

SOLICITATION, OFFER, AND AWARD		1. Caption		Page of Pages	
		Fiscal Employer Agent Financial Management Services - Supports Broker		1	99
2. Contract Number	3. Solicitation Number	4. Type of Solicitation	5. Date Issued	6. Type of Market	
	DCHT-2010-R-0006	<input type="checkbox"/> Sealed Bid (IFB) <input checked="" type="checkbox"/> Sealed Proposals (RFP) <input type="checkbox"/> Sole Source	9/7/2010	<input checked="" type="checkbox"/> Open <input type="checkbox"/> Set Aside - See Section B.3	
7. Issued by:			8. Address Offer to:		
Department of Health Care Finance Office of the Director - Contracts and Compliance 825 No Capitol Street, NE, 6th Floor Washington, DC 20002			Office of Contracting and Procurement - Bid Room 441 4th Street, NW Suite 703 South Washington, DC 20001 Department of Health Care Finance Proposal Enclosed		

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 703 South until 2:00 PM local time October 6, 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
	Lillian Beavers	(Area Code) 202	(Number) 724-4349	lillian.beavers3@dc.gov

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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	<input checked="" type="checkbox"/> 10 Calendar days %	<input type="checkbox"/> 20 Calendar days %	<input type="checkbox"/> 30 Calendar days %	<input type="checkbox"/> ___ Calendar days %
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14. Acknowledgement of Amendments (The offeror acknowledges receipt of amendments to the SOLICITATION):	Amendment Number	Date	Amendment Number	Date

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

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
James H. Marshall		

**SECTION B
SUPPLIES OR SERVICES AND PRICE**

B.1 SUPPLIES OR SERVICES AND PRICE/COST

B.1.1 The Department of Health Care Finance (DHCF) is seeking a Fiscal Employer Agent Financial Management Services (F/EA FMS)-Supports Broker (Contractor) to perform financial management and supports brokerage services for Medicaid participants in the District's Medicaid Home and Community-Based (HCBS) Elderly and Persons with Physical Disabilities (EPD) and Individuals with Intellectual/Development Disabilities (IDD) 1915(c) waivers who choose to enroll in a new participant-direction program option. The Vendor F/FA FMS-Supports Broker shall offer counseling, information and assistance related to using participant-directed services and serving as common law employers for qualified direct care workers, and provide fiscal, payroll and invoice processing and payment services to Medicaid waiver participants who choose to participant-direct their care.

B.1.1.1 The Vendor F/FA FMS-Supports Broker shall assist the District's Medicaid waiver participants, and their representatives, if applicable, with the new participant-direction program option. The Vendor F/FA FMS-Supports Broker shall offer support brokerage services to help participants develop individual service plans (ISPs) and participant-directed individual budgets; provide participants with information and counseling as needed, and assist participants with completing paperwork for and managing financial and employment activities. The Vendor F/FA FMS-Supports Broker shall also provide financial management services (FMS), including processing employment documents, payroll and taxes; paying invoices for approved goods and services; billing the District's Medicaid Management Information System (MMIS) and maintaining public funds; preparing and distributing participant and employee enrollment information; and creating monthly reports on utilization and expenditures.

B.2 CONTRACT TYPE

The District anticipates the award a fixed price contract based on fixed capitated rate.

B.3 PRICE SCHEDULE

B.3.1 BASE YEAR

Contract Line Item Number (CLIN)	Item Description	Unit	Unit Price	Estimated Quantity	Total Price
0001	Perform financial management and supports brokerage services for Elderly and Persons with Physical Disabilities (EPD) participants in the District's Medicaid Home and Community-Based (HCBS) as described in C.3.1	Per Member Per Day	\$ _____	12,775	\$ _____

B.3.2 Option Year One

Contract Line Item Number (CLIN)	Item Description	Unit	Unit Price	Estimated Quantity	Total Price
1001	Perform financial management and supports brokerage services for Elderly and Persons with Physical Disabilities (EPD) participants in the District's Medicaid Home and Community-Based (HCBS) as described in C.3.1	Per Member Per Day	\$ _____	12,775	\$ _____

B.3.3 Option Year Two

Contract Line Item Number (CLIN)	Item Description	Unit	Unit Price	Estimated Quantity	Total Price
2001	Perform financial management and supports brokerage services for Elderly and Persons with Physical Disabilities (EPD) participants in the District's Medicaid Home and Community-Based (HCBS) as described in C.3.1	Per Member Per Day	\$ _____	12,775	\$ _____

B.3.3 Option Year Three

Contract Line Item Number (CLIN)	Item Description	Unit	Unit Price	Estimated Quantity	Total Price
3001	Perform financial management and supports brokerage services for Elderly and Persons with Physical Disabilities (EPD) participants in the District's Medicaid Home and Community-Based (HCBS) as described in C.3.1	Per Member Per Day	\$ _____	12,775	\$ _____

B.3.4 Option Year Four

Contract Line Item Number (CLIN)	Item Description	Unit	Unit Price	Estimated Quantity	Total Price
4001	Perform financial management and supports brokerage services for Elderly and Persons with Physical Disabilities (EPD) participants in the District's Medicaid Home and Community-Based (HCBS) as described in C.3.1	Per Member Per Day	\$ _____	12,775	\$ _____

SECTION C

DESCRIPTIONS, SPECIFICATIONS, STATEMENT OF WORK

C.1 SCOPE

C.1.1 The Department of Health Care Finance (DHCF) is seeking a Fiscal Employer Agent Financial Management Services (F/EA FMS)-Supports Broker (Vendor F/EA FMS-Supports Broker) to perform financial management and supports brokerage services for Medicaid participants in the District's Medicaid Home and Community-Based (HCBS) Elderly and Persons with Physical Disabilities (EPD) and Individuals with Intellectual/Development Disabilities 1915(c) waivers who choose to enroll in a new participant-direction program option. The Vendor F/EA FMS-Supports Broker shall offer counseling, information and assistance related to using participant-directed services and serving as common law employers for qualified direct care workers, and provide fiscal, payroll and invoice processing and payment services to Medicaid waiver participants who choose to participant-direct their care.

C.1.1.1 The Vendor F/EA FMS-Supports Broker shall provide similar support services to Intellectual Developmental Disabilities (IDD) waiver participants who reside in their natural homes as well within approximately six to eight months following participant-direction implementation for the EPD waiver participants. Similar to participants in the EPD Waiver, the Vendor F/EA FMS-Supports Broker shall provide all reasonable supports and services to facilitate communication up to and including reviewing and familiarizing with an individual's behavior support plans prior to communicating with individuals who are ID/IDD waiver participants, translation and ASL services. Supports Brokerage roles and responsibilities shall differ slightly for IDD waiver participants compared to EPD waiver participants to best target each individual's needs. Any additional requirements for the Offeror to meet for participants in the IDD waiver will be specified in the contract modification to the contract for the EPD population specific to service implementation for the IDD population.

C.1.2 DEFINITIONS

C.1.2.1 **Budget Authority:** the ability to control targeted public dollars along with the obligation to use those public dollars wisely, and to maintain decision-making authority over the participant-directed individual budget exercised by participants. Participants must approve and manage the amount and scope of participant-directed care and participant-directed goods and services included in the budget within a pre-determined amount determined by DHCF.

C.1.2.2 **Case Manager:** An individual employed by a home health care agency, and/or social service agency, and/or other community-based organization that is licensed to conduct business in the District who provides counseling, clinical support and

assistance to EPD waiver participants to help them gain access to needed linkages in the community. Case Managers obtain home- and community-based Medicaid Waiver services for participants by identifying waiver services, community supports as well as State plan services, make level of care determinations, and develop participants' ISPs. Within the ID/IDD HCBS Waiver, the term service coordinator, not case manager is used, because individuals are persons who require supports and services to live independent lives in the community.

- C.1.2.3 Centers for Medicare and Medicaid Services (CMS):** The agency under the U.S. Department of Health and Human Services responsible for administering Title XIX (Medicaid) of the Social Security Act.
- C.1.2.4 Common Law Employer:** An individual or organization under common law rules that has the right to direct and control how a person (engaged by an individual/organization) performs the services provided. This control refers not only to the result to be accomplished (outcome) by the work but also the means and details by which that result are accomplished, even if the employer gives the person he/she engages freedom of action.
- C.1.2.5 Contract:** This agreement, the RFP, any addendum to the RFP, the Offeror's proposal submitted in response to the RFP and the notice of acceptance from the District to the Offeror's proposal submitted.
- C.1.2.6 Contractor:** The Offeror who is awarded the Contract to perform the functions as described in Section C.3.
- C.1.2.7 Contract Administrator (CA):** DHCF staff member responsible for ongoing monitoring of the Contractor, and who documents and reports on the Contractor's technical performance, serves as the Contractor's point of contact and oversees successful performance of the Contract.
- C.1.2.8 Department of Health Care Finance (DHCF):** the District's state Medicaid agency, formerly the Medical Assistance Administration under the Department of Health. The mission of 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 also administers insurance programs for immigrant children, the State Child Health Insurance Program (S-CHIP or CHIP) and Medical Charities (a locally funded program).
- C.1.2.9 Employment Taxes:** taxes imposed on employees and employers by the Federal Insurance Contribution Act (FICA), sections 3101 and 3111 of the Code, the tax imposed on employers by the Federal Unemployment Tax Act (FUTA), section 3301 of the Code and Federal income tax withholding, section 3402 of the Code, as well as employment taxes imposed by the District government.

- C.1.2.10 Employee:** Anyone who performs services for a person or organization under common law rules where the person/organization has the right to direct and control what will be done and how it will be done. This control refers not only to the result to be accomplished (outcome) by the work but also the means and details by which that result is accomplished, even if the person/organization gives the individual they engaged freedom of action.
- C.1.2.11 Employer Authority:** the ability to control some targeted amount of public dollars to serve as common law employers for and exercise the full range of decision-making authority over their qualified direct care workers.
- C.1.2.12 Elderly and Persons with Physical Disabilities (EPD) Home and Community Based Services (HCBS) 1915 (c) waiver:** CMS-approved waiver that provides for Medicaid-eligible beneficiaries who are elders age 65 and over and people with physical disabilities ages 18 – 64 in-home supports and assistance with activities of daily living to allow them to remain in their homes or the community in lieu of a Nursing Facility.
- C.1.2.13 Vendor Fiscal/Employer Agent Financial Management Services (F/EA FMS):** Payroll, invoice processing and payment, fiscal reporting services, employer orientation, and skills training, and other fiscal-related services provided by an entity operating under §3504 of the IRS code, Revenue Procedure 70-6 1970-1 C.B. 420 and the January 13, 2010 IRS *Notice of Proposed Rulemaking Regarding Section 3504 Agent Tax Liability* (REG-137036-08-1) to Medicaid waiver participants who choose to participant-direct. F/EA FMS assist participants with managing the employer-related administrative burden and their participant-directed individual budgets to ensure Medicaid funds used to pay for services and supports as outlined in the participant’s Individual Service Plan are managed and disbursed appropriately, and as authorized. In the District of Columbia, Vendor F/EA FMS will be provided by the Vendor F/EA FMS-Support Broker who is award the contract.
- C.1.2.14 Home and Community-Based 1915 (c) waiver:** A process by which a state or the District may obtain an approval from CMS for an exception to federal Medicaid requirements(s) to offer a variety of services to Medicaid participants. The Medicaid §1915 (c) provisions allow long-term care services to be delivered in community settings and is the Medicaid alternative to providing comprehensive long-term services in institutional settings. These programs may provide a combination of both traditional medical services (i.e. dental services, skilled nursing services) as well as non-medical services (i.e. respite, case management, and environmental modifications).
- C.1.2.15 Intellectual Developmental Disabilities (IDD) Home and Community Based Services (HCBS) 1915 (c) waiver.** CMS-approved waiver that provides for Medicaid-eligible people with intellectual or physical disabilities age 18 and older with home supports and assistance with activities of daily living to allow them to

remain in their homes or the community in lieu of a facility, and to strengthen participants' capacity for self-care and self-sufficiency. The applicant must meet one of the following criteria and be eligible to receive the services provided in an Intermediate Care Facility (ICF):

Option A: The applicant's primary disability is mental retardation with an intelligence quotient (IQ) of 59 or less.

Option B: The applicant's primary disability is mental retardation with an intelligence quotient (IQ) of 60-69 and the applicant has at least one of the handicapping conditions listed below OR applicant's primary disability is mental retardation with an intelligence quotient (IQ) of 60-69 and the applicant has severe functional limitations in at least three of the major life activities listed below.

Option C: The applicant is eligible under the category of developmental disabilities such as autism, cerebral palsy, Prader Willi or spinal bifida and the applicant has severe functional limitations in at least three of the major life activities listed below.

Handicapping Conditions are defined as:

- Mobility refers to the ability to move from one area to another area independently. The need for assistive devices does not indicate that the individual is non-mobile, but the assistive devices should be noted.
- Sensory Deficits refers to an individual lacking ability to translate into consciousness the effects of a stimulus.
- Chronic Health is a long-term progressive demise in health to include but not limited to the following diagnosis: Cancer, Renal failure, COPD and Multiple Sclerosis
- Behavior Problems refers to an individual's need for supervision to ensure their safety or the safety of others.

Major Life Activities are defined as:

- Self-Care Skills: Self-care skills refer to the effectiveness or degree with which individuals meet the standards of personal independence and social responsibility expected of their age and cultural group. Self-care skills include personal skills essential for privacy and independence.
- Language: Understanding and use of language refers to the development of both verbal and nonverbal and receptive and expressive communication skills.
- Functional Academics: Functional Academics refers to the development of those processes by which information received by the senses is stored, recovered and used. It includes the development of

the processes and abilities involved in memory, reasoning and problem solving.

- C.1.2.16 Individual Service Plan (ISP)** is the plan of care that describes the amount, scope and duration of services for which a participant is eligible, needs and wants, and the provision of these services. For individuals in the EPD waiver, the ISP is developed by the participant, representative if applicable, and the Vendor F/EA FMS-Supports Broker. For individuals in the IDD waiver, the ISP is developed through the IDT (interdisciplinary team) meeting process. The ISP will be comprised of a potential mix of participant-directed services managed by the participant (participant-directed personal care and participant-directed goods and services that will comprise the participant-directed individual budget), traditional EPD waiver services and other Medicaid services provided under the District's Medicaid State Plan.
- C.1.2.17 Interdisciplinary Team (IDT)** – the full spectrum of all individuals who provide services and supports to Medicaid beneficiaries enrolled in the IDD waiver, including, but not limited to, the DDA Service Coordinator, family members, friends, guardians, Court appointed attorney, DDA service providers, clinicians and other medical professionals.
- C.1.2.18 Office of Chronic and Long-Term Care (OCLTC):** the office within the Health Care Delivery Management Administration within DHCF that is responsible for developing, implementing and monitoring Medicaid-financed long-term care services for elders, individuals with disabilities, and other individuals with chronic conditions. OCLTC oversees waiver services for participants in the EPD and IDD waivers.
- C.1.2.19 Critical Incident:** any suspected or confirmed Medicaid fraud, alleged abandonment, abuse and/ or neglect, fraud, or poor quality of care.
- C.1.2.20 Omnicaid** (District Medicaid Management Information System (MMIS): A CMS approved system that supports the operation of the Medicaid program. Omnicaid includes the following types of sub-systems and files: recipient eligibility, Medicaid provider, claims processing, pricing, and encounter processing.
- C.1.2.21 Participant:** A person determined by DHCF to be eligible for and enrolled in a HCBS 1915 (c) waiver and who chooses to participant-direct.
- C.1.2.22 Participant/representative-employer:** A Medicaid waiver participant or representative (if applicable) who chooses to participant-direct and serve as a common law employer for a qualified direct care worker
- C.1.2.23 Participant-directed Goods and Services:** Services, equipment or supplies not otherwise provided through the EPD or IDD waivers or through the Medicaid State Plan, that the participant (or representative, if applicable) may choose to

purchase that address an identified need in the ISP, including improving and maintaining the participant's opportunities for full membership in the community. Participant-directed Goods and Services are purchased from the participant's individual budget. The participant may not have the funds to purchase the item or service, or other means to access the item or service is through another source. In addition, purchases of individual –directed goods and services meet at least one of requirements below:

- a. The item or service would decrease the need for other Medicaid services; and/or
- b. Promote inclusion in the community; and/or
- c. Increase the participant's safety in the home environment.

C.1.2.24 Participant-Directed Personal Care: Services consisting of assistance with personal care, of both a supportive and health-related nature, specific to the participant-directed needs of a waiver participant who chooses to participant-direct. Supportive services are those which substitute for the absence, loss, diminution, or impairment of a physical or cognitive function. Housekeeping, chore, and respite activities, and escorts to medical appointments may also be furnished as part of this activity. Participants (or representatives, if applicable) recruit, dismiss, manage and dismiss their own staff and pay hourly wages from their participant-directed individual budget. They may appoint someone to act as their representative if they do not wish to personally direct their own care.

C.1.2.25 Participant-Directed Individual Budget: Document that converts the participant-directed services included in the ISP into a monetary amount. The budget, developed by the participant, representative (if applicable), and the Vendor F/EA FMS-Supports Broker, will translate into expenditures the number of hours/month of participant-directed directed personal care and the amount each participant has been approved to spend each month on participant-directed goods and services.

C.1.2.26 Participant-Direction: Service delivery model in which Medicaid participants in the District's HCBS 1915 (c) waivers have the right to exercise decision-making authority over some or all of the services they need to live in their community and accept the responsibility for taking a direct role in managing these services. It is an alternative to provider management of services and promotes personal choice and control over their services and how they are delivered. Program participants may share authority with or delegate authority to a representative (i.e., a family member, friend or other person close to the participant). Two major features of participant-direction are budget authority and employer authority.

C.1.2.27 Per Member Per Day (PM/PD): Payment method established by DHCF that Vendor F/EA FMS-Supports Broker entity for services rendered based on a flat rate of payment for each participant it serves as a Vendor F/EA FMS-Supports Broker for each day it provides services to each participant.

- C.1.2.28** **Qualified Direct Care Worker:** Individual who meets the requirements as described in waiver or program standards and is employed by the participant/representative-employer to provide assistance and support to the participant in accordance with the participant's ISP and participant-directed individual budget.
- C.1.2.29** **Representative:** Family member, friend or other person who is close to and chosen by the participant who shares the authority with the participant, for managing the participant's services and supports and the direct care workers who provide them. This authority must reflect the desires and preferences of the participant and may include being the common law employer of the participants' direct care workers when appropriate. A participant's representative cannot also be his/her qualified direct care worker.
- C.1.2.30** **Supports Broker:** Individual employed by the contractor who is the primary, front line support to the Program Participant. The Supports Broker provides individualized guidance, including assisting with the development of the ISP, training the Participant on their role as an employer and how to effectively use the participant-directed individual budget. The Supports Broker also helps the participant determine which medical, social, educational and other services to include in the participant's ISP for which the participant is eligible aside from participant-directed services.
- C.1.2.31** **Vendor Fiscal/Employer Agent (F/EA) Financial Management Services (FMS)-Supports Broker entity:** a vendor entity that applies for and receives approval from the Internal Revenue Service (IRS) to be an employer agent, in accordance with §3504 of the IRS code, Revenue Procedure 70-6, 1970-1 C.B. 420, and the January 13, 2010 IRS *Notice of Proposed Rulemaking Regarding Section 3504 Agent Tax Liability* , (REG-137036-08-1) on behalf of participants/representatives performing all that is required of an employer for wages paid on their behalf and all that is required of the payer for the requirements of back-up withholding, as applicable. The Vendor F/EA FMS-Supports Broker entity performs other fiscal, payroll, participant-directed goods and service invoice payment, supports brokerage and reporting tasks as required by DHCF and as described in this document. The entity must have a Vendor F/EA FMS-Supports Broker Policies and Procedures Manual that is available in an electronic format and includes the policies, procedures and internal controls that describe its operations and that are in accordance with federal and District tax, labor, workers' compensation, and program rules and regulations.

C.1.3 Applicable Documents

The following documents are applicable to this procurement and are hereby incorporated by this reference. The Contractor shall comply with the current and any future revisions to the documents.

Document No.	Document Type	Document Title	Version/ Date
1	IRS Code	TITLE 26 - INTERNAL REVENUE CODE Subtitle C - Employment Taxes CHAPTER 25 - GENERAL PROVISIONS RELATING TO EMPLOYMENT TAXES Sec. 3504. Acts to be performed by agents http://uscode.house.gov/download/pls/26C25.txt	Most Recent
2	District Municipal Regulations	DCMR Chapter 42 of Title 29, Section 4216 www.dc.gov	Most Recent
3	IRS	IRS Form SS-4 Application for Employer Identification Number http://www.irs.gov/pub/irs-pdf/fss4.pdf	Most Recent
4	IRS	IRS Form 2678 Employer/Payer Appointment of Agent http://www.irs.gov/pub/irs-pdf/f2678.pdf	Most Recent
5	IRS	IRS LTR 1997C Notice of Appointment www.irs.gov	Most Recent
6	IRS	IRS Form 8821 Tax Information Authorization www.irs.gov	Most Recent
7	District	DC Department of Employment Services (DOES) Form DC-2848 Power of Attorney and Declaration of Representative http://does.dc.gov/does/site/default.asp?doesNav=32060	Most Recent
8	District	DC Office of Tax and Revenue Form FR-500 Combined Business Registration Application www.otr.dc.gov	Most Recent
9	IRS	IRS Form W-4 Employee Withholding Allowance Certificate www.irs.gov	Most Recent
10	IRS	US CIS Form I-9 Employment Eligibility Verification http://www.uscis.gov/files/form/i-9.pdf	Most Recent

Document No.	Document Type	Document Title	Version/ Date
11	IRS	IRS Forms W-9 www.irs.gov	Most Recent
12	IRS	IRS Notice 797 Possible Federal Tax Return Due to Earned Income Credit http://www.irs.gov/pub/irs-pdf/n797.pdfm	Most Recent
13	CMS	CMS HCBS waiver template instructions and guidance http://www.ct.gov/ddc/lib/ddc/waiver/hcbs_consolidated_waiver_operations_manual.pdf	Most Recent
14	District Law	Health-Care Facility, Unlicensed Personnel Criminal Background Check Act of 1998 dccouncil.washington.dc.us/images/00001/20010726162441.pdf	Most Recent
15	IRS	FW-5 www.irs.gov	Most Recent
16	IRS	FICA/FUTA or SUTA exempt per Section 3 of IRS Publication 15 and DC requirements www.irs.gov	Most Recent
17	IRS	Form 941 Employer's Quarterly Federal Tax Report and the IRS Form 941 Schedule R www.irs.gov	Most Recent
18	IRS	Tax withholding in the aggregate using the Vendor F/EA FMS-Supports Broker Entity's separate FEIN (electronic filing or IRS Form 8109 Federal Tax Deposit Coupon) www.irs.gov	Most Recent
19	IRS	Form 940, Employer's Annual Federal Unemployment (FUTA) Report and the IRS Form 940 Schedule R. www.irs.gov	Most Recent
20		DOES-UC 30 Contribution and Wage Report	Most Recent
21	IRS	New IRS Form 941-X rather than the IRS Form 941(c) effective 6/2009 and the new IRS Form 941 Schedule R effective 1/2010 www.irs.gov	Most Recent
22	IRS	W-2, W-2-c www.irs.gov	Most Recent

Document No.	Document Type	Document Title	Version/ Date
23	IRS	W-3, Transmittal of Wage and Tax Statement, as applicable. Note: When IRS Form W-2 is filed electronically, an IRS Form W-3 does not have to be filed www.irs.gov	Most Recent
24	IRS	IRS Forms SS-8, Determination of Worker Status for Purpose of Federal Employment Taxes and Income Tax www.irs.gov	Most Recent
25	IRS	Form 1099-Misc Miscellaneous Income www.irs.gov	Most Recent
26	IRS	IRS Form 1096 Annual Summary and Transmittal of U.S. Information Returns www.irs.gov/pub/irs-pdf/f1096.pdf	Most Recent
27	Federal Law	Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Attachment J.8) www.hipaa.org/	Most Recent
28	District	District's Unemployment Compensation Notice Responsibilities	Most Recent
29	IRS	DTR FR 900B 2010 Employer Withholding Tax Annual Reconciliation and Report, or copies of proof of filing if return filed electronically www.irs.gov	Most Recent
30	District	Form D-4A Certificate of Non residence in the District of Columbia	Most Recent
31	IRS	Forms W-5 Earned Income Credit Advance Payment www.irs.gov	Most Recent
32	Federal Law	American with Disabilities Act www.ada.gov/	Most Recent

C.2 BACKGROUND

C.2.1 DHCF MISSION

The Department of Health Care Finance (DHCF), formerly the Medical Assistance Administration (MAA), is the single state agency responsible for the implementation and administration of the District of Columbia's ("the District's") Medicaid Program (Title XIX of the Social Security Act)

C.2.1.1 Elderly and Persons with Physical Disabilities (EPD) and Intellectual and Developmental Disability (IDD) 1915(c) Home and Community-Based Services (HCBS) waiver

The District received approval from the Centers for Medicare and Medicaid Services (CMS) to implement both the Elderly and Persons with Physical Disabilities (EPD) and Intellectual and Developmental Disability (IDD) 1915(c) Home and Community-Based Services (HCBS) waiver in 2007. The EPD waiver provides Medicaid-eligible beneficiaries who are elders age 65 and over and people with physical disabilities ages 18 – 64 with in-home supports and assistance with activities of daily living. The goal of the program is to ensure that participants may remain in home and community-based settings including Assisted Living in lieu of a Nursing Facility with assistance in attaining their activities of daily living. The EPD waiver provides the District with the opportunity to address the institutional bias in long-term care by improving the availability and quality of community-based services, while providing people who would otherwise be institutionalized the option to be served in the community.

C.2.2 Participant-Directed Program

DHCF is amending the EPD and IDD waiver to implement a participant-direction program option. Participant-direction will allow EPD waiver participants and IDD waiver participants who reside in their natural homes, and who have the ability (with assistance from a representative, if needed) and desire to exercise more choice and control over their Medicaid services and supports to do so and remain in the community. DHCF believes that participant-direction will enhance the quality of life for and expand the range of health care and or non-medical direct care staff services available to EPD or IDD waiver participants by affording them more flexibility to better meet their individual needs. EPD waiver participants and IDD waiver participants who live in their natural home will have the option to choose to enroll in participant direction or will remain in the traditional EPD waiver. The FE/A FMS-Supports Broker will ensure all sites where services are provided are handicap / wheel chair accessible.

C.2.2.1 Principles and Philosophy

The principles and philosophy of DHCF home and community-based programs that offer the participant-directed service option, which supports empowering EPD waiver program participants and their families by expanding their degree of choice and control over the long-term services and supports they need to live at home, and vesting decision-making and managerial authority in participant/representative-employers- and their families (when chosen or required to represent them).

C.2.2.2 Participant-directed Goods and Services and Participant-Directed Personal Care

The participant-direction program redefines two new EPD waiver services— participant-directed goods and services and participant-directed personal care— that participants who select this option may access. Based on participant’s preferences, participant- directed goods and services and the number of participant-directed personal care hours calculated based on the current needs assessments will be incorporated into each participant’s individual service plan (ISP). These services will be converted into a monetary amount, and this amount will be translated into a participant-directed individual budget, and any services received or items may not exceed the budget. The individual’s participant-directed budget will be reduced by the cost of Vendor F/EA FMS and Supports Brokerage services on a daily basis, which are described in Section C.2.2.3. Participants will be eligible for all other waiver services except for case management and traditional personal care. The cost of traditional services in the plan will not be included in the individual’s participant-directed budget.

C.2.2.2.1 Participants will be afforded both employer and budget authority. Therefore, participants or their representatives will serve as common law employers of the qualified direct care workers they choose to hire, and will be subject to related tax, insurance and labor laws and requirements (employer authority) as household employers of direct care workers. Participants will also help to develop and manage their individual service plans, budget and supports (budget authority).

C.2.2.2.2 The amendment also defines two administrative services: Vendor Fiscal/Employer Agent (F/EA) Financial Management Services (FMS) and Supports Brokerage. The purpose of the RFP is to secure a Vendor Fiscal/Employer Agent (F/EA) Financial Management Service (FMS)-Supports Brokerage entity, with which DHCF will contract to provide a new administrative service. The Vendor F/EA FMS/Supports Brokerage entity will offer counseling and information assistance (“support brokerage”, similar to case management). The Supports Brokerage services will vary slightly for the EPD waiver participants and the IDD waiver participants. The Vendor Fiscal/Employer Agent Financial Management Services (F/EA FMS) including participant-budget

management, processing payroll for qualified direct care workers and processing and paying vendor invoices participant-directed goods and services.

C.2.2.3 DHCF expects gradual enrollment of Medicaid waiver participants into the participant-direction option that will increase following the initial start-up years. DHCF estimates that 35 and 70 EPD waiver participants will elect participant-direction in the first two years of program implementation, respectively. DHCF plans to implement the participant-direction program option on January 1, 2011 for EPD waiver participants and on July 1, 2011 for IDD waiver participants.

C.3 REQUIREMENTS

C.3.1 VENDOR F/EA FMS-SUPPORTS BROKER SERVICES – EPD WAIVER PARTICIPANTS

C.3.1.1 Standards

The Vendor F/EA FMS-Supports Broker shall provide services in accordance with the eighteen (18) standards described in Attachment J.1 and listed below:

C.3.1.1.1 Standard 1: Qualifications of Vendor F/EA FMS-Supports Broker Entity Staff

C.3.1.1.2 Standard 2: Billing for Services Rendered

C.3.1.1.3 Standard 3: Managing Public Funds

C.3.1.1.4 Standard 4: Receiving Federal and State Authority to Act as a Vendor F/EA FMS for Participant/Representative-Employers

C.3.1.1.5 Standard 5: Providing Customer Service

C.3.1.1.6 Standard 6: Communicating Between Vendor F/EA FMS and Supports Broker Entity Divisions and with Case Managers

C.3.1.1.7 Standard 7: Providing Participant/Representative-Employer Orientation and Skills Training

C.3.1.1.8 Standard 8: Enrolling Participants/Representative-Employers with the Vendor F/EA FMS- Support Broker Entity and Obtaining Federal and DC Employer Tax Registration Numbers

C.3.1.1.9 Standard 9: Enrolling Qualified Direct Care Workers and Participant-directed Goods and Services Vendors with the Vendor F/EA FMS- Supports Broker Entity

- C.3.1.1.10** Standard 10: Disenrolling Participant/Representative-Employers' with Vendor F/EA FMS- Supports Broker Entity and Terminating Employer Status for Participant/Representative-Employers, When Appropriate
- C.3.1.1.11** Standard 11: Processing and Distributing Qualified Direct Care Workers' Payroll and Withholding, Filing and Paying Related Federal and District Taxes
- C.3.1.1.12** Standard 12: Processing, Paying and Tracking Payments to Approved Participant-directed Goods and Services
- C.3.1.1.13** Standard 13: Establishing and Maintaining Files and Documentation
- C.3.1.1.14** Standard 14: Preparing and Submitting Required Vendor F/EA FMS-related Reports
- C.3.1.1.15** Standard 15: Preparing and Submitting Required Supports Broker-related Reports
- C.3.1.1.16** Standard 16: Brokering Workers' Compensation Insurance for Participant/Representative-Employers
- C.3.1.1.17** Standard 17: Providing Supports Broker Services to Participants and Representatives
- C.3.1.1.18** Standard 18: Vendor F/EA FMS-Supports Broker Entity Quality Management Activities
- C.3.1.2** **General Administrative Requirements**

The Vendor F/EA FMS-Supports Broker entity shall meet the following general administrative Federal and DHCF requirements.

- a. Be an enrolled provider in the DC Medical Assistance Program;
- b. Be qualified/registered with the District to conduct business in the District;
- c. Maintain documentation regarding registration to do business in the District in the Vendor F/EA FMS – Supports Broker files;
- d. Maintain the Vendor F/EA FMS –Supports Broker entity qualifications as outlined in Attachment J.1;
- e. Conduct the operations of the required services in accordance with the Standards as outlined in Attachment J.1 and maintain documentation to support its compliance with the standards described in Attachment J.1;
- f. Conduct the operations of the required services in accordance with §3504 of the IRS code, Revenue Procedure 70-6, 1970-1 C.B. 420, and the January 13, 2010 IRS *Notice of Proposed Rulemaking Regarding Section 3504 Agent Tax Liability* (REG-137036-08-1) and any other future revenue procedures, notices or publication promulgated by the IRS in the future;

- g. Support the principles and philosophy of DHCF home and community-based programs that offer the participant-directed service option which supports empowering EPD waiver program participants and their families by expanding their degree of choice and control over the long-term services and supports they need to live at home, and vesting decision-making and managerial authority in participant/representative-employers- and their families (when chosen or required to represent them).;
- h. Comply with all relevant DHCF health and safety requirements;
- i. Ensure service delivery in accordance with current Federal and DC tax, labor, workers' compensation insurance and program regulations related to the DHCF Programs, the delivery of Vendor F/EA FMS, Supports Broker services, household employers and domestic service workers;

C.3.1.2.1 Staff and Organizational Structure

C.3.1.2.1.1 Key Staff

The Vendor F/EA FMS-Supports Broker shall provide knowledgeable and experience management in providing Vendor F/EA FMS and Supports Broker services and working with persons with disabilities and chronic conditions. The Vendor F/EA FMS-Supports Broker shall maintain all Key Personnel to carry out the required services including at a minimum the positions identified in Standard 1, Attachment J.1.

C.3.1.2.1.2 Other Staff

The Vendor F/EA FMS-Supports Broker shall provide knowledgeable and line staff in providing Vendor F/EA FMS and Supports Broker services and working with persons with disabilities and chronic conditions.

C.3.1.2.1.3 Health-Care Facility, Unlicensed Personnel Criminal Background Check Act of 1998

The Vendor F/EA FMS-Supports Broker shall, in accordance with the Health-Care Facility, Unlicensed Personnel Criminal Background Check Act of 1998 (Applicable Document #14), obtain written results of criminal history clearances for itself and all employees providing waiver/program services within 30 days from the date that the entity initiates services to the participant.

C.3.1.2.2 Organizational Structure

The Vendor F/EA FMS-Supports Broker shall maintain an organizational structure to successfully provide the required services and to ensure that the Broker:

- a. Provide the staff, organization, supervision, and lines of accountability to successfully provide the required services;
- b. Provide the required services in accordance with the Standards provided in Attachment J.1;
- c. Provide written materials including deliverables and reports associated with the Standards described in Attachment J.1; and
- d. Attend meetings as directed by DHCF and required by the Contract;

C.3.1.2.3 Office Space

The Vendor F/EA FMS-Supports Broker shall maintain the office space and policies and procedures to ensure the maintenance of hardcopy and electronic current and archived Vendor F/EA FMS – Supports Broker entity records and files in an accurate, secure and confidential manner. The Vendor F/EA FMS-Supports Broker shall ensure its office space is compliant with the provisions of the Americans with Disabilities Act

C.3.1.2.4 Financial Viability

The Vendor F/EA FMS-Supports Broker shall ensure adequate financial viability by successfully completing or providing at a minimum the following:

- a. An indemnity bond equal to or greater than the total cost of Vendor F/EA FMS and Supports Broker services for two (2) months;
- b. A minimum reserve of two months of estimated service costs at all times;
- c. Audited financial statements for at least two (2) fiscal years including a balance sheet, statement of revenue and expense, and a statement of cash flow, independent auditor’s opinion, the notes to the financial statements, and management letters submitted by the auditor to the Contractor;
- d. Sound financial and reporting structure to efficiently serve participants;
- e. Maintain books, records, documents, and other evidence of expenditures in with generally accepted accounting principles (GAAP); and
- f. Make all books, records and documents available for inspection by the DHCF or federal authorities without prior notice;

C.3.1.2.5 Information Technology and Information System

The Vendor F/EA FMS-Supports Broker shall identify and provide an information system to accomplish the required services including at a minimum the following:

- a. Interface successfully and exchange data and information with the District’s MMIS, Omnicaid system;
- b. Ensure the information system is auditable, uses standardized formats and terminology that complies with HIPAA (45 C.F.R. §§ 160-164) (Attachment J.8), systems;

- c. Submit claims electronically to DHCF through Omnicaid for Medicaid participant-directed waiver services in accordance with the participant's ISPs and DHCF billing and contract requirements;
- d. Support the billing process including waiver related and administrative fees and services;
- e. Maintain and track data and information required to fulfill federal and District requirements;
- f. Produce the required reports;
- g. Manage and maintain files and related records confidentially; and
- h. Provide sufficient technical assistance and training to preempt avoidable errors.

C.3.1.2.6 Reporting

C.3.1.2.561 Policies and Procedures

The Vendor F/EA FMS-Supports Broker shall prepare and maintain in written and electronic formats comprehensive Vendor F/EA FMS – Supports Broker Policies and Procedures Manual as described in the Standards 1 through 18, Attachment J.1 including:

- a. All Vendor F/EA FMS and Supports Broker tasks,
- b. Internal controls to monitor completion of each Vendor F/EA FMS and Supports Broker task,
- c. Addresses Federal and District of Columbia program, tax, labor, citizenship and legal alien status and workers' compensation insurance rules and regulations,
- d. Has been approved by DHCF, and
- e. Is updated at least annually and more frequently as needed

C.3.1.2.6.2 Standards Reporting

The Vendor F/EA FMS-Supports Broker shall prepare and submit each of the reports described in the Standards Document, Standards 1 through 18, Attachment J.1.

C.3.1.2.6.3 Neglect, Abuse, and Exploitation

The Vendor F/EA FMS-Supports Broker shall report all suspected cases of neglect, abuse, and exploitation of participants applying for or receiving waiver services within 24 hours of awareness to the CA and appropriate authorities.

**SECTION D
PACKAGING AND MARKING**

This section is not applicable to this procurement.

SECTION E INSPECTION AND ACCEPTANCE

E.1 INSPECTION AND ACCEPTANCE

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 (Attachment J.2).

E.2 RIGHT TO ENTER PREMISES

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

E.3 READINESS ASSESSMENT

Prior to execution of the contract, the District will conduct a readiness assessment to determine if the Vendor F/EA FMS-Supports Broker demonstrates it is able to meet all of the standards in the protocol and perform the required Vendor F/EA FMS-Support Broker functions in a satisfactory manner.

E.4 MONITORING OF PERFORMANCE

E.4.1 The District will utilize a variety of methods to determine compliance with the Contract requirements and measure the quality of the Contractor's performance including but not limited to the following:

- a. Performance review
- b. Customer Satisfaction
- c. Scheduled and Unscheduled Site Visits
- d. Auditing and Monitoring - The District, DHCF, the Federal government and its contractors may perform off-site and on-site audits to ensure that the Contractor is in compliance with the requirements set forth in the Contract. The reviews and audits may include: on-site visits; staff interviews; medical record reviews; review of claims and other supporting data information; and corrective actions and follow-up plans.

**SECTION F
PERIOD OF PERFORMANCE AND DELIVERABLES**

F.1 TERM OF THE CONTRACT

The term of the Contract for EPD and IDD waiver participants will be for a period of one (1) year from date of award.

F.2 OPTION TO EXTEND THE TERM OF THE CONTRACT

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

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

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

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

F.3 DELIVERABLES

Deliverable Number	Deliverable Name	Due Date
1	Criminal Background Checks as described in C.3.1.1.3	
2 - 19	Policies and Procedures Standards (Attachment J.1) as described in C.3.1.2.6.1 C.3.1.1.1 Standard 1: Qualifications of Vendor F/EA FMS-Supports Broker Entity Staff C.3.1.1.2 Standard 2: Billing for Services Rendered C.3.1.1.3 Standard 3: Managing Public Funds C.3.1.1.4 Standard 4: Receiving Federal and State Authority to Act as a Vendor F/EA FMS for Participant/Representative-Employers	

Deliverable Number	Deliverable Name	Due Date
C.3.1.1.5	Standard 5: Providing Customer Service	
C.3.1.1.6	Standard 6: Communicating Between Vendor F/EA FMS and Supports Broker Entity Divisions and with Case Managers	
C.3.1.1.7	Standard 7: Providing Participant/Representative-Employer Orientation and Skills Training	
C.3.1.1.8	Standard 8: Enrolling Participants/Representative-Employers with the Vendor F/EA FMS- Support Broker Entity and Obtaining Federal and DC Employer Tax Registration Numbers	
C.3.1.1.9	Standard 9: Enrolling Qualified Direct Care Workers and Participant-directed Goods and Services Vendors with the Vendor F/EA FMS Supports Broker	
C.3.1.1.10	Standard 10: Disenrolling Participant/Representative-Employers' with Vendor F/EA FMS- Supports Broker Entity and Terminating Employer Status for Participant/Representative-Employers, When Appropriate	
C.3.1.1.11	Standard 11: Processing and Distributing Qualified Direct Care Workers' Payroll and Withholding, Filing and Paying Related Federal and District Taxes	
C.3.1.1.12	Standard 12: Processing, Paying and Tracking Payments to Approved Participant-directed Goods and Services	
C.3.1.1.13	Standard 13: Establishing and Maintaining Files and Documentation	
C.3.1.1.14	Standard 14: Preparing and Submitting Required Vendor F/EA FMS-related Reports	
C.3.1.1.15	Standard 15: Preparing and Submitting Required Supports Broker-related Reports	
C.3.1.1.16	Standard 16: Brokering Workers' Compensation Insurance for Participant/Representative-Employers	
C.3.1.1.17	Standard 17: Providing Supports Broker Services to Participants and Representatives	
C.3.1.1.18	Standard 18: Vendor F/EA FMS-Supports Broker Entity Quality Management Activities	

Deliverable Number	Deliverable Name	Due Date
20 - 38	Standards Reporting (Attachment J.1) as described in C.3.1.2.6.2	
	C.3.1.1.1 Standard 1: Qualifications of Vendor F/EA FMS-Supports Broker Entity Staff	
	C.3.1.1.2 Standard 2: Billing for Services Rendered	
	C.3.1.1.3 Standard 3: Managing Public Funds	
	C.3.1.1.4 Standard 4: Receiving Federal and State Authority to Act as a Vendor F/EA FMS	
	C.3.1.1.5 Standard 5: Providing Customer Service	
	C.3.1.1.6 Standard 6: Communicating Between Vendor F/EA FMS and Supports Broker Entity Divisions and with Case Managers	
	C.3.1.1.7 Standard 7: Providing Participant/Representative-Employer Orientation and Skills Training	
	C.3.1.1.8 Standard 8: Enrolling Participants/Representative-Employers with the Vendor F/EA FMS- Support Broker Entity and Obtaining Federal and DC Employer Tax Registration Numbers	
	C.3.1.1.9 Standard 9: Enrolling Qualified Direct Care Workers and Participant-directed Goods and Services Vendors with the Vendor F/EA FMS-Supports Broker Entity	
	C.3.1.1.10 Standard 10: Disenrolling Participant/Representative-Employers' with Vendor F/EA FMS- Supports Broker Entity and Terminating Employer Status for Participant/Representative-Employers, When Appropriate	
	C.3.1.1.11 Standard 11: Processing and Distributing Qualified Direct Care Workers' Payroll and Withholding, Filing and Paying Related Federal and District Taxes	
	C.3.1.1.12 Standard 12: Processing, Paying and Tracking Payments to Approved Participant-directed Goods and Services	
	C.3.1.1.13 Standard 13: Establishing and Maintaining Files and Documentation	
	C.3.1.1.14 Standard 14: Preparing and Submitting Required Vendor F/EA FMS-related Reports	
C.3.1.1.15 Standard 15: Preparing and Submitting Required		

Deliverable Number	Deliverable Name	Due Date
	Supports Broker-related Reports C.3.1.1.16 Standard 16: Brokering Workers' Compensation Insurance for Participant/Representative-Employers C.3.1.1.17 Standard 17: Providing Supports Broker Services to Participants and Representatives C.3.1.1.18 Standard 18: Vendor F/EA FMS-Supports Broker Entity Quality Management Activities	
39	Neglect, Abuse, and Exploitation as described in as described in C.3.1	As Needed
40	Transition plan to describe how it will establish and maintain communication with Omnicaid to allow for the exchange of information and data from the current payroll processing entity without disruption to the program.	
41	Monthly and ad hoc (as requested) participant utilization and expenditure reports	
42	A detailed plan for producing requested reports above, including data elements to be included and how data will be generated, collected and submitted	

F.3.4 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.3.5 If any documents contain confidential information, the outer and inner contents of the package shall be prominently labeled "Confidential."

F.3.6 Notice of Disapproval of Deliverables – Resubmission of Deliverables

F.3.6.1 The CA (or designee) shall provide written notice of disapproval of a Deliverable or report to Contractor within fifteen (15) business days of submission if it is disapproved. The notice of disapproval shall state the reasons for disapproval as specifically as is reasonably necessary and the nature and extent of the corrections required for meeting the Contract requirements.

F.3.6.2 Contractor shall make the corrections and resubmit the Deliverable within ten (10) business days unless otherwise specifically noted in the notice of disapproval.

F.3.7 Any reports required pursuant to Section H.5 of the Fifty One Percent (51%) District Residents New Hires Requirements and First Source Employment Agreement are to be submitted to the District as a deliverable. If the report is not submitted as part of the deliverables, final payment to Contractor shall not be paid.

SECTION G
CONTRACT ADMINISTRATION DATA

G.1 INVOICE PAYMENT

G.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 30th 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 PAYMENT

The District will pay the Contractor monthly the cumulative total of the per member per day price described in B.3.2 for each participant enrolled and eligible to receive services each day of the month.

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 3rd day after the required payment date for meat or a meat product;
- b. the 5th day after the required payment date for an agricultural commodity;
- or
- c. the 15th 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 3rd day after the required payment date for meat or a meat product;
- b. the 5th day after the required payment date for an agricultural commodity;
- or
- c. the 15th 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 – 4th Street, N.W., Suite 700 South
Washington, D.C. 20001
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:

Michele Herman
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 RECOUPMENT

G.10.1 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.10.2 Contractor shall be responsible for any recoupment of funds or sanctions imposed by the federal government to the District that are related to Contractor's non-compliance of any part of the Contract.

G.10.3 Right to Withhold Payment

G.10.3.1 The District reserves the right to withhold or recoup funds from Contractor in addition to any other remedies allowed under the Contract or any policies and procedures.

G.10.3.2 Payment will be withheld for Contractor late submissions of deliverables. Contractor shall receive payment when each deliverable is completed and approved by DHCF. If the deliverable has not been completed and submitted to DHCF by the deliverable due date and/or it is submitted, but DHCF does not approve the submission, DHCF may impose a penalty of 5 percent per day until deliverable is complete and approved.

**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.3. 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, (Attachment J.5) 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 10th 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.

- 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 .
- H.8.5** The Contractor shall provide a copy of the Fact Sheet attached as J.7 to each employee and subcontractor who performs services under the contract. The Contractor shall also post the Notice attached as provided in Attachment J.6 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.9.4 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.9.4.1** 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.9.4.2** 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.9.4.3** The names and addresses of all proposed subcontractors who are SBEs or, if insufficient SBEs are available, who are certified business enterprises;
- H.9.4.4** 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.9.4.5** 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.9.4.6** 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.9.4.7** 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.9.4.8** 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.9.4.9 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.9.5 COMPLIANCE REPORTS

By the 21st 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.9.5.1 The dollar amount of the contract or procurement;

H.9.5.2 A brief description of the goods procured or the services contracted for;

H.9.5.3 The name and address of the business enterprise from which the goods were procured or services contracted;

H.9.5.4 Whether the subcontractors to the contract are currently certified business enterprises;

H.9.5.5 The dollar percentage of the contract or procurement awarded to SBEs, or if insufficient SBEs, to other certified business enterprises;

H.9.5.6 A description of the activities the contractor engaged in, in order to achieve the subcontracting requirements set forth in section H.9; and

H.9.5.7 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.9.6 ENFORCEMENT AND PENALTIES FOR BREACH OF SUBCONTRACTING PLAN

H.9.6.1 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.9.6.2 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. 9.6.3 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.10 DISTRICT RESPONSIBILITIES

H.10.1 The District through the CA will conduct a readiness assessment of the Contractor to ensure that the Contractor has all processes in place to meet the scope of work outlined in this Contract. The Contractor shall demonstrate evidence of readiness relative to each requirement and function in the scope of work prior to undertaking any of the services or functions of this Contract.

H.10.2 The District, through the CA, will review and provide comments on each contract deliverable.

H.10.3 The District, through the CA, will provide continuous contract performance evaluations and program monitoring including Annual Performance Review

H.10.4 The District, through the CA, will maintain adequate liaison and cooperation with the Contractor.

H.10.5 The District will attend required meetings with the Contractor to discuss issues, changes, deliverables' status, and other specific agenda items.

H.10.6 DHCF will review and approve all deliverables prepared and submitted by Contractor.

H.11 CONTRACTOR RESPONSIBILITIES

H.11.1 Corrective Action Plan

If the CA determines that the Contractor has not met the criteria for readiness (H.10.1), the Contractor will be notified and required to develop a corrective action plan acceptable to CA.

H.11.2 Criminal Background Check

The Contractor shall not employ or contract with any person until a criminal background check has been conducted for that person. Contractor shall inform each prospective employee or contract worker that the Contractor is required to conduct a criminal background check before employing or contracting with a person.

H.11.3 Fidelity Bond

The Contractor shall maintain a fidelity bond with an estimated value of two (2) months total service delivery including waiver and administrative services fees.

H.11.4 Fraud, Waste and abuse

H.11.4.1 Cooperation with the District

H.11.4.1.1 This contract is subject to all District and federal laws and regulations relating to fraud and abuse in health care and the Medicaid program.

H.11.4.1.2 The Contractor shall cooperate and assist the District of Columbia and any District or federal agency charged with the duty of identifying, investigating, or prosecuting suspected fraud and abuse.

H.11.4.1.3 The Contractor shall provide originals and/or copies of all records and information requested and allow access to premises and provide records to CA or its authorized agent(s), CMS, the U.S. Department of Health and Human Services, FBI and the District's Medicaid Fraud Control Unit. All copies of records shall be provided free of charge.

H.11.4.1.4 The Contractor shall be responsible for promptly reporting suspected fraud, abuse, or violation of the terms of this contract to CA via the Contracting Officer, taking prompt corrective actions consistent with the terms of any subcontract, and cooperating with CA investigations.

H.11.4.1.5 The Contractor shall allow the District of Columbia Medicaid Fraud Unit or its representatives to conduct private interviews of Contractor's employees, subcontractors, and their employees, witnesses, and patients. The Contractor shall honor requests for information in the form and the language specified.

H.11.4.1.6 The Contractor's shall ensure that its employees and its subcontractors and their employees shall cooperate fully and be available in person for interviews, consultation grand jury proceedings, pre-trial conference, hearings, trial and in any other process.

H.11.4.2 Prohibiting Affiliations with Individuals Debarred by Federal Agencies

H.11.4.2.1 In accordance with the Social Security Act (Section 1932(d) (1), as amended by the Balanced Budget Act of 1997) or Executive Order, the Contractor may not knowingly have a director, officer, partner, or person, who has been debarred or suspended by the federal government, with more than 5% equity, or have an employment, consulting, or other contract with such a person for the provision of

items and services that are significant and material to the entity's contractual obligation with the District.

- H.11.4.2.2** The Contractor shall notify CA within three (3) days of the time it receives notice that action is being taken against Contractor, any person defined under the provisions of section 1128(a) or (b) of the Social Security Act (42 USC 1320 a-7) or any subcontractor which could result in exclusion, debarment, or suspension of the Contractor or a subcontractor from the Medicaid program, or any program listed in Executive Order 12549.

H.11.5 Financial Requirements

- H.11.5.1** The Contractor shall ensure through its contracts, subcontracts and in any other appropriate manner that the District is not held liable for Contractor's debts in the event of the Contractor's insolvency.

H.11.6 Solvency and Financial Reserves

- H.11.6.1** The Contractor shall maintain a positive financial net worth, and insolvency reserves or deposits that provide a sound financial foundation for the Contractor to perform the operations and services required under this Contract.

H.11.7 Financial Statements

- H.11.7.1** The Contractor shall submit financial statements audited by an independent certified public accountant to the District within one hundred twenty (120) days of the close of Contractor's fiscal year. The financial statements shall clearly show both total administrative and operating expenses and revenues that attributable to the DCHFP program.

H.11.8 Information System

H.11.8.1 Confidentiality of Records

- H.11.8.1.1** The Contractor must treat all records as confidential and must use reasonable care to protect that confidentiality in compliance with Federal and District regulations. Any use of data for purposes other than those completing the duties under this Contract including the sale or offering for sale of data is prohibited.

- H.11.8.1.2** The Contractor shall require its staff to sign a confidentiality Statement. The Contractor will be liable for any fines, financial penalties, or damages imposed on the District as a result of the Contractor's systems, staff, subcontractors or other agents causing a breach of confidentiality.

- H.11.8.1.3** A breach of confidentiality is a breach of this Contract and will constitute grounds for Contract termination and prosecution to the fullest extent permissible by law.

H.11.8.2 Use of Information and Data

H.11.8.2.1 The District agrees to maintain, and to cause its employees, agents or representatives to maintain on a confidential basis information concerning the Contractor's relations and operations as well as any other information compiled or created by Contractor which is proprietary to Contractor and which Contractor identifies as proprietary to the District in writing.

H.11.9 Conflict of Interest

H.11.9.1 No official or employee of the District of Columbia or the Federal government who exercises any functions or responsibilities in the review of approval of the undertaking or carrying out of this contract shall, prior to the completion of the project, voluntarily acquire any personal interest, direct or indirect, in the contract or proposed contract. (DC Procurement Practices Act of 1985, DC Law 6-85 and Chapter 18 of the DC Personnel Regulations).

H.11.9.2 The Contractor represents and covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants that, in the performance of the contract, no person having any such known interests shall be employed.

H.11.10 Accounting and Audits

H.11.10.1 The Contractor shall maintain an accounting system which conforms with generally accepted accounting principles which will permit an audit of all income and expenditures received or disbursed by the Contractor in the provision of services under this Contract.

H.11.10.2 The Contractor shall make provisions, upon request, for inspection of financial records, including audited financial Statements and tax returns, by the Contracting Officer or designee(s).

H.11.11 Assignment of Funds

H.11.11.1 No contract or any interest therein shall be transferred by the party to whom the award is made; such transfer will be null and void, and will be cause to annul the contract.

H.11.12 Prohibited Information and Activities

H.11.12.1 The Contractor and their Subcontractors are prohibited from distribution the following information or conducting the following activities:

- a. Materials that mislead or falsely describe covered or available services;
- b. Materials which mislead or falsely describe the Contractor's provider participation network, the participation or availability of network providers, the qualifications and skills of network providers (including their bilingual skills), or the hours of operation;
- c. Direct soliciting of members, either by mail, door-to-door or telephonic, of prospective Enrollees; and
- d. Engaging in any marketing activity or using any marketing material not approved in advance by the District.

H.11.13 General Subcontracting Requirements

H.11.13.1 Subcontracting

H.11.13.1.1 Contractor shall ensure that all activities carried out by any subcontractor conform to the provisions of the Contract and are clearly specified in the subcontract.

H.11.13.1.2 Contractor shall include in all of its contracts and subcontracts a requirement that Contractor or subcontractor look solely to Contractor for payment for services rendered.

H.11.13.1.3 It is the responsibility of Contractor to ensure its subcontractors are capable of meeting the reporting requirements under the Contract and, if they cannot, Contractor is not relieved of the reporting requirements.

H.11.13.2 Termination of Subcontract

H.11.13.2.1 Contractor shall notify the Contracting Officer, in writing, of the termination of any subcontract for the provision or administration of medical services, including the arrangements made to ensure continuation of the services covered by the terminated subcontract, not less than forty-five (45) days prior to the effective date of the termination, unless immediate termination of the Contract is necessary to protect the health and safety of Enrollees or prevent fraud and abuse. In such an event, Contractor shall notify the CA and Contracting Officer immediately upon taking such action.

H.11.13.2.2 If the District determines that the termination or expiration of a subcontract materially affects the ability of Contractor to carry out its responsibility under this contract, the District may terminate the Contract.

H.11.13.3 Review and Approval of Subcontracts

H.11.13.3.1 Contractor shall submit copies of subcontracted agreements to the Contracting Officer and the CA prior to execution of the Contract by Contractor.

H.11.14 Conflict of Interest

- H.11.14.1** In accordance with 45 C.F.R. § 74.42, no employee, officer, or agent of Contractor shall participate in the selection, award, or administration of the Contract if a real or apparent conflict of interest would be involved.
- H.11.14.1.1** A Conflict of Interest arises when the employee, officer, or agent, or any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award.
- H.11.14.1.2** The officers, employees, and agents of Contractor shall neither solicit nor accept gratuities, favors, or anything of monetary value from Contractors, or parties to subcontracts. However, Contractor may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employers, or agents of the recipients.
- H.11.14.2** In accordance with the District of Columbia Code § 27-2220, DHCF shall avoid any potential organization conflict of interest by an Offeror that may arise in the award of this procurement.
- H.11.14.2.1** An organizational conflict of interest may result from an actual or potential conflict of interest on an instant contract, or when the nature of the work to be performed on the instant contract creates an actual or potential conflict of interest on a previous or future contract. (Federal Acquisitions Regulation, 45 C.F.R. §9.5).
- H.11.14.2.2** Contractor shall identify any previous management support services; consultant or other professional services; contractor performance of or assistance in technical evaluations; and systems engineering and technical direction work performed by Contractor that are related in any manner to the services, goods, or supplies being acquired in this procurement (CDCR 27-2220).
- H.11.14.2.3** Specifically, Contractor shall not be currently involved with or connected to any Contractor or subcontractor that is contracted by DHCF as an adjudicator of claims or billing agent for DHCF and shall attest to such
- H.11.14.3** Contractor represents and covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contractor further covenants that, in the performance of the Contract, no person having any such known interests shall be employed.
- H.11.14.4** No official or employee of the District or the federal government who exercises any functions or responsibilities in the review of approval of the undertaking or carrying out of the Contract shall, prior to the termination of the Contract,

voluntarily acquire any personal interest, direct or indirect, in the Contract or proposed Contract (D.C. Procurement Practices Act of 1985, D.C. Law 6-85 and Chapter 18 of the D.C. Personnel Regulations).

H.11.15 Records Retention

H.11.15.1 Contractor shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Contract for the length of the Contract in addition to a period of six (6) years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report. The only exceptions are the following:

H.11.15.1.1 If any litigation, claim, financial management review, or audit is started before the expiration of the record retention period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken;

H.11.15.1.2 Records for real property and equipment acquired with federal funds shall be retained for six (6) years after final disposition; and

H.11.15.1.3 When records are transferred to or maintained by the HHS awarding agency, the record retention requirement is not applicable to the recipient.

H.12 DIVERSION, REASSIGNMENT AND REPLACEMENT OF KEY PERSONNEL

The Key Personnel specified in Section C.3.1.2.1.1 are considered to be essential to the work being performed hereunder. Contractor shall notify the CA and the CO in writing of any resignations, terminations, vacancies, and replacements of Key Personnel within two (2) Business Days. Prior to diverting any of the specified Key Personnel for any reason, the Contractor shall notify the CA and the Contracting Officer 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 Contracting Officer for any proposed substitution of Key Personnel. Contractor shall identify Key Personnel in the spaces below:

Name	Position
	Project Manager

H.13 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.14 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.

H.15 HIPAA COMPLIANCE – BUSINESS ASSOCIATE AGREEMENT

H.15.1 DHCF is a "Covered Entity" as that term is defined in the Privacy Rule and Security Rules (Attachment J.8) 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.15.2 Definitions

The following definitions shall apply to this Section:

H.15.2.1 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.15.2.2 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.15.2.3 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.15.2.4 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.15.2.5 Designated Record Set:** a group of records maintained by or for the Covered Entity that is:
- H.15.2.5.1** The medical records and billing records about individuals maintained by or for a covered health care provider;
 - H.15.2.5.2** The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
 - H.15.2.5.3** Used, in whole or in part, by or for the Covered Entity to make decisions about individuals.
- H.15.2.6 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 (Attachment J.8).
- H.15.2.7 Electronic Media:**
- H.15.2.7.1** 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.15.2.7.2** 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.15.2.8** Electronic Protected Health Information: Protected Health Information which is transmitted by Electronic Media (as defined herein) or maintained in Electronic Media.
- H.15.2.9** **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.15.2.9.1** 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.15.2.9.2** Sale or dispensing of a drug, device, equipment, or other item in accordance with the prescription.
- H.15.2.10** **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.15.2.11** **Health Care Operations:** shall have the same meaning as the term “health care operations” in 45 C.F.R. § 164.501.
- H.15.2.12** **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.15.2.13** **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.15.2.14 Individually Identifiable Health Information:** a subset of health information, including demographic information collected from an individual, and:
- H.15.2.14.1** Is created or received by a health care provider, health plan, employer, or health care clearinghouse;
 - H.15.2.14.2** 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.15.2.14.3** Identifies the individual; or
 - H.15.2.14.4** With respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- H.15.2.15 National Provider Identifier (NPI) Rule:** the Standard Unique Health Identifier for Healthcare Providers; Final Rule at 45 C.F.R. Part 162.
- H.15.2.16 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.15.2.17 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.15.2.18 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.15.2.19 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.15.2.20 Protected Health Information:** individually identifiable health information that is:
- H.15.2.20.1** Transmitted by electronic media;

- H.15.2.20.2** Maintained in electronic media;
- H.15.2.20.3** Transmitted or maintained in any other form or medium;
- H.15.2.20.4** Limited to the information created or received by the Business Associate from or on behalf of the Covered Entity; and
- H.15.2.20.5** Excluding information in the records listed in subsection (2) of the definition in 45 C.F.R. §160.103.
- H.15.2.21** **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.15.2.22** **Required By Law:** same meaning as the term "required by law" in 45 C.F.R. § 164.103.
- H.15.2.23** **Secretary:** the Secretary of the United States Department of Health and Human Services or his or her designee.
- H.15.2.24** **Security Incident:** attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- H.15.2.25** **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.15.2.26** **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.15.2.27** **Security Rule:** the Standards for Security of Individually Identifiable Health Information at 45 C.F.R. part 164.
- H.15.2.28** **Technical Safeguards:** the technology and the policies and procedures for its use that protect electronic protected health information and control access.

H.15.2.29 **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.15.3 **Obligations and Activities of Business Associate**

H.15.3.1 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.15.3.2 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.15.3.3 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.15.3.4 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.15.3.5 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.15.3.6 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.15.3.7 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.15.3.8 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.15.3.9 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.15.3.10 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.15.3.11 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.15.3.12 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.15.3.13 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.15.4 Permitted Uses and Disclosures by the Business Associate

H.15.4.1 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.15.4.2 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.15.4.3 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.15.4.4 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.15.4.5 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.15.5 Additional Obligations of the Business Associate

H.15.5.1 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.15.5.1.1 Name of the Business Associate of the Covered Entity;

H.15.5.1.2 Title of the Report/File;

H.15.5.1.3 Confirmation that the Report/File contains Protected Health Information (Yes or No);

H.15.5.1.4 Description of the basic content of the Report/File;

H.15.5.1.5 Format of the Report/File (Electronic or Paper);

H.15.5.1.6 Physical location of Report/File;

- H.15.5.1.7** 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.15.5.1.8** Supporting documents if the recipient/personal representative has access to the Report/File.
- H.15.5.2** 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.15.5.2.1** 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.15.5.2.2** The Business Associate agrees to ensure that any agents or subcontractors of the Business Associate also agree to implement the appropriate security safeguards.
- H.15.5.2.3** 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.15.5.2.4** 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.15.5.2.5** 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.15.5.2.6** This Compliance Clause continues in force for as long as the Business Associate retains any access to the Covered Entity's EPHI.
- H.15.6** **Sanctions**

H.15.6.1 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.15.6.2 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.15.6.3 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.15.7 Obligations of the Covered Entity

H.15.7.1 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.15.7.2 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.15.7.3 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.15.8 Permissible Requests by Covered Entity

H.15.8.1 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.15.9 Representations and Warranties

H.15.9.1 The Business Associate represents and warrants to the Covered Entity:

H.15.9.1.1 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.15.9.1.2 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.15.9.1.3 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.15.9.1.4 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.15.9.1.5 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.15.9.1.6 That it will reasonably cooperate with the Covered Entity in the performance of the mutual obligations under this Agreement;

H.15.9.1.7 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.15.9.1.7.1 The neglect or abuse of a patient;

H.15.9.1.7.2 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.15.9.1.7.3 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.15.9.1.7.4 The unlawful, manufacture, distribution, prescription or dispensing of a controlled substance, or

H.15.9.1.7.5 Interference with or obstruction of any investigation into any criminal offense described in H.15.9.1.7.1 through H.15.9.1.7.4 above.

H.15.9.2 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.15.10 Term and Termination

H.15.10.1 Term

H.15.10.1.1 The requirements of this HIPAA Compliance Clause shall be effective as of the date of the contract award.

H.15.10.1.2 The requirements of this HIPAA Compliance Clause shall terminate when:

H.15.10.1.2.1 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.15.10.1.2.2 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.15.10.2 Termination for Cause

H.15.10.2.1 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.15.2.2.1.1 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.15.2.2.1.2 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.15.2.2.1.3 If neither termination nor cure is feasible, the Covered Entity shall report the violation to the Secretary.

H.15.10.3 Effect of Termination

H.15.10.3.1 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.15.10.3.2 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.15.10.3.3 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.15.11 **Miscellaneous**

H.15.11.1 **Regulatory References**

H.15.11.1.1 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.15.11.2 **Amendment**

H.15.11.2.1 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.15.22.2.2 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.15.11.3 **Survival**

H.15.11.3.1 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.15.11.4 **Interpretation**

H.15.11.4.1 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 (Attachment J.8).

H.15.11.4.2 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.15.11.4.3 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.15.11.5 No Third-Party Beneficiaries

H.15.11.5.1 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.15.11.5.2 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.15.11.6 **Compliance with Applicable Law**

H.15.11.6.1 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.15.11.7 Governing Law and Forum Selection

H.15.11.7.1 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.15.11.7.2 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.15.11.7.3 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.15.11.8 Indemnification

H.15.11.8.1 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.15.11.8.1.1 Any misrepresentation, breach of warranty or non-fulfillment of any undertaking of the Business Associate under this HIPAA Compliance Clause; and

H.15.11.8.1.2 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.15.11.9 Injunctive Relief

H.15.11.9.1 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.15.11.10 Assistance in litigation or administrative proceedings

H.15.11.10.1 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.15.11.11 Notices

H.15.11.11.1 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.15.11.11.2 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.15.11.12 Headings

H.15.11.12.1 Headings are for convenience only and form no part of this HIPAA Compliance Clause and shall not affect its interpretation.

H.15.11.13 Counterparts; Facsimiles

H.15.11.13.1 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.15.11.14 Successors and Assigns

H.15.11.14.1 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.15.11.15 Severance

H.15.11.15.1 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.15.11.15.2 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.15.11.15.3 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.15.11.16 Independent Contractor

H.15.11.16.1 The Business Associate will function as an independent contractor and shall not be considered an employee of the Covered Entity for any purpose.

H.15.11.16.2 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.15.11.17 Entire Agreement

H.15.11.17.1 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.15.11.18 Attachments:

H.15.11.18.1 Exhibit A, Department of Health Care Finance Privacy Policy Operations Manual, Policy Number IV.14.a) Individual's Information Rights – Access

H.15.11.18.2 Exhibit B, Department of Health Care Finance Privacy Policy Operations Manual, Policy Number IV.15.a) Individual's Information Rights - Amendment

H.15.11.18.3 Exhibit C, Department of Health Care Finance Privacy Policy Operations Manual, Policy Number VII.25 Standard Procedures - Identity and Procedure Verification

H.15.11.18.4 Exhibit D, Department of Health Care Finance Privacy Policy Operations Manual, Policy Number VII.27 Standard Procedures - Logging Disclosures for Accounting

H.15.11.18.5 Exhibit E, Department of Health Care Finance Privacy Policy Operations Manual, Policy Number IV.16.a) Individual's Information Rights - Disclosure Accounting

**SECTION I
STANDARD 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.2.

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 4th Street, NW, Room 700 South
Washington, DC 20001
Phone: 202 724-4197
E-Mail: 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.4. 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
LIST OF ATTACHMENTS

The following list of attachments are incorporated into the RFP by reference and made a part of the RFP in the order of priority described in Section I.12.

Attachment Number	Document
J.1	Vendor F/EA FMS-Supports Broker Standards
J.2	Government of the District of Columbia Standard Contract Provisions for Use with the Supplies and Services Contracts Dated March 2007
J.3	U.S. Department of Labor Wage Determination Rev. No. 10 dated June 15, 2010
J.4	Office of Local Business Development Equal Employment Opportunity Information Report and Mayor's Order 85-85
J.5	Department of Employment Services First Source Employment Agreement
J.6	Way to Work Amendment Act of 2006 - Living Wage Notice
J.7	Way to Work Amendment Act of 2006 - Living Wage Fact Sheet
J.8	HIPAA Security and Privacy Regulations
J.9	Cost/Price Certification and Data Package
J.10	Past Performance Evaluation Form
J.11	Tax Affidavit

**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).

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 subcontractors. (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.2), “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.2), “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

K.6.1 Each signature of the offeror is considered to be a certification by the signatory that:

K.6.1.1 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:

- a. those prices,
- b. the intention to submit a contract, or
- c. the methods or factors used to calculate the prices in the contract.

K.6.1.2 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

K.6.1.3 No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit a contract for the purpose of restricting competition.

K.6.1.4 Each signature of the offeror is considered to be a certification by the signatory that the signatory:

- a. 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
- b. 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:

(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.

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 GENERAL PROPOSAL SUBMISSION REQUIREMENTS

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

“Proposal in Response to Solicitation No. DCHC-2010-R-0006 –
Fiscal Employer Agent Financial Management Services (F/EA FMS)-Supports
Broker and the Offeror's Name”

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

- a. Typewritten (8.5” by 11” bond paper);
- b. Single spaced;
- c. One (1) sided;
- d. Pages of each proposal volume shall be numbered and identified with the Offeror's name, RFP number, and date (Subsequent revisions, if any, shall be similarly identified to show revision number and date);
- e. One (1)-inch (or greater) margins;
- f. Six (6) lines (or less) per inch, the equivalent of twelve (12) point font (or larger), charts and graphics may be no less than eight (8) point font;
- g. Responses that simply repeat the standards or requirements included in Section C.3 will be viewed as “non-responsive.”

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

L.2.3 The Offeror shall prepare a Cover Letter to accompany its Technical Proposal and Price Proposal. The Cover Letter shall state the Offeror's address and phone number for a contact person, and a statement regarding acceptance of the Contract provisions as described in Sections A – K of the solicitation. The Cover Letter shall be signed by an authorized representative of the Offeror's organization.

L.2.4 The Offeror shall prepare a Table of Contents for each volume indicating the location of the title of the subheadings and page numbers for each subheading.

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

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

L.2.7 Proposal Information Submission

When responding to the instructions in Section L.3, below, the Offeror shall provide information, as applicable, regarding services provided by the Offeror similar in size and scope as those described in Section C.3; and when relevant, the qualifications, training, education, years of experience, and capability of Offeror's Key Personnel, as defined in section C.3.1.2.1.1, to perform the required services.

L.3 PROPOSAL CONTENT AND ORGANIZATION

L.3.1 VOLUME I - TECHNICAL PROPOSAL CONTENT INSTRUCTIONS

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

L.3.1.1 Technical Capability

The information contained in this section shall facilitate the evaluation of the Offeror's technical capability including technical approach and methodology to provide financial management and supports brokerage services for Medicaid participants in the District's Medicaid Home and Community-Based (HCBS) Elderly and Persons with Physical Disabilities (EPD) and Individuals with Intellectual/Development Disabilities (IDD) 1915(c) waivers. The Offeror shall provide at a minimum the following information:

L.3.1.1.1 Technical Capability Narratives

The Offeror shall provide the following narratives:

- a. Description of the Offeror's understanding of the District's requirements and the principles of participant directed programs;
- b. Describe the Offeror's understanding of the applicable documents described in C.1.3 including Federal and District rules and regulations including the Offeror's approach to staying current with laws, rules, and regulations;
- c. Describe the Offeror's understanding of and approach to meeting each of the 18 standards described in Attachment J.1 and referenced in Section C.3.1. The Offeror shall include a discussion on how the Offeror has successfully met each of the 18 standards through its activities working with other state Medicaid participant-direction programs for beneficiaries who are elderly, or who have a physical and/or intellectual/developmental disability.
- d. Describe the Offeror's understanding of and approach to providing supports brokerage services, including providing accurate, complete and understandable information to participants regarding the range and scope of choices, and service and delivery options for both participant-direction and traditional Medicaid programs in the District; Medicaid and non-Medicaid rights, risks, and responsibilities associated with participant direction; assisting with the development of ISPs and participant-directed individual budget; and assisting with employer management tasks for their qualified direct care workers. The Offeror shall reference its experience in providing supports brokerage services working with other state Medicaid participant-direction programs for beneficiaries who are elderly, or who have a physical and/or intellectual/developmental disability.

- e. Describe any innovative features to be implemented by the Offeror in the delivery of the required services and the expected benefit to the service delivery;
- f. Describe the offeror's capacity to work with individuals with IDD and individuals' family, support networks, and full interdisciplinary teams.

L.3.1.1.2 Technical Capability Attachments

The Offeror shall provide the following attachments:

- a. An outline of the Offeror's Policies and Procedures and internal controls for each of the 18 Standards described in Attachment J.1;
- b. Process flow-charts to indicate the Offeror's claims and billing steps, tracking of communication including complaints, and processing and tracking payments for approved participant-directed goods and services received from vendors, in an accurate, complete and timely manner ;
- c. Conceptual Customer Service system and procedures as described in Standard 5;
- d. Conceptual Grievance procedures as described in Standard 5;
- e. Conceptual employer orientation and skills training curriculum to be provided as described in Standard 7 including evaluation form and process for evaluating the effectiveness of the participant/representative-employer orientation curriculum and sessions.

L.3.1.2 Past Performance

The information contained in this section shall facilitate the evaluation of the Offeror's past performance to provide financial management and supports brokerage services similar in size and scope as those described in Section C.3. The Offeror shall provide at a minimum the following information:

L.3.1.2.1.1 Past Performance Narratives

The Offeror shall provide the following narratives:

- a. Describe the Offeror's past performance and previous experience providing FMS and Supports Brokerage services for state Medicaid participant-direction programs as described in the standards and tasks in Section C.3 over the past five years. The Offeror's description shall include lessons learned and barriers and obstacles overcome and how the Offeror's past experience will be applied to ensure the successful delivery of the District's required services.

L.3.1.2.1.2 Past Performance Attachments

The Offeror shall provide the following attachments:

- a. References from a minimum of three (3) individuals participating in the EPD waiver program in which the Offeror has provided FMS and Supports Brokerage services as described in Section C.3 in the past three (3) years.
- b. References from a minimum of two (2) individuals participating in the IDD waiver program in which the Offeror has provided FMS and Supports Brokerage services as described in Section C.3 in the past three (3) years.
- c. List of contracts and subcontracts that the Offeror has performed FMS and Supports Brokerage services similar in size and scope to those described in Section C.3 in the past five (5) years. The Offeror shall provide at a minimum the following for each contract/subcontract.
 1. Name of contracting entity;
 2. Contract number;
 3. Contract type;
 4. Contract duration (or Period);
 5. Total contract value;
 6. Type of work performed;
 7. Contracting Officer's name, address, telephone, and e-mail address
 8. Project Manager's name, address, telephone, and e-mail address
 9. Name, Address and Telephone; and
 10. A description of any major problems encountered in performing the contract and corrective actions taken/
- d. Offeror shall request that at a minimum three (3) entities identified in c above complete and provide Past Performance Evaluation Form Section J.10 and forward to Lillian Beavers at lillian.beavers3@dc.gov prior to the closing date established for the solicitation and described in on page 1, block 9 and Section L.4.

L.3.1.3 Organization and Staffing

The information contained in this section shall facilitate the evaluation of the Offeror's organization and staffing to provide financial management and supports brokerage services similar in size and scope as those described in Section C.3. The Offeror shall provide at a minimum the following information:

L.3.1.3.1 Organizational Structure Narratives

The Offeror shall provide the following narratives:

- a. A narrative to describe the Offeror's overall organizational structure, proposed staffing plan, and staffing pattern to fulfill the required services as described in Section C.3. The narrative shall

address the Offeror's rationale for the proposed staffing plan and why the Offeror believes the plan will be successful.

L.3.1.3.2 Organization and Staffing Attachments:

The Offeror shall provide the following attachments:

- a. An organizational chart providing the names and positions/title of the Offeror's employees who will provide the required services and the lines of accountability and supervision;
- b. The resumes of key staff and other staff to perform the required services;
- c. Documentation of judgments and licensing actions involving Offeror in other states or jurisdictions

L.3.1.4 Representations and Certifications

Offeror shall complete the following representations and certifications:

- a. H.12, Key Personnel
- b. Attachment J.4 - Completed information in the Equal Employment Opportunity Forms;
- c. Attachment J.5, First Source Employment Agreement;
- d. Tax Certification, Attachment J.11;
- e. K.1, Authorized Negotiators
- f. K.2, Type of Business or Organization;
- g. K.3, Equal Employment Opportunity Statement
- h. K.4, Buy American Certification;
- i. K.5, District Workers Not to Benefit Certification
- j. K.6 Certification of Independent Price Determination;
- k. K.7, Tax Affidavit; and
- l. K.8, Certification of Eligibility;

L.3.2 VOLUME II: PRICE PROPOSAL

Offeror's Price Proposal shall provide at a minimum the following information:

- a. Table of Contents
- b. Completed Section B.3
- c. Cost/Price Data and Certification - 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.9 is met. This pro-forma contract budget will show the "total costs" that Offeror anticipates incurring in the performance of the contract requirements
- d. Price Proposal Narrative to describe the methodology utilized by the Offeror to develop each of the cost elements included in the cost/price data;

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

L.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 October 6, 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 4:00pm September 17, 2010. The District will not consider any questions received after 4:00pm September 17, 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, James H. Marshall, 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.

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.10.1 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.11 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.12 PROPOSAL COSTS

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

L.13 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.14 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
825 North Capitol Street, NE, 6th Floor
Washington, DC 20002

L.15 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.16 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.17 LEGAL STATUS OF OFFEROR

Each proposal must provide the following information:

L.17.1 Name, address, telephone number and federal tax identification number of offeror;

L.17.2 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.17.3 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.18 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.19 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.19.1 Evidence of adequate financial resources, credit or the ability to obtain such resources as required during the performance of the contract.

L.19.2 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.19.3 Evidence of the necessary organization, experience, accounting and operational control, technical skills or the ability to obtain them.

L.19.4 Evidence of compliance with the applicable District licensing and tax laws and regulations.

L.19.5 Evidence of a satisfactory performance record, record of integrity and business ethics.

L.19.6 Evidence of the necessary production, construction and technical equipment and facilities or the ability to obtain them.

L.19.7 Evidence of other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations.

L.19.8 If the prospective contractor fails to supply the information requested, the CO shall make the determination of responsibility or nonresponsibility 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.20 SPECIAL STANDARDS OF RESPONSIBILITY

L.20.1 In addition to the general standards of responsibility set forth in section L.19, the Offeror must demonstrate to the satisfaction of the District that the offeror meets the Special Standard(s) of Responsibility described below:

Prior to the execution of the contract the Contractor shall undergo a Readiness Assessment to be conducted by DHCF. The Readiness Assessment will examine in detail the Contractor's ability and preparedness to deliver the required services in accordance with the Standards described in Attachment J.1 and referenced in Section C.3.1.1.

SECTION M EVALUATION FACTORS FOR AWARD

M.1 EVALUATION FOR AWARD

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

M.2 TECHNICAL RATING SCALE

The Offeror's technical proposal response for each technical factor will be evaluated by the District and assigned a technical rating based on the quality of the Offeror's response. The Technical Rating Scale follows:

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

M.2.1 The technical rating is a weighting mechanism that will be applied to the point value for each evaluation factor and significant subfactor to determine the Offeror's score for each factor. The Offeror's total technical score will be determined by adding the Offeror's score in each evaluation factor. For example, if an evaluation factor has a point value of zero (0) to forty (40) points, utilizing the Technical Rating Scale above the District evaluates the Offeror's response as "Good," the score for that evaluation factor is 4/5 of 40 or 32.

M.3 EVALUATION FACTORS

Proposals will be evaluated based on the following evaluation factors:

Factor 1 – Technical Capability	40 Points
Factor 2 – Past Performance	20 Points
Factor 3 – Organization and Staffing	20 Points
Factor 4 - Price	20 Points

M.3.1.1 Technical Capability

This factor will consider the Offeror’s overall understanding of the District’s requirements and the principles of participant directed programs. This factor will also consider the Offeror’s technical approach and methodology to successfully deliver the required services including the standards described in Attachment J.1.

M.3.1.2 Past Performance

This factor will consider the Offeror’s pasty performance and previous experience providing services similar in size and scope to those described in Section C.3

M.3.1.3 Organization and Staffing

This factor will consider the Offeror’s organization and staffing to provide the required servicers including the qualifications and expertise of the

M.3.1.4 Price Criteria

M.3.1.4.1 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.3.1.4.2 Actual points assigned to each Offeror in this category will be based on the Offeror’s total price as provided in the Offeror’s Price Proposal (Section L.3.2 and information the Offeror provides in the Table in Section B.3) in accordance with the following formula.

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

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.