M.3 EVALUATION FACTORS**

**M.3.1 TECHNICAL EVALUATION FACTORS**

**M.3.1.1 Technical Approach and Methodology 0 – 30 Points**

This factor includes the Offerors technical approach and methodology to administer the District's Preferred Drug List and Supplemental Rebate Program including the offeror's understanding of the District's objectives and overall understanding of the District's requirements; approach and methodology to successfully complete the required services including prior authorizations and P&T Committee.

**M.3.1.2 Technical Expertise and Capacity 0 – 25 Points**

This factor includes the Offerors technical expertise and capacity to administer the District's Preferred Drug List and Supplemental Rebate Program including the key staff and other staff, quality assurance and other supporting requirements, and reporting ability.

**M.3.1.3 Past Performance and Previous Experience 0 – 25 Points**

This factor includes the Offerors past performance and previous experience performing services similar in size and scope as those described in this RFP.

**M.3.2 PRICE**

**M.3.2.1** Price evaluations will account for up to twenty (20) 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.3.2.2** 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.

$$\frac{\text{Lowest Price Proposal}}{\text{Price of Proposal Being Evaluated}} \times (20) = \frac{\text{Evaluated}}{\text{Price Score}}$$

#### **M.4 EVALUATION OF OPTION YEARS**

The District will evaluate offers for award purposes by evaluating the total price for all options as well as the base year. Evaluation of options shall not obligate the District to exercise them. The total District's requirements may change during the option years. Quantities to be awarded will be determined at the time each option is exercised.

#### **M.5. PREFERENCES FOR CERTIFIED BUSINESS ENTERPRISES**

Under the provisions of the "Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005", as amended, D.C. Official Code § 2-218.01 *et seq.* (the Act), the District shall apply preferences in evaluating proposals from businesses that are small, local, disadvantaged, resident-owned, longtime resident, veteran-owned, local manufacturing, or local with a principal office located in an enterprise zone of the District of Columbia.

##### **M.5.1 APPLICATION OF PREFERENCES**

For evaluation purposes, the allowable preferences under the Act for this procurement shall be applicable to prime contractors as follows:

- M.5.1.1** Any prime contractor that is a small business enterprise (SBE) certified by the Department of Small and Local Business Development (DSLBD) will receive the addition of three points on a 100-point scale added to the overall score for proposals submitted by the SBE in response to this Request for Proposals (RFP).
- M.5.1.2** Any prime contractor that is a resident-owned business (ROB) certified by DSLBD will receive the addition of five points on a 100-point scale added to the overall score for proposals submitted by the ROB in response to this RFP.
- M.5.1.3** Any prime contractor that is a longtime resident business (LRB) certified by DSLBD will receive the addition of five points on a 100-point scale added to the overall score for proposals submitted by the LRB in response to this RFP.
- M.5.1.4** Any prime contractor that is a local business enterprise (LBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the LBE in response to this RFP.
- M.5.1.5** Any prime contractor that is a local business enterprise with its principal offices located in an enterprise zone (DZE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the DZE in response to this RFP.

**M.5.1.6** Any prime contractor that is a disadvantaged business enterprise (DBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the DBE in response to this RFP.

**M.5.1.7** Any prime contractor that is a veteran-owned business (VOB) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the VOB in response to this RFP.

**M.5.1.8** Any prime contractor that is a local manufacturing business enterprise (LMBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the LMBE in response to this RFP.

**M.5.2 MAXIMUM PREFERENCE AWARDED**

Notwithstanding the availability of the preceding preferences, the maximum total preference to which a certified business enterprise is entitled under the Act is the equivalent of twelve (12) points on a 100-point scale for proposals submitted in response to this RFP. There will be no preference awarded for subcontracting by the prime contractor with certified business enterprises.

**M.5.3 PREFERENCES FOR CERTIFIED JOINT VENTURES**

When DSLBD 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.5.4 VERIFICATION OF OFFEROR'S CERTIFICATION AS A CERTIFIED BUSINESS ENTERPRISE**

**M.5.4.1** Any vendor seeking to receive preferences on this solicitation must be certified at the time of submission of its proposal. The contracting officer will verify the offeror's certification with DSLBD, and the offeror should not submit with its proposal any documentation regarding its certification as a certified business enterprise.

**M.5.4.2** 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: CBE Certification Program  
441 Fourth Street, NW, Suite 970N  
Washington DC 20001

**M.5.4.3** All vendors are encouraged to contact DSLBD at (202) 727-3900 if additional information is required on certification procedures and requirements.

**M.6 EVALUATION OF PROMPT PAYMENT DISCOUNT**

**M.6.1** Prompt payment discounts shall not be considered in the evaluation of offers. However, any discount offered will form a part of the award and will be taken by the District if payment is made within the discount period specified by the offeror.

**M.6.2** In connection with any discount offered, time will be computed from the date of delivery of the supplies to carrier when delivery and acceptance are at point of origin, or from date of delivery at destination when delivery, installation and acceptance are at that, or from the date correct invoice or voucher is received in the office specified by the District, if the latter date is later than date of delivery. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the District check.