

SOLICITATION, OFFER, AND AWARD			1. Caption Auditing HHA FY2013 Cost Reports		Page of Pages 1		
2. Contract Number		3. Solicitation Number DOC#185167		4. Type of Solicitation <input type="checkbox"/> Sealed Bid (IFB) <input checked="" type="checkbox"/> Sealed Proposals (RFP) <input type="checkbox"/> Sole Source <input type="checkbox"/> Human Care Agreements <input type="checkbox"/> Emergency		5. Date Issued 11/26/2014	
				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 of Health Care Finance Contracts and Acquisitions Division 441 4th Strret, N.W. Room 900 Washington, DC 20001				8. Address Offer to: Department of Health Care Finance Contracts and Acquisitions Division 441 4th Strret, N.W. Room 900 Washington, DC 20001			
NOTE: In sealed bid solicitations "offer" and offeror" means "bid" and "bidder"							
SOLICITATION							
9. Sealed offers in original and 4 copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if hand carried to the bid counter located at ELECTRONIC SUBMISSIONS until 2:00 PM local time 17-Dec-14 (Hour) (Date)							
CAUTION: Late Submissions, Modifications and Withdrawals: See 27 DCM R chapters 15 & 16 as applicable. All offers are subject to all terms & conditions contained in this solicitation.							
10. For Information Contact		A. Name Kalvin D. Paddyfote		B. Telephone (Area Code) 202 (Number) 442-9106 (Ext)		C. E-mail Address kalvin.paddyfote@dc.gov	
11. Table of Contents							
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OFFER							
12. In compliance with the above, the undersigned agrees, if this offer is accepted within 120 calendar days from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified herein.							
13. Discount for Prompt Payment		10 Calendar days %	20 Calendar days %	30 Calendar days %	Calendar days %		
14. Acknowledgement of Amendments (The offeror acknowledges receipt of amendments to the SOLICITATION):				Amendment Number	Date	Amendment Number	Date
15A. Name and Address of Offeror				16. Name and Title of Person Authorized to Sign Offer/Contract			
15B. Telephone		15 C. Check if remittance address is different from above - Refer to Section G		17. Signature		18. Offer Date	
(Area Code)	(Number)	(Ext)					
AWARD (TO BE COMPLETED BY GOVERNMENT)							
19. Accepted as to Items Numbered			20. Amount		21. Accounting and Appropriation		
22. Name of Contracting Officer (Type or Print)			23. Signature of Contracting Officer (District of Columbia)			24. Award Date	
Government of the District of Columbia			 Office of Contracting & Procurement				

SECTION B: CONTRACT TYPE, SUPPLIES OR SERVICES AND PRICE/COST

B.1 The District of Columbia Office of Contracting and Procurement, on behalf of The District of Columbia (District), Department of Health Care Finance (DHCF), is seeking the services of Certified Public Accounting (CPA) firms to audit the fiscal year (FY) 2013 cost reports submitted by the Home Health Agencies operating under the District’s Medicaid program.

B.2 Contract Type

The District contemplates multiple contract award (s) of FIRM FIXED priced contract(s).

B.3 PRICE SCHEDULE

Contract Line Item No. (CLIN)	Line Item Description	Total Price
1.	Audit of small sized provider (has up to \$15 million annual revenue as reported on its FY2013 cost report)	\$_____
2.	Audit of large sized provider (has annual revenue of \$15 million or more on its FY2013 cost report)	\$_____
3.	Participation at stakeholder meetings	\$_____
4.	Total	\$_____

THIRTY DAY OPTION

Contract Line Item No. (CLIN)	Line Item Description	Total Price
1	Additional Thirty (30) day Option	\$_____

B.4 An offeror responding to this solicitation must submit with its proposal, a notarized statement detailing any subcontracting plan required by law. Proposals responding to this RFP shall be deemed nonresponsive and shall be rejected if the offeror fails to submit a subcontracting plan that is required by law. For contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted in accordance with section H.9.1.

SECTION C: SPECIFICATIONS/WORK STATEMENT

C.1 SCOPE:

The purpose of this Request for Proposal (RFP) is to select Contractors with experience and knowledge to perform audits and consultation services as described in the Scope of Work, Contract Terms and Conditions. The outcome of the audit will assist DHCF with rate setting and program monitoring activities by ensuring that reported costs are accurate and in compliance with the District's living wage regulations. Furthermore, findings from the audit may result in the agency requesting more comprehensive audit(s) of Home Health Agencies.

C.2 APPLICABLE DOCUMENTS

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

Item No.	Document Type	Title	Link
1	D.C. Mun. Regs. tit 29, ch. 42 (2014)	HOME AND COMMUNITY-BASED WAIVER SERVICES FOR PERSONS WHO ARE ELDERLY AND INDIVIDUALS WITH PHYSICAL DISABILITIES	http://www.dcregs.dc.gov/Gateway/ChapterHome.aspx?ChapterNumber=29-42
2	D.C. Mun. Regs. tit. 29, ch. 50 (2014)	MEDICAID REIMBURSEMENT FOR PERSONAL CARE SERVICES	http://www.dcregs.dc.gov/Gateway/ChapterHome.aspx?ChapterNumber=29-50
3	42 C.F.R. § 440.167, 42 C.F.R. § 440.70	Home health services	http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=af93f1a04fec0ad84055fca36f2ff522&n=42y4.0.1.1.9&r=PART&ty=HTML
4	D.C Code 220.1-11	Living Wage Act of 2006	http://www.lexisnexis.com/hottopics/dccode/
5	Medicaid State Plan	Sections 3, attachment 3.1A(7), (24)	http://dhcf.dc.gov/node/192082
6	Medicaid State Plan	Sections 3, attachment 3.1B(7), (24)	http://dhcf.dc.gov/node/192082
7	Medicaid State Plan	Supplement 1 to Attachment 3.1A(7), (24)(F)	http://dhcf.dc.gov/node/192082
8	Medicaid State Plan	Supplement 1 to Attachment 3.1B(7), (24)(F)	http://dhcf.dc.gov/node/192082

C.3. DEFINITIONS

C.3.1. CENTERS FOR MEDICARE AND MEDICAID SERVICES (CMS) is the federal agency that administers the Medicare program and partially funds state Medicaid programs whose policies and provisions it oversees. It is the purpose of CMS to ensure that beneficiaries of these programs receive high quality health care.

DEPARTMENT OF HEALTH CARE FINANCE (DHCF) is the District of Columbia Government agency responsible for administering publicly financed medical assistance benefits, including Medicaid services under Title XIX, the Children's Health Insurance Program, the Immigrant Children's Health Program, and the DC HealthCare Alliance.

C.3.2. DISTRICT OF COLUMBIA (DISTRICT) refers to the government of the District of Columbia.

- C.3.3. Home Health Agency (HHA)** are agencies that offer a wide range of skilled medical services such as nursing care, physical therapy and occupational therapy from qualified medical professionals in addition to various services from home health aides. Home Health Agencies offer assistance with daily activities, such as bathing and eating. Home care services are provided at the beneficiary's home.
- C.3.4 Related Party** is an entity which to a significant extent is associated or affiliated with, or has control of or is controlled by, the organization furnishing required services, facilities, or supplies to Medicaid beneficiaries.
- C.3.5 State Plan Amendments (SPA)** are changes, as approved by CMS, to the State Plan, which is the contract between a state and the Federal Government describing how that state administers its Medicaid program. The State Plan is approved by CMS to ensure that services provided by a state are in accordance with Federal requirements and are eligible for Federal funding participation . The state plan sets out groups of individuals to be covered, services to be provided, methodologies by which providers are reimbursed and administrative requirements that States must meet.
- C.3.6 Provider size is intended as a guide to pricing.** DHCF estimates that there are approximately fifteen (15) Home Health Care providers to be audited. Generally, a small sized provider has up to \$15 million annual revenue as reported on its FY2013 cost report and a large sized provider has annual revenue of \$15 million or more on its FY2013 cost report.

C.4 BACKGROUND

This section provides background on DHCF, the PCA/HHA program and proposed rates adjustment that may be helpful to Contractors in preparing their proposal. The information is provided as an overview and is not intended to be a complete and exhaustive description.

DHCF's mission is to improve health outcomes by providing access to comprehensive, cost-effective and quality care services for residents of the District. DHCF was established as a cabinet level agency pursuant to the Department of Health Care Finance Act of 2008, and codified at D.C. Code § 7-771.07. The agency's proposed FY 15 budget is \$2.9 billion, spread across the various programs it administers: Medicaid, Children's Health Insurance Program, the Immigrant Children's Health Program, and the DC HealthCare Alliance. Further, DHCF is comprised of six administrative units that report to the Office of the Director. Within the Office of the Director, the newly created Office of Rates, Reimbursement and Financial Analysis (ORRFA) is tasked with all issues pertaining to rates and reimbursements.

Medicaid is a medical assistance program authorized under Title XIX of the Social Security Act, and administered through a partnership between states and the Centers for Medicare and Medicaid Services (CMS). Each state's Medicaid program is administered in accordance with an approved state plan and enacted states laws and regulations.

As the single state agency tasked with the administration of Medicaid programs in the District, DHCF is responsible for operating reimbursement methodologies that complies

with Medicaid reimbursement principles set forth at 42 CFR 413. These principles guide and establish the minimum standards DHCF applies in tailoring sound reimbursement rates paid to providers across the many programs the agency administers.

PCA/HHA

The Personal Care Aide (PCA) service is one of several optional benefits provided under the District's Medicaid program. PCA services provided through home health care is a preferred and cost effective alternative to institutional care. In FY14, the PCA program budget was \$182 million, with services largely provided by 15 Home Health Agencies (HHA) that participate in the District's Medicaid program. The District's rules at 29 DCMR §5006.7 provide a list of reimbursable and non-reimbursable PCA services (

Reason for Audits

In recent years, DHCF noted significant increases in both the utilization and size of program expenditures in PCA services. In February, 2014 the FBI raided various HHA providers operating under the District's Medicaid program. As a result of these investigations DHCF has determined that increased scrutiny of provider costs is required.

Similarly, the recent adjustments to the District's Living Wage rates has led to HHA providers to request increases to their rates. DHCF pays in 15-minute increments. Prior to April 1, 2014, DHCF paid \$4.08 per 15-minute increment, and as of April 1, 2014, pays \$4.35 per 15-minute increment. The \$12.50 living wage rate that was in place since FY 2010 was increased to \$13.40 for FY13 and \$13.60 for FY14.

Under the current reimbursement methodology at State Plan Attachment 4.19B, HHA personal care services are paid an hourly rate established by DHCF. All HHA's are required to pay the living wage to their hourly paid employees. As a consequence of the living wage increases, HHA providers have requested a rate increase.

As part of DHCF's rate adjustment process, DHCF has requested all participating HHA providers to submit FY 2013 cost reports to evaluate the need for a rate adjustment. Specifically in accordance with 42 C.F.R. §§447.202, and 203 DHCF must assure appropriate auditing of provider records if a payment adjustment is based on costs of services.

- (a) DHCF must maintain documentation of payment rates and make it available to Health and Human Services (HHS) upon request.
- (b) DHCF must record, in State manuals or other official files, the following information for increases in payment rates for individual practitioner services:
 - (1) An estimate of the percentile of the range of customary charges to which the revised payment structure equates and a description of the methods used to make the estimate.
 - (2) An estimate of the composite average percentage increase of the revised payment rates over the preceding rates.

C.5 REQUIREMENTS

C.5.1. The Contractors will perform audits (both desk review and field work) on the submitted cost reports for FY 2013. The procedures performed will at a minimum include:

1. The development of an audit plan that outlines the Contractor's activities for the duration of the audit. The audit plan shall include, but not limited to :
 - Audit objectives
 - Audit Procedures
 - Audit Instructions
 - Audit Forms
 - Time Frames for completing the audits
 - Reporting the audit results
2. An examination and reconciliation of the financial, statistical and cost data stated in the submitted cost reports. The cost report template is attached at appendix (1).
3. Apply specific procedures tailored to ensure accuracy of the wages paid to individual employees and compliance with the District's Living Wage regulations.
4. Be available to assist DHCF and answering questions regarding the interpretation of Medicaid reimbursement principles and Generally Accepted Accounting Principles (GAAP).
5. Participate in any stakeholder meetings; including hearings by the DC Council regarding the audit.
6. Maintain all work papers required for preparation of each audited cost report.

C.5.2. PROJECT APPROACH

The Contractor shall develop an audit plan that documents the Contractor's overall project approach /methodology in performing this audit. The audit plan shall contain at a minimum the following:

- a) Audit objectives, audit procedures, audit instructions, audits forms, time frames for completing the audit and reporting the audit results.
- b) Sufficient detail to demonstrate the Contractor understands the HHA SPA, rules and reimbursement methodology.
- c) Sufficient detail to demonstrate the Contractor's experience with the general Medicaid program and performing Medicaid provider audits.
- d) Description of the quality assurance process to be used to ensure the integrity and accuracy of the audit.

C.5.3. PROJECT MANAGEMENT

The Contractor shall participate in weekly conference calls and provide weekly progress reports to the CA and other District officials of the progress made in the completion of the tasks and identification of barriers and any impediments to successfully performing the required services.

C.5.4. FINAL REPORT – DRAFT

The Contractor shall develop and provide a draft of the Final Report to the contract administrator prior to completing the final report. The Contractor must maintain and make available all relevant supporting documentation and work papers used to complete the audit. The Contractor shall ensure that the draft of the Final Report includes and addresses at a minimum the following:

- The audit plan and audit approach;
- Results/findings from audit procedures performed
- A review of the District’s HHA reimbursement methodology;
- A review of the HHA cost reimbursement methodology used in at least five other Medicaid programs;
- Results/findings of detailed investigation of administrative payroll costs;
- Recommendation(s) based on the findings

C.5.5. FINAL REPORT

For each entity audited the Contractor shall develop and provide a final report to the contract administrator. The Contractor shall ensure that the final report includes the items described in the Final Report Draft, and any other relevant or significant findings that come to its attention.

The Contractor shall be prepared to present and explain the methodologies, analysis and recommendations in the final reports in a clear and concise manner at meetings requested by DHCF, the DC Council, and stakeholders as approved by DHCF.

C.5.6 SUBCONTRACTED WORK

No work can be subcontracted without specific prior approval of DHCF. When approved subcontractors or the services of another firm or vendor on the Department’s approved contractors listing are used, Contractor agrees to bill fees and expenses at the lower of Contractor fees or subcontractor fees.

SECTION D: PACKAGING AND MARKING

- D.1** The packaging and marking requirements for this 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 July 2010. (Attachment J.1)

SECTION E: INSPECTION AND ACCEPTANCE

E.1 INSPECTION OF WORK PERFORMED

The inspection and acceptance requirements for the resultant Contract shall be Governed by the Inspection of Services Clause in Section 6 of the Government of The District of Columbia's Standard Contract Provisions for use with Supplies And Services Contracts, dated July 2010, Attachment J.1.

E.1.1 RIGHT TO ENTER PREMISES

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

SECTION F: PERIOD OF PERFORMANCE AND DELIVERABLES

F.1 TERM OF CONTRACT

The term of the contract shall be for a period of ninety (90) days from the date of award specified on the cover page of this contract.

F.2 OPTION TO EXTEND THE TERM OF THE CONTRACT

F.2.1 The District may extend the term of this contract for a period of **30 days**, successive fractions thereof, by written notice to the Contractor before the expiration of the contract; provided that the District will give the Contractor 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.2.2 If the District exercises this option, the extended contract shall be considered to include this option provision.

F.2.3 The price for the option period shall be as specified in the Section B of the contract.

F.2.4 The total duration of this contract, including the exercise of any options under this clause, shall not exceed one hundred twenty (120) days.

F.3 DELIVERABLES The contractor shall perform the required services and tasks, develop, and submit one (1) electronic copy of the following deliverables to the CA in accordance with the due dates identified in the Deliverable Schedule, as described below. The Contractor shall provide hard copies of any deliverable upon request of the CA.

Deliverable No.	Deliverable	Due Date
1	Proposed Schedule	Within 3 days of award
2	Weekly Status Reports	On-going
3	Draft Final Report	Within 60 days of award
4	Final Report	Within 75 days of award

F.3.1 Weekly status reports will at a minimum contain status of the audit, any issues with the vendor and other issue that hinder the progress of the audit.

F.3.2 The Contractor shall submit to the District, as a deliverable, the report described in section H.5 that is required by the 51% District Residents New Hires Requirements and First Source Employment Agreement. If the Contractor does not submit the report as part of the deliverables, final payment to the Contractor shall not be paid pursuant to section G.3.2.

SECTION G: CONTRACT ADMINISTRATION

G.1 INVOICE SUBMITTAL

G.1.1 The Contractor shall submit proper invoices on a monthly basis electronically to the Accounts Payable recipient, Garland Singletary at Garland.Singletary@dc.gov and to the Contract Administrator (CA) at dhcf.invoices@dc.gov. The Contractor shall ensure the purchase order number appears in the subject line of the e-mail (See Invoice Payment, Section 28 of the Standard Contract Provisions, July 2010, J-1)

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

G.2 INVOICE SUBMITTAL

G.2.1 The Contractor shall submit proper invoices on a monthly basis or as otherwise specified in Section G.4.1. Invoices shall be prepared in duplicate and submitted to the Agency Fiscal Officer with concurrent copies to the CA specified in Section G9.2. below. The address of the AFO is:

Darrin Shaffer
Department of Health Care Finance
441 4th St. NW
Suite 960 N

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

G.2.2.1 Contractor's name, federal tax ID and invoice date (date invoices as of the date of mailing or transmittal);

G.2.2.2 Contract number and invoice number;

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

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

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

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

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

G.2.2.8 Authorized signature.

G.3 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT

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

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

G.4 PAYMENT

G.4.1 The District will make payments to the Contractor, upon the submission of proper invoices, at the prices stipulated in this contract, for supplies delivered and accepted or services performed and accepted, less any discounts, allowances or adjustments provided for in this contract.

G.4.2 The District will pay the Contractor on or before the thirtieth 30th business day after receiving a proper invoice from the Contractor. Payment of invoices will be withheld pending a signed acceptance and approval of all services by the COTR. The District reserves the right to conduct post payment reviews or audits.

G.5 ASSIGNMENT OF CONTRACT PAYMENTS

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

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

G.5.3 Notwithstanding an assignment of contract payments, the Contractor, not the assignee, is required to prepare invoices. Where such an assignment has been made, the original copy of the invoice must refer to the assignment and must show that payment of the invoice is to be made directly to the assignee as follows:

“Pursuant to the instrument of assignment dated _____, make payment of this invoice to (name and address of assignee).”

G.6 THE QUICK PAYMENT CLAUSE

G.6.1 Interest Penalties to Contractors

G.6.1.1 The District will pay interest penalties on amounts due to the Contractor under the Quick Payment provision, D.C. Official Code §2-221.01 *et seq.*, for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of 1% per month. No interest

penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before:

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

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

G.6.2 Payments to Subcontractors

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

- a) Pay the subcontractor for the proportionate share of the total payment received from the District that is attributable to the subcontractor for work performed under the contract; or
- b) Notify the District and the subcontractor, in writing, of the Contractor's intention to withhold all or part of the subcontractor's payment and state the reason for the nonpayment.

G.6.2.2 The Contractor must pay any subcontractor or supplier interest penalties on amounts due to the subcontractor or supplier beginning on the day after the payment is due and ending on the date on which the payment is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid on the following if payment for the completed delivery of the item of property or service is made on or before:

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

G.6.2.3 Any amount of an interest penalty which remains unpaid by the Contractor at the end of any 30-day period shall be added to the principal amount of the debt to the subcontractor and thereafter interest penalties shall accrue on the added amount.

G.6.2.4 A dispute between the Contractor and subcontractor relating to the amounts or entitlement of a subcontractor to a payment or a late payment interest penalty under the Quick Payment Act does not constitute a dispute to which the District of Columbia is a party. The District of Columbia may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

G.6.3 Subcontract requirements

G.6.3.1 The Contractor shall include in each subcontract under this contract a provision requiring the subcontractor to include in its contract with any lower-tier subcontractor or

supplier the payment and interest clauses required under paragraphs (1) and (2) of D.C. Official Code §2-221.02(d).

G.7 CONTRACTING OFFICER (CO)

G.7.1 Contracting Officer

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

G.7.2 The address and telephone number of the Contracting Officer for this contract is:

Kenneth Evans
Contracting Officer (DHCF)
Department of Health Care Finance
441 – 4TH Street, N.W., Room 969
Washington, DC 20001
202-673-4425
Kenneth.Evans@dc.gov

G.8 AUTHORIZED CHANGES BY THE CONTRACTING OFFICER

G.8.1 The CO is the only person authorized to approve changes in any of the requirements of this contract.

G.8.2 The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the CO.

G.8.3 In the event the Contractor effects any change at the instruction or request of any person other than the CO, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

G.9 CONTRACT ADMINSTRATOR (CA)

G.9.1 The CA is responsible for general administration of the contract and advising the CO as to the Contractor's compliance or noncompliance with the contract. The CA has the responsibility of ensuring the work conforms to the requirements of the contract and such other responsibilities and authorities as may be specified in the contract. These include:

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

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

- G.9.1.3** Reviewing invoices for completed work and recommending approval by the CO if the Contractor's costs are consistent with the negotiated amounts and progress is satisfactory and commensurate with the rate of expenditure;
- G.9.1.4** Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions; and
- G.9.1.5** Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.
- G.9.2** The address and telephone number of the CA is:

Darrin Shaffer
Agency Fiscal Officer
Department of Health Care Finance
One Judiciary Square
441 4th Street, N.W.
9th Floor, Suite 960N
Washington, DC 20001
(202) 442-9079
darrin.shaffer@dc.gov

The responsibilities of the CA are listed in the Standard Contract Provisions, Attachment **J.1** of this document.

G.9.3 The CA shall NOT have the authority to:

1. Award, agree to, or sign any contract, delivery order or task order. Only the CO shall make contractual agreements, commitments or modifications;
2. Grant deviations from or waive any of the terms and conditions of the contract;
3. Increase the dollar limit of the contract or authorize work beyond the dollar limit of the contract,
4. Authorize the expenditure of funds by the Contractor;
5. Change the period of performance; or
6. Authorize the use of District property, except as specified under the contract.

G.9.4 The Contractor will be fully responsible for any changes not authorized in advance, in writing, by the CO; may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.

G.10 CORRECTIVE ACTION

G.10.1 In addition to its rights under the Default Clause under the Standard Contract Provisions in Attachment J.1, if the District determines that the Contractor has failed to comply with terms of the Contract or has violated applicable Federal or District law, regulation or court order, the District may request corrective action within the time frame established by the District.

G.10.2

The Contractor shall complete all steps necessary to correct the identified violation. Upon the Contractor's failure to comply with an approved corrective action plan the District may withhold of up to ten (10%) percent of the Contractor's monthly payment when the District has determined that the Contractor has failed to perform according to the corrective action plan and Sanctions have been previously imposed.

SECTION H: SPECIAL CONTRACT REQUIREMENTS

H.1 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES

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

H.1.1.1 At least fifty-one (51) percent of apprentices and trainees employed shall be residents of the District of Columbia registered in programs approved by the District of Columbia Apprenticeship Council.

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

H.2 DEPARTMENT OF LABOR WAGE DETERMINATIONS

The Contractor shall be bound by the Wage Determination No.: 2005-2103, Revision No.: 13, dated June 19, 2013, issued by the U.S. Department of Labor in accordance with the Service Contract Act (41 U.S.C. 351 et seq.) and incorporated herein as Attachment J.3 of this contract. The Contractor shall be bound by the wage rates for the term of the contract. If an option is exercised, the Contractor shall be bound by the applicable wage rate at the time of the option. If the option is exercised and the Contracting Officer obtains a revised wage determination, the revised wage determination is applicable for the option periods and the Contractor may be entitled to an equitable adjustment.

H.3 PUBLICITY

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

H.4 FREEDOM OF INFORMATION ACT

The District of Columbia Freedom of Information Act, at D.C. Official Code § 2-532 (a-3), requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private Contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If the Contractor receives a request for such information, the Contractor shall immediately send the request to the CA designated in subsection G.8.2 who shall provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained

by the Contractor pursuant to the contract, the CA shall forward a copy to the Contractor. In either event, the Contractor is required by law to provide all responsive records to the CA within the timeframe designated by the CA. The FOIA Officer for the agency with programmatic responsibility shall determine the releasability of the records. The District shall reimburse the Contractor for the costs of searching and copying the records in accordance with D.C. Official Code § 2-532 and Chapter 4 of Title 1 of the *D.C. Municipal Regulations*.

H.5 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT

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

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

- (1) The first source for finding employees to fill all jobs created in order to perform this contract shall be the DOES; and
- (2) The first source for finding employees to fill any vacancy occurring in all jobs covered by the First Source Employment Agreement shall be the First Source Register.

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

- (1) Number of employees needed;
- (2) Number of current employees transferred;
- (3) Number of new job openings created;
- (4) Number of job openings listed with DOES;
- (5) Total number of all District residents hired for the reporting period and the cumulative total number of District residents hired; and
- (6) Total number of all employees hired for the reporting period and the cumulative total number of employees hired, including:
 - (a) Name;
 - (b) Social security number;
 - (c) Job title;
 - (d) Hire date;
 - (e) Residence; and
 - (f) Referral source for all new hires.

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

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

- (1) Document in a report to the CO its compliance with section H.5.4 of this clause; or

(2) Submit a request to the CO for a waiver of compliance with section H.5.4 and include the following documentation:

- (a) Material supporting a good faith effort to comply;
- (b) Referrals provided by DOES and other referral sources;
- (c) Advertisement of job openings listed with DOES and other referral sources; and
- (d) Any documentation supporting the waiver request pursuant to section H.5.6.

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

- (1) A good faith effort to comply is demonstrated by the Contractor;
- (2) The Contractor is located outside the Washington Standard Metropolitan Statistical Area and none of the contract work is performed inside the Washington Standard Metropolitan Statistical Area which includes the District of Columbia; the Virginia Cities of Alexandria, Falls Church, Manassas, Manassas Park, Fairfax, and Fredericksburg, the Virginia Counties of Fairfax, Arlington, Prince William, Loudoun, Stafford, Clarke, Warren, Fauquier, Culpeper, Spotsylvania, and King George; the Maryland Counties of Montgomery, Prince Georges, Charles, Frederick, and Calvert; and the West Virginia Counties of Berkeley and Jefferson.
- (3) The Contractor enters into a special workforce development training or placement arrangement with DOES; or
- (4) DOES certifies that there are insufficient numbers of District residents in the labor market possessing the skills required by the positions created as a result of the contract.

H.5.7 Upon receipt of the contractor's final payment request and related documentation pursuant to sections H.5.5 and H.5.6, the CO shall determine whether the Contractor is in compliance with section H.5.4 or whether a waiver of compliance pursuant to section H.5.6 is justified. If the CO determines that the Contractor is in compliance, or that a waiver of compliance is justified, the CO shall, within two business days of making the determination forward a copy of the determination to the agency Chief Financial Officer and the CA.

H.5.8 Willful breach of the First Source Employment Agreement, or failure to submit the report pursuant to section H.5.5, or deliberate submission of falsified data, may be enforced by the CO through imposition of penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract. The Contractor shall make payment to DOES. The Contractor may appeal to the D.C. Contract Appeals Board as provided in this contract any decision of the CO pursuant to this section H.5.8.

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

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

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

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

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

H.8 WAY TO WORK AMENDMENT ACT OF 2006

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

H.8.2 Contractor shall pay its employees and subcontractor who perform services under the Contract no less than the current living wage described in Attachment J.5 & J.6.

H.8.3 Contractor shall include in any subcontract for fifteen thousand dollars (\$15,000) or more a provision requiring the subcontractor to pay its employees who perform services under the contract no less than the current living wage rate.

H.8.4 The Department of Employment Services may adjust the living wage annually.

H.8.5 Contractor shall provide a copy of the Fact Sheet attached as Attachment J.6 to each employee and subcontractor who performs services under the contract. Contractor shall also post the Notice attached as Attachment J.5 in a conspicuous place in its place of business. Contractor shall include in any subcontract for fifteen thousand dollars (\$15,000) or more a provision requiring the subcontractor to post the Notice in a conspicuous place in its place of business.

H.8.6 Contractor shall maintain its payroll records under the contract in the regular course of business for a period of at least three (3) years from the payroll date, and shall include this requirement in its subcontracts for fifteen thousand dollars (\$15,000) or more under the Contract.

H.8.7 The payment of wages required under the Living Wage Act of 2006 shall be consistent with and subject to the provisions of D.C. Official Code § 32-1301 *et seq.*

H.8.8 The requirements of the Living Wage Act of 2006 do not apply to:

- a. Contracts or other agreements that are subject to higher wage level determinations required by federal law;
- b. Existing and future collective bargaining agreements, provided, that the future collective bargaining agreement results in the employee being paid no less than the established living wage;
- c. Contracts for electricity, telephone, water, sewer or other services provided by a regulated utility;
- d. Contracts for services needed immediately to prevent or respond to a disaster or eminent threat to public health or safety declared by the Mayor;
- e. Contracts or other agreements that provide trainees with additional services including, but not limited to, case management and job readiness services;

provided that the trainees do not replace employees subject to the Living Wage Act of 2006;

- f. An employee under twenty-two (22) years of age employed during a school vacation period, or enrolled as a full-time student, as defined by the respective institution, who is in high school or at an accredited institution of higher education and who works less than twenty-five (25) hours per week; provided that he or she does not replace employees subject to the Living Wage Act of 2006;
- g. Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia; provided, that the tenant or retail establishment did not receive direct government assistance from the District; and
- h. Employees of nonprofit organizations that employ not more than fifty (50) individuals and qualify for taxation exemption pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3));

H.8.9 The Mayor may exempt a Contractor from the requirements of the Living Wage Act of 2006, subject to the approval of Council, in accordance with the provisions of Section 109 of the Living Wage Act of 2006.

H.9 SUBCONTRACTING REQUIREMENTS

H.9.1 Mandatory Subcontracting Requirements

(a) Mandatory Subcontracting Requirements

- (1) Unless the Director of the Department of Small and Local Business Development (DSLBD) has approved a waiver in writing, for all contracts in excess of \$250,000, at least 35% of the dollar volume of the contract shall be subcontracted to qualified small business enterprises (SBEs).
- (2) If there are insufficient SBEs to completely fulfill the requirement of paragraph (a)(1), then the subcontracting may be satisfied by subcontracting 35% of the dollar volume to any qualified certified business enterprises (CBEs); provided, however, that all reasonable efforts shall be made to ensure that SBEs are significant participants in the overall subcontracting work.
- (3) A prime contractor that is certified by DSLBD as a small, local or disadvantaged business enterprise shall not be required to comply with the provisions of sections (a)(1) and (a)(2) of this clause.
- (4) Except as provided in (a)(5) and (a)(7), a prime contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A CBE prime contractor that performs less than 35% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.
- (5) A prime contractor that is a certified joint venture and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the contracting effort with its own organization

and resources and, if it subcontracts, 35% of the subcontracting effort shall be with CBEs. A certified joint venture prime contractor that performs less than 50% of the contracting effort shall be subject to enforcement actions under D.C. Official Code § 2-218.63.

- (6) Each CBE utilized to meet these subcontracting requirements shall perform at least 35% of its contracting effort with its own organization and resources.
- (7) A prime contractor that is a CBE and has been granted a proposal preference pursuant to D.C. Official Code § 2-218.43, or is selected through a set-aside program, shall perform at least 50% of the on-site work with its own organization and resources if the contract is \$1 million or less.
- (8) The District may reject any proposal that fails to include a subcontracting plan that is required by law.

(b) Subcontracting Plan

If the prime contractor is required by law to subcontract under this contract, it must subcontract at least 35% of the dollar volume of this contract in accordance with the provisions of section (a) of this clause. The plan shall be submitted as part of the proposal and may only be amended after award with the prior written approval of the CO and Director of DSLBD. Any reduction in the dollar volume of the subcontracted portion resulting from an amendment of the plan after award shall inure to the benefit of the District.

Each subcontracting plan shall include the following:

- (1) The name and address of each subcontractor;
- (2) A current certification number of the small or certified business enterprise;
- (3) The scope of work to be performed by each subcontractor; and
- (4) The price that the prime contractor will pay each subcontractor.

(c) Copies of Subcontracts

Within twenty-one (21) days of the date of award, the Contractor shall provide fully executed copies of all subcontracts identified in the subcontracting plan to the CO, CA, District of Columbia Auditor and the Director of DSLBD.

(d) Subcontracting Plan Compliance Reporting.

- (1) If the Contractor has a subcontracting plan required by law for this contract, the Contractor shall submit a quarterly report to the CO, CA, District of Columbia Auditor and the Director of DSLBD. The quarterly report shall include the following information for each subcontract identified in the subcontracting plan:
 - (A) The price that the prime contractor will pay each subcontractor under the subcontract;
 - (B) A description of the goods procured or the services subcontracted for;

- (C) The amount paid by the prime contractor under the subcontract; and
- (D) A copy of the fully executed subcontract, if it was not provided with an earlier quarterly report.

(2) If the fully executed subcontract is not provided with the quarterly report, the prime contractor will not receive credit toward its subcontracting requirements for that subcontract.

(e) Annual Meetings

Upon at least 30-days written notice provided by DSLBD, the Contractor shall meet annually with the CO, CA, District of Columbia Auditor and the Director of DSLBD to provide an update on its subcontracting plan.

(f) Notices

The Contractor shall provide written notice to the DSLBD and the District of Columbia Auditor upon commencement of the contract and when the contract is completed.

(g) Enforcement and Penalties for Breach of Subcontracting Plan

- (1) A contractor shall be deemed to have breached a subcontracting plan required by law, if the contractor (i) fails to submit subcontracting plan monitoring or compliance reports or other required subcontracting information in a reasonably timely manner; (ii) submits a monitoring or compliance report or other required subcontracting information containing a materially false statement; or (iii) fails to meet its subcontracting requirements.
- (2) A contractor that is found to have breached its subcontracting plan for utilization of CBEs in the performance of a contract shall be subject to the imposition of penalties, including monetary fines in accordance with D.C. Official Code § 2-218.63.
- (3) If the CO determines the Contractor's failure to be a material breach of the contract, the CO shall have cause to terminate the contract under the default provisions in **clause 8 of the SCP, Default.**

H.10 DISTRICT RESPONSIBILITIES

H.10.1 The District through the CA shall provide feedback regarding required Deliverables. The CA shall review and provide approval or disapproval.

H.10.2 The District through the CA shall provide on-going oversight and monitoring of the Contractor's performance.

H.10.3 The District, through the CA, shall maintain adequate liaison and cooperation with the Contractor.

H.10.4 The District shall attend required meetings with the Contractor to discuss issues, changes, deliverables' status, and other specific agenda items.

H.11 CONTRACTOR RESPONSIBILITIES

H.11.1 STAFFING AND SUPERVISION

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

H.11.2 The Contractor shall ensure that its staff responds to the CA's requests for documents and information. The Contractor's staff shall respond to the CA's questions and requests in a timely and efficient manner.

H.12 RECORDS RETENTION

H.12.1 The Contractor shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Contract for the length of the Contract in addition to a period of six (6) years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report. The only exceptions are the following:

H.12.2 If any litigation, claim, financial management review, or audit is started before the expiration of the record retention period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken;

H.12.3 Records for real property and equipment acquired with federal funds shall be retained for six (6) years after final disposition; and

H.12.4 When records are transferred to or maintained by the HHS awarding agency, the record retention requirement is not applicable to the recipient.

SECTION H.13 HIPAA PRIVACY COMPLIANCE

This HIPAA Compliance Clause is the standard language that must be included in contracts which involve access to the District's HIPAA protected data (protected health information) or creation of the same. When needed, agencies are encouraged to add business-specific language. This language should also be adapted and used where 1. An agency complies with the best practices of HIPAA, 2. Where an agency facilitates access to HIPAA protected data, or 3. Where agencies otherwise wish to protect similar data. Finally, where applicable, to ensure HIPAA compliance, this language must be adapted and incorporated or attached to miscellaneous agreements or arrangements such as Memoranda of Understanding, Memoranda of Agreement, Donation Agreements or small purchase arrangements.

For the purpose of this agreement [AGENCY], a covered component within the District of Columbia's Hybrid Entity will be referred to as a "Covered Entity" as that term is defined by the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA") and associated regulations promulgated at 45 CFR Parts

160, 162 and 164 as amended (the “HIPAA Regulations”) and [INSERT VENDOR INFORMATION], as a recipient of Protected Health Information or electronic Protected Health Information from [AGENCY], is a “Business Associate” as that term is defined by HIPAA.

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Regulations.

Definitions

- a. *Business Associate* means a person or entity, who, on behalf of the District government or of an organized health care arrangement (as defined in this section) in which the covered entity participates, but other than in the capacity of a member of the workforce of the District or arrangement, creates, receives, maintains, or transmits protected health information for a function or activity for the District, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, patient safety activities listed at 42 CFR 3.20, billing, benefit management, practice management, and repricing; or provides, other than in the capacity of a member of the workforce of such covered entity, legal, actuarial, accounting, consulting, data aggregation (as defined in 45 CFR § 164.501), management, administrative, accreditation, or financial services to or for the District, or to or for an organized health care arrangement in which the District participates, where the provision of the service involves the disclosure of protected health information from the District or arrangement, or from another business associate of the District or arrangement, to the person. A covered entity may be a business associate of another covered entity.

A Business Associate includes, (i) a Health Information Organization, E-prescribing Gateway, or other person that provides data transmission services with respect to protected health information to a covered entity and that requires access on a routine basis to such protected health information; (ii) a person that offers a personal health record to one or more individuals on behalf of the District; (iii) a subcontractor that creates, receives, maintains, or transmits protected health information on behalf of the business associate.

A *Business Associate* does not include: (i) a health care provider, with respect to disclosures by a covered entity to the health care provider concerning the treatment of the individual; (ii) a plan sponsor, with respect to disclosures by a group health plan (or by a health insurance issuer or HMO with respect to a group health plan) to the plan sponsor, to the extent that the requirements of 45 CFR § 164.504(f) apply and are met; (iii) a government agency, with respect to determining eligibility for, or enrollment in, a government health plan that provides public benefits and is administered by another government agency, or collecting protected health information for such purposes, to the extent such activities are authorized by law; iv) a covered entity participating in an organized health care arrangement that performs a function, activity or service included in the definition of a Business Associate above for or on behalf of such organized health care arrangement.

- b. *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 HIPAA. With respect to this HIPAA Compliance Clause, *Covered Entity* shall also include the designated health care components of the District government’s hybrid entity or a District agency following HIPAA best practices.
- c. *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.

- d. *Designated Record Set* means a group of records maintained by or for the Covered Entity that are:
 - i. The medical records and billing records about individuals maintained by or for a covered health care provider;
 - ii. The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
 - iii. Records used, in whole or in part, by or for the Covered Entity to make decisions about individuals.
- e. *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:
 - iv. 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
 - v. Sale or dispensing of a drug, device, equipment, or other item in accordance with the prescription.
- f. *Health Care Components* means a component or a combination of components of a hybrid entity designated by a hybrid entity. *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.
- g. *Health Care Operations* shall have the same meaning as the term “health care operations” in 45 C.F.R. § 164.501.
- h. *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. The District of Columbia is a Hybrid Covered Entity. Hybrid Entities are required to designate and include functions, services and activities within its own organization, which would meet the definition of Business Associate and irrespective of whether performed by employees of the Hybrid Entity, as part of its health care components for compliance with the Security Rule and privacy requirements under this Clause.

- i. *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.
- j. *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).
- k. *Individually Identifiable Health Information* is information that is health information, including demographic information collected from an individual, and;
 - vi. Is created or received by a health care provider, health plan, employer, or health care clearinghouse;
 - vii. 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
 - viii. That identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- l. *National Provider Identifier (NPI) Rule*: "National Provider Identifier" shall mean the Standard Unique Health Identifier for Healthcare Providers; Final Rule at 45 C.F.R. Part 162.
- m. *Privacy and Security Official*. The person or persons designated by the District of Columbia, a *Hybrid Entity*, who is/are responsible for developing, maintaining, implementing and enforcing the District-wide Privacy Policies and Procedures, and for overseeing full compliance with the Privacy and Security Rules, and other applicable federal and state privacy law.
- n. *Privacy Officer*. "Privacy Officer" shall mean the person designated by the District's Privacy and Security Official or one of the Districts's covered components within its Hybrid Entity, who is responsible for overseeing compliance with the Covered Agency's Privacy Policies and Procedures, the HIPAA Privacy Regulations, HIPAA Security Regulations and other applicable federal and state privacy law(s). Also referred to as the agency Privacy Officer, the individual shall follow the guidance of the District's Privacy and Security Official, and shall be responsive to and report to the District's Privacy and Security Official on matters pertaining to HIPAA compliance.
- o. *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.
- p. *Protected Health Information*. "Protected Health Information" (PHI) or "Electronic Protected Health Information" (ePHI) means individually identifiable health information that is created or received by the Business Associate from or on behalf of the Covered Entity, or agency following HIPAA best practices, which is:
 - ix. Transmitted by, created or maintained in electronic media; or
 - x. Transmitted or maintained in any other form or medium;

Protected Health Information does not include information in the records listed in subsection (2) of the definition in 45 C.F.R. §160.103. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.

- q. *Secretary*. "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- r. *Security Officer*. The person designated by the Security Official or one of the District of Columbia's designated health care components, who is responsible for overseeing compliance with the Covered Agency's Privacy Policies and Procedures, the Security Rules, and other applicable federal and state privacy law(s). The Covered Agency's security officer shall follow the guidance of the District's Security Official, as well as the Associate Security Official within the Office of the Chief Technology Officer, and shall be responsive to the same on matters pertaining to HIPAA compliance.
- s. *Security Rule*. "Security Rule" shall mean the Standards for Security of Individually Identifiable Health Information at 45 C.F.R. part 164.
- t. *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.

2. Obligations and Activities of Business Associate

- a. The Business Associate agrees not to use or disclose Protected Health Information or electronic Protected Health Information (hereinafter "PHI" or Protected Health Information") other than as permitted or required by this HIPAA Compliance Clause or as Required By Law.
- b. The Business Associate agrees to use appropriate safeguards and comply with administrative, physical, and technical safeguards requirements in 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316 as required by § 13401 of the Health Information Technology Economic and Clinical Health ACT (February 18, 2010) ("HITECH"), 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. Business Associate acknowledges that, pursuant to HITECH, it must comply with the Security Rule and privacy provisions detailed in this Clause. As such, Business Associate is under the jurisdiction of the United States Department of Health and Human Services and is directly liable for its own compliance. A summary of HIPAA Security Rule standards, found at Appendix A to Subpart C of 45 C.R.R. Part 164 is as follows:

Administrative Safeguards

Security Management Process	164.308(a)(1)	Risk Analysis (R) Risk Management (R) Sanction Policy (R) Information System Activity Review (R)
Assigned Security Responsibility	164.308(a)(2)	(R)
Workforce Security	164.308(a)(3)	Authorization and/or Supervision (A) Workforce Clearance Procedure Termination Procedures (A)
Information Access Management	164.308(a)(4)	Isolating Health care Clearinghouse Function (R) Access Authorization (A) Access Establishment and Modification (A)
Security Awareness and Training	164.308(a)(5)	Security Reminders (A) Protection from Malicious Software (A) Log-in Monitoring (A) Password Management (A)
Security Incident Procedures	164.308(a)(6)	Response and Reporting (R)
Contingency Plan	164.308(a)(7)	Data Backup Plan (R) Disaster Recovery Plan (R) Emergency Mode Operation Plan (R) Testing and Revision Procedure (A)

		Applications and Data Criticality Analysis (A)
Evaluation	164.308(a)(8)	(R)
Business Associate Contracts and Other Arrangement	164.308(b)(1)	Written Contract or Other Arrangement (R)

Physical Safeguards

Facility Access Controls	164.310(a)(1)	Contingency Operations (A) Facility Security Plan (A) Access Control and Validation Procedures (A) Maintenance Records (A)
Workstation Use	164.310(b)	(R)
Workstation Security	164.310(c)	(R)
Device and Media Controls	164.310(d)(1)	Disposal (R) Media Re-use (R) Accountability (A) Data Backup and Storage (A)

Technical Safeguards (see § 164.312)

Access Control	164.312(a)(1)	Unique User Identification (R) Emergency Access Procedure (R) Automatic Logoff (A) Encryption and Decryption (A)
Audit Controls	164.312(b)	(R)
Integrity	164.312(c)(1)	Mechanism to Authenticate Electronic Protected Health Information (A)
Person or Entity Authentication	164.312(d)	(R)
Transmission Security	164.312(e)(1)	Integrity Controls (A) Encryption (A)

- c. The Business Associate agrees to name a Privacy and/or Security Officer who is accountable for developing, maintaining, implementing, overseeing the compliance of and enforcing compliance with this Clause, the Security Rule and other applicable federal and state privacy law within the Business Associate's business. The Business associate reports violations and conditions to the District-wide Privacy and Security Official and/or the Agency Privacy Officer of the covered component within the District's Hybrid Entity.
- d. The Business Associate agrees to establish procedures for mitigating, and to mitigate to the extent practicable, any deleterious effects that are known to the Business Associate of a use or disclosure of Protected Health Information by the Business Associate in violation of the requirements of this Clause.
- e. 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 or other incident or condition arising out the Security Rule, including breaches of unsecured protected health information as required at 45 CFR 164.410, to the District-wide Privacy and Security Official or agency Privacy Officer within ten (10) days from the time the Business Associate becomes aware of such unauthorized use or disclosure. However, if the Business Associate is an agent of the District (i.e., performing delegated essential governmental functions), the Business Associate must report the incident or condition immediately. Upon the determination of an actual data breach, and in consultation with the District's Privacy and Security Official, the Business Associate will handle breach notifications to individuals, the HHS Office for Civil Rights (OCR), and potentially the media, on behalf of the District.
- f. 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.

- g. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information
- h. Initially, within ten (10) days following the commencement of this Contract, or within ten (10) days of a new or updated agreement with a subcontractor, the Business Associate agrees to provide the District a list of all subcontractors who meet the definition of a Business Associate. Additionally, Business Associate agrees to ensure its subcontractors understanding of liability and monitor, where applicable, compliance with the Security Rule and applicable privacy provisions in this Clause.
- i. The Business Associate agrees to provide access within five business days, 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, to facilitate the District's compliance with the requirements under 45 C.F.R. §164.524.
- j. The Business Associate agrees to make any amendment(s) within five business days 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 [*agency should insert appropriate terms for amendment if applicable*] or as directed by the District Privacy Official or agency Privacy Officer in order to facilitate the District's compliance with the requirements under 45 C.F.R. §164.526.
- k. 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 [*Insert Applicable Agency Identity And Procedure Verification Policy*], attached hereto as Exhibit C and incorporated by reference.
- l. 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.
- m. 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 [*delete bolded material and insert agency appropriate terms if applicable*] by the District's Privacy and Security 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.
- n. 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 [~~delete bolded material and insert negotiated terms if applicable~~] by the District Privacy and Security 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.

- o. To the extent the business associate is to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, the business associate agrees to comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s).
- p. As deemed necessary by the District, the Business Associate agrees to the monitoring and auditing of items listed in paragraph 2 of this Clause, as well as data systems storing or transmitting protected health information, to verify compliance.
- q. 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 other Covered Entities provided that the purpose of the 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.
- r. 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) and any associated HHS guidance. 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.

3. Permitted Uses and Disclosures by the Business Associate

- a. 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 Subpart E of 45 CFR Part 164 if the same activity were performed by the Covered Entity or would not violate the minimum necessary policies and procedures of the Covered Entity.
- b. 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.
- c. 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.

- d. 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).
- e. 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).

4. Additional Obligations of the Business Associate

- a. 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:
 - i. Name of the Business Associate of the Covered Entity;
 - ii. Title of the Report/File;
 - iii. Confirmation that the Report/File contains Protected Health Information (Yes or No);
 - iv. Description of the basic content of the Report/File;
 - v. Format of the Report/File (Electronic or Paper);
 - vi. Physical location of Report/File;
 - vii. 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
 - viii. Supporting documents if the recipient/personal representative has access to the Report/File.
- b. Business Associate must provide assurances to the Covered Entity that it will continue to employ sufficient administrative, technical and physical safeguards, as described under the Security Rule, to protect and secure (the Covered Entity's) ePHI entrusted to it. These safeguards include:
 - i. The Business Associate agrees to administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that the Business Associate creates, receives, maintains or transmits on behalf of the covered entity.
 - ii. The Business Associate agrees to report to the covered entity any security incident of which it becomes aware, including any attempts to access ePHI, whether those attempts were successful or not.
 - iii. This Business Associate Agreement may be terminated if the covered entity determines that the business associate has materially breached the agreement.
 - iv. The Business Associate agrees to make all policies and procedures, and documents relating to security, available to the Secretary of HHS for the purposes of determining the covered entity's compliance with HIPAA.

- v. This agreement continues in force for as long as the Business Associate retains any access to the Covered Entity's ePHI.
 - vi. With respect to the subset of PHI known as electronic PHI (ePHI) as defined by HIPAA Security Standards at 45 C.F.R. Parts 160 and 164, subparts A and C (the "Security Rule"), if in performing the Services, Business Associate, its employees, agents, subcontractors and any other individual permitted by Business Associate will have access to any computer system, network, file, data or software owned by or licensed to Provider that contains ePHI, or if Business Associate otherwise creates, maintains, or transmits ePHI on Provider's behalf, Business Associate shall take reasonable security measures necessary to protect the security of all such computer systems, networks, files, data and software. With respect to the security of ePHI, Business Associate shall: (A) Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that it creates, receives, maintains, or transmits on behalf of the Provider; (B) Ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect it; and (C) Report to the Provider any security incident of which it becomes aware.
 - vii. Business Associate agrees not to electronically transmit or permit access to PHI unless such transmission or access is authorized by this Addendum and the Agreement and further agrees that it shall only transmit or permit such access if such information is secured in a manner that is consistent with applicable law, including the Security Rule. For purposes of this Addendum, "encrypted" shall mean the reversible conversion of readable information into unreadable, protected form so that only a recipient who has the appropriate "key" can convert the information back into original readable form. If the Covered Entity stores, uses or maintains PHI in encrypted form, or in any other secured form acceptable under the security regulations, Covered Entity shall promptly, at request, provide with the key or keys to decrypt such information and will otherwise assure that such PHI is accessible by upon reasonable request.
 - viii. In the event Business Associate performs functions or activities involving the use or disclosure of PHI on behalf of Covered Entity that involve the installation or maintenance of any software (as it functions alone or in combination with any hardware or other software), Business Associate shall ensure that all such software complies with all applicable standards and specifications required by the HIPAA Regulations and shall inform of any software standards or specifications not compliant with the HIPAA Regulations.
- c. At the request of the Covered Entity, the Business Associate agrees to amend this agreement to comply with all HIPAA mandates.

5. Sanctions

Business Associate agrees that its workforce members, agents and subcontractors who violate the provisions of HIPAA or other applicable federal or state privacy law will be subject to discipline in accordance with Business Associate's Personnel Policy 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 Compliance Clause 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 HIPAA 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.

6. Obligations of the Covered Entity

- a. 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.
- b. 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.
- c. 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.

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 and Subpart E of 45 CFR Part 164 if done by the Covered Entity.

8. Representations and Warranties.

The Business Associate represents and warrants to the Covered Entity:

- a. 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;
- b. 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;
- c. 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;

- d. 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;
- e. That all of its employees, agents, subcontractors, representatives and members of its workforce, whose services may be used to fulfill obligations under this HIPAA Compliance Clause are or shall be appropriately informed of the terms of this HIPAA Compliance Clause and are under legal obligation to the Business Associate, by contract or otherwise, sufficient to enable the Business Associate to fully comply with all provisions of this HIPAA Compliance Clause. Modifications or limitations that the Covered Entity has agreed to adhere to with regards 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;
- f. That it will reasonably cooperate with the Covered Entity in the performance of the mutual obligations under this Agreement;
- g. 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

9. Term and Termination

- a. *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. The Protected Health Information shall be 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. If it is infeasible to return or confidentially destroy the Protected Health Information, protections shall be 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. The requirement to return Protected Health Information to the District at the end of the contract term or if the contract is terminated applies irrespective of whether the Business Associate is also a covered entity under HIPAA. Where a business associate is also a covered entity, Protected Health Information provided by the District, or created or received by the Business Associate on behalf of the District, a duplicate of the record may be acceptable if mutually agreed.

b. *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:

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

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

c. *Effect of Termination.*

- i. 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 [*delete bolded material and insert negotiated terms and conditions if applicable*] 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 form.
- ii. In the event that the Business Associate determines that returning or destroying the Protected Health Information is infeasible, the Business Associate shall provide written notification to the Covered Entity 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 for so long as the Business Associate maintains such Protected Health Information. Additionally, the Business Associate shall:

- (1) Retain only that protected health information which is necessary for business associate to continue its proper management and administration or to carry out its legal responsibilities;
- (2) Return to covered entity [or, if agreed to by covered entity, destroy] the remaining protected health information that the business associate still maintains in any form;
- (3) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as business associate retains the protected health information;

- (4) Not use or disclose the protected health information retained by business associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at [Insert section number related to paragraphs (e) and (f) above under “Permitted Uses and Disclosures By Business Associate”] which applied prior to termination; and
- (5) Return to covered entity [or, if agreed to by covered entity, destroy] the protected health information retained by business associate when it is no longer needed by business associate for its proper management and administration or to carry out its legal responsibilities.

The obligations outlined in Section 2. Obligations and Activities of Business Associate shall survive the termination of this Contract.

10. Miscellaneous

- a. *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.
- b. *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.
- c. *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.
- d. *Interpretation.* Any ambiguity in this HIPAA Compliance Clause shall be resolved to permit compliance with applicable federal and District of Columbia laws, rules and regulations, and the HIPAA Rules, 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 the HIPAA Rules. .

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.

- e. *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 have access to and amend 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 provide any benefit or right, whether directly, indirectly, or otherwise, to third persons.

- f. *Compliance with Applicable Law.* The Business Associate shall comply with all federal and 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.
- g. *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 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. *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.
- i. *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.
- j. *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.
- k. *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

If to the Covered Entity, to

Attention: _____

Attention: _____

Fax: _____

Fax: _____

- l. *Headings.* Headings are for convenience only and form no part of this HIPAA Compliance Clause and shall not affect its interpretation.
- m. *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.
- n. *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.
- o. *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.
- p. *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.
- q. *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.

Attachments:

Exhibit A Identity and Procedure Verification

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 (Attachment J.1) are incorporated as part of the contract.

I.2 CONTRACTS THAT CROSS FISCAL YEARS

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

I.3 CONFIDENTIALITY OF INFORMATION

All information obtained by Contractor relating to any employee or customer of the District shall be kept in absolute confidence and shall not be used by Contractor in connection with any other matters, nor shall any such information be disclosed to any other person, firm, or corporation, in accordance with the District and Federal laws governing the confidentiality of records.

I.3.1 Both parties agree that they, their personnel, agents or representatives will not, at any time during the term of this Contract or after its termination, reveal, divulge, or make known to any person, firm, corporation or other business organization, any customers' lists, trade secrets, cost figures and projections, profit figures and projections or any other secret, confidential or proprietary information whatsoever, whether of the DHCF, Contractor or any of the DHCFs, used or gained by the DHCF or Contractor during performance under this Contract. Contractor and the DHCF further covenant and agree to retain all such knowledge and information acquired during and after the term of this Contract respecting such lists, trade secrets, or any secret, confidential or proprietary information whatsoever in trust for the sole benefit of the DHCF or Contractor and their successors and assigns. The above prohibition of disclosure shall not apply to the extent that the DHCF or Contractor must disclose such data to a governmental authority or a court of competent jurisdiction.

I.3.2 The DHCF acknowledges that its personnel may be exposed to proprietary information of Contractor, including, but not limited to Contractor's proprietary SAS Software System, and the DHCF agrees that it will take all appropriate steps to ensure that its personnel will keep all aspects of Contractor's SAS Software System confidential.

I.3.3 Both parties acknowledge and agree that a breach of this Section by a party or its personnel, agents or representatives is highly likely to cause significant, irreparable harm to the other party and that such other party shall be entitled to temporary, preliminary and/or injunctive relief, or any other equitable remedy deemed appropriate by a reviewing court, to prevent a breach or threatened breach of this Section in order to protect its interests in its Confidential Information.

I.4 TIME

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

I.5 **RIGHTS IN DATA**

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

I.5.2 The term “Technical Data”, as used herein, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work, or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.

I.5.3 The term “Computer Software”, as used herein means computer programs and computer databases. “Computer Programs”, as used herein means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. "Computer Programs" include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort merge programs, and automated data processing equipment maintenance diagnostic programs, as well as applications programs such as payroll, inventory control and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general purpose in nature or designed to satisfy the requirements of a particular user.

I.5.4 The term "computer databases", as used herein, means a collection of data in a form capable of being processed and operated on by a computer.

I.5.5 All data first produced in the performance of this Contract shall be the sole property of the District. Contractor hereby acknowledges that all data, including, without limitation, computer program codes, produced by Contractor for the District under this Contract, are works made for hire and are the sole property of the District; but, to the extent any such data may not, by operation of law, be works made for hire, Contractor hereby transfers and assigns to the District the ownership of copyright in such works, whether published or unpublished. Contractor agrees to give the District all assistance reasonably necessary to perfect such rights including, but not limited to, the works and supporting documentation and the execution of any instrument required to register copyrights. Contractor agrees not to assert any rights in common law or in equity in such data. Contractor shall not publish or reproduce such data in whole or in part or in any manner

or form, or authorize others to do so, without written consent of the District until such time as the District may have released such data to the public.

I.5.6 The District shall 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 shall be furnished with restricted rights, provided however, notwithstanding any contrary provision in any such license or agreement, such restricted rights shall include, as a minimum the right to:

I.5.6.1 Use the computer software and all accompanying documentation and manuals or instructional materials with the computer for which or with which it was acquired, including use at any District installation to which the computer may be transferred by the District;

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

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

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

I.5.7.1 RESTRICTED RIGHTS LEGEND

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

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

I.5.8 In addition to the rights granted in Section I.5.6 above, Contractor hereby grants to the District a nonexclusive, paid-up license throughout the world, of the same scope as restricted rights set forth in Section I.5.6 above, under any copyright owned by Contractor, in any work of authorship prepared for or acquired by the District under this contract. Unless written approval of the Contracting Officer is obtained, Contractor shall not include in technical data or computer software prepared for or acquired by the District under this contract any works of authorship in which copyright is not owned by

Contractor without acquiring for the District any rights necessary to perfect a copyright license of the scope specified in the first sentence of this paragraph.

- I.5.9** Whenever any data, including computer software, are to be obtained from a subcontractor under this contract, Contractor shall use this clause, I.5, Rights in Data, in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the District's or Contractor's rights in that subcontractor data or computer software which is required for the District.
- I.5.10** For all computer software furnished to the District with the rights specified in Section I.5.5, Contractor shall furnish to the District, a copy of the source code with such rights of the scope specified in Section I.5.5. For all computer software furnished to the District with the restricted rights specified in Section I.5.6, the District, if Contractor, either directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided the District under this contract or any paid-up maintenance agreement, or if Contractor shall be declared bankrupt or insolvent by a court of competent jurisdiction, shall have the right to obtain, for its own and sole use only, a single copy of the then current version of the source code supplied under this contract, and a single copy of the documentation associated therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.
- I.5.11** Contractor shall indemnify and save and hold harmless the District, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, for:
- I.5.11.1** Violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or,
- I.5.11.2** Based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.
- I.5.12** Nothing contained in this clause shall imply a license to the District under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the District under any patent.
- I.5.13** Paragraphs I.5.6, I.5.7, I.5.8, I.5.11 and I.5.12 above are not applicable to material furnished to Contractor by the District and incorporated in the work furnished under contract, provided that such incorporated material is identified by Contractor at the time of delivery of such work

I.6 OTHER CONTRACTORS

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

I.7 SUBCONTRACTS

Contractor hereunder shall not subcontract any of Contractor's work or services to any subcontractor without the prior written consent of the Contracting Officer. Any work or service so subcontracted shall be performed pursuant to a subcontract agreement, which the District shall have the right to review and approve prior to its execution by Contractor. Any such subcontract shall specify that Contractor and the subcontractor shall be subject to every provision of this contract. Notwithstanding any such subcontract approved by the District, Contractor shall remain liable to the District for all Contractor's work and services required hereunder.

I.8 INSURANCE

GENERAL REQUIREMENTS. The Contractor shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the CO giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO. 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 and have an A.M. Best Company rating of A-VIII or higher. The Contractor shall require all of its subcontractor to carry the same insurance required herein. The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event the stated limit in the declarations page of the policy is reduced via endorsement or the policy is canceled prior to the expiration date shown on the certificate. The

Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium.

I.8.1 Commercial General Liability Insurance

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

I.8.1.2 Automobile Liability Insurance

The Contractor shall provide automobile liability insurance to cover all owned, hired or non-owned motor vehicles used in conjunction with the performance of this contract.

The policy shall provide a \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

I.8.1.3 Workers' Compensation Insurance

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

I.8.1.4 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.

I.8.1.5 Umbrella or Excess Liability Insurance

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

I.8.1.6 Professional Liability Insurance (Errors & Omissions)

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

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

I.8.2 Duration

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

I.8.3 Liability

These are the required minimum insurance limits required by the District of Columbia. HOWEVER THE REQUIRED MINIMUM INSURANCE REQUIREMENTS SHALL IN NO WAY LIMIT THE CONTRACTOR'S LIABILITY UNDER THIS CONTRACT.

I.8.4 Contractor's Property

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

I.8.5 Measure of Payment

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

I.8.6 Notification

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

I.8.7 Certificates of Insurance

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

Kenneth Evans
Contracting Officer (DHCF)
Department of Health Care Finance
441 – 4TH Street, N.W., Room 969
Washington, DC 20001
202-673-4425
Kenneth.Evans@dc.gov

I.8.8 Disclosure of Information

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

I.9 EQUAL EMPLOYMENT OPPORTUNITY

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

I.10 CONTINUITY OF SERVICES

I.10.1 The Contractor recognizes that the services provided under this contract are vital to the District of Columbia and must be continued without interruption and that, upon contract expiration or termination, a successor, either the District or another Contractor, at the District's option, may continue to provide these services. To that end, the Contractor agrees to:

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

I.10.2 The Contractor shall, upon the Contracting Officer's written notice:

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

I.10.3 The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

I.10.4 The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

I.10.5 Only in accordance with a modification issued by the Contracting Officer, the Contractor shall be reimbursed for all reasonable phase- in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase- in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

I.11 GOVERNING LAW

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

I.12 ORDER OF PRECEDENCE

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

- (1) The supplies or services and pricing/Cost Section (Section B)
- (2) Specifications/Work State (Section C)
- (3) The Special Contract requirements (Section H)
- (4) Inspection and Acceptance (Section E)
- (5) The Contract Clauses (Section I)
- (6) Government of District of Columbia Standard Provisions for use with supply and service contracts, dated March 2007 (Section J.1)
- (7) U.S. Department of labor Wage Determination No. 05-2103, Revision No: 13 dated 06/25/2013
- (8) Contractor's best and final offer, (Section L.14)
- (9) Contractor's Proposal, (Section L.2)

SECTION J: ATTACHMENTS

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

Attachment Number Document

Attachment Number	Document
J.1	Government of the District of Columbia Standard Contract Provisions for Use with the Supplies and Services Contracts (March 2007) available at www.ocp.dc.gov click on "Solicitation Attachments"
J.2	U.S. Department of Labor Wage Determination [WD 05-2103 08/05/14]
J.3	Office of Local Business Development Equal Employment Opportunity Information Report and Mayor's Order 85-85 available at www.ocp.dc.gov click on "Solicitation Attachments"
J.4	Department of Employment Services First Source Employment Agreement available at www.ocp.dc.gov click on "Solicitation Attachments"
J.5	Way to Work Amendment Act of 2006 - Living Wage Notice available at www.ocp.dc.gov click on "Solicitation Attachments"
J.6	Way to Work Amendment Act of 2006 - Living Wage Fact Sheet available at www.ocp.dc.gov click on "Solicitation Attachments"
J.7	Tax Certification Affidavit available at www.ocp.dc.gov click on "Solicitation Attachments"
J.8	Bidder/Offeror Certifications available at www.ocp.dc.gov click on "Solicitation Attachments"

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

Bidder/Offeror Certification Form available at www.ocp.dc.gov click on "Solicitation Attachments"

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 *multiple* contract[s] resulting from this solicitation to the responsible offeror[s] whose offer conforming to the solicitation will be most advantageous to the District, cost or price, technical and other factors, specified elsewhere in this solicitation considered. The award may be based on a mixture of small and large, all small and or all large. Actual determination will be made after proposal evaluation.

L.1.2 Initial Offers

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

L.2 PROPOSAL ORGANIZATION AND CONTENT

- L.2.1 This solicitation will be conducted electronically using the District's Ariba E-Sourcing system. To be considered, an offeror must submit the required attachments via the Ariba E-Sourcing system before the closing date and time. Paper, telephonic, telegraphic, and facsimile proposals may not be accepted.
- L.2.2 All attachments shall be submitted as a .pdf file. The District will not be responsible for corruption of any file submitted. If the submitted file cannot be viewed and printed as submitted, it will not be considered.
- L.2.3 The offeror shall submit two (2) attachments in its electronic submittal: (1) a technical proposal, and (2) a price proposal. **Please note that each attachment is limited to a maximum size of 25 MB.**
- L.2.3.1 The District may reject any proposal that fails to include a subcontracting plan that is required by law.
- L.2.4 The offeror shall label each attachment, i.e., "Technical Proposal", "Price Proposal."
- L.2.5 Offerors are directed to the specific proposal evaluation criteria found in Section M of this solicitation, Evaluation Factors. The offeror shall respond to each factor in a way that will allow the District to evaluate the offeror's response. The offeror shall submit information in a clear, concise, factual and logical manner providing a comprehensive description of program supplies and services and delivery thereof. The information requested for the technical proposal shall facilitate evaluation for all proposals. The technical proposal must contain sufficient detail to provide a clear and concise response fully reflecting the manner in which the offeror proposes to fully meet the requirements in Section C.

L.2.6 The bidders shall complete, sign and submit all Representations, Certifications and Acknowledgments as appropriate.

L.2.7 Proposal Format and Content

L.2.7.1 Volume I - Technical Proposal Content Instructions

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

L.2.7.1.1 Section 1 - Technical Approach and Methodology

The information contained in this section shall facilitate the evaluation of the Offeror's technical approach and methodology to provide the requirements described in C.5.

L.2.7.1.1.1 The Offeror shall provide the following narratives:

- a. A description of the Offeror's understanding of the District's requirements section C.5, and discussion of the Offeror's knowledge of the Applicable Documents referenced in paragraph C.2. and the application of these documents to the successful performance of the District's requirements C.5. The Offeror shall provide narrative discussion on how the audit will be performed. The Offeror shall include a discussion of the Offeror's plan to identify and comply with future revisions or updates to the Applicable Documents.

L.2.7.1.2 Section 2 - Technical Expertise and Capacity

L.2.7.1.2.1 The Offeror shall provide the resume(s) of personnel that will provide services in section C.5. The resume shall include details of the academic background, professional licenses/certifications and positions held.

L.2.7.1.3 Section 3 - Past Performance and Previous Experience

L.2.7.1.3.1 The information contained in this section shall facilitate the evaluation of the Offeror's past performance and previous experience in conducting similar audits in the Health Care industry. The description shall include examples of both favorable and unfavorable experiences and situations and how these experiences will influence the Offeror's delivery of the required services for the District.

- a. The Offeror shall provide a discussion of the Offeror's experience providing the services in Section C.5. The discussion shall include lessons learned as well as the application of those lessons learned to the successful delivery of services described in Section C.5.
- b. The Offeror shall provide a list of three references within the last five years providing services described in Section C.5. The Offeror's list shall include the following information:

- 1.Name of Organization;
- 2.Description of work performed;
- 3.Contact Person name, phone, and e-mail address

L.2.7.2 Volume II: Price Proposal

L.2.7.2.1 Offeror’s Price Proposal shall contain a Table of Contents and organized and presented in the following clearly marked separate sections.

L.2.7.2.2 PRICE SCHEDULE

Contract Line Item No. (CLIN)	Line Item Description	Total Price
1	Audit of small sized provider (has up to \$15 million annual revenue as reported on its FY2013 cost report)	\$_____
2	Audit of large sized provider (has annual revenue of \$15 million or more on its FY2013 cost report)	\$_____
3	Participation at stakeholder meetings	\$_____
4	Total	\$_____

THIRTY DAY OPTION

Contract Line Item No. (CLIN)	Line Item Description	Total Price
1	Additional Thirty (30) day Option	\$_____

L.3 REQUIREMENT FOR AN ELECTRONIC COPY OF PROPOSALS TO BE MADE AVAILABLE TO THE PUBLIC

In addition to the proposal submission requirements in Section L.2 above, the offeror must submit an electronic copy of its proposal, redacted in accordance with any applicable

exemptions from disclosure under D.C. Official Code §2-534. Redacted copies of the offeror's proposal must be submitted by e-mail attachment to the contact person designated in the solicitation. D.C. Official Code §2-536(b) requires the District to make available electronically copies of records that must be made public. The District's policy is to release documents relating to District proposals following award of the contract, subject to applicable FOIA exemption under §2-534(a)(1). Successful proposals will be published on the OCP Internet in accordance with D.C. Official Code §2-361.04, subject to applicable FOIA exemptions.

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

L.4.1 Proposal Submission

L.4.1.1 Proposals must be fully uploaded into the District's E-Sourcing system no later than the closing date and time. The system will not allow late proposals, modifications to proposals, or requests for withdrawals after the exact closing date and time.

L.4.1.2 Paper, telephonic, telegraphic, and facsimile proposals may not be accepted or considered for award.

L.4.1.3 It is solely the offeror's responsibility to ensure that it begins the upload process in sufficient time to get the attachment uploaded into the District's E-Sourcing system before the closing time. **(PLEASE NOTE: DO NOT USE MICROSOFT INTERNET EXPLORER VERSION 9 TO UPLOAD THE ATTACHMENTS).**

L.4.2 Withdrawal or Modification of Proposals

An offeror may modify or withdraw its proposal via the District's E-Sourcing system at any time before the closing date and time for receipt of proposals.

L.4.3 Late Proposals

The District's E-Sourcing system will not accept late proposals or modifications to proposals after the closing date and time for receipt of proposals.

L.4.4 Late Modifications

A late modification of a successful proposal, which makes its terms more favorable to the District, shall be considered at any time it is received and may be accepted.

L.5 EXPLANATION TO PROSPECTIVE OFFERORS

If a prospective offeror has any questions relating to this solicitation, the prospective offeror shall submit the question electronically via the District's E-Sourcing system's instructions. The prospective offeror should submit questions no later than **5** days prior to the closing date and time indicated for this solicitation. The District may not consider any questions received less than **5** days before the date set for submission of proposals. The District will furnish responses via the District's E-Sourcing system's messaging process. An amendment to the solicitation will

be issued if the CO decides that information is necessary in submitting offers, or if the lack of it would be prejudicial to any prospective offeror. Oral explanations or instructions given by District officials before the award of the contract will not be binding.

L.6 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 ten (10) business days after the basis of protest is known or should have been known, whichever is earlier. A protest based on alleged improprieties in a solicitation which are apparent at the time set for receipt of initial proposals shall be filed with the Board prior to the time set for receipt of initial proposals. In procurements in which proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, must be protested no later than the next closing time for receipt of proposals following the incorporation. The protest shall be filed in writing, with the Contract Appeals Board, 441 4th Street, N.W., Suite 350N, Washington, D.C. 20001. The aggrieved person shall also mail a copy of the protest to the CO for the solicitation.

L.8 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 visual and other presentation aids are neither necessary nor desired.

L.9 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.10 PROPOSAL COSTS

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

L.11 CERTIFICATES OF INSURANCE

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

Kenneth Evans
Contracting Officer (DHCF)
Department of Health Care Finance
441 – 4TH Street, N.W., Room 969
Washington, DC 20001
202-673-4425
Kenneth.Evans@dc.gov

L.13 ACKNOWLEDGMENT OF AMENDMENTS

The offeror shall acknowledge receipt of any amendment to this solicitation electronically via the District's E-Sourcing system's messaging process. The District must receive the acknowledgment by the date and time specified for receipt of proposals. An offeror's failure to acknowledge an amendment may result in rejection of its offer.

L.14 BEST AND FINAL OFFERS

If, subsequent to receiving original proposals, negotiations are conducted, all offerors within the competitive range will be so notified and will be provided an opportunity to submit written best and final offers at the designated date and time. Best and final offers will be subject to the Late Submissions, Late Modifications and Late Withdrawals of Proposals provisions of the solicitation. After receipt of best and final offers, no discussions will be reopened unless the CO determines that it is clearly in the District's best interest to do so, e.g., it is clear that information available at that time is inadequate to reasonably justify contractor selection and award based on the best and final offers received. If discussions are reopened, the CO shall issue an additional request for best and final offers to all offerors still within the competitive range.

L.15 LEGAL STATUS OF OFFEROR

Each proposal must provide the following information:

L.15.1 Name, address, telephone number and federal tax identification number of offeror;

L.15.2 A copy of each District of Columbia license, registration or certification that the offeror is required by law to obtain. This mandate also requires the offeror to provide a copy of the executed "Clean Hands Certification" that is referenced in D.C. Official Code §47-2862, if the offeror is required by law to make such certification. If the offeror is a corporation or

partnership and does not provide a copy of its license, registration or certification to transact business in the District of Columbia, the offer shall certify its intent to obtain the necessary license, registration or certification prior to contract award or its exemption from such requirements; and

L.15.3 If the offeror is a partnership or joint venture, the names and addresses of the general partners or individual members of the joint venture, and copies of any joint venture or teaming agreements.

L.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 GENERAL STANDARDS OF RESPONSIBILITY

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

L.17.1 To be determined responsible, a prospective contractor must demonstrate that it:

- (a) Has adequate financial resources, or the ability to obtain such resources, required to perform the contract;
- (b) Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
- (c) Has a satisfactory performance record;
- (d) Has a satisfactory record of integrity and business ethics;
- (e) Has a satisfactory record of compliance with the applicable District licensing and tax laws and regulations;
- (f) Has a satisfactory record of compliance with labor and civil rights laws and rules, and the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code §2-219.01 *et seq.*;
- (g) Has, or has the ability to obtain, the necessary organization, experience, accounting, and operational control, and technical skills;
- (h) Has, or has the ability to obtain, the necessary production, construction, technical equipment, and facilities;

- (i) Has not exhibited a pattern of overcharging the District;
- (j) Does not have an outstanding debt with the District or the federal government in a delinquent status; and
- (k) Is otherwise qualified and is eligible to receive an award under applicable laws and regulations.

L.17.2 If the prospective contractor fails to supply the information requested, the CO shall make the determination of responsibility or non responsibility based upon available information. If the available information is insufficient to make a determination of responsibility, the CO shall determine the prospective contractor to be non responsible.

SECTION M - EVALUATION FACTORS

M.1 EVALUATION FOR AWARD

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

M.2 TECHNICAL RATING

M.2.1 The Technical Rating Scale is as follows:

<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.

M.2.2 The technical rating is a weighting mechanism that will be applied to the point value for each evaluation factor to determine the offeror's score for each factor. The offeror's total technical score will be determined by adding the offeror's score in each evaluation factor. For example, if an evaluation factor has a point value range of zero (0) to forty (40) points, using the Technical Rating Scale above, if the District evaluates the offeror's response as "Good," then the score for that evaluation factor is 4/5 of 40 or 32.

If subfactors are applied, the offeror's total technical score will be determined by adding the offeror's score for each subfactor. For example, if an evaluation factor has a point value range of zero (0) to forty (40) points, with two subfactors of twenty (20) points each, using the Technical Rating Scale above, if the District evaluates the offeror's response as "Good" for the first subfactor and "Poor" for the second subfactor, then the total score for that evaluation

factor is 4/5 of 20 or 16 for the first subfactor plus 1/5 of 20 or 4 for the second subfactor, for a total of 20 for the entire factor.

M.3 EVALUATION CRITERIA

M.3.1 TECHNICAL EVALUATION FACTORS (80 MAXIMUM POINTS)

M.3.1.1 Technical Approach, Methodology and Narratives (0 – 25 Points)

M.3.1.1.1 This factor will examine the Offeror’s understanding of the District’s requirements in section C.5, and discussion of the Offeror’s knowledge of the Applicable Documents referenced in paragraph C.2. and the application of these documents to the successful performance of the District’s requirements C.5.

Evaluation of the Offeror’s technical approach and methodology allows the District to assess the Offeror’s knowledge, understanding and technical knowledge to perform the required services based on information provided in Section L.2.7.1.1.1 of the Offeror’s Technical Proposal.

M.3.1.2 Technical Expertise (0 – 25 Points)

M.3.1.2.1 This factor will examine the Offeror’s designated and project team members technical expertise to provide the required services described in Section C.5.

Evaluation of technical expertise allows the District to assess the skill set and ability of Offeror to perform the required services based on information provided in response in Section L.2.7.1.2.1 of the Offeror’s Technical Proposal.

M.3.1.3 Past Performance and Previous Experience (0 – 30 Points)

M.3.1.3.1 This factor will examine the Offeror’s past performance and previous experience providing services similar in scope as those required by the District and described in C.5.

M.3.1.3.1.1 Evaluation of past performance and previous experience allows the District to assess the Offeror’s ability to perform the required services utilizing the information provided in Section L.2.7.1.3.1 of the Offeror’s Technical Proposal.

- a. The Offeror shall provide a summary of the Offeror’s experience providing the services in Section C.5. The summary shall include lessons learned as well as the application of those lessons learned to the successful delivery of services described in Section C.5. **(0-20 Points)**
- b. The Offeror shall provide a list of three references within the last five years providing services described in Section C.5. The Offeror’s list shall include the following information: **(0-10 Points)**

- 1.Name of Organization;
- 2.Description of work performed;
- 3.Contact Person name, phone, and e-mail address

M.3.2 PRICE CRITERION (0-20 Points Maximum)

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:

$$\frac{\text{Lowest price proposal}}{\text{Price of proposal being evaluated check}} \times 20 = \text{Evaluated price score}$$

M.3.3 PREFERENCE POINTS AWARDED PURSUANT TO SECTION M.5.2 (12 Points Maximum)

M.3.4 TOTAL POINTS (112)

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

M.4 EVALUATION OF OPTION YEARS

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

M.5. PREFERENCES FOR CERTIFIED BUSINESS ENTERPRISES

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

M.5.1 Application of Preferences

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

- M.5.1.1** Any prime contractor that is a small business enterprise (SBE) certified by the Department of Small and Local Business Development (DSLBD) will receive the addition of three points on a 100-point scale added to the overall score for proposals submitted by the SBE in response to this Request for Proposals (RFP).

- M.5.1.2** Any prime contractor that is a resident-owned business (ROB) certified by DSLBD will receive the addition of five points on a 100-point scale added to the overall score for proposals submitted by the ROB in response to this RFP.
- M.5.1.3** Any prime contractor that is a longtime resident business (LRB) certified by DSLBD will receive the addition of five points on a 100-point scale added to the overall score for proposals submitted by the LRB in response to this RFP.
- M.5.1.4** Any prime contractor that is a local business enterprise (LBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the LBE in response to this RFP.
- M.5.1.5** Any prime contractor that is a local business enterprise with its principal offices located in an enterprise zone (DZE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the DZE in response to this RFP.
- M.5.1.6** Any prime contractor that is a disadvantaged business enterprise (DBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the DBE in response to this RFP.
- M.5.1.7** Any prime contractor that is a veteran-owned business (VOB) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the VOB in response to this RFP.
- M.5.1.8** Any prime contractor that is a local manufacturing business enterprise (LMBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the LMBE in response to this RFP.

M.5.2 Maximum Preference Awarded

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

M.5.3 Preferences for Certified Joint Ventures

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

M.5.4 Verification of Offeror's Certification as a Certified Business Enterprise

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

M.5.4.2 Any vendor seeking certification or provisional certification in order to receive preferences under this solicitation should contact the:

Department of Small and Local Business Development
ATTN: CBE Certification Program
441 Fourth Street, NW, Suite 850 North
Washington DC 20001

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

M.6 EVALUATION OF PROMPT PAYMENT DISCOUNT

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

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