

2. Contract Number	3. Solicitation Number DCJM-2013-R-0011	4. Type of Solicitation <input type="checkbox"/> Sealed Bid (IFB) <input type="checkbox"/> Sealed Proposals (RFP) <input type="checkbox"/> Sole Source <input type="checkbox"/> Human Care Agreements <input type="checkbox"/> Emergency	5. Date Issued 1/29/2013	6. Type of Market <input checked="" type="checkbox"/> Open <input type="checkbox"/> Set Aside <input type="checkbox"/> Open with Sub-Contracting Set Aside
--------------------	---	---	------------------------------------	---

7. Issued By: Department on Disability Service Office of Contracts and Procurement 1125 15 th Street, NW 2 nd Floor Washington, DC (Include Zip Code)	8. Address Offer to: Same as block 7
---	---

NOTE: In sealed bid solicitations "offer" and offeror" means "bid" and "bidder"

SOLICITATION

9. Sealed offers in original and bid counter located at 3 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 1125 15th Street, NW 2nd Floor until 4:00 p.m. local time September 30, 2013

(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 Monica Brown	B. Telephone			C. E-mail Address Monica.brown4@dc.gov
	(Area Code) 202	(Number) 730-1861	(Ext)		

11. Table of Contents

(X)	Section	Description	Page No.	(X)	Section	Description	Page No.
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
X	A	Solicitation/Contract Form	1	X	I	Contract Clauses	29
X	B	Supplies or Services and Price/Cost	2	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS			
X	C	Specifications/Work Statement	4	X	J	List of Attachments	35
x	D	Packaging and Marking	8	PART IV - REPRESENTATIONS AND INSTRUCTIONS			
X	E	Inspection and Acceptance	8	X	K	Representations, certifications and other statements of offerors	36
X	F	Deliveries or Performance	9				
X	G	Contract Administration Data	11	X	L	Instructions, conditions & notices to offerors	38
X	H	Special Contract Requirements	15	X	M	Evaluation factors for award	44

OFFER

12. In compliance with the above, the undersigned agrees, if this offer is accepted within 3 calendar days from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified herein.

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

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

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

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

AWARD (TO BE COMPLETED BY GOVERNMENT)

19 Accepted as to Items Numbered	20. Amount	21 Accounting and Appropriation
22. Name of Contracting Officer (Type or Print)	23. Signature of Contracting Officer (District of Columbia)	24. Award Date

**Government of the District of Columbia
 Department on Disability Services
 Office of Contracting and Procurement**



SECTION B: SUPPLIES OR SERVICES AND PRICE

B.1 The Government of the District of Columbia, Department on Disability Services, Disability Determination Division (DDD) (the District) is seeking Licensed Medical Doctors to serve as *Medical Records Reviewers* to assist disability claims examiners in rendering disability determinations on claims applications from residents of the District of Columbia for Federal disability benefits under Title II and Title XVI of the Social Security Act.

B.2 The District contemplates awarding multiple indefinite delivery indefinite quantity contracts based on fixed unit prices for a fee for service schedule.

Price Schedule
 Attachment B

Base Year

Item No.	Description	Unit	Unit Price	Minimum Units	Maximum Units
0001	Medical Consultant Internist	Hour	\$ _____		
0002	Medical Consultant Psychologist	Hour	\$ _____		

Option Year One (1)

Item No.	Description	Unit	Unit Price	Minimum Units	Maximum Units
1001	Medical Consultant Internist	Hour	\$ _____		
1002	Medical Consultant Psychologist	Hour	\$ _____		

Option Year Two (2)

Item No.	Description	Unit	Unit Price	Minimum Units	Maximum Units
2001	Medical Consultant Internist	Hour	\$ _____		
2002	Medical Consultant Psychologist	Hour	\$ _____		

Option Year Three (3)

Item No.	Description	Unit	Unit Price	Minimum Units	Maximum Units
3001	Medical Consultant Internist	Hour	\$ _____		
3002	Medical Consultant Psychologist	Hour	\$ _____		

Option Year Four (4)

Item No.	Description	Unit	Unit Price	Minimum Units	Maximum Units
4001	Medical Consultant Internist	Hour	\$ _____		
4002	Medical Consultant Psychologist	Hour	\$ _____		

Proposed prices are subject to negotiation in an effort to standardize rates based on experience and length of time providing services to DDD.

SECTION C: SPECIFICATIONS/WORK STATEMENT

C.1 SCOPE:

C.1.1 The Disability Determination Division orders over 1,100 medical record reviews annually. RSA orders approximately 200 medical record reviews annually to make a determination for eligibility for rehabilitation services. The core element of the definition of disability is an established medical (physical or mental) impairment whereby Social Security regulations require that medical consultants be involved in the disability decision making process. The Medical Consultant shall have review responsibilities for disability claims with physical impairments. The medical consultant shall evaluate the medical evidence (medical reports, laboratory data and other diagnostic test results) in claims files in an effort to make the following determinations:

C.1.1.1 Adequacy for making a disability decision;

C.1.1.2 Assess the severity of impairments and describe the functional physical capacities and limitation imposed by impairments; and

C.1.1.3 Render a medical judgment as to whether impairment or impairments are medically equivalent in severity to an impairment listed in the appendix to Subpart P of the disability regulations;

C.1.2 The Contractor's duties shall also include the following:

C.1.2.1 provide consultation and assistance to the disability claims examiner and other staff in resolving problems is securing medical evidence of record from community medical sources.

C.1.2.2 Assist disability claims examiners in obtaining appropriate medical evidence of records in unusually complex medical claims through physician to physician telephone contact.

C.1.2.3 Review disability determination decisions to assure integrity of decisions based on medical evidence and sign the determinations.

C.1.2.4 Complete and submit to the Chief, Disability Determination Division, an evaluation report MED/PSY CONSULTANT EVALUATION, on each claimant case reviewed.

C.1.2.5 Complete on a daily basis the DAILY MEDICAL DOCTOR'S CLAIMS REPORT and submit report weekly to Chief, Disability Determination Division.

C.1.3 **Target Population**

C.1.3.1 Claims of residents of the District of Columbia who apply for disability benefits under Title II and/or Title XVI of the Social Security Act. Age of applicants ranges from birth to 65 years of age.

C.1.3.2 Claims of residents of the District of Columbia who are receiving disability benefits under Title II and/or Title XVI of the Social Security Act. Age of applicants ranges from birth to 65 years of age.

C.1.4 APPLICABLE DOCUMENTS

Ite m No.	Document Type	Title	Date	Location
1	Public Law	TITLE II— FEDERAL OLD— AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS	Last reviewed or modified Monday Mar 28, 2011	http://www.ssa.gov/OP_Home/ssact/title02/0200.htm
2	Public Law	TITLE XVI— SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED ¹¹	Last reviewed or modified Monday Mar 28, 2011	http://www.ssa.gov/OP_Home/ssact/title16b/1600.htm

C.1.5 DEFINITIONS

C.1.5.1 Disability –under the Social Security Act disability is defined as the inability to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment expected to last 12 months of result in death.

C.1.5.2 Medically Determinable Impairment – an impairment which has medically demonstrable anatomically, physiological and pathological abnormalities.

C.1.5.3 Disability Claims – an application for Social Security disability benefits. Included in the application is an allegation of the disabling impairments or conditions, onset date of disability and sources of treatment for the alleged impairment.

C.1.5.4 Determination – a decision as to whether the individual is or is not disabled as defined by Social Security law.

C.1.5.5 Residual Functional Capacity (RFC) – a medical assessment of the remaining work-related physical and mental capacities (e.g. walks, stand, lift, carry, understand, carry out and remember instructions).

- C.1.5.6** Listing of Impairments – a list of impairment for each of the body systems which are considered severe enough to prevent a person from doing any substantial work activity.
- C.1.5.7** Medical Equivalence – a decision as to whether an individual’s impairment or impairments are medically the equivalent of impairment listed in the “Listing of Impairments”.
- C.1.5.8** Consultative Examination (CE) – medical examination and/or laboratory procedures purchased and paid for by the Social Security Administration. CE’s are purchased if medical evidence from the individual’s treating sources is not adequate to make a determination of disability.
- C.1.5.9** Quality Assurance Review – a review of a designated sample of the state agency’s disability determinations to assure decisional accuracy and case processing in accordance with Social Security regulations and other adjudicative criteria

C.2 BACKGROUND

- C.2.1** The determination of disability under Social Security laws and regulations is a process requiring team participation by an examiner and a medical consultant, both trained in the disability process. The medical consultant provides expertise in defining and assessing the severity of the impairment. The examiner determines disability base on the alleged impairment and other medical/vocational factors, and the existing social security program requirements.
- C.2.2** The 1980 and 1984 amendments to the Social Security Act Established disability claims accuracy and processing time standards as indicators of the state agency performance. The legislation also provided for Federal Intervention if a state agency failed to meet established claims accuracy threshold levels for two consecutive calendar quarters and for termination of continued state participation in the disability program if all efforts to help the state achieve an acceptable level of performance failed. Therefore, maintaining an acceptable level of disability claims accuracy is vital to the continuance of the District of Columbia’s participation in the Social Security Disability program.

C.3 REQUIREMENTS

- C.3.1** The Contractor shall be a Board Certified or Board Eligible Physician, licensed in accordance with the District of Columbia Occupations Act of 1985 and submit documentation of certification/license.
- C.3.2** Typically Contractors designated as internist shall be available to work 32 hours per week.
- C.3.3** Typically Contractors designated as Psychologist shall be available to work 24 hours per week.

- C.3.4** Typically Contractors designated as Pediatrician shall be available to work 10 – 32 hours per week.
- C.3.5** Contractors shall include in their application to provide these services alternative schedules if the schedules listed in C.3.2 through C.3.4 are not acceptable due to other obligations. The DDD will attempt to provide as much flexibility in the hours of work as is practical in recognition of the fact that the Contractor may also be practicing medicine or otherwise engaged in his or her profession.
- C.3.6** The Contractor shall possess a thorough knowledge of medicine that will ensure his or her ability to assess the medical conditions of individuals who either apply for or already receive disability benefits for such conditions relating to, but not limited to, the Musculoskeletal, Ophthalmologic, Otolaryngological, Respiratory, Cardiovascular, Digestive, Genitor-Urinary, Hemic and Lymphatic, Skin, Endocrine, Multiple, Body, Neurological, Neoplastic Diseases and Malignant impairment areas. The Contractor shall be required to possess the specialized knowledge base and skills for this specialty.
- C.3.7** The Contractor shall have a basic knowledge of the Social Security Disability law and regulations.
- C.3.8** The Contractor shall have experience in disability evaluation conducted for Social Security or other disability programs such as Veterans' Administration or Workman's Compensation.
- C.3.9** Be available to work between the hours of 8:15 am – 4:45 pm Monday through Friday based on the scheduled hours listed in C.3.2 through C.3.4.
- C.3.10** 1227 25th Street NW, Washington DC 20037
- C.3.11** Perform responsibilities on a regular weekly basis provided there is work available.

SECTION D: PACKAGING AND MARKING

- D.1** The packaging and marking requirements for the resultant contract shall be governed by clause number (2), Shipping Instructions-Consignment, of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated March 2007 ([Attachment J.1](#)).

SECTION E: INSPECTION AND ACCEPTANCE

- E.1.** The Contracting Officer Technical Representative (COTR) designated in [G.8](#) shall perform inspection and acceptance of services to be furnished under this contract in accordance with the requirements for service delivery described in Section C of this contract and due dates for documentation and deliverables as described in Section F.2 of this contract.
- E.2.** If any of the services do not conform to the contract requirements, the District may require the Contractor to perform these services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by performance, the District may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect value of services performed.
- E.3.** If the Contractor fails to promptly perform the services again or take the necessary action to ensure future performance in conformity to contract requirements, the District may (1) by contract or otherwise, perform the services and charge the Contractor any cost incurred by the District that is directly related to the performance of such services, or (2) terminate the contract for default.

SECTION F: DELIVERIES OR PERFORMANCE

F.1 TYPE OF CONTRACT

The contract shall be a Indefinite Delivery Indefinite Quantity type contract with payment based on the unit prices set forth in the Price Schedule, Section B.

F.2 TERM OF CONTRACT

F.2.1 The term of the contract shall be for a period of one (1) year from date of award as specified on page one of the Contract.

OPTION TO EXTEND THE TERM OF THE CONTRACT

F.2.1.1 The District may extend the term of the Contract for a period of four (4), one-year option periods, or successive fractions thereof, by written notice to the Contractor before the expiration of the contract; provided that the District will give the Contractor a preliminary written notice of its intent to extend at least thirty (30) days before the contract expires. The preliminary notice does not commit the District to an extension. The exercise of this option is subject to the availability of funds at the time of the exercise of this option. The Contractor may waive the thirty (30) day preliminary notice requirement by providing a written waiver to the Contracting Officer prior to expiration of the contract.

F.2.1.2 If the District exercises this option, the extended contract shall be considered to include this option provision.

F.2.1.3 The total duration of the Contract, including all options under this clause, shall not exceed five (5) years.

F.3 DELIVERABLES

The Contractor will be paid based on approved deliverables submitted to the COTR shown in Section G.8.

Deliverable	Method of Deliverable	Due Date
Medical or Psychiatric/Psychological Consultant Evaluation Report	2 hard copies. The evaluation shall include: <ul style="list-style-type: none">Name of the ClaimantClaimant SSNName of Disability Examiner (DE)Referral DateConsultant EvaluationConsultant SignatureDate of Evaluation	The evaluation report shall be prepared on each claimant referral reviewed and evaluated and submitted to the Disability Determination Division Chief between the 1 st and the 5 th day of each calendar month following the evaluation.

Daily Claims Report	2 hard copies. The evaluation shall include: <ul style="list-style-type: none"> • Date • Claimant's Name • Claimant's SS# • Date Received from Disability Examiner (DE) • Date Returned to Disability (DE) Unit • Outcome 	The report shall be prepared daily on each claimant case reviewed and submitted weekly to the Chief, Disability Determination Division.
---------------------	---	---

F.4. NOTICE OF DISAPPROVAL

F.4.1 The COTR shall provide written notice of disapproval of a Deliverable to the Contractor within fourteen (14) days of submission if it is disapproved.

F.4.2 The notice of disapproval shall state the reasons for disapproval as specifically as is reasonably necessary and the nature and extent of the corrections required for meeting the Contract requirements.

F.5. RESUBMISSION WITH CORRECTIONS

Within fourteen (14) business days after receipt of a notice of disapproval, the Contractor shall make the corrections and resubmit the Deliverable.

F.6. NOTICE OF APPROVAL/DISAPPROVAL OF RESUBMISSION

Within thirty (30) business days following resubmission of any disapproved Deliverable, the COTR shall give written notice to the Contractor of the approval, conditional approval or disapproval.

F.7. FAILURE TO RESPOND TO RESUBMISSION

In the event that the COTR fails to respond to a Contractor's resubmission within the applicable time period, the Contractor shall notify the COTR in writing that it intends to delay subsequent work until the COTR responds in writing to the resubmission.

SECTION G : CONTRACT ADMINISTRATION DATA

G.1 INVOICE PAYMENT

- G.1.1** The District will make payments to the Contractor, upon the submission of proper invoices, at the prices stipulated in Section B of the contract, for services performed and accepted, less any discounts, allowances or adjustments provided for in this contract.
- G.1.1.2** 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 this Contract. Invoices shall be prepared in duplicate and submitted to the agency Chief Financial Officer (CFO), with duplicate copies to the Contracting Officer's Technical Representative (COTR), specified in G.9.2

Provider/Contractor Shall Submit All Invoices To.”

**Office of the Chief Financial Officer
Department on Disability Services
Attn: Accounts Payable
P.O. Box 54047
Washington, DC 20032-0247**

- G.2.2** The Contractor shall submit the following information on the invoice:
- G.2.2.1** Contractor's name, Federal Tax ID, DUNS number and invoice date (the Contractor shall date invoices on the date of mailing or transmittal);
- G.2.2.2** Contract number, page one (1) block number two (2) and purchase number order number. (Contractor shall not provide any services without a valid purchase order to pay for services to be rendered)
- G.2.2.3** Description, price, quantity and the date (2) that the supplies/services were actually delivered and/or performed (Each deliverable submitted during the invoice period shall be specified) Contractor shall only invoice for completed reports accepted by the COTR;
- 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, mailing address and phone number of the person preparing the invoice;
- G.2.2.7** Name, title, phone number and mailing address of the person to be notified in the event of a defective invoice; and
- G.2.2.8** Authorized signature.

G.3 METHOD OF PAYMENT

G.3.1 ELECTRONIC PAYMENTS

G.3.1 The District reserves the option to make payments to the Contractor by wire or NACHA transfer and shall provide the Contractor at least thirty (30) days notice prior to the effective date of any such change.

G.3.2 Where payments are made by electronic funds transfer, the District shall not assume responsibility for any error or delay in transfer or indirect or consequential damages arising from the use of the electronic funds transfer process. Any changes or expenses imposed by the bank for transfers or related actions shall be borne by the Contractor.

G.4 ASSIGNMENTS

G.4.1 In accordance with 27 DCMR 3250, unless otherwise prohibited by the contract, the Contractor may assign funds due or to become due as a result of the performance of the contract to a bank, trust company, or other financing institution.

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

G.4.3 Notwithstanding an assignment of money claims pursuant to authority contained in this Contract, 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 date _____, make payment of this invoice to _____
(name and address of assignee).

G.5 THE QUICK PAYMENT CLAUSE

G.5.1 INTEREST PENALTIES TO CONTRACTORS

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 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.6 AUTHORITY OF CONTRACTING OFFICER

G.6.1 CONTRACTING OFFICER

G.6.1.1 Contracts may be entered into and signed on behalf of the District Government only by contracting officers.

G.6.1.2 The address and telephone number of the Contracting Officer for this contract is:

Ms. Marsha Robinson
Contracting Officer
1125 – 15th Street NW, 2nd Floor
Washington, DC 20005-2717

E-Mail: Marsha.Robinson@dc.gov

Telephone Number: (202) 730-1628

G.7 AUTHORIZED CHANGES ONLY BY THE CONTRACTING OFFICER

G.7.1 A Contracting Officer is the only person authorized to approve changes in any of the requirements of this contract, notwithstanding provisions contained elsewhere in this Contract.

G.7.2 The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this Contract, unless issued in writing and signed by a Contracting Officer, or pursuant to specific authority otherwise included as part of this Contract.

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

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

G.8.1 The Contracting Officers Technical Representative (COTR) will have the responsibility of ensuring the work conforms to the requirements of the contract and such other responsibilities and authorities as may be specified in the contract. These include:

G.8.1.1 Keeping the Contracting Officer (CO) fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the contract;

G.8.1.2 Coordinating site entry for Contractor personnel, if applicable;

G.8.1.3 Reviewing invoices for completed work and recommending approval by the CO if the Contractor's costs are consistent with the negotiated amounts and progress is satisfactory and commensurate with the rate of expenditure;

- G.8.1.4** Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions; and
- G.8.1.5** Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoices/vouchers.
- G.8.2** The address and telephone number of the COTR is:

Dr. Martin (Tony) Jones
Director, Disability Determination Division
D.C. Department on Disability Services
1227 25th Street, NW
4th Floor
Washington, DC 20037
202.442.8555 (office)
202.442.8717 (fax)

SECTION H: SPECIAL CONTRACT REQUIREMENTS

H.1 DEPARTMENT OF LABOR WAGE DETERMINATIONS

The Contractor shall be bound by the Wage Determination No. 2005-2103, Revision No.: 10, dated June 6, 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 Section J.1.1 of this solicitation. The Contractor shall be bound by the wage rates for the term of the contract.

H.2 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.3 FREEDOM OF INFORMATION ACT

H.3.1. 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 COTR designated in subsection G.8 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.

H.3.2. If the agency with programmatic responsibility receives a request for a record maintained by the Contractor pursuant to the contract, the COTR will forward a copy to the Contractor. In either event, the Contractor is required by law to provide all responsive records to the COTR within the timeframe designated by the COTR. The FOIA Officer for the agency with programmatic responsibility will determine the releasability of the records. The District will reimburse 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.4 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.5 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.6 HIPAA PRIVACY COMPLIANCE (April 2003)

H.6.1 Definitions

- H.6.1.1.** *Business Associate* means 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.6.1.2.** *Covered Entity* means 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 Rule. With respect to this HIPAA Compliance Clause, *Covered Entity* shall also include the designated health care components-of a hybrid entity.
- H.6.1.3.** *Data Aggregation* means, 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.6.1.4.** *Designated Record Set* means a group of records maintained by or for the Covered Entity that is:
- a. in whole or in part, by or for the Covered Entity to make decisions about individuals.
 - b. The medical records and billing records about individuals maintained by or for a covered health care provider;
 - c. The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or

- H.6.1.5.** Used *Health Care* means care services, or services, or supplies related to the health of an individual. Health care includes, but is not limited to, the following:
- a. 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
 - b. Sale or dispensing of a drug, device, equipment, or other item in accordance with the prescription.
- H.6.1.6.** *Health Care Components* means 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.6.1.7.** *Health Care Operations* shall have the same meaning as the term “health care operations” in 45 C.F.R. § 164.501.
- H.6.1.8.** *Hybrid Entity* means 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.6.1.9.** *Record* shall mean 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.6.1.10.** *Individual* shall have the same meaning as the term "individual" in 45 C.F.R. § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- H.6.1.11.** *Individually Identifiable Health Information* is information that is 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; and
 - 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; and
 - c. That 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.6.1.12. *Privacy Official.*** The person 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 this Manual, the Privacy Rules, and other applicable federal and state privacy law.
- H.6.1.13. *Privacy Officer.*** The person designated by the Privacy Official or one of the District of Columbia's designated health care components, which is responsible for enforcing the provisions of this Manual as well as overseeing full compliance with the Covered Agency's Privacy Policies and Procedures, the Privacy Rules, and other applicable federal and state privacy law(s). 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.6.1.14. *Privacy Rule.*** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- H.6.1.15. *Protected Health Information.*** "Protected Health Information" means individually identifiable health information that is:
- a. Transmitted by electronic media;
 - b. Maintained in electronic media; or
 - 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 behalf of the Covered Entity; and
 - e. Excluding information in the records listed in subsection (2) of the definition in 45 C.F.R. §160.103.
- H.6.1.16. *Required By Law.*** "Required By Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
- H.6.1.17. *Secretary.*** "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- H.6.1.18. *Workforce.*** "Workforce" shall mean 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.6.2 Obligations and Activities of Business Associate

- H.6.2.1.** The Business Associate agrees not to use or disclose Protected Health Information other than as permitted or required by this HIPAA Compliance Clause or as Required by Law.
- H.6.2.2.** The Business Associate agrees to use commercially reasonable efforts and appropriate safeguards to maintain the security of the Protected Health Information and to prevent use or disclosure of such Protected Health Information other than as provided for by this Clause.

- H.6.2.3.** The Business Associate agrees to establish procedures for mitigating, and to mitigate to the extent practicable, any deleterious effect that is known to the Business Associate of a use or disclosure of Protected Health Information by the Business Associate in violation of the requirements of this Clause.
- H.6.2.4.** The Business Associate agrees to report to Covered Entity, in writing, any use or disclosure of the Protected Health Information not permitted or required by this HIPAA Compliance Clause to the District Privacy Official or agency Privacy Officer within ten (10) days from the time the Business Associate becomes aware of such unauthorized use or disclosure.
- H.6.2.5.** 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 Clause with respect to Protected Health Information received from the Business Associate, Protected Health Information created by the Business Associate, or Protected Health Information received by the Business Associate on behalf of the Covered Entity.
- H.6.2.6.** 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 agency 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 *Department on Disability Services Access Policy*, 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.6.2.7.** 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 as directed by the District Privacy Official or agency Privacy Officer, or as otherwise mandated by the Privacy Rule or applicable District of Columbia laws, in compliance with applicable portions of *Department on Disability Services Amendment Policy*, 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.6.2.8.** 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 on Disability Services Identity And Procedure Verification Policy*, incorporated by reference.
- H.6.2.9.** The Business Associate agrees to record authorizations and log such disclosures of 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*

on Disability Services Logging Disclosures for Accounting Policy incorporated by reference.

- H.6.2.10.** 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 agency 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 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 on Disability Services Disclosure Accounting Policy* incorporated by reference.
- H.6.2.11.** 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 agency 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.
- H.6.2.12.** 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.6.2.13.** 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.6.3 Permitted Uses and Disclosures by the Business Associate

- H.6.3.1.** 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 if same activity were performed by the Covered Entity or would not violate the minimum necessary policies and procedures of the Covered Entity.

- H.6.3.2.** Except as otherwise limited in this HIPAA Compliance Clause, the Business Associate may use 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.6.3.3.** Except as otherwise limited in this HIPAA Compliance Clause, the Business Associate may disclose 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 of the information has been breached.
- H.6.3.4.** Except as otherwise limited in this HIPAA Compliance Clause, the Business Associate may use 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.6.3.5.** Business Associate may use 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.6.4 Additional Obligations of the Business Associate

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.6.5. Sanctions

Business Associate agrees that its workforce members, agents and subcontractors who violate the provisions of the Privacy Rules or other applicable federal or state privacy law will be subject to discipline in accordance with Business Associate's District Personnel Manual 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 persons employed by it. Members of the Business Associate Workforce who are not employed by Business Associate are subject to the policies and applicable sanctions for violation of this Manual as set forth in business associate agreements. In the event Business Associate imposes sanctions against any member of its workforce, agents and subcontractors for violation of the provisions of the Privacy Rules or other applicable federal or state privacy laws, the Business Associate shall inform the District Privacy Official or the agency Privacy Officer of the imposition of sanctions.

H.6.6. Obligations of the Covered Entity

- H.6.6.1.** 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 by the Business Associate.
- H.6.6.2.** 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, to the extent that such changes may affect the use or disclosure of Protected Health Information by the Business Associate.
- H.6.6.3.** The Covered Entity shall notify the Business Associate of any restriction to the use or disclosure of 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 by the Business Associate.

H.6.7. Permissible Requests by Covered Entity

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

H.6.8. Representations and Warranties

The Business Associate represents and warrants to the Covered Entity:

- H.6.8.1.** 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.6.8.2.** 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.6.8.3.** 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.6.8.4.** 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.6.8.5.** 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; provided that modifications or limitations that the Covered Entity has agreed to adhere to with regard to the use and disclosure of Protected Health Information of any individual that materially affects or limits the uses and disclosures that are otherwise permitted under the Privacy Rule will be communicated to the Business Associate, in writing, and in a timely fashion;
- H.6.8.6.** That it will reasonably cooperate with the Covered Entity in the performance of the mutual obligations under this Agreement 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 (e) interference with or obstruction of any investigation into any criminal offense described in (a) through (d) above. 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.6.9. Term and Termination

H.6.9.1. *Term.* The requirements of this HIPAA Compliance Clause shall be effective as of the date of the contract award, and shall terminate when all of the 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 Official and/or Privacy Officer or his or her designee 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 Privacy Official or Privacy Officer or his or her designee.

H.6.9.2. *Termination for Cause.* 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.6.9.2.1. 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.6.9.2.2. 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.6.9.2.3. If neither termination nor cure is feasible, the Covered Entity shall report the violation to the Secretary.

H.6.9.2.4 *Effect of Termination.*

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 in any media form.

In the event that the Business Associate determines that returning or destroying the 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. Upon determination by the agency Privacy 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 limit further uses and disclosures of such 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. The obligations outlined in Section 2. Obligations and Activities of Business Associate will remain in force to the extent applicable.

H.6.10 **Miscellaneous**

H.6.10.1. *Regulatory References.* A reference in this HIPAA Compliance Clause to a section in the Privacy Rule means the section as in effect or as amended.

H.6.10.2. *Amendment.* 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 and HIPAA. 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 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.6.10.3. *Survival.* The respective rights and obligations of the Business Associate under Section 9. Term and Termination of this HIPAA Compliance Clause and Sections 9 and 20 of the Standard Contract Provisions for use with the District of Columbia Government Supply and Services Contracts, effective April 2003, shall survive termination of the Contract.

H.6.10.4. *Interpretation.* 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 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 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 than those of HIPAA and its Privacy Rule.

H.6.10.5. 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. In the event of any conflict between the provisions of the Contract (as amended by this HIPAA Compliance Clause) and the Privacy Rule, the Privacy Rule shall control.

- H.6.10.6.** *No Third-Party Beneficiaries.* 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. Except for the rights of Individuals, as defined herein, to access to and amendment of their 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.6.10.7.** *Compliance with Applicable Law.* 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.6.10.8.** *Governing Law and Forum Selection.* This Contract shall be construed broadly to implement and comply with the requirements relating to the Privacy Rule, and other applicable laws and regulations. All other aspects of this Contract shall be governed under the laws of the District of Columbia. 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 by and 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. 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.6.10.9.** *Indemnification.* 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 (a) any misrepresentation, breach of warranty or non-fulfillment of any undertaking of the Business Associate under this HIPAA Compliance Clause; and (b) 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.6.10.10. *Injunctive Relief.* 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 by the Business Associate, its workforce, any of its subcontractors, agents, or any third party who has received Protected Health Information from the Business Associate.

H.6.10.11. *Assistance in litigation or administrative proceedings.* 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 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.6.10.12. *Notices.* 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. Any notice, being addressed 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

Attention: _____
Fax: _____

If to the Covered Entity, to

Department on Disability Services
Developmental Disabilities
Administration
1125 15th Street NW, 8th floor
Washington, DC 20005-2726
Attention: Deputy Director
Fax: 202-730-1843

H.6.10.13. *Headings.* Headings are for convenience only and form no part of this HIPAA Compliance Clause and shall not affect its interpretation.

H.6.10.14. *Counterparts; Facsimiles.* 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.6.10.15. *Successors and Assigns.* 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.6.10.16. *Severance.* 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. 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. 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, then either Party has the right to terminate this HIPAA Compliance Clause upon written notice to the other Party.

H.6.10.17. *Independent Contractor.* The Business Associate will function as an independent contractor and shall not be considered an employee of the Covered Entity for any purpose. 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.

Entire Agreement. 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 District of Columbia Department of Health 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 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

SECTION I: CONTRACT CLAUSES

I.1 APPLICABILITY OF STANDARD CONTRACT PROVISIONS

The Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts dated March 2007 ("SCP"), are incorporated as part of the contract resulting from this solicitation. To obtain a copy of the SCP go to [http://ocp.dc.gov/DC/OCP/Vendor+Support+Center/Solicitation+Attachments/Standard+Contract+Provisions+\(March+2007\)](http://ocp.dc.gov/DC/OCP/Vendor+Support+Center/Solicitation+Attachments/Standard+Contract+Provisions+(March+2007)) (copy and paste into Internet Explorer address bar),.

I.2 CONFIDENTIALITY OF INFORMATION

All information obtained by the Contractor relating to any employee or customer of the District will be kept in absolute confidence and shall not be used by the 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.3 TIME

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

I.4 RIGHTS IN DATA

I.4.1 "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.4.2 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.4.3 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.4.4** 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.4.5** All data first produced in the performance of this Contract shall be the sole property of the District. The 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. The 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. The Contractor agrees not to assert any rights in common law or in equity in such data. The 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.4.6** 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.4.6.1** 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.4.6.2** 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.4.6.3** 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.4.7** The restricted rights set forth in section I.4.6 are of no effect unless
- (i) the data is marked by the Contractor with the following legend:

RESTRICTED RIGHTS LEGEND

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

- (ii) If the data is computer software, the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The 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 the Contractor to apply a restricted rights legend to such computer software shall relieve the District of liability with respect to such unmarked software.
- I.4.8** In addition to the rights granted in Section I.4.6 above, the 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.4.6 above, under any copyright owned by the 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, the 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 the 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.4.9** Whenever any data, including computer software, are to be obtained from a subcontractor under this contract, the Contractor shall use this clause, I.4, Rights in Data, in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the District's or the Contractor's rights in that subcontractor data or computer software which is required for the District.
- I.4.10** For all computer software furnished to the District with the rights specified in Section I.4.5, the Contractor shall furnish to the District, a copy of the source code with such rights of the scope specified in Section I.4.5. For all computer software furnished to the District with the restricted rights specified in Section I.4.6, the District, if the 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.4.11** The 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, (i) for 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 (ii) based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.

I.4.12 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.4.13 Paragraphs I.4.6, I.4.7, I.4.8, I.4.11 and I.4.12 above are not applicable to material furnished to the Contractor by the District and incorporated in the work furnished under contract, provided that such incorporated material is identified by the Contractor at the time of delivery of such work

I.5 **INSURANCE** *(November 2008 Low to Moderate Risk)*

I.5.1 **GENERAL REQUIREMENTS.** The Contractor shall acquire and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall submit a Certificate of Insurance giving evidence of the required coverage prior to commencing work on the contract.

- A.** 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-V III or higher, a Standard & Poor's rating of AA or higher, or a Moody's rating of Aa2 or higher.
- B.** The Contractor shall require all subcontractors to carry the insurance required herein, or the Contractor may, at its option, provide the coverage for any or all subcontractors, and if so, the evidence of insurance submitted shall so stipulate.
- C.** All policies (excluding Workers' Compensation and Professional Liability, if applicable) shall name the District as an additional insured with respect to work or services performed under the Contract.
- D.** All policies shall provide that the insurance coverage provided hereunder will be primary and noncontributory with any other applicable insurance.
- E.** All policies shall contain a waiver of subrogation in favor of the Government of the District of Columbia.
- F.** In no event shall work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) has been furnished.
- G.** All policies shall provide that the Contracting Officer shall be given thirty (30) days prior written notice via certified mail in the event coverage is substantially changed, canceled or not renewed.

I.5.2 **CERTIFICATE OF INSURANCE REQUIREMENT.** The policy description on the Certificate of Insurance form shall include the contract number, the contract award date (if

available), the contract expiration date (if available), the name of the requesting agency, the name of the contracting officer, a brief description of the work to be performed, the job location, the District as an additional insured, and a waiver of subrogation.

I.5.3 INSURANCE LIABILITY LIMITATIONS

- A. 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 limits per occurrence; \$1,000,000 per aggregate; \$1,000,000 for products and completed operations; and \$1,000,000 for personal and advertising injury. The policy coverage shall be primary and non-contributory, shall contain the CGL 2503 per project endorsement, and shall include the Government of the District of Columbia as an additional insured.
- B. 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 cover the operations performed under the contract with a \$1,000,000 per occurrence combined single limit for bodily injury and property damage. The policy coverage shall be primary and non-contributory and shall include the Government of the District of Columbia as an additional insured.
- C. WORKERS' COMPENSATION INSURANCE.**

I.5.10.4.1 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.5.10.4.2 Employer's Liability Insurance. The Contractor shall provide employer's liability insurance as follows: \$500,000 per accident for injury; \$500,000 per employee for disease; and \$500,000 for policy disease limit.

- D. Crime Insurance.** The Contractor shall provide a policy to cover costs associated with the criminal activities of its employees including, but not limited to, robbery, burglary, larceny, forgery, or embezzlement. The policy shall provide a limit of \$1,000,000 per occurrence for each wrongful act and \$1,000,000 per aggregate for each wrongful act.

I.5.11 DURATION: The Contractor shall carry all insurance until all contract work is accepted by the District. Each insurance policy shall contain a binding endorsement that the insurer agrees that the Contracting Officer shall be given thirty (30) days prior written notice via certified mail in the event coverage is substantially changed, canceled or not renewed.

I.5.12 CONTRACTOR'S PROPERTY: Contractors and subcontractor are solely responsible for any loss or damage to their personal property, including owned and leased equipment, whether such equipment is located at a project site or "in transit".

H. Item 5.3.A is applicable to this contract. The Contractor shall be responsible for ensuring that Professional Liability Insurance (Errors & Omissions) is included. The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The Policy shall provide limits of \$1,000,000 per occurrence for each wrongful act and \$2,000,000 annual aggregate.

I.6 HOLD HARMLESS AND INDEMNIFICATION

The Contractor agrees to indemnify, defend, and save harmless the District, its officers, employees, and agents, from any claim, real or imaginary, filed against the District or its officers, employees and agents, alleging damage or injury arising out of the subject matter of this Agreement; provided, however, that such provision shall not apply to the extent that damage or injury results from the fault of the District or its officers, agents, or employees.

SECTION J: LIST OF ATTACHMENTS

<http://ocp.dc.gov/DC/OCP/Vendor+Support+Center/Solicitation+Attachments/Solicitation+Attachments> (copy and paste in to internet explorer address bar if link doesn't work)

J.1 ATTACHMENT

J.1.1 Wage Determination No. 2005-2103, Revision No. 10, dated June 6, 2010

J.1.2 The Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts dated March 2007

J.1.3 Tax certification/affidavit for procurements in excess of \$100,000

SECTION K: REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS

K.1 AUTHORIZED NEGOTIATORS

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

K.2 TYPE OF BUSINESS ORGANIZATION

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

K.2.1.1 It operates as:

- a corporation incorporated under the laws of the State of: _____
- an individual,
- a partnership,
- a nonprofit organization, or
- a joint venture.

K.2.1.2 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 DISTRICT EMPLOYEES NOT TO BENEFIT CERTIFICATION

Each offeror shall check one of the following:

- No person listed in the SCP, "District Employees Not To Benefit" will benefit from this contract.
- The following person(s) listed in the SCP may benefit from this contract. For each person listed, attach the affidavit required by f the SCP.

K.4 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

K.4.1. Each signature of the offeror is considered to be a certification by the signatory that:

K.4.1.1. 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:

K.4.1.1.1 those prices

K.4.1.1.2 the intention to submit a contract, or

K.4.1.1.3 the methods or factors used to calculate the prices in the contract.

K.4.1.2. 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.4.1.3. 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.4.2 Each signature on the offer is considered to be a certification by the signatory that the signatory:

K.4.2.1 Is the person in the offeror's organization responsible for determining the prices being offered in this contract, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

K.4.2.2 Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs K.4.1.1 through K.4.1.3 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 K.4.2.2 have not participated, and will not participate, in any action contrary to subparagraphs K.4.1.1 through K.4.1.3 above; and

As an agent, has not participated, and will not participate, in any action contrary to subparagraphs K.4.1.1 through K.4.1.3 above.

K.4.2.3 If the offeror deletes or modifies subparagraph K.4.1.2 above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

SECTION L: INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS

L.1 CONTRACT AWARD

L.1.1 Most Advantageous to the District

The District intends to award a single purchase order resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the District, based on the evaluation criteria set forth in Section M.3

L.1.2 Initial Offers

The District may award contracts 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 *three (3)* copies of the written proposals shall be submitted in two parts, titled "Technical Proposal" and "Price Proposal". Proposals shall be typewritten in 12 point font size on 8.5" by 11" bond paper. Telephonic, telegraphic, and facsimile proposals will not be accepted. Each proposal shall be submitted in a sealed envelope conspicuously marked: "Proposal in Response to Solicitation No. **(DCJM-2013-R-0011, Medical Records Reviewer for DDD and name of offeror)**".

(Offerors are directed to the specific proposal evaluation criteria found in Section M of this solicitation, Evaluation Factors. The Offeror shall respond to each factor in a way that will allow the District to evaluate the Offeror's response. The Offeror shall submit information in a clear, concise, factual and logical manner providing a comprehensive description of program services delivery thereof. 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.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 **4:00 p.m., September 30, 2013**. Proposals, modifications to proposals, or requests for withdrawals that are received in the designated District office after the exact local time specified above, are "late" and shall be considered only if they are received before the award is made and one (1) or more of the following circumstances apply:

- L.3.1.1** The proposal or modification was sent by registered or certified mail not later than the fifth (5th) day before the date specified for receipt of offers;

L.3.1.2 The proposal or modification was sent by mail and it is determined by the Contracting Officer that the late receipt at the location specified in the solicitation was caused by mishandling by the District, or

L.3.1.3 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 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 an offer that is not considered shall be held unopened, unless opened for identification, until after award and then retained with unsuccessful offers resulting from this solicitation.

L.4 EXPLANATION TO PROSPECTIVE OFFERORS

If a prospective offeror has any questions relative to this solicitation, the prospective offeror shall submit the question in writing to the contact person, identified on page one. The prospective offeror shall submit questions no later than *ten (10)* days prior to the closing date and time indicated for this solicitation. The District will not consider any questions received less than *ten (10)* days before the date set for submission of proposals. The District will furnish responses promptly to all other prospective offerors. An amendment to the solicitation will be issued if that information is necessary in submitting offers, or if the lack of it would be prejudicial to any other prospective offerors. Oral explanations or instructions given before the award of the contract will not be binding.

L.5 FAILURE TO SUBMIT OFFERS

Recipients of this solicitation not responding with an offer should not return this solicitation. Instead, they should advise the Contracting Officer, Department on Disability Services, (202) 730-1717 by letter or postcard whether they want to receive future solicitations for similar requirements. It is also requested that such recipients advise the Contracting Officer, Department on Disability Services of the reason for not submitting a proposal in response to this solicitation. If a recipient does not submit an offer and does not notify the Contracting Officer, Department on Disability Services 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 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 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.8 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.9 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.10 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.11 PROPOSAL COSTS

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

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

In addition to other proposal submission requirements, the offeror must submit an electronic copy of its proposal, redacted in accordance with any applicable exemptions from disclosure in D.C. Official Code § 2-534, in order for the District to comply with Section 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 Section 2-534(a)(1).

L.13 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 or telegram including mailgrams. The District must receive the acknowledgment by the date and time specified for receipt of offers. Offerors' failure to acknowledge an amendment may result in rejection of the offer.

L.14 BEST AND FINAL OFFERS

The District expects to make multiple awards based on initial offers. However, if subsequent to receiving original proposals it is determined that it is in the District's best interest that negotiations be 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 after the negotiations have concluded. Best and Final Offers will be subject to the Late Submissions, Late Modifications and Late Withdrawals of Proposals provision of the solicitation. After receipt of best and final offers, no discussions will be reopened unless the Contracting Officer determines that it is clearly in the District's best interest to do so, e.g., it is clear that information available at that time is inadequate to reasonably justify Contractor selection and award based on the best and final offers received. If discussions are reopened, the Contracting Officer shall issue an additional request for best and final offers to all offerors still within the competitive range.

L.15 LEGAL STATUS OF OFFEROR

Each proposal must provide the name, address, telephone number and federal tax identification number of offeror;

L.16 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.17 STANDARDS OF RESPONSIBILITY

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

- L.17.1** Evidence of adequate financial resources, credit or the ability to obtain such resources as required during the performance of the contract.
- L.17.2** Evidence of the ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.
- L.17.3** Evidence of the necessary organization, experience, accounting and operational control, technical skills or the ability to obtain them.

- L.17.4** Evidence of compliance with the applicable District licensing and tax laws and regulations.
- L.17.5** Evidence of a satisfactory performance record, record of integrity and business ethics.
- L.17.7** Evidence of other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations
- L.17.8** If the prospective contractor fails to supply the information requested, the Contracting Officer 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 Contracting Officer shall determine the prospective contractor to be nonresponsible.

SECTION M - EVALUATION FACTORS

M.1 EVALUATION FOR AWARD

M.1.1 The District will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the District, cost or price and technical factors listed below considered. For this solicitation, technical quality is more important than cost or price. As proposals become more equal in their technical merit, the evaluated cost or price becomes more important.

M.1.2 The technical evaluation factors listed below are in descending order of importance:

M.1.2.1 Experience with disability evaluation conducted for Social Security and/or other disability programs such as Veterans' Administration or Workman's Compensation.

M.1.2.2 Credentials. Board Certified or Board Eligible Physician, licensed in accordance with the District of Columbia Occupations Act of 1985 and submit documentation of certification/license.

M.1.2.3 Technical Qualifications. Possess a thorough knowledge of medicine that will ensure the provider is able to assess the medical conditions of individuals who apply/receive disability benefits in the Musculoskeletal, Ophthalmologic, Otolaryngological, Respiratory, Cardiovascular, Digestive, Genitor-Urinary, Hemic and Lymphatic, Skin, Endocrine, Multiple, Body, Neurological, Neoplastic Diseases and Malignant impairment areas. The Physician or psychologist shall submit evidence of specialized knowledge base and skills for his or her specialty.

M.2 TECHNICAL RATING

The Technical Rating Scale is as follows:

<u>Numeric Rating</u>	<u>Adjective</u>	<u>Description</u>
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 STANDARDS

M.3.1 Factor: Experience and Past Performance 40 points

Description: This factor considers the offeror’s past performance in performing services similar to the required services as described in Section C of this solicitation. This factor includes an examination of the quality of services provided, timeliness in service delivery, business practices, and overall satisfaction of the offeror’s performance

The standard is met when:

Offeror’s provides evidence of experience delivering disability evaluations conducted for Social Security and/or other disability programs such as Veterans’ Administration or Workman’s Compensation

M.3.2 Factor: Credentials 30 points

Description: Information including resumes and certificates, demonstrating the qualifications and expertise of the offeror to meet the minimum qualifications and the expertise to perform the services required. Offeror acknowledges the responsibilities to perform the requirements. The offeror’s information, including resumes and other relevant credentials are consistent with the information presented in the offeror’s proposal;

The standard is met when:

Offerors provides credentials of Board Certification or Board Eligible Physician, licensed in accordance with the District of Columbia Occupations Act of 1985 and submit documentation of certification/license.

M.3.3 Factor: Technical Qualifications 20 points

Description: This factor considers the Technical Approach to be utilized by the offeror to perform the requirements as described in Section C of this solicitation. This factor examines the offeror’s proposed technical plan, including the offeror’s service description, service delivery, and knowledge of the population to be assessed in the required work. The offeror’s knowledge and application of recognized industry standards and best practice models. This factor examines all

elements of the technical approach and the interdependency of each element in the successful delivery of the required services.

The standard is met when the offeror:

- a) Presents a written narrative of the offeror's thorough knowledge of medicine that will ensure the provider is able to assess the medical conditions of individuals who apply/receive disability benefits in the Musculoskeletal, Ophthalmologic, Otolaryngological, Respiratory, Cardiovascular, Digestive, Genitor-Urinary, Hemic and Lymphatic, Skin, Endocrine, Multiple, Body, Neurological, Neoplastic Diseases and Malignant impairment areas. The Physician or psychologist shall submit evidence of specialized knowledge base and skills for his or her specialty

M. 4 EVALUATION CRITERIA

Proposals will be evaluated based on the following technical evaluation factors listed in descending order of importance.

M.4.1 TECHNICAL CRITERIA (_90_Points)

M.4.2 PRICE CRITERIA (_10_Points)

The price evaluation will be objective. The offeror with the lowest 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 price score:

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

M.4.3 PREFERENCE (Maximum _12_points in accordance with M.5)

M.4.4 TOTAL POSSIBLE POINTS (112 Points)

M.5 Preferences for Local Businesses, Disadvantaged Businesses, Resident-owned Businesses, Small Businesses, Longtime Resident Businesses, or Local Businesses with Principal Offices Located in an Enterprise Zone

Under the provisions of the “Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005” (the Act), Title II, Subtitle N, of the “Fiscal Year 2006 Budget Support Act of 2005”, D.C. Law 16-33, effective October 20, 2005, the District shall apply preferences in evaluating bids or proposals from businesses that are small, local, disadvantaged, resident-owned, longtime resident, or local with a principal office located in an enterprise zone of the District of Columbia.

M.5.1 General Preferences

For evaluation purposes, the allowable preferences under the Act for this procurement are as follows:

- M.5.1.1** Three percent reduction in the bid price or the addition of three points on a 100-point scale for a small business enterprise (SBE) certified by the Small and Local Business Opportunity Commission (SLBOC) or the Department of Small and Local Business Development (DSLBD), as applicable;
- M.5.1.2** Three percent reduction in the bid price or the addition of three points on a 100-point scale for a resident-owned business enterprise (ROB) certified by the SLBOC or the DSLBD, as applicable;
- M.5.1.3** Ten percent reduction in the bid price or the addition of ten points on a 100-point scale for a longtime resident business (LRB) certified by the SLBOC or the DSLBD, as applicable;
- M.5.1.4** Two percent reduction in the bid price or the addition of two points on a 100-point scale for a local business enterprise (LBE) certified by the SLBOC or the DSLBD, as applicable;
- M.5.1.5** Two percent reduction in the bid price or the addition of two points on a 100-point scale for a local business enterprise with its principal office located in an enterprise zone (DZE) and certified by the SLBOC or the DSLBD, as applicable; and
- M.5.1.6** Two percent reduction in the bid price or the addition of two points on a 100-point scale for a disadvantaged business enterprise (DBE) certified by the SLBOC or the DSLBD, as applicable.

M.5.2 Application of Preferences

The preferences shall be applicable to prime contractors as follows:

- M.5.2.1** Any prime contractor that is an SBE certified by the SLBOC or the DSLBD, as applicable, will receive a three percent (3%) reduction in the bid price for a bid submitted by the SBE in response to an Invitation for Bids (IFB) or the addition of

three points on a 100-point scale added to the overall score for proposals submitted by the SBE in response to a Request for Proposals (RFP).

M.5.2.2 Any prime contractor that is an ROB certified by the SLBOC or the DSLBD, as applicable, will receive a three percent (3%) reduction in the bid price for a bid submitted by the ROB in response to an IFB or the addition of three points on a 100-point scale added to the overall score for proposals submitted by the ROB in response to an RFP.

M.5.2.3 Any prime contractor that is an LRB certified by the SLBOC or the DSLBD, as applicable, will receive a ten percent (10%) reduction in the bid price for a bid submitted by the LRB in response to an IFB or the addition of ten points on a 100-point scale added to the overall score for proposals submitted by the LRB in response to an RFP.

M.5.2.4 Any prime contractor that is an LBE certified by the SLBOC or the DSLBD, as applicable, will receive a two percent (2%) reduction in the bid price for a bid submitted by the LBE in response to an IFB or the addition of two points on a 100-point scale added to the overall score for proposals submitted by the LBE in response to an RFP.

M.5.2.5 Any prime contractor that is a DZE certified by the SLBOC or the DSLBD, as applicable, will receive a two percent (2%) reduction in the bid price for a bid submitted by the DZE in response to an IFB or the addition of two points on a 100-point scale added to the overall score for proposals submitted by the DZE in response to an RFP.

M.5.2.6 Any prime contractor that is a DBE certified by the SLBOC or the DSLBD, as applicable, will receive a two percent (2%) reduction in the bid price for a bid submitted by the DBE in response to an IFB or the addition of two points on a 100-point scale added to the overall score for proposals submitted by the DBE in response to an RFP.

M.5.3 Maximum Preference Awarded

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

M.5.4 Preferences for Certified Joint Ventures

When the SLBOC or the DSLBD, as applicable, certifies a joint venture, the certified joint venture will receive preferences as a prime contractor for categories in which the joint venture and the certified joint venture partner are certified, subject to the maximum preference limitation set forth in the preceding paragraph.

M.5.5 Vendor Submission for Preferences

M.5.5.1 Any vendor seeking to receive preferences on this solicitation must submit at the time of, and as part of its bid or proposal, the following documentation, as applicable to the preference being sought:

M.5.5.1.1 Evidence of the vendor's or joint venture's certification by the SLBOC as an SBE, LBE, DBE, DZE, LRB, or RBO, to include a copy of all relevant letters of certification from the SLBOC; or

M.5.5.1.2 Evidence of the vendor's or joint venture's provisional certification by the DSLBD as an SBE, LBE, DBE, DZE, LRB, or RBO, to include a copy of the provisional certification from the DSLBD.

M.5.5.2 Any vendor seeking certification or provisional certification in order to receive preferences under this solicitation should contact the:

Department of Small and Local Business Development
ATTN: LSDBE Certification Program
441 Fourth Street, N.W., Suite 970N
Washington, DC 20001

M.5.5.3 All vendors are encouraged to contact the DSLBD at (202) 727-3900 if additional information is required on certification procedures and requirements.