

SOLICITATION, OFFER, AND AWARD			1. Caption		Page of Pages		
			United Medical Center Audit		1	79	
2. Contract Number		3. Solicitation Number	4. Type of Solicitation		5. Date Issued		
		DCHT-2011-R-0010	<input type="checkbox"/> Sealed Bid (IFB) <input checked="" type="checkbox"/> Sealed Proposals (RFP) <input type="checkbox"/> Sole Source		4/25/2011		
7. Issued by:			8. Address Offer to:				
Department of Health Care Finance Office of the Director - Office of Contracts 899 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 Attn: Department of Health Care Finance				
NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".							
SOLICITATION							
9. Sealed offers in original and <u>5</u> 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 <u>441 4th Street NW., Suite 703 South</u> until <u>2:00 PM</u> local time <u>May 10, 2011</u> (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) <u>202</u> (Number) <u>724-4349</u> (Ext)		lillian.beavers3@dc.gov		
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OFFER							
12. In compliance with the above, the undersigned agrees, if this offer is accepted within <u>120</u> calendar days from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified herein.							
13. Discount for Prompt Payment		10 Calendar days %	20 Calendar days %	30 Calendar days %	___ Calendar days %		
14. Acknowledgement of Amendments (The offeror acknowledges receipt of amendments to the SOLICITATION):			Amendment Number	Date	Amendment Number	Date	
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							
 Government of the District of Columbia 							

**SECTION B
SUPPLIES OR SERVICE AND PRICE/COST**

B.1 INTRODUCTION

The Government of the District of Columbia Department of Health Care Finance (DHCf (District) is seeking the services of a qualified Contractor to conduct a financial statement and performance audit of the financial operations of the United Medical Center.

B.2 CONTRACT TYPE

The District contemplates the award a fixed price contract.

B.3 PRICE SCHEDULE – FIXED PRICE

Contract Line Item No. (CLIN)	Line Item Description	Total Price
0001	Conduct a financial statement and performance audit of the financial operations of the United Medical Center as described in C.3.1	
0001AA	Planning (C.3.1.1)	\$ _____
0001AB	Test of Controls (C.3.1.2)	\$ _____
0001AC	Reporting (C.3.1.3)	\$ _____
Total Price		\$ _____

B.4 CBE REQUIREMENTS

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

SECTION C
SPECIFICATIONS/WORK STATEMENT

C.1 SCOPE OF WORK

The Government of the District of Columbia Department of Health Care Finance (DHCF) (District) is seeking the services of a qualified Contractor to conduct a financial statement and performance audit of the financial operations of the United Medical Center (UMC).

C.1.1 APPLICABLE DOCUMENTS

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

Item No.	Document Type	Title	Date
1	District Audit	Comprehensive Annual Financial Report (CAFR) Full report http://cfo.dc.gov/cfo/frames.asp?doc=/cfo/lib/cfo/cafr/2010/cafr_2010.pdf Summary http://cfo.dc.gov/cfo/frames.asp?doc=/cfo/lib/cfo/cafr/2010/cafr_summary.pdf	2010
2	Federal Guidelines	GAO-10-853G http://www.gao.gov/new.items/d10853g.pdf	Most Recent
3	Federal Guidelines	GAO Federal Information Systems Controls Audit Manual http://www.gao.gov/special.pubs/ai12.19.6.pdf	Most Recent
4	Federal Guidelines	GAGAS Yellow Book http://www.gao.gov/govaud/yb2003.pdf	Most Recent
5	Federal Guidelines	A-133 Compliance http://en.wikipedia.org/wiki/OMB_A-133_Compliance_Supplement	Most Recent
6	Industry Standards	Statements on Standards for Attestation Engagements http://www.aicpa.org/Research/Standards/AuditAttestation/Pages/SSAE.aspx	Most Recent
7	Industry Standards	Generally Accepted Accounting Procedures http://www.fasab.gov/accepted.html	Most Recent

C.1.2 DEFINITIONS

C.1.2.1 Attestation Engagements: concern examining, reviewing, or performing agreed-upon procedures on a subject matter or an assertion; about a subject matter and reporting on the results. The subject matter of an attestation engagement may take many forms, including historical or prospective performance or condition, physical characteristics, historical events, analyses, systems and processes, or behavior. Attestation engagements can cover a broad range of financial or nonfinancial subjects and can be part of a financial audit or performance audit. Possible subjects of attestation engagements could include reporting on:

- a. An entity's internal control over financial reporting;
- b. An entity's compliance with requirements of specified laws, regulations, rules, contracts, or grants;
- c. The effectiveness of an entity's internal control over compliance with specified requirements, such as those governing the bidding for, accounting for, and reporting on grants and contracts;
- d. Management's discussion and analysis;
- e. Prospective financial statements or pro-forma financial information;
- f. The reliability of performance measures;
- g. Final contract cost;
- h. Allowability and reasonableness of proposed contract amounts; and
- i. Specific procedures performed on a subject matter

C.1.2.2 Audit Risk: occurs when a transaction is lacking documentation.

C.1.2.3 CAFR: Comprehensive Annual Financial Report

C.1.2.4 Children's Health Insurance Program (CHIP) The Children's Health Insurance Program is jointly financed by the Federal and State governments and is administered by the States. Within broad Federal guidelines, each State determines the design of its program, eligibility groups, benefit packages, payment levels for coverage, and administrative and operating procedures. CHIP provides a capped amount of funds to States on a matching basis. Federal payments under title XXI to States are based on State expenditures under approved plans effective on or after October 1, 1997.

C.1.2.5 Control: is a set of instructions that management establishes to prevent losses resulting from fraud, error and technological breakdowns.

C.1.2.6 Control Risk: is the risk that a material misstatement could occur in a relevant assertion and not be prevented or detected on a timely basis by the entity's internal control.

C.1.2.7 DC HealthCare Alliance (Alliance) is a DC-funded program that provides community-based health care and medical services to DC residents ineligible for

Medicaid with household incomes at or below 200 percent of the Federal Poverty level. The Program was established by the Health Care Privatization Amendment Act of 2001, effective July 12, 2001 (D.1.Law 14-18; D.1. Official Code § 7-1401 *et seq*).

C.1.2.8 Department of Health Care Finance (DHCF) is the District of Columbia Government agency responsible for administering publicly-financed medical assistance benefits, including Medicaid services under Title XIX, the Children’s Health Insurance Program, the Immigrant Children’s Health Program, and the DC HealthCare Alliance.

C.1.2.9 Department of Human Services (DHS) Income Maintenance Administration (IMA) is the District agency responsible for eligibility determination for a number of public benefit programs, including Medicaid, the DC Healthcare Alliance, Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), Child Care Subsidy, Burial Assistance, Emergency Rental Assistance, Interim Disability Assistance, and Refugee Cash Assistance.

C.1.2.10 District of Columbia (District) refers to the Government of the District of Columbia

C.1.2.11 Evidential matter: is information collected during financial reviews on which auditors base their opinion.

C.1.2.12 Federal Poverty Level (FPL) A measure of income level issued annually by the Department of Health and Human Services. Federal poverty levels are used to determine your eligibility for certain programs and benefits.

C.1.2.13 Financial Statement Audit: A review process of an organization’s financial statements, policies, and procedures reviewed by a third party. Generally, a financial statement audit is completed in several steps, including the planning phase, testing, sample and transaction testing, disclosure testing, final reporting, and delivery of the auditor’s opinion.

C.1.2.14 Inherent Risk: is the susceptibility of a relevant assertion to material misstatement, assuming that there are no related controls. Inherent risk arises for a variety of reasons including the business risk faced by management, the possibility of material misstatement due to fraud, and significant measurement uncertainty in accounting estimates and in non-routine transactions.

C.1.2.15 Medicaid: A state-administered health insurance program for low-income families and children, pregnant women, the elderly, people with disabilities, and in some states, other adults. The Federal government provides a portion of the funding for Medicaid and sets guidelines for the program. States also have

choices in how they design their program, so Medicaid varies state by state and may have a different name in your state.

C.1.2.16 Medicare A Federal health insurance program for people who are age 65 or older and certain younger people with disabilities. It also covers people with End-Stage Renal Disease (permanent kidney failure requiring dialysis or a transplant, sometimes called ESRD). The program provides protection with an acute care focus under four parts: (1) Part A covers inpatient hospital services, post-hospital care in skilled nursing facilities and care in patients' homes; (2) Part B covers primarily physician and other outpatient services; (3) Part C covers Managed Care; and (4) Part D covers prescription drug coverage.

C.2 BACKGROUND

C.2.1 DHCF MISSION

C.2.1.1 The Department of Health Care Finance (DHCF) is the District of Columbia's state Medicaid agency. The mission of the DHCFC 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 the Alliance program, a locally funded Medical Charities program. As the cabinet level component of the DC Government in the area of health care management, DHCF has partial oversight and responsibility for the District's state run health care facility, Not-For-Profit Hospital Corporation (dba United Medical Center). From this point on in this document just referred to as United Medical Center or (UMC).

C.2.2 HISTORICAL INFORMATION

C.2.2.1 Originally known as the Greater Southeast Community Hospital (UMC), the District created the Not-For-Profit Hospital Corporation (the Hospital Corporation) as an independent quasi government agency. A listing of legislation associated with hospital is provided as Attachment J.X, The main purpose of the Hospital Corporation is to operate the hospital, take any necessary actions to ensure continued operations, and to transfer or sell all or part of the hospital site as buyer(s) are identified.

C.2.3 UNITED MEDICAL CENTER HOSPITAL

The UMC has a unique organizational structure. UMC is not part of the primary District government, the agencies that make up the District's legal entity. Even though UMC is not part of the primary government, it is a legal entity. UMC is a financial reporting entity because it fits the criteria as follows:

- a. UMC is dependent fiscally on the District of Columbia government;

- b. The exclusion of UMC's financial position from the Districts financial statements would be misleading;
- c. UMC has the potential to provide financial benefit or impose a financial burden on the District;
- d. The District government has the ability to impose its will on the UMC;
- e. The corporate powers of UMC are held by the District government;
- f. The voting majority of UMC's board is appointed by the District government.

C.2.3.1

According to the Council of the District of Columbia government, the Chief Financial Officer of the District of Columbia Government, and the CAFR (comprehensive annual financial audit) of the District 2010 (Applicable Document #1), UMC is insolvent and may need a bailout to continue to provide medical services in the District. Council has reported an operating deficit of \$20 million and banks have denied UMC lines of credit. Between November 2007 and July 2010, the District has provided direct and indirect funding of approximately \$95.9 million in the form of loans and grants. Despite support from the District UMC's financial position and operational stability continue to deteriorate. UMC's inability to pay its liabilities as they came due has caused them to fall behind in servicing its loan payments to the District. As a consequence, on July, 9 2010, foreclosure proceedings were initiated by the District, and the District foreclosed on UMC's assets pursuant to the Deed of Trust, Security Agreement, Fixture Filing and Restrictive Covenants securing the District loans. Being the sole bidder the District paid \$20 million and acquired accounts of UMC, land, buildings, equipment, and furnishings. At the time there were outstanding working capital and acquisition loans owed to the District by UMC. Part of this transaction consideration was given in the form of forgiveness of a portion of the outstanding acquisition loans and working capital owed to the District. There is \$26,759 outstanding loan balance remaining. The debt is non-recourse debt and is allowance for doubtful accounts.

C.2.3.2

The District incurred upon foreclosure nearly \$79,290 in cash and investments, receivables, and tangible and intangible assets. In addition to assets, liabilities were also incurred of nearly \$3,222 in (IRS) tax liens owed by UMC and \$27,940 of accounts payable outstanding debt owed by UMC to critical vendors. At time of foreclosure a capital contribution of these net assets to the newly established corporation was made. Identifiable Assets at Fair market value acquired and transferred by the District to the Not-For-Profit Hospital Corporation as seen below:

Transfer of UMC's Assets to Not-For-Profit Hospital Corporation

Identifiable net assets transferred:

Assets	\$ 79,290
Liabilities	<u>31,162</u>

Net Assets transferred/

Capital Contribution

\$ 48,128

C.2.3.3 Thus far approximately \$30 million in grants mostly for renovations and equipment and a \$20 million dollar loan in working capital the District government have been invested in UMC. The hospital regained its accreditation in January of 2010 after losing it for a year. Several new additions has been added since the District took control, things such as new roof, generators, renovation of the emergency department, and replacement of some equipment such as radiology equipment. There is also a 50 bed acute-care-unit, reported as one of the first in the city. Federal regulators requested that an elevator be built at the facility. The elevators has an estimated cost of 1.7 million dollars, but do to cash flow problems at UMC, this has proven difficult to accomplish.

C.2.3.4 UMC documents relevant to this procurement including History of Legislation United Medical Center (Attachment J.7) United Medical Center Summary (Attachment J.8), UMC Financial Statements November 30, 2010 (Attachment J.9), United Medical Center Fiscal Year 2011 Budget, and UMC Management Vision 2015 (Attachment J.10).

C.2.4 GOALS AND OBJECTIVES

On January 2, 2011 Vincent C. Gray was sworn in as Mayor of the District of Columbia. Mayor Gray has called for an evaluation or assessment of UMC financial operations. The services expected to result from this procurement include at a minimum the following:

- a. Financial Statement Audit including all financials with particular attention to Accounts Receivable and Payables to ascertain a clear understanding of how UMC does business;
- b. Attestation Engagement including review of non-financial transactions;
- c. Identification of any contingent liabilities the hospital may be facing, legal or otherwise;
- d. A-133 Compliance Audit of UMC Major Programs;
- e. Review and assessment of information system control environment and intra-government transactions between the District Government and UMC
- f. Review and assessment of the billing of DC Medicaid or its components as it relates to timeliness, accuracy, and potential for fraud, waste, and abuse; and
- g. Assessment of the financial model currently used by UMC;

C.3 REQUIREMENTS

The Contractor shall provide the financial statement and performance audit in accordance with the Applicable Documents identified in Section C.1.1. The Contractor shall at a minimum perform or provide the following to successfully achieve the District's goals as described in C.2.4:

C.3.1 PLANNING

The Contractor shall plan the work to be performed and supervise staff to contribute to the performance of the required services. The Contractor shall at a minimum perform or provide the following:

C.3.1.1 Audit Plan

The Contractor shall develop and provide an Audit Plan to document the Contractor's overall approach and strategy to be used to complete the financial statement and performance audit. The Contractor's Audit Plan shall at a minimum include the following:

- a. Sufficient detail to demonstrate the Contractor's understandings of the UMC and its environment, including its internal controls, to assess the risk of material misstatement of the financial statements whether due to error or fraud;
- b. Audit Staffing Plan (C.3.1.1.1)
- c. Schedule of audit activities including the activity and the date of completion (C.3.1.2, C.3.1.3, and C.3.1.4)
- d. Schedule of weekly conference calls (C.3.1.2.1.1.)
- e. Schedule for submission of Bi-weekly progress reports (C.3.1.1.2.2)
- f. Description of the quality assurance process to be used to ensure the integrity and accuracy of the audit reports (C.3.4)

C.3.1.1.1 Audit Staffing Plan

The Contractor shall develop and provide an Audit Staffing Plan as part of the Audit Plan (C.3.1.1). The Contractor's Audit Staffing Plan shall identify at a minimum the staff to contribute to the performance of the required services, the appropriate licenses held by each staff member, a description of the duties, roles, and responsibilities for each, the percentage of time each staff member shall contribute to the audit. The Contractor shall ensure staff have at a minimum skill sets that include attention to detail, precision, understanding of business rules and requirements, and the Applicable Documents identified in C.3.2.2.

C.3.1.2 Project Management

C.3.1.2.1 The Contractor shall participate in weekly conference calls with the COTR and other District officials to discuss audit activities.

C.3.1.2.2 The Contractor shall develop and provide bi-weekly progress reports to inform the District of the progress made in the completion of the Audit Plan (C.3.1) and identification of barriers and any impediments to successfully completing the required services.

C.3.1.2 TEST OF CONTROLS

The Contractor shall conduct tests of controls to determine whether key controls are properly designed and operating effectively. The Contractor shall at a minimum complete or provide the following:

C.3.1.2.1 Sample Testing

The Contractor shall review and test a small sample of the company's financial transactions and reporting procedures to determine areas of risk. The Contractor shall review policies and procedures, documentation,

C.3.1.2.2 Internal Controls and Transaction Testing

The Contractor shall review and test a large portion of financial transactions in the internal controls and transaction testing phase. The Contractor shall place special emphasis on those transactions that created audit risk during the sample testing phase (C.3.2), non-financial transactions, information system control environment and intra-government transactions, A-133 Compliance, and DC Medicaid billing transactions. The Contractor shall review all documentation, as well as authorization and approval of the financial transactions, segregation of duties and the system of checks and balances within UMC. The results of the Contractor's testing shall include the evidential matter to form the basis for the audit reports.

C.3.1.2.3 Disclosure Testing

The Contractor shall review UMC's disclosures in financial statements to support the financial assertions in their disclosures. The Contractor shall utilize substantive procedures including analytical procedures and tests of details of account balances, transactions, and disclosures to review the documentation supplied by UMC to detect misstatements in the financial statements, specifically, misstatements of relevant assertions relating to transactions, account balances, and disclosures.

C.3.1.2.4 UMC Specific Testing

The Contractor shall ensure the following specific tests are conducted:

- a. Identification of any contingent liabilities the hospital may be facing including a review of all malpractice and all insurance documents to ascertain any outstanding litigations and liability associated with these litigations.
- b. A-133 Compliance Audit of UMC Major Programs;
- c. Review and assessment of information system control environment and intra-government transactions between the District Government and UMC
- d. Review and assessment of the billing of DC Medicaid or its components as it relates to timeliness, accuracy, and potential for fraud, waste, and abuse;
- e. Assessment of the financial model currently used by UMC;
- f. A review of the hospitals accreditation reports and recommendations for improvement to include outstanding issues and timeline for resolution.
- g. A review of other audits and recommendations for improvement to include outstanding issues with timeline for resolution.
- h. An audit of internal operations that address efficiencies
- i. A review of billing practices to ensure that UMC is billing for all services that has been provided, within the billing guidelines established by various entities and have establish sound collection practices.
- j. A review of uncompensated care documents to ensure that all DSH payments that have been paid will not be disallowed.
- k. A review of UMC capital improvement plan and cost associated with this plan; and
- l. A review of the UMC nursing center and a strategic plan as how to fill all vacant beds.

C.3.1.3 REPORTING

The Contractor shall aggregate evidence and evaluate the sufficiency of the findings, analyze and assess conclusions and provide at a minimum the following:

C.3.1.3.1 Final Report – Draft

The Contractor shall develop and provide a draft of the Final Report Audit. The Contractor shall ensure that the draft of the Final Report shall include at a minimum the following:

- a. Address the District’s objectives identified in C.2.4;
- b. Follow the guidelines prescribed by the GAO Federal Information Systems Controls Audit Manual (Applicable Document #3), GAGAS Yellow Book (Applicable Document #4), A-133 Compliance (Applicable Document #5), Standards for Attestation Statements (Applicable Document #6), and Generally Acceptable Accounting Procedures (Applicable Document #7);

- c. Audit documentations and supporting work papers; and
- d. Recommendations for improvement.

C.3.1.3.2 Final Report

The Contractor shall develop and provide the Final Report Audit. The Contractor shall ensure that the Final Report shall include items described in C.3.1.3.1, Final Report Draft and any required revisions in the draft Final Report.

**SECTION D
PACKAGING AND MARKING**

This section is not applicable to this solicitation.

SECTION E
INSPECTION AND ACCEPTANCE

- E.1** The inspection and acceptance requirements for this 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.1)

**SECTION F
DELIVERIES OR PERFORMANCE**

F.1 TERM OF CONTRACT

The term of the task order shall be for the period date of award through eight (8) weeks thereafter.

F.2 DELIVERABLES

Deliverable No.	Deliverable Name	Due Date
1	Audit Plan (C.3.1.1)	Within 1 week from Task Order Award
2	Progress Reports (C.3.1.2.2)	Bi-weekly
3	Final Report- Draft (C.3.1.3.1)	Within 6 weeks from Task Order Award
4	Final Report-Final (C.3.1.3.2)	Within 8 weeks from Task Order Award

**SECTION G
CONTRACT ADMINISTRATION**

G.1 INVOICE PAYMENT

G.1.1 The District will make payments to the Contractor, upon the submission of proper invoices, at the prices stipulated in this contract, for supplies delivered and accepted or 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 (CFO) with electronic copies to the Contracting Officer's Technical Representative (COTR) specified in Section G.8 below. The address of the CFO is:

Office of the Controller/Agency Fiscal Officer
64 New York Avenue, NE
Washington, DC 20001

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 (Contractors shall date invoices as of the date of mailing or transmittal);

G.2.2.2 Contract number and invoice number;

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

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

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

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

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

G.2.2.8 Authorized signature.

G.3 PAYMENT

G.3.1 Unless otherwise specified in this task order, payment will be made on partial deliveries of goods and services accepted by the District if:

- a. The amount due on the deliveries warrants it; or
- b. Payments based upon Section B (Price Schedules) and Section F (Deliverables).

G.3.1.1 A payment error discovered by the District will be subject to repayment or adjustment by the District making a corresponding decrease in a current Contractor's payment or by making an additional payment by the District to the Contractors Provision for Adjustment of Payment.

G.4 ASSIGNMENT OF TASK ORDER PAYMENTS

G.4.1 In accordance with 27 DCMR 3250, the Contractor may assign funds due or to become due as a result of the performance of this task order to a bank, trust company, or other financing institution.

G.4.2 Any assignment shall cover all unpaid amounts payable under this task order, and shall not be made to more than one party.

G.4.3 Notwithstanding an assignment of task order 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.5 THE QUICK PAYMENT CLAUSE

G.5.1 INTEREST PENALTIES TO CONTRACTORS

G.5.1.1 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.5.1.2 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.5.2 PAYMENTS TO SUBCONTRACTORS

G.5.2.1 The Contractor must take one of the following actions within 7 days of receipt of any amount paid to the Contractor by the District for work performed by any subcontractor under a 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.5.2.2 The Contractor must pay any lower-tier subcontractor or supplier interest penalties on amounts due to the subcontractor or supplier beginning on the day after the payment is due and ending on the date on which the payment is made. Interest shall be calculated at the rate of 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.5.2.3 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.5.2.4 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 CONTRACTING OFFICER (CO)

Contracts and Task Orders will be entered into and signed on behalf of the District only by Contracting Officers. The name, address and telephone number of the Contracting Officer is:

James H. Marshall
Contracts Compliance Officer
Department of Health Care Finance
899 North Capitol Street, NE Suite 6037
Washington, DC 20002
Voice: 202 442-9106
e-mail: jim.marshall@dc.gov

G.7 AUTHORIZED CHANGES BY THE CONTRACTING OFFICER

G.7.1 The Contracting Officer is the only person authorized to approve changes in any of the requirements of this task order.

G.7.2 The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this task order, unless issued in writing and signed by the Contracting Officer.

G.7.3 In the event the Contractor effects any change at the instruction or request of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the task order price to cover any cost increase incurred as a result thereof.

G.8 CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)

G.8.1 The COTR is responsible for general administration of the task order and advising the Contracting Officer as to the Contractor's compliance or noncompliance with the task order. In addition, the COTR is responsible for the day-to-day monitoring and supervision of the task order, of ensuring that the work conforms to the requirements of this task order and such other responsibilities and authorities as may be specified in the task order. The COTR for this task order is:

Nathan Ganayswaran
Deputy Director for Medicaid Finance
Department of Health Care Finance
899 North Capitol Street, NE Suite 6037
Washington, DC 20002
Phone: 202 442-5988
e-mail: ganayswaran.nathan@dc.gov

G.8.2 The COTR shall not have authority to make any changes in the specifications or scope of work or terms and conditions of the task order.

G.8.3 The Contractor may be held fully responsible for any changes not authorized in advance, in writing, by the Contracting Officer; may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.

**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 (Attachment J.6) 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 DOES for jobs created as a result of this contract. The DOES shall be the Contractor's first source of referral for qualified applicants, trainees, and other workers 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, Revision No. 10, dated June 15, 2010, 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 Attachment J.4 of this contract. The Contractor shall be bound by the wage rates for the term of the contract. If an option is exercised, the Contractor shall be bound by the applicable wage rate at the time of the option. If the option is exercised and the Contracting Officer obtains a revised wage determination, the revised wage determination is applicable for the option periods and 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 Contracting Officer before it, any of its officers, agents, employees or subcontractors, either during or after expiration or termination of the contract, make any statement, or issue any material, for publication through any medium of communication, bearing on the work performed or data collected under this contract.

H.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 designated in subsection G.9 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, sec. 2-219.01 et seq. (“First Source Act”) (Attachment J.6).

H.5.2 The Contractor shall enter into and maintain, during the term of the contract, a First Source Employment Agreement, (Attachment J.6) in which the Contractor shall agree that:

- a. The first source for finding employees to fill all jobs created in order to perform this contract shall be the Department of Employment Services (“DOES”); and
- b. The first source for finding employees to fill any vacancy occurring in all jobs covered by the First Source Employment Agreement (Attachment J.6) shall be the First Source Register.

H.5.3 The Contractor shall submit to DOES, no later than the 10th each month following execution of the contract, a First Source Agreement Contract Compliance Report (“contract compliance report”) verifies its compliance with the First Source Agreement for the preceding month. The contract compliance report for the contract shall include the:

- a. Number of employees needed;
- b. Number of current employees transferred;

- c. Number of new job openings created;
- d. Number of job openings listed with DOES;
- e. Total number of all District residents hired for the reporting period and the cumulative total number of District residents hired; and
- f. Total number of all employees hired for the reporting period and the cumulative total number of employees hired, including:
 - 1. Name;
 - 2. Social Security number;
 - 3. Job title;
 - 4. Hire date;
 - 5. Residence; and
 - 6. 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:

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

H.5.6 The Contracting Officer may waive the provisions of section H.5.4 if the Contracting Officer finds that:

- a. A good faith effort to comply is demonstrated by the Contractor;
- b. 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, Culpepper, Spotsylvania, and King George; the Maryland Counties of Montgomery, Prince Georges, Charles, Frederick, and Calvert; and the West Virginia Counties of Berkeley and Jefferson.
- c. The Contractor enters into a special workforce development training or placement arrangement with DOES; or

- d. 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 Contracting Officer 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 Contracting Officer determines that the Contractor is in compliance, or that a waiver of compliance is justified, the Contracting Officer 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 Contracting Officer 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 the contract any decision of the Contracting Officer 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 AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)

During the performance of the 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.7 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 program and activities. See 29 U.S.C. 794 et seq.

H.8 WAY TO WORK AMENDMENT ACT OF 2006

H.8.1 Except as described in Section H.8.8 below, Contractor shall comply with Title I of the Way to Work Amendment Act of 2006, effective June 9, 2006, (D.C. Law 16-118, D.C. Official Code § 2-220.01 *et seq.*) “Living Wage Act of 2006” for contracts for services in the amount of one-hundred thousand dollars (\$100,000) or more in a twelve (12) month period.

- H.8.2** Contractor shall pay its employees and subcontractors who perform services under the Contract no less than the current living wage described in Attachment J.7.
- H.8.3** Contractor shall include in any subcontract for fifteen thousand dollars (\$15,000) or more a provision requiring the subcontractor to pay its employees who perform services under the contract no less than the current living wage rate.
- H.8.4** The Department of Employment Services may adjust the living wage annually.
- H.8.5** Contractor shall provide a copy of the Fact Sheet attached as Attachment J.8 to each employee and subcontractor who performs services under the contract. Contractor shall also post the Notice attached as Attachment J.7 in a conspicuous place in its place of business. Contractor shall include in any subcontract for fifteen thousand dollars (\$15,000) or more a provision requiring the subcontractor to post the Notice in a conspicuous place in its place of business.
- H.8.6** Contractor shall maintain its payroll records under the contract in the regular course of business for a period of at least three (3) years from the payroll date, and shall include this requirement in its subcontracts for fifteen thousand dollars (\$15,000) or more under the Contract.
- H.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:
- a. Contracts or other agreements that are subject to higher wage level determinations required by federal law;
 - b. 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;
 - c. Contracts for electricity, telephone, water, sewer or other services provided by a regulated utility;
 - d. Contracts for services needed immediately to prevent or respond to a disaster or eminent threat to public health or safety declared by the Mayor;
 - e. 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;
 - f. An employee under twenty-two (22) years of age employed during a school vacation period, or enrolled as a full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than twenty-five (25) hours per

week; provided that he or she does not replace employees subject to the Living Wage Act of 2006;

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

H.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 businesses certified as certified small business enterprises by the District's Department of Small Local Business Development; provided, however, that the costs of materials, goods and supplies shall not be counted towards the 35% subcontracting requirement unless such materials, goods and supplies are purchased from certified small business enterprises.

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

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

H.10 SUBCONTRACTING PLAN

For the base year of the Contract, Contractor shall prepare a subcontracting plan as a prime contractor and shall subcontract at least 35% of the dollar volume of this contract in accordance with the provisions of section H.9. Once the plan is approved by the contracting officer, changes to the plan will only occur with the prior written approval of the contracting officer and the Director of DSLBD. Each subcontracting plan shall include the following:

H.10.1 A description of the goods and services to be provided by SBEs or, if insufficient qualified SBEs are available, by any certified business enterprises;

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

H.11 COMPLIANCE REPORTS

By the 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.11.1** The dollar amount of the contract or procurement;
- H.11.2** A brief description of the goods procured or the services contracted for;

H.11.3 The name and address of the business enterprise from which the goods were procured or services contracted;

H.11.4 Whether the subcontractors to the contract are currently certified business enterprises;

H.11.5 The dollar percentage of the contract or procurement awarded to SBEs, or if insufficient SBEs, to other certified business enterprises;

H.11.6 A description of the activities the contractor engaged in, in order to achieve the subcontracting requirements set forth in section H.9; and

H.11.7 A description of any changes to the activities the contractor intends to make by the next month to achieve the requirements set forth in section H.9.

H.12 ENFORCEMENT AND PENALTIES FOR BREACH OF SUBCONTRACTING PLAN

H.12.1 If during the performance of this contract, the contractor fails to comply with its approved subcontracting plan, and the contracting officer determines the contractor's failure to be a material breach of the contract, the contracting officer shall have cause to terminate the contract under the default clause of the Standard Contract Provisions (Attachment J.3).

H.12.2 There shall be a rebuttable presumption that a contractor willfully breached its approved subcontracting plan if the contractor (i) fails to submit any required monitoring or compliance report; or (ii) submits a monitoring or compliance report with the intent to defraud.

H. 12.3 A contractor that is found to have willfully breached its approved subcontracting plan for utilization of certified business enterprises in the performance of a contract shall be subject to the imposition of penalties, including monetary fines of \$15,000 or 5% of the total amount of the work that the contractor was to subcontract to certified business enterprises, whichever is greater, for each such breach.

H.13 DISTRICT RESPONSIBILITIES

H.13.1 The District through the COTR will provide feedback regarding required Deliverables. The COTR will review and provide approval or disapproval

H.13.2 The District through the COTR will provide on-going oversight and monitoring of the Contractor's performance.

H.13.3 The District, through the COTR, will maintain adequate liaison and cooperation with the Contractor.

H.13.4 The District will attend required meetings with the Contractor to discuss issues, changes, deliverables' status, and other specific agenda items.

H.13.5 REVIEW AND APPROVAL OF SUBCONTRACT(S)

H.13.5.1 The Contracting Officer will notify the Contractor, in writing, of its approval or disapproval of a proposed model subcontract for service providers within fifteen (15) business days of receipt of the proposed subcontract and supporting documentation required by the District. The District will specify the reasons for any disapproval, which shall be based upon review of the provisions of this Contract, the Contractor's proposal, and District or federal law or regulations.

H.13.5.2 The District may require the Contractor to furnish additional information relating to the ownership of the subcontractor, the subcontractor's ability to carry out the proposed obligations under the subcontract, and the procedures to be followed by the Contractor to monitor the execution of the subcontract.

H.14 CONTRACTOR RESPONSIBILITIES

H.14.1 STAFFING AND SUPERVISION

The Contractor shall provide the staff and supervision required to successfully perform the required services.

H.14.2 SUBCONTRACTS

The Contractor hereunder shall not subcontract any of Contractor's work or services to any subcontractor without the prior written consent of the Contracting Officer. 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 Contractor. Any such subcontract shall specify that Contractor and the subcontractor shall be subject to every provision of this contract. Notwithstanding any such subcontract approved by the District, Contractor shall remain liable to the District for all Contractor's work and services required hereunder.

H.14.2.1 Allowable Subcontracting Requirements

H.14.2.1.1 The Contractor shall ensure that all activities carried out by any subcontractor conforms to the provisions of this Contract.

H.14.2.1.2 It is the responsibility of the Contractor to ensure its subcontractors are capable of meeting the reporting requirements under this Contract and, if they cannot, the Contractor is not relieved of the reporting requirements.

H.14.2.1.3 Termination of Subcontract

The Contractor shall notify the District Contracting Officer, in writing, of the termination of any subcontract for the provision of 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, the Contractor shall notify CA immediately upon taking such action.

H.14.2.1.4 If the District determines that the termination or expiration of a subcontract materially affects the ability of the Contractor to carry out its responsibility under this contract; the District may terminate this Contract.

H.14.2.1.5 The Contractor shall ensure subcontracts contain a provision that requires subcontracts to contain all provisions of the Contractor's contract with the District and that the subcontractor look solely to Contractor for payment for services rendered.

H.14.3 PROHIBITED INFORMATION AND ACTIVITIES

H.14.3.1 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 and locations of network services;
- c. Offering gifts of more than de minimum value, cash, promotions, and/or other insurance products which are designed to induce enrollment by individual beneficiaries;

- d. Compensation arrangements with marketing personnel which utilize any type of payment structure in which compensation is tied to the number (or classes) of persons who enroll;
- e. Direct soliciting of members, either by mail, door-to-door or telephonic, of prospective Enrollees; and
- f. Engaging in any marketing activity or using any marketing material not approved in advance by the District.

H.14.4 RECORDS RETENTION

H.114.4.1 The 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.14.4.1.1 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.14.4.1.2 Records for real property and equipment acquired with federal funds shall be retained for six (6) years after final disposition; and

H.14.4.1.3 When records are transferred to or maintained by the HHS awarding agency, the record retention requirement is not applicable to the recipient.

H.14.5 RESERVED

H.14.6 ADVISORY AND ASSISTANCE SERVICES

This contract is a “nonpersonal services contract”. It is therefore, understood and agreed that 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.14.7 HIPAA COMPLIANCE – BUSINESS ASSOCIATE AGREEMENT

H.14.7.1 DHCF is a “Covered Entity” as that term is defined in the Privacy Rule and Security Rules and Contractor, as a recipient of Protected Health Information and/or Electronic Protected Health Information from DHCF, is a “Business Associate” as that term is defined in the Privacy and Security Rules.

H.14.7.2 Definitions

The following definitions shall apply to this Section:

H.14.7.2.1 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.14.7.2.2 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.14.7.2.3 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 Compliance Clause, Covered Entity shall also include the designated health care components of a hybrid entity.

H.14.7.2.4 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.14.7.2.5 Designated Record Set: a group of records maintained by or for the Covered Entity that is:

- a. The medical records and billing records about individuals maintained by or for a covered health care provider;
- b. The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
- c. Used, in whole or in part, by or for the Covered Entity to make decisions about individuals.

H.14.7.2.6 HIPAA: the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, codified at 42 USCA 1320d, et.seq. and it's implementing regulations at 45 C.F.R. Parts 160, 162, and 164 (Attachment J.16).

H.14.7.2.7 Electronic Media:

H.14.7.2.7.1 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.14.7.2.7.2 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.14.7.2.8 Electronic Protected Health Information: Protected Health Information which is transmitted by Electronic Media (as defined herein) or maintained in Electronic Media.

H.14.7.2.9 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.14.7.2.9.1 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.14.7.2.9.2 Sale or dispensing of a drug, device, equipment, or other item in accordance with the prescription.

H.14.7.2.10 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.14.7.2.11 “Health Care Operations: shall have the same meaning as the term “health care operations” in 45 C.F.R. § 164.501.

H.14.7.2.12 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.14.7.2.13 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.14.7.2.14 Individually Identifiable Health Information: a subset of health information, including demographic information collected from an individual, and:

- a. Is created or received by a health care provider, health plan, employer, or health care clearinghouse;
- b. 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;
- c. Identifies the individual; or
- d. With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

H.14.7.2.15 National Provider Identifier (NPI) Rule: the Standard Unique Health Identifier for Healthcare Providers; Final Rule at 45 C.F.R. Part 162.

H.14.7.2.16 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.14.7.2.17 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.14.7.2.18 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.14.7.2.19 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.14.7.2.20 Protected Health Information: individually identifiable health information that is:

- a. Transmitted by electronic media;
- b. Maintained in electronic media;
- c. Transmitted or maintained in any other form or medium;
- d. Limited to the information created or received by the Business Associate from or on
- e. behalf of the Covered Entity; and
- f. Excluding information in the records listed in subsection (2) of the definition in 45 C.F.R.
- g. §160.103.

H.14.7.2.21 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.14.7.2.22 Required By Law: same meaning as the term "required by law" in 45 C.F.R. § 164.103.

H.14.7.2.23 Secretary: the Secretary of the United States Department of Health and Human Services or his or her designee.

H.14.7.2.24 Security Incident: attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

H.14.7.2.25 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.14.7.2.26 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.14.7.2.27** Security Rule: the Standards for Security of Individually Identifiable Health Information at 45 C.F.R. part 164.
- H.14.7.2.28** Technical Safeguards: the technology and the policies and procedures for its use that protect electronic protected health information and control access.
- H.14.7.2.29** 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.14.7.3** **Obligations and Activities of Business Associate**
- H.14.7.3.1** 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.14.7.3.2** 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.14.7.3.3** 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.14.7.3.4** 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.14.7.3.5** 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.14.7.3.6 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.14.7.3.7 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.14.7.3.8 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.14.7.3.9 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.14.7.3.10 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.14.7.3.11 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.14.7.3.12 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.14.7.3.13 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.14.7.4 Permitted Uses and Disclosures by the Business Associate

- H.14.7.4.1** 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.14.7.4.2** 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.14.7.4.3** 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.14.7.4.4** 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.14.7.4.5** 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.14.7.5** **Additional Obligations of the Business Associate**
- H.14.7.5.1** 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:

- a. Name of the Business Associate of the Covered Entity;
- b. Title of the Report/File;
- c. Confirmation that the Report/File contains Protected Health Information (Yes or No);
- d. Description of the basic content of the Report/File;
- e. Format of the Report/File (Electronic or Paper);
- f. Physical location of Report/File;
- g. 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. Supporting documents if the recipient/personal representative has access to the Report/File.

H.14.7.5.2 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.14.7.5.2.1 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.14.7.5.2.2 The Business Associate agrees to ensure that any agents or subcontractors of the Business Associate also agree to implement the appropriate security safeguards.

H.14.7.5.2.3 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.14.7.5.2.4 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.14.7.5.2.5 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.14.7.5.2.6 This Compliance Clause continues in force for as long as the Business Associate retains any access to the Covered Entity's EPHI.

H.14.7.6 Sanctions

H.14.7.6.1 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.14.7.6.2 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.14.7.6.3 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.14.7.7 Obligations of the Covered Entity

H.14.7.7.1 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.14.7.7.2 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.14.7.7.3 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.14.7.8 Permissible Requests by Covered Entity

H.14.7.8.1 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.14.7.9 Representations and Warranties

H.14.7.9.1 The Business Associate represents and warrants to the Covered Entity:

H.14.7.9.1.1 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.14.7.9.1.2 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.14.7.9.1.3 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.14.7.9.1.4 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.14.7.9.1.5** 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.14.7.9.1.6** That it will reasonably cooperate with the Covered Entity in the performance of the mutual obligations under this Agreement;
- H.14.7.9.1.7** 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:
- a. The neglect or abuse of a patient;
 - b. 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;
 - c. 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;
 - d. The unlawful, manufacture, distribution, prescription or dispensing of a controlled substance, or
- H.14.7.9.1** Interference with or obstruction of any investigation into any criminal offense described in H.23.9.1.7 .1 through H.23.9.1.7 .4 above.
- H.14.7.9.2** 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.14.7.10 Term and Termination

H.14.7.10.1 Term

H.14.7.10.1.1The requirements of this HIPAA Compliance Clause shall be effective as of the date of the contract award.

H.14.7.10.1.2The requirements of this HIPAA Compliance Clause shall terminate when:

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,

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.14.7.10.2 Termination for Cause

H.14.7.10.2.1 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.14.7.20.2.1.1 Provide an opportunity for the Business Associate to cure the breach or end the violation and terminate the Contract if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity;

H.14.7.20.2.1.2 Immediately terminate the Contract if the Business Associate breaches a material term of this HIPAA Compliance Clause and a cure is not possible; or

H.14.7.20.2.1.3 If neither termination nor cure is feasible, the Covered Entity shall report the violation to the Secretary.

H.14.7.10.3 Effect of Termination

H.14.7.10.3.1 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.14.7.10.3.2 In the event that the Business Associate determines that returning or destroying the Protected Health Information and Electronic Protected Health Information is infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make the return or confidential destruction infeasible.

H.14.7.10.3.3 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.14.7.11 Miscellaneous

H.14.7.11.1 Regulatory References

H.14.7.11.1.1 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.14.7.11.2 Amendment

H.14.7.11.2.1 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.14.7.22.2.2 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.14.7.11.3 Survival

H.14.7.11.3.1 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 (Attachment J.3) for use with the District of Columbia Government Supply and Services Contracts shall survive termination of the Contract.

H.14.7.11.4 Interpretation

H.14.7.11.4.1 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.16) .

H.14.7.11.4.2 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.14.7.11.4.3 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.14.7.11.5 No Third-Party Beneficiaries

H.14.7.11.5.1 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.14.7.11.5.2 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.14.7.11.6 Compliance with Applicable Law

H.14.7.11.6.1 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.14.7.11.7 Governing Law and Forum Selection

H.14.7.11.7.1 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.14.7.11.7.2 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.14.7.11.7.3 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.23.11.8 Indemnification

H.14.7.11.8.1 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.14.7.11.8.1.1 Any misrepresentation, breach of warranty or non-fulfillment of any undertaking of the Business Associate under this HIPAA Compliance Clause; and

H.14.7.11.8.1.2 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.14.7.11.9 Injunctive Relief

H.14.7.11.9.1 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.14.7.11.10 Assistance in litigation or administrative proceedings

H.14.7.11.10.1 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.14.7.11.11 Notices

H.14.7.11.11.1 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.14.7.11.11.2 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: DHCF General Counsel
	Fax: 202-442-4790

H.14.7.11.12 Headings

H.14.7.11.12.1 Headings are for convenience only and form no part of this HIPAA Compliance Clause and shall not affect its interpretation.

H.14.7.11.13 Counterparts; Facsimiles

H.14.7.11.13.1 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.14.7.11.14 Successors and Assigns

H.14.7.11.14.1 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.14.7.11.15 Severance

H.14.7.11.15.1 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.14.7.11.15.2 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.14.7.11.15.3 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 (Attachment J.16), then either Party has the right to terminate this HIPAA Compliance Clause upon written notice to the other Party.

H.14.7.11.16 Independent Contractor

H.14.7.11.16.1 The Business Associate will function as an independent contractor and shall not be considered an employee of the Covered Entity for any purpose.

H.14.7.11.16.2 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.14.7.11.17 Entire Agreement

H.14.7.11.17.1 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.14.7.11.18 Attachments:

H.14.7.11.18.1 Exhibit A, Department of Health Care Finance Privacy Policy Operations Manual, Policy Number IV.14.a) Individual's Information Rights – Access

H.14.7.11.18.2 Exhibit B, Department of Health Care Finance Privacy Policy Operations Manual, Policy Number IV.15.a) Individual's Information Rights - Amendment

H.14.7.11.18.3 Exhibit C, Department of Health Care Finance Privacy Policy Operations Manual, Policy Number VII.25 Standard Procedures - Identity and Procedure Verification

H.14.17.11.18.4 Exhibit D, Department of Health Care Finance Privacy Policy Operations Manual, Policy Number VII.27 Standard Procedures - Logging Disclosures for Accounting

**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 (Attachment J.3) are incorporated as part of the contract.

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

All information obtained by Contractor relating to any employee or customer of the District will be kept in absolute confidence and shall not be used by Contractor in connection with any other matters, nor shall any such information be disclosed 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 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

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

Contractor hereunder shall not subcontract any of Contractor's work or services to any subcontractor without the prior written consent of the Contracting Officer. 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 Contractor. Any such subcontract shall specify that Contractor and the subcontractor shall be subject to every provision of this contract. Notwithstanding any such subcontract approved by the District,

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
825 North Capitol Street, 6th Floor
Washington, DC 20002
Phone: 202 442-9106
jim.marshall@dc.gov

I.8.8 Disclosure of Information

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

I.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 Attachment J.5. An award cannot be made to any Offeror who has not satisfied the equal employment requirements.

I.10 PRE-AWARD APPROVAL

In accordance with D.C. Official Code §1-301.05a and 1-204.51(c), the Council of the District of Columbia must approve award of any contract that has obligations that extend beyond the fiscal year for which appropriated.

I.11 CONTINUITY OF SERVICES

I.11.1 The Contractor recognizes that the services provided under this contract are vital to the District of Columbia and must be continued without interruption and that, upon contract expiration or termination, a successor, either the District or another contractor, at the District's option, may continue to provide these services. To that end, the Contractor agrees to:

- a. Furnish phase-out, phase-in (transition) training; and
- b. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

I.11.2 The Contractor shall, upon the Contracting Officer's written notice:

- a. Furnish phase-in, phase-out services for up to 90 days after this contract expires and
- b. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval.

I.11.3 The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

I.11.4 The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

I.11.5 Only in accordance with a modification issued by the Contracting Officer, the Contractor shall be reimbursed for all reasonable phase- in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase- in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

I.12 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:

- a. An applicable Court Order, if any
- b. Contract document
- c. Standard Contract Provisions
- d. Contract attachments other than the Standard Contract Provisions
- e. RFP, as amended
- f. BAFOs (in order of most recent to earliest)
- g. Proposal

**SECTION J
ATTACHMENTS**

The following list of attachments are incorporated by this reference and made a part of the resulting contract in the order of priority described in H.4.

Attachment Number	Document
J.1	Standard Contract Provisions for Use with the Supply and Service Contract, dated March 2007
J.2	US Department of Labor Wage Determination Schedule Rev. No. 10 dated June 15, 2010
J.3	Office of Local Business Development Equal Employment Opportunity Information Report and Mayor's Order 85-85
J.4	Department of Employment Services First Source Employment Agreement
J.5	Way to Work Amendment Act of 2006 - Living Wage Notice
J.6	Way to Work Amendment Act of 2006 - Living Wage Fact Sheet
J.7	United Medical Center Summary
J.8	United Medical Center Fiscal Year 2011 Budget
J.9	UMC Financial Statements November 30, 2010
J.10	UMC Management Vision 2015
J.11	Tax Certification Affidavit
J.12	Cost/Price Data Requirement Package
J.13	Past Performance Evaluation Forms

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

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 Standard Contract Provisions (Attachment J.3), “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.3), “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

K6.1 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.11.

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 REQUEST FOR TASK ORDER PROPOSAL AWARD

L.1.1 Most Advantageous to the District

The District intends to award a single contract resulting from this solicitation to the responsible Offeror(s) 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.

L.1.2 Initial Offers

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

L.2 PROPOSAL FORM, ORGANIZATION AND CONTENT

One original and six (6) copies of the written proposals shall be submitted in two parts, titled "Technical Proposal" and "Price Proposal". Proposals shall be typewritten in 12 point font size on 8.5" by 11" bond paper. Telephonic and telegraphic proposals will not be accepted. Each proposal shall be submitted in a sealed envelope conspicuously marked:

"Proposal in Response to Solicitation No. DCHT-2011-R-0010
United Medical Center Audit"

The Offeror's proposal(s) shall be organized and presented in the two separate volumes, Volume I, Technical Proposal, and Volume II, Price Proposal.

Offerors are directed to the specific proposal evaluation criteria found in Section M of this solicitation, **EVALUATION FACTORS FOR AWARD**. 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 services and service delivery. The information requested below for the technical proposal shall facilitate evaluation and best value source selection for all proposals. The technical proposal must contain sufficient detail to provide a clear and concise representation of the requirements in Section C.

L.2.1 Technical Proposal Instructions

The Offeror's Technical Proposal shall include the following:

L.2.1.1 Project Technical Approach and Methodology

The offeror shall provide the following to demonstrate the Offeror's understanding, approach, and methodology to successfully complete the required services:

- a. A discussion of the Offeror's overall understanding of the required services and specifically the Offeror's understanding of the Applicable Documents (C.3.1.1)
- b. The Offeror shall include a comprehensive draft Audit Plan (C.3.1.1) to set forth in detail the Offeror's plans and approach for completing all tasks required by the scope of work.
- c. A discussion of the Offeror's approach to conducting the planning (C.3.1), testing controls (C.3.1.2), and reporting (C.3.1.3).
- d. The Offeror shall describe any innovative, unique features proposed, and additional deliverables to be provided and the expected benefit of each and contribution to the success of the project and the achievement of the District's objectives.

L.2.1.2 Corporate Capabilities and Project Staff

The Offeror shall provide the following to demonstrate the Offeror's corporate capabilities and project staff to successfully complete the required services:

- a. The Offeror shall provide a project organizational chart, showing the individuals (including subcontractor's personnel) to be assigned to the project. The organizational chart shall include at a minimum the following:
 1. Identify the staff (C.3.1.1.1) including name, labor category, and title for each individual named; an
 2. Reporting Lines and Lines of Accountability
- b. The Offeror shall provide a detailed resume for each individual staff and subcontractors identified in the project organizational chart. Staff and subcontractor resumes shall be constructed to emphasize relevant qualifications and experience of the individuals assigned and their successful completion projects similar size and scope to those described in Section C. Resumes shall include the following data:
 1. Name
 2. Skill Category(ies) for this project
 3. Education, for each school list the school name and mailing address, dates attended, major(s), degree(s) conferred and date(s)
 4. Employment History with dates and descriptions of previous projects demonstrating how the individual's role and work on current and/or completed projects relates to the individual's ability to contribute to the successful completion of the required services.

L.2.1.3 Past Performance and Previous Experience

- a. The Offeror shall describe its overall experience providing services similar in size and scope as those described in Section C.3. The description shall include examples of both favorable and unfavorable experiences and situations providing services and how these experiences will influence the Offeror's delivery of the required services for the District.
- b. The Offeror shall provide a list of **all** contracts and subcontracts the Offeror has performed similar in size and scope as the required services described in Section C.3 within the past five (5) years. The Offeror's list shall include the following information for each contract or subcontract:
 1. Name of contracting entity;
 1. Contract number;
 2. Contract type;
 3. Contract duration (or Period);
 4. Total contract value;
 5. Description of work performed;
 6. Contact Person name, phone, and e-mail address
- c. The Offeror shall ensure that a minimum of three (3) entities included in the Offeror's list in L.2.1.3 c above complete the Past Performance Evaluation Forms (Attachment J.13). The Offeror shall provide the completed evaluation forms in the Offeror's Technical Proposal.
- d. The Offeror shall ensure that at a minimum of two (2) Past Performance Evaluation Forms (Attachment J.13) are completed for each of the Offeror's Subcontractor to contribute to the performance of the required services.

L.2.1.4 Representations and Certifications

Offeror shall include the following completed representations and certifications:

- a. H.14.17 HIPAA Business Associate Agreement;
- b. Attachment J.3 Equal Employment Opportunity Forms;
- c. Attachment J.4 First Source Employment Agreement;
- d. Attachment J.11 Tax Affidavit;
- e. K.1 Authorized Negotiators;
- f. K.2 Type of Organization;
- g. K.3 EEO Certification;

L.2.2 VOLUME II – PRICE PROPOSAL INSTRUCTIONS

The Offeror's Price Proposal shall include the following:

- a. Completed Price Schedule Section B.3 – The Offeror's
- b. Cost Price Data Attachment J.12

L.3 PROPOSAL SUBMISSION DATE AND TIME, AND LATE SUBMISSIONS, LATE MODIFICATIONS, WITHDRAWAL OR MODIFICATION OF PROPOSALS AND LATE PROPOSALS

L.3.1 PROPOSAL SUBMISSION

Proposals must be submitted no later than 2:00 pm May 10, 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.3.2 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.3.3 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.3.4 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.3.5 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.4 EXPLANATION TO PROSPECTIVE OFFERORS

If a prospective Offeror has any questions relating to this solicitation, the prospective Offeror shall submit the question in writing to the contact person, identified on page one. The prospective Offeror shall submit questions no later than **4:00 pm April 29, 2010**. The District will not consider any questions received after April 29, 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.5 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 e-mail at jim.marshall@dc.gov 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.6 RESTRICTION ON DISCLOSURE AND USE OF DATA

L.6.1 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.6.2 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.7 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.8 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.9 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 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 shall 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 electronically to

James H. Marshall
Contracting Officer
Department of Health Care Finance
825 North Capitol Street, NE, 6th Floor
Washington, DC 20001

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 shall 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 government 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** Evidence of fiduciary bond (H.14.8.2), Disclosure Form (H.14 10) and Certificate of Insurance (I.8.7).
- L.19.9** 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 PROHIBITION AGAINST UNAUTHORIZED CONTACT

The District is committed to a proposal process that maintains the highest level of integrity. Accordingly, Offerors, as well as their agents, liaisons, advocates, lobbyists, “legislative consultants,” representatives, or others promoting their position, are limited to those communications authorized by and described in this

RFP. Any attempt to influence any of the participants, whether that attempt is oral or written, formal or informal, direct or indirect, outside of the RFP process is strictly prohibited.

SECTION M EVALUATION FACTORS FOR AWARD

M.1 EVALUATION FOR AWARD

A Task Order will be awarded to the responsible offeror(s) 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

The Technical Rating Scale is as 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.

For example, if a sub factor has a point evaluation of 0 to 6 points, and (using the Technical Rating Scale) the District evaluates as "good" the part of the proposal applicable to the sub factor, the score for the sub factor is 4.8 (4/5 of 6). The sub factor scores will be added together to determine the score for the factor level.

M. 3 EVALUATION CRITERIA

The objective of the source selection process is to identify and select the Offeror that has successfully demonstrated the ability to successfully meet the District's needs in the manner most advantageous to the District, all factors considered.

M.3.1 The technical evaluation criteria set forth below have been developed by agency technical personnel and have been tailored to the requirements of this particular solicitation. The Contractor is informed that these criteria will serve as the standard against which all proposals will be evaluated and serve to establish the evaluation criteria including the evaluation factors and significant sub factors which the Contractor should specifically address in complying with the requirements of the solicitation as described in Section C and Proposal Format and Content described in Section L.2.

M.3.2 The relative probabilities of the Offeror to accomplish the requirements of the solicitation will be evaluated based on the specific information requested in L.2 in accordance with the evaluation factors described below. The Contractor should respond to each factor and significant sub factor in a way that will allow the District to evaluate the Contractor's response. The scoring for each evaluation factor will be based on the District's determination of the degree to which the Offeror satisfies the requirements within the evaluation factor and significant sub factors. Deficiencies and weaknesses identified in the proposal as well as the District's risk will also be considered. The evaluation factors and significant sub factors, point value and relative importance follows.

M.3.3 EVALUATION FACTORS

M.3.3.1 Technical Evaluation

M.3.3.1.1 Project Technical Approach and Methodology (0 – 20 Points)

The content of this section of the Offeror's proposal shall be evaluated to determine if the Offeror's approach and methodology is realistic, attainable and appropriate and that the proposed plan, methodology, and approach will lead to successful provision of the required services. The Offeror's overall understanding of the project, ACA and health insurance exchanges will also be evaluated.

M.3.3.1.2 Project Staff and Corporate Capabilities (0 – 20 Points)

The content of this section of the Offeror's proposal shall be evaluated to determine if the Offeror's proposal provides a detailed picture of the Offeror's staff and organizational structure as well as the Offeror's plans to manage, control and supervise the delivery of the required services in order to insure satisfactory contract performance. This section will also examine the Offeror's project staff and corporate capabilities and the contribution of each to the successful and timely completion of the required services.

M.3.3.1.3 Corporate Qualifications, Experience, and Past Performance (0 – 20 Points)

The content of this section of the Offeror's proposal shall evaluate pertinent information relating to the offeror's qualifications, experience, and past

performance providing services similar, in size, scope as those described in Section C.

M.3.3.3 PRICE EVALUATION (0 – 40 Points)

The price evaluation will be objective. The offeror with the lowest cost/price will receive the maximum price points. All other proposals will receive a proportionately lower total score. The following formula will be used to determine each offeror's evaluated cost/price score:

$$\frac{\text{Lowest price proposal}}{\text{Price of proposal being evaluated}} \times 40 = \text{Evaluated price score}$$

M.3.4 PREFERENCE POINTS AWARDED PURSUANT TO SECTION M.5.2 (12 POINTS MAXIMUM)

M.3.6 TOTAL POINTS

Total points shall be the cumulative total of the Offeror's technical criteria points, price criterion points and preference points, if any.

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, the District of Columbia

M.5.1 Application of Preferences

For evaluation purposes, the allowable preferences under the Act for this procurement shall be 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 be awarded to a 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.

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.