

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Contracting and Procurement**



REQUEST FOR DELIVERY ORDER (RFDO)

TO: ALL PROSPECTIVE DIRECT MANUFACTURER BIDDERS
Solicitation No: DCHC-2011-D-3026
Caption: Safe Sex Products- Condoms and Lubricant Packets
Issuance Date: December 6, 2010
Due Date: December 13, 2010

The Government of the District of Columbia, Office of Contracting and Procurement (OCP), on behalf of the Department of Health (DOH) HIV/AIDS, Hepatitis, STD & TB-Administration (HAHSTA) (the District) is seeking a qualified primary manufacturer (see Section L.15.4) to supply and deliver approximately five (5) million lubricated latex condoms and two (2) million lubricant packets annually to multiple locations, throughout the District of Columbia. The successful contractor shall be expected to provide services under a firm fixed price and time and materials delivery order agreement.

The RFDO should be prepared according to the instructions listed below.

1. RFDO SUBMISSION REQUIREMENTS

The request for quotation shall consist of one (1) original and one (1) copy. Each quotation will be submitted in a sealed envelope conspicuously marked: "Request for Delivery Order in Response to Solicitation No. **DCHC-2011-D-3026, Safe Sex Products- Condoms and Lubricant Packets.**" Pricing shall be firm fixed price and shall identify all costs, unless otherwise directed in writing, the price shall, at a minimum include:

- i. Unit price for Standard Size Male Condoms
- ii. Unit price for Large Size Male Condoms
- iii. Identify the total price and include a summary of all items proposed.

Offerors shall also complete and return the Tax Certification Affidavit (Attachment J.4).

2. RFDO SUBMISSION DATE AND TIME:

RFDO must be submitted no later than 2:00 P.M., local time on December 13, 2010. RFDO's, modifications to quotation, or requests for withdrawals that are received in the designated District office after the exact local time specified above, are "late" and will not be considered.

3. RFDO DELIVERY (Mailed, Hand Delivered, or sent via Electronic Mail)

Deliver or Mail to:

Office of Contracting and Procurement
Bid Counter Room, Suite 703 South
441 4th Street, NW
Washington, DC 20001
Attention: Antwanette Murphy

RFDO may be submitted electronically to Antwanette.Murphy@dc.gov.

4. TERM OF CONTRACT

The term of the contract shall be from the date of award through September 30, 2011.

The Contractor shall provide with their response, proof of being a Direct Manufacturer .

If you have any questions, please contact Antwanette Murphy at (202) 727-5829.

5. Invoice Payment

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.

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

6. Invoice Submittal

The Contractor will submit proper invoices on a monthly basis or as otherwise specified in Section 6.2. Invoices will be prepared in duplicate and submitted to the agency Chief Financial Officer (CFO) with concurrent copies to the Contracting Officer's Technical Representative (COTR). The address of the CFO is:

Department of Health (DOH)
899 North Capitol Street NW, 5th Floor
Washington, DC 20002
Phone: (202) 442-9069

SECTION B: SUPPLIES OR SERVICES AND PRICES

SUPPLIES OR SERVICES AND PRICE

B.1 The Government of the District of Columbia, Office of Contracting and Procurement (OCP), on behalf of the Department of Health (DOH) HIV/AIDS, Hepatitis, STD & TB-Administration (HAHSTA) (the District) is seeking a qualified primary manufacturer or a certified authorized agent of a qualified manufacturer to supply and deliver approximately five (5) million lubricated latex condoms and two (2) million lubricant packets annually to multiple locations, throughout the District of Columbia.

B.2 The District contemplates award of an indefinite delivery indefinite quantity (IDIQ) type contract with fixed unit prices.

B.3 IDIQ CONTRACT

This is an IDIQ contract for the supplies or services specified, and effective for the period stated.

- a. Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering Clause described in G.10. The Contractor shall furnish to the District, when and if ordered, the supplies or services specified in the Schedule up to and including the maximum quantities provided in Section B.4. The District will order at least the minimum quantities provided in Section B.4. The District will issue one purchase order and task order at the start of the Contract to provide the funding for the estimated dollar value of orders to be placed in accordance with Sections G.10 and H.9.1 of the contract for the current fiscal year's period of performance. Subject to the availability of funds, the District will issue an additional purchase order and task order to provide the funding for the estimated dollar value of orders to be placed in accordance with Sections G.10 and H.9.1 of the contract for the next fiscal year's period of performance.
- b. There is no limit on the number of orders that may be issued. The District may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- c. Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and District's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective dates.

B.4 PRICE SCHEDULE

B.4.1 BASE YEAR

(Date of award through twelve (12) months thereafter)

Contract Line Item Number (CLIN)	Item Description	Price per Unit	Minimum Quantity	Minimum Total Price	Maximum Quantity	Maximum Total Price
0001	Male Condoms - Standard Size as described in C.3.5	\$ _____ ea.	750,000	\$ _____	2,000,000	\$ _____
0002	Male Condoms - Large Size as described in C.3.6	\$ _____ ea.	750,000	\$ _____	2,500,000	\$ _____
0003	Lubricant Packets as described in C.5.2	\$ _____ ea.	500,000	\$ _____	1,000,000	\$ _____
Base Year Period of Performance Totals				\$ _____		\$ _____

B.4.2 OPTION YEAR ONE

Contract Line Item Number (CLIN)	Item Description	Price per Unit	Minimum Quantity	Minimum Total Price	Maximum Quantity	Maximum Total Price
1001	Male Condoms - Standard Size as described in C.3.5	\$ _____ ea.	750,000	\$ _____	2,000,000	\$ _____
1002	Male Condoms - Large Size as described in C.3.6	\$ _____ ea.	750,000	\$ _____	2,500,000	\$ _____
1003	Lubricant Packets as described in C.5.2	\$ _____ ea.	500,000	\$ _____	1,000,000	\$ _____
Option Year One Totals				\$ _____		\$ _____

B.4.3 OPTION YEAR TWO PERIOD OF PERFORMANCE
(Date of award through Twelve Months thereafter)

Contract Line Item Number (CLIN)	Item Description	Price per Unit	Minimum Quantity	Minimum Total Price	Maximum Quantity	Maximum Total Price
2001	Male Condoms - Standard Size as described in C.3.5	\$ _____ ea.	750,000	\$ _____	2,500,000	\$ _____
2002	Male Condoms - Large Size as described in C.3.6	\$ _____ ea.	750,000	\$ _____	2,000,000	\$ _____
2003	Lubricant Packets as described in C.5.2	\$ _____ ea.	500,000	\$ _____	1,000,000	\$ _____
Option Year Two Period of Performance Totals				\$ _____		\$ _____

B.4.4 OPTION YEAR THREE

Contract Line Item Number (CLIN)	Item Description	Price per Unit	Minimum Quantity	Minimum Total Price	Maximum Quantity	Maximum Total Price
3001	Male Condoms - Standard Size as described in C.3.5	\$ _____ ea.	750,000	\$ _____	2,000,000	\$ _____
3002	Male Condoms - Large Size as described in C.3.6	\$ _____ ea.	750,000	\$ _____	2,500,000	\$ _____
3003	Lubricant Packets as described in C.5.2	\$ _____ ea.	500,000	\$ _____	1,000,000	\$ _____
Option Year Three Totals				\$ _____		\$ _____

B.4.5 OPTION YEAR FOUR

Contract Line Item Number (CLIN)	Item Description	Price per Unit	Minimum Quantity	Minimum Total Price	Maximum Quantity	Maximum Total Price
4001	Male Condoms - Standard Size as described in C.3.5	\$ _____ ea.	750,000	\$ _____	2,000,000	\$ _____
4002	Male Condoms - Large Size as described in C.3.6	\$ _____ ea.	750,000	\$ _____	2,500,000	\$ _____
4003	Lubricant Packets as described in C.5.2	\$ _____ ea.	500,000	\$ _____	1,000,000	\$ _____
Option Year Four Totals				\$ _____		\$ _____

B.4.6 GRAND TOTAL

Period of Performance	Minimum Total Price	Maximum Total Price
Base Period (B.4.1)	\$ _____	\$ _____
Option Year One (B.4.2)	\$ _____	\$ _____
Option Year Two (B.4.3)	\$ _____	\$ _____
Option Year Three (B.4.4)	\$ _____	\$ _____
Option Year Four (B.4.5)	\$ _____	\$ _____
Grand Total	\$ _____	\$ _____

SECTION C
SPECIFICATIONS/WORK STATEMENT

C.1 SCOPE

The Government of the District of Columbia, Office of Contracting and Procurement (OCP), on behalf of the Department of Health (DOH) HIV/AIDS, Hepatitis, STD & TB Administration (HAHSTA) (the District) is seeking a qualified primary manufacturer (see Section L.15.4) to supply and deliver approximately five (5) million lubricated latex condoms and two (2) million lubricant packets annually to multiple locations, throughout the District of Columbia in accordance with the specifications/work statement described in Section C.3. It is the purpose of this solicitation and resulting contract to provide safe sex products to prevent the transmission of HIV/AIDS, STDs, Hepatitis, and other infectious diseases.

C.2 APPLICABLE DOCUMENTS

The following Applicable Documents are incorporated into the contract by this reference. The Contractor shall comply with the most recent and any future versions of all applicable Federal and District of Columbia laws, court orders, regulations, and guidelines related to the delivery of the contract requirements including the following Applicable Documents:

Document No.	Document Type	Title	Date/Version
1	FDA Standard	ASTM D-3492-03, Standard Specification for Rubber Contraceptives (Male Condoms) http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/SimpleSearch.cfm?db=STD&id=19213	10/31/2005
2	FDA Standard	ISO 4074:2002/Cor.1:2003(E);, Natural latex rubber condoms - Requirements and test methods, Technical Corrigendum http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/SimpleSearch.cfm?db=STD&id=19216	10/31/2005
3	Code of Federal Regulations	Title 21 – Food and Drugs Chapter 1 – Food and Drug Administration Department of Health and Human Services Subchapter H – Special Requirements for Specific Devices Section 801.435 User labeling for latex condoms http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfCFR/CFRSearch.cfm?fr=801.435&SearchTerm=condoms	April 1, 2007
4	FDA Standard	ASTM Directory of Testing Laboratories. Laboratories can found on the ASTM web site at www.astm.org/LABS/search.html	

C.3 DEFINITIONS AND ACRONYMS

The following definitions are applicable to this solicitation and resulting contract.

- C.3.1 American National Standards Institute (ANSI)** - coordinates development and use of voluntary consensus standards in the United States and represents the needs and views of U.S. stakeholders in standardization forums around the globe.
- C.3.2 Department of Health (DOH)** - The District of Columbia agency with a mission to promote and protect the health, safety and quality of life of residents, visitors and those doing business in the District of Columbia. DOH's responsibilities include identifying health risks; educating the public; preventing and controlling diseases, injuries and exposure to environmental hazards; promoting effective community collaborations; and optimizing equitable access to community resources.
- C.3.3 FDA** – US Food and Drug Administration
- C.3.4 HIV/AIDS, Hepatitis, STD & TB Administration (HAA)** - The HIV/AIDS, Hepatitis, STD & TB Administration (HAHSTA) is the core District government agency to prevent HIV/AIDS, STDs, Tuberculosis and Hepatitis, reduce transmission of the diseases and provide care and treatment to persons with the diseases. HAHSTA partners with health and community-based organizations to offer testing and counseling, prevention education and intervention, free condoms, medical support, free medication and insurance, housing, nutrition, personal care, emergency services and more for residents of the District and the metropolitan region. HAHSTA administers the District's budget for HIV/AIDS, STD, Tuberculosis, and Hepatitis programs, provides grants to service providers, monitors programs, and tracks the incidence of HIV, AIDS, STDs, Tuberculosis and Hepatitis in the District of Columbia.
- C.3.5 Standard Size Male Condoms:** 7.5 inches long, 2 inches wide at the shaft and a little more than 2 inches wide at the head.
- C.3.6 Large Size Male Condoms:** At least 0.5 inches wider at the head and at the shaft than regular/standard size condoms.
- C.3.7 STDs** – sexually transmitted diseases include Chlamydia, syphilis, gonorrhea and other conditions. The mission of the Sexually Transmitted Diseases (STD) Control Program is to prevent and control sexually transmitted diseases in the District of Columbia through partnership with local communities by promoting and maintaining healthy sexual behavior.
- C.3.8 Tuberculosis** – Tuberculosis is also known as TB. TB is spread by tiny germs that can float in the air. The TB germs may spray into the air if a person with *TB disease* of the lungs or throat coughs, shouts, or sneezes. Anyone nearby can breathe TB germs into their lungs. The mission of the Division of Tuberculosis Control is to prevent the spread of TB in the District of Columbia. The Division operates a clinic to provide diagnostic work-ups and treatment to patients with or at-risk of contracting

TB, administers directly-observed therapy (DOT), provides prophylaxis, and performs contact tracing to each active case and treats persons who have come into contact with known TB carriers.

C.3.9 Hepatitis – hepatitis is an inflammation of the liver caused by a virus. The most common viruses that cause hepatitis are: hepatitis A, hepatitis B and hepatitis C. Acute and chronic liver disease caused by viral hepatitis result in substantial disease, disability and death. The mission of the Viral Hepatitis Program is to prevent and control the transmission of the viruses through disease surveillance and investigation, intervention and education.

C.3.10 Safe sex products – safe sex products are devices that help reduce transmission of HIV, STDs and Hepatitis, including male condoms, female condoms, and dental dams.

C.4 BACKGROUND

C.4.1 The HIV/AIDS, Hepatitis, STD & TB Administration (HAHSTA) is the core District government agency responsible for setting policy and delivering HIV/AIDS, STDs, TB and Hepatitis services to residents. HAHSTA administers the District’s budget for HIV/AIDS, STDs, TB and Hepatitis programs, provides grants to service providers, monitors programs, and tracks the incidence of the diseases in the District of Columbia. Through it’s partnership with health and community-based organizations, HAHSTA supports testing and counseling, prevention education and intervention, free condoms, medical support, free medication and insurance, housing, nutrition, personal care, emergency services.

C.4.2 The District of Columbia has the highest HIV and AIDS case rates in the country. In the 2009 HIV/AIDS Epidemiology Annual Report, the District has 16,500 people living with HIV/AIDS. The AIDS rate is nearly 10 times the national rate per population. Compared to other cities, the District has an AIDS rate one-third higher than Baltimore, twice as high as New York, four times that of Detroit. The safe sex products solicited are part of the DOH’s effort to reduce the transmission of HIV, STDs, Hepatitis, and other diseases in the District of Columbia. Distribution of these items will support and enhance current outreach and education efforts around disease reduction through the use of safe-sex products.

C.4.3 Previously, HAHSTA purchased condoms and took responsibility for their distribution to organizations and sites within the District. Through this procurement, HAA intends to enter into a contract whereby the Contractor assumes responsibility for direct distribution of condoms to HAHSTA partner organizations, businesses, and other sites within the District.

C.5 REQUIREMENTS

C.5.1 MALE CONDOMS

The Contractor shall provide male condoms to various District of Columbia locations at various quantities as described in the ordering clause (Section G.10) and the transmission of orders clause (Section H.9.1) in accordance with the following specifications:

- C.5.1.1** The Contractor shall ensure that all condoms provided are manufacturer brand condoms readily available over-the-counter in the District of Columbia.
- C.5.1.2** The Contractor shall provide condoms in standard and large size.
- C.5.1.3** The Contractor shall ensure that all condoms provided are made of latex and shall meet all the requirements and pass all tests as specified in the Applicable Documents in Section C.2, as well as Section C.5.3.
- C.5.1.4** The Contractor shall ensure that all condoms provided meet the following minimum specifications:
- a. Condoms shall be a transparent natural color or pale transparent tinted color so that the color of the condom is barely visible when condom is worn;
 - b. Condoms (latex) shall be free of defects, embedded grit, and discoloration;
 - c. Condoms shall be smooth in texture;
 - d. Condoms shall have a reservoir tip;
 - e. Condoms and any dressing materials applied to the condoms shall not liberate substances that are known to be toxic, otherwise harmful under normal conditions of use and shall be in strict compliance with other applicable portions of and have been tested in accordance with the Food and Drug Administration (FDA) regulations in force at the time of manufacture of the condom.
 - f. Condoms shall be lubricated with silicone and shall not contain Nonoxynol-9;
 - g. Condoms shall be individually wrapped and sealed; and
 - h. Condom wrappers shall be legibly marked to include the name or trademark of the manufacturer and shall explicitly show the expiration date.
- C.5.1.5** The Contractor shall ensure that the minimum shelf life for the condoms provided is at least five (5) years from date of manufacture.
- C.5.1.6** The Contractor shall ensure that the condoms provided do not come into contact with oil-based antiseptics, phenols and their derivatives, petroleum-based products, or other materials harmful to latex during the manufacturing process.

C.5.1.7 The Contractor shall ensure that the condoms provided remain protected from exposure to heat and light during storage and shipping.

C.5.2 LUBRICANT PACKET REQUIREMENTS

The Contractor shall provide lubricant packets to various District of Columbia locations in various quantities as described in the ordering clause (Section G.10) and the transmission of orders clause (Section H.9.1) in accordance with the following specifications:

C.5.2.1 The Contractor shall ensure that lubricant packets provided meet the following minimum specifications:

- a. Lubricant packets are individually wrapped packets in 4.5 g aluminum packets or 10 ml pillow units with tear-tabs;
- b. Lubricant packets are water-based, with Vitamin E; and
- c. Lubricant packets do not contain spermicidal or any color, flavor or scent properties.

C.5.2.2 The Contractor shall ensure that the lubricant packets provided have a minimum shelf life of at least four (4) years from the date shipped.

C.5.3 CONDOMS AND LUBRICANT PACKETS PACKAGING REQUIREMENTS

C.5.3.1 The Contractor shall provide the COTR confirmation electronically of the receipt of each order placed within 24 hours receipt of the order.

C.5.3.2 The Contractor shall pack condoms and lubricant packets in quantities of 1,000 per carton.

C.5.3.3 The Contractor shall fill condom and lubricant packet orders using the fewest number of manufacturing lots as possible.

C.5.3.4 The Contractor shall not accept orders or change any orders previously placed except as requested by the Contracting Officer Technical Representative (COTR) or designee in writing within 2 days of order.

C.5.4 CONDOMS AND LUBRICANT PACKETS DELIVERY REQUIREMENTS

The Contractor shall deliver condoms and lubricant packets directly to approximately 75 locations within the District of Columbia in quantities specified by the COTR or designee in the transmission of orders to the Contractor as described in H.9.1.

C.5.4.1 The Contractor shall deliver items within 10 days of receipt of the transmission of an order from the COTR or designee as described in H.9.1.

C.5.4.2 The Contractor shall maintain an inventory of not less than 1/12th of the maximum condoms, standard and large sized condoms and lubricant packets for orders and delivery as described in C.5.4.1 above.

C.5.4.3 CONDOMS AND LUBRICANT PACKETS QUALITY ASSURANCE AND TESTING

The Contractor shall comply with all federal regulations and ASTM standards specified in C.1.1, Applicable Documents, Document Numbers 1 and 2. The Contractor's quality assurance and testing shall include at a minimum compliance with the following:

C.5.4.4 The Contractor shall ensure that the condoms provided are tested in accordance with Section C.2, Applicable Documents, Document #1, including but not limited to the following:

- a. Dimension requirements for standard size and large size condoms (See C.1.2.4 and C.1.2.5);
- b. Tensile strength;
- c. Breaking force;
- d. Elongation;
- e. Air burst; and
- f. Leakage

C.5.4.5 The Contractor shall provide certification of conformance to FDA and ASTM standards and requirements for all condoms and lubricant packets provided and delivered by including a certificate of conformance in each batch or lot of condoms and lubricant packages provided and delivered. The Contractor's certificate of conformance shall include at a minimum the following:

- a. FDA product registration number; and
- b. FDA site registration number for the primary manufacturer's manufacturing site.

C.5.4.6 The Contractor shall maintain quality assurance processes and procedures to ensure the successful fulfillment of the requirements.

C.5.4.7 The Contractor shall include a copy of their quality assurance procedures with the Contractor's bid and at a minimum provide annual updates to the quality assurance procedures.

C.5.4.8 The Contractor shall test products delivered, at no expense to the District, through an independent laboratory listed in the ASTM Directory of Testing Laboratories. Laboratories (Applicable Document #4). Testing requests shall be initiated by the COTR upon the receipt of three (3) or more documented and investigated complaints of leakage, breakage, or other major defects.

C.5.4.9 The items to be tested shall be provided by the COTR to the Contractor within five (5) days of the request for test.

C.5.4.10 Testing shall be done on items in lots identified in the investigation as having problems or defects.

C.5.4.11 The Contractor shall provide the results of the independent tests within thirty (30) days of receipt of test items.

**SECTION D
PACKAGING AND MARKING**

- D.1** The packaging and marking requirements for the resultant contract shall be governed by clause number (2), Shipping Instructions-Consignment, of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated March 2007 and incorporated as Attachment J.1.
- D.2** The Contractor shall comply with packaging (C.5.3) and delivery (C.5.4) described in the noted sections of the solicitation.

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SECTION E
INSPECTION AND ACCEPTANCE

- E.1** The inspection and acceptance requirements for the resultant contract shall be governed by clause number five (5) Inspection of Supplies of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated March 2007 and incorporated as Attachment J.1.
- E.2** The COTR will review the results of products tests as described in C.5.4.9.
- E.3** The COTR will randomly survey organizations receiving condoms and lubricant packets to determine the timeliness of the delivery, quality of products delivered and overall satisfaction with the condoms and lubricant packets.

SECTION F
DELIVERIES OR PERFORMANCE

F.1 TERM OF CONTRACT

The term of the contract shall be for a period of one (1) year from date of award.

F.2 OPTION TO EXTEND THE TERM OF THE CONTRACT

F.2.1 The District may extend the term of this contract for a period of four (4) one year option periods, or successive fractions thereof by written notice to the Contractor before the expiration of the contract; provided that the District will give the Contractor a preliminary written notice of its intent to extend at least thirty (30) days before the contract expires. The preliminary notice does not commit the District to an extension. The exercise of this option is subject to the availability of funds at the time of the exercise of this option. The Contractor may waive the thirty (30) day preliminary notice requirement by providing a written waiver to the Contracting Officer prior to expiration of the contract.

F.2.2 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 contract.

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

F.3 DELIVERABLES

Contractor shall deliver condoms and lubricant packets directly to sites specified in the transmission of orders to the Contract as described in Section H.9.1. The Contractor shall provide the COTR or designee other Contract deliverables in accordance with the following schedule:

Deliverable No.	Deliverable	Qty./ Format/ Method of Delivery	Due Date
1	Male Condoms -Standard Size as described in C.5.1	Qty. varies by order	Within 10 days of receipt of order from the COTR
2	Male Condoms -Large Size as described in C.5.1	Qty. varies by order	Within 10 days of receipt of order from the COTR
3	Lubricant Packets as described in C.5.2	Qty. varies by order	Within 10 days of receipt of order from the COTR
4	Order Confirmation C.5.3.1	1 electronic confirmation per order	Within 24 hours of the transmission of order
5	Certification of Conformance as described in C.5.4.5	1 hard Copy per delivery	With each order delivered
6	Quality Assurance procedures – Updates as described in C.5.4.7	1 electronic and 1 hard Copy	Annually at exercise of Contract options
7	Product test results from independent lab, based on complaints C.5.4.9	1 electronic and 1 hard copy	Within 30 days of receipt of the items to be tested.

F.3.1

The Contractor shall submit to the District, as a deliverable, the report described in section H.3.5 of this contract 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 may not be paid.

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SECTION G
CONTRACT ADMINISTRATION DATA

G.1 INVOICE PAYMENT

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

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

G.2 INVOICE SUBMITTAL

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

Office of the Chief Financial Officer
Department of Health – HAHSTA Administration
825 North Capitol Street
5th Floor
Washington, D. C. 20002
(202) 442-9069

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

G.2.2.1 Contractor's name, Federal tax ID and invoice date (Contractors shall date invoices on the date of mailing or transmittal);

G.2.2.2 Contract number and invoice number;

G.2.2.3 Date of Order, Description, price, quantity and the date that the supplies were delivered, and the location of the delivery.

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.3.5.

G.3.2 No final payment shall be made to the Contractor until the 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 PAYMENTS ON PARTIAL DELIVERY OF GOODS

Unless otherwise specified in this contract, payment will be made on partial deliveries of goods accepted by the District if:

- a. The amount due on the deliveries warrants it; or
- b. The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price

G.5 ASSIGNMENT OF CONTRACT PAYMENTS

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

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 Act, D.C. Official Code §2-221.01 et seq., for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of 1% per month. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before:

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

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

G.6.2 PAYMENTS TO SUBCONTRACTORS

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

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

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

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

G.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.7 CONTRACTING OFFICER (CO)

Contracts may be entered into and signed on behalf of the District only by contracting officers. The name, address and telephone number of the Contracting Officer is:

Silvester Howell
Contracting Officer
Office of Contracting and Procurement
441 4th Street, NW Room 700
Phone: 202 727-0252
Fax: 202 727-8843
E-mail: Silvester.howell@dc.gov

G.8 AUTHORIZED CHANGES BY THE CONTRACTING OFFICER

G.8.1 The Contracting Officer 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 Contracting Officer.

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

G.9 CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR)

G.9.1 The COTR is responsible for general administration of the contract and advising the Contracting Officer as to the Contractor's compliance or noncompliance with the contract. In addition, the COTR is responsible for the day-to-day monitoring and supervision of the contract, of ensuring that the work conforms to the requirements of this contract and such other responsibilities and authorities as may be specified in the contract. The COTR for this contract is:

DC Department of Health
HIV/AIDS, Hepatitis, STD & TB Administration (HAHSTA)
64 New York Ave., NE
Washington, DC 20002
202-671-4809 office
202-671-4860 fax

- G.9.2** The COTR shall not have authority to make any changes in the specifications or scope of work or terms and conditions of the contract.
- G.9.3** The Contractor may be held fully responsible for any changes not authorized in advance, in writing, by the Contracting Officer; may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to the District, to take all corrective action necessitated by reason of the unauthorized changes.
- G.10** **ORDERING CLAUSE**
- G.10.1** Any supplies and services to be furnished under this contract must be ordered by issuance of delivery orders or task orders by the COTR. Such orders may be issued during the term of this contract.
- G.10.2** All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of a conflict between a delivery order or task order and this contract, the contract shall control.
- G.10.3** Once an electronic order is electrically transmitted, a delivery order or task order is considered "issued".
- G.10.4** Task orders and purchase orders will be issued as described in B.3 and orders will be transmitted to the Contractor by the COTR or designee as described in H.9.1.

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SECTION H SPECIAL CONTRACT REQUIREMENTS

H.1 PUBLICITY

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

H.2 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 COTR designated in subsection G.9 who will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by the Contractor pursuant to the contract, the COTR will forward a copy to the Contractor. In either event, the Contractor is required by law to provide all responsive records to the COTR within the timeframe designated by the COTR. The FOIA Officer for the agency with programmatic responsibility will determine the releasability of the records. The District will reimburse the Contractor for the costs of searching and copying the records in accordance with D.C. Official Code § 2-532 and Chapter 4 of Title 1 of the *D.C. Municipal Regulations*.

H.3 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT

H.3.1 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.3.2 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:

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

H.3.3 The Contractor shall submit to DOES, no later than the 10th day of each month following execution of the contract, a First Source Agreement Contract Compliance

Report (“contract compliance report”) to verify the Contractor’s compliance with the First Source Agreement for the preceding month. The contract compliance report for the contract shall include the:

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

H.3.4 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.3.5 With the submission of the Contractor’s final request for payment from the District, the Contractor shall:

- a. Document in a report to the Contracting Officer its compliance with the section H.3.4 of this clause; or
- b. Submit a request to the Contracting Officer for a waiver of compliance with section H.3.4 and include the following documentation:
 1. Material supporting a good faith effort to comply;
 2. Referrals provided by DOES and other referral sources;
 3. Advertisement of job openings listed with DOES and other referral sources; and
 4. Any documentation supporting the waiver request pursuant to section H.3.6.

H.3.6 The Contracting Officer may waive the provisions of section H.3.4 if the Contracting Officer finds that:

- a. A good faith effort to comply is demonstrated by the Contractor;
- b. The Contractor is located outside the Washington Standard Metropolitan Statistical Area and none of the contract work is performed inside the Washington Standard Metropolitan Statistical Area which includes the District of Columbia; the Virginia Cities of Alexandria, Falls Church, Manassas, Manassas Park, Fairfax, and Fredericksburg, the Virginia Counties of Fairfax, Arlington, Prince William, Loudoun, Stafford, Clarke, Warren, Fauquier,

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.

- c. The Contractor enters into a special workforce development training or placement arrangement with DOES; or
- d. DOES certifies that there are insufficient numbers of District residents in the labor market possessing the skills required by the positions created as a result of the contract.

H.3.7 Upon receipt of the contractor's final payment request and related documentation pursuant to sections H.3.5 and H.3.6, the Contracting Officer shall determine whether the Contractor is in compliance with section H.3.4 or whether a waiver of compliance pursuant to section H.3.6 is justified. If the Contracting Officer determines that the Contractor is in compliance, or that a waiver of compliance is justified, the Contracting Officer shall, within two business days of making the determination forward a copy of the determination to the Agency Chief Financial Officer and the COTR.

H.3.8 Willful breach of the First Source Employment Agreement, or failure to submit the report pursuant to section H.3.5, or deliberate submission of falsified data, may be enforced by the Contracting Officer through imposition of penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract. The Contractor shall make payment to DOES. The Contractor may appeal to the D.C. Contract Appeals Board as provided in the contract any decision of the Contracting Officer pursuant to this section H.3.8.

H.3.9 The provisions of sections H.3.4 through H.3.8 do not apply to nonprofit organizations.

H.4 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES

H.4.1 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.4.1.1 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.4.2 The Contractor shall negotiate an Employment Agreement with the DOES for jobs created as a result of this contract. The DOES shall be the Contractor's first source of referral for qualified apprentices and trainees in the implementation of employment goals contained in this clause.

H.5 PROTECTION OF PROPERTY:

The Contractor shall be responsible for any damage to the building, interior, or their approaches in delivering equipment covered by this contract.

H.6 AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)

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

H.7 SECTION 504 OF THE REHABILITATION ACT OF 1973, as amended.

During the performance of the contract, the Contractor and any of its subcontractors shall comply with Section 504 of the Rehabilitation Act of 1973, as amended. This Act prohibits discrimination against disabled people in federally funded program and activities. See 29 U.S.C. § 794 (1983) *et seq.*

H.8 DISTRICT RESPONSIBILITIES

H.9.1 The District through the COTR will receive requests from organizations and sites for condoms and lubricant packets via the DOH HAHSTA web site. The COTR or designee will review each order before electronically transmitting the delivery order or task order to the Contractor at an agreed upon e-mail address. The transmission will contain a description of the ordered items, the quantity, the shipping address, name, and phone number of the contact person for the HAA partner organization to which the Contractor shall deliver the condoms or lubricant packets.

H.9.2 The COTR will provide the Contractor written notification of changes in orders placed within two (2) days of placement of the order.

H.10 CONTRACTOR RESPONSIBILITIES

H.10.1 The Contractor shall provide the necessary staff, equipment, and facilities to successfully provide the required goods in the time frames described in Section F.3.

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 and incorporated as Attachment J.1.

I.2 CONTRACTS THAT CROSS FISCAL YEARS

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

I.3 CONFIDENTIALITY OF INFORMATION

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

I.4 TIME

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

I.5 RIGHTS IN DATA

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

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

- I.5.3** The term “Computer Software”, as used herein means computer programs and computer databases. “Computer Programs”, as used herein means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. "Computer Programs" include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort merge programs, and automated data processing equipment maintenance diagnostic programs, as well as applications programs such as payroll, inventory control and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general purpose in nature or designed to satisfy the requirements of a particular user.
- I.5.4** The term "computer databases", as used herein, means a collection of data in a form capable of being processed and operated on by a computer.
- I.5.5** All data first produced in the performance of this Contract shall be the sole property of the District. The Contractor hereby acknowledges that all data, including, without limitation, computer program codes, produced by Contractor for the District under this Contract, are works made for hire and are the sole property of the District; but, to the extent any such data may not, by operation of law, be works made for hire, Contractor hereby transfers and assigns to the District the ownership of copyright in such works, whether published or unpublished. The Contractor agrees to give the District all assistance reasonably necessary to perfect such rights including, but not limited to, the works and supporting documentation and the execution of any instrument required to register copyrights. The Contractor agrees not to assert any rights in common law or in equity in such data. The Contractor shall not publish or reproduce such data in whole or in part or in any manner or form, or authorize others to do so, without written consent of the District until such time as the District may have released such data to the public.
- I.5.6** The District will have restricted rights in data, including computer software and all accompanying documentation, manuals and instructional materials, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, provided however, notwithstanding any contrary provision in any such license or agreement, such restricted rights shall include, as a minimum the right to:
- I.5.6.1** Use the computer software and all accompanying documentation and manuals or instructional materials with the computer for which or with which it was acquired, including use at any District installation to which the computer may be transferred by the District;
- I.5.6.2** Use the computer software and all accompanying documentation and manuals or instructional materials with a backup computer if the computer for which or with which it was acquired is inoperative;
- I.5.6.3** Copy computer programs for safekeeping (archives) or backup purposes; and modify the computer software and all accompanying documentation and manuals or

instructional materials, or combine it with other software, subject to the provision that the modified portions shall remain subject to these restrictions.

I.5.7 The restricted rights set forth in section I.5.6 are of no effect unless

- a. the data is marked by the Contractor with the following legend:

RESTRICTED RIGHTS LEGEND

Use, duplication, or disclosure is subject to restrictions stated in Contract No. _____

With _____ (Contractor's Name); and

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

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

I.5.9 Whenever any data, including computer software, are to be obtained from a subcontractor under this contract, the 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 the 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, the 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 the Contractor, either directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided the District under this contract or any paid-up maintenance agreement, or if Contractor should be declared bankrupt or insolvent by a court of competent jurisdiction, shall have the right to obtain, for its

own and sole use only, a single copy of the then current version of the source code supplied under this contract, and a single copy of the documentation associated therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.

I.5.11 The Contractor shall indemnify and save and hold harmless the District, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or (ii) based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.

I.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 the Contractor by the District and incorporated in the work furnished under contract, provided that such incorporated material is identified by the Contractor at the time of delivery of such work

I.6 OTHER CONTRACTORS

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

I.7 SUBCONTRACTS

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

I.8 INSURANCE

I.8.1 Contractor shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall submit a certificate of insurance giving evidence of the required coverages prior to commencing work. All insurance shall be written with responsible companies licensed by the District of Columbia's Department of Insurance, Securities and Banking. The Contractor shall require all subcontractors to carry the insurance required herein, or Contractor may, at its option, provide the coverage for any or all subcontractors, and if so, the evidence of insurance submitted shall so stipulate. All

insurance provided by the Contractor as required by this section, except comprehensive automobile liability insurance, shall set forth the District as an additional named insured. In no event shall work be performed until the required certificates of insurance have been furnished. The insurance shall provide for 30 days' prior written notice to be given to the District in the event coverage is substantially changed, canceled or non-renewed. If the insurance provided is not in compliance with all the requirements herein, the District maintains the right to stop work until proper evidence is provided.

I.8.1.1 Commercial General Liability Insurance, \$1,000,000 limits per occurrence, District added as an additional insured.

I.8.1.2 Automobile Liability Insurance, \$1,000,000 per occurrence combined single limit.

I.8.1.3 Worker's Compensation Insurance according to the statutes of the District of Columbia, including Employer's Liability, \$100,000 per accident for injury, \$100,000 per employee for disease, \$500,000 policy limit disease.

I.8.1.4 Umbrella/ Excess Liability Insurance, \$5,000,000 limits per occurrence.

I.8.1.5 Professional Liability Insurance, \$1,000,000 limits per claim (note: such insurance is typically called medical malpractice insurance for doctors, professional liability insurance for lawyers and nurses, and errors and omissions liability insurance for all other "professions" with a professional liability exposure).

I.9 EQUAL EMPLOYMENT OPPORTUNITY

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

I.10 ORDER OF PRECEDENCE

Any inconsistency in this solicitation shall be resolved by giving precedence in the following order:

- a. Supplies or Services and Price/Cost Section (Section B);
- b. Specifications/Work Statement (Section C);
- c. Special Contract Requirements (Section H);
- d. Contract Clauses (Section I);
- e. Delivery/Performance (Section F);
- f. Contract Administration (Section G);
- g. Inspection and Acceptance (Section E)
- h. Packaging and Marking (Section D)
- i. Attachments (Section J) in the order they appear.

I.11 CONTRACTS IN EXCESS OF ONE MILLION DOLLARS

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

SECTION J
LIST OF ATTACHMENTS

The following documents are attached and incorporated by reference into this contract:

Attachment	Name
J.1	Government of the District of Columbia Standard Contract Provisions for Use with the Supply and Service Contracts, dated March 2007
J.2	Government of the District of Columbia Office of Local Business Development Equal Employment Opportunity Information Report and Mayor's Order 85-85
J.3	Government of the District of Columbia Department of Employment Services First Source Employment Agreement
J.4	Tax Certification Affidavit
J.5	Living Wage Fact Sheet
J.6	Living Wage Notice

SECTION K
REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF BIDDERS

K.1 TYPE OF BUSINESS ORGANIZATION

K.1.1 The bidder, by checking the applicable box, represents that
a. It operates as:

a corporation incorporated under the laws of the State of:

- _____
 an individual,
 a partnership,
 a nonprofit organization, or
 a joint venture.

b. If the bidder is a foreign entity, it operates as:

- an individual,
 a joint venture, or
 a corporation registered for business in _____
(Country)

K.2 CERTIFICATION AS TO COMPLIANCE WITH EQUAL OPPORTUNITY OBLIGATIONS

Mayor's Order 85-85, "Compliance with Equal Opportunity Obligations in Contracts", dated June 10, 1985 and the Office of Human Rights' regulations, Chapter 11, "Equal Employment Opportunity Requirements in Contracts", promulgated August 15, 1986 (4 DCMR Chapter 11, 33 DCR 4952) are included as a part of this solicitation and require the following certification for contracts subject to the order. Failure to complete the certification may result in rejection of the bidder for a contract subject to the order. I hereby certify that I am fully aware of the content of the Mayor's Order 85-85 and the Office of Human Rights' regulations, Chapter 11, and agree to comply with them in performance of this contract.

Bidder _____ Date _____

Name _____ Title _____

Signature _____

Bidder ____ has ____ has not participated in a previous contract or subcontract subject to the Mayor's Order 85-85. Bidder ____ has ____ has not filed all required compliance reports, and representations indicating submission of required reports signed by proposed sub-bidders. (The above representations need not be submitted in connection with contracts or subcontracts which are exempt from the Mayor's Order.)

K.3 BUY AMERICAN CERTIFICATION

The bidder hereby certifies that each end product, except the end products listed below, is a domestic end product (as defined in Paragraph 23 of the SCP, “Buy American Act”), and that components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.

_____ EXCLUDED END PRODUCTS
_____ COUNTRY OF ORIGIN

K.4 DISTRICT EMPLOYEES NOT TO BENEFIT CERTIFICATION

Each Bidder shall check one of the following:

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

K.5 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

K.5.1 Each signature of the bidder is considered to be a certification by the signatory that:

- a. The prices in this contract have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any bidder or competitor relating to:
 - 1. those prices
 - 2. the intention to submit a contract, or
 - 3. the methods or factors used to calculate the prices in the contract.
- b. The prices in this Contract have not been and will not be knowingly disclosed by the Bidder, directly or indirectly, to any other Bidder or competitor before Contract opening unless otherwise required by law; and
- c. No attempt has been made or will be made by the bidder to induce any other concern to submit or not to submit a contract for the purpose of restricting competition.

K.5.2 Each signature on the bid is considered to be a certification by the signatory that the signatory:

- a. Is the person in the bidder's organization responsible for determining the prices being offered in this contract, and that the signatory has not participated and will not participate in any action contrary to subparagraphs K.5.1 a - c; or
- b. Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs K.5.1 a - c above:

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

- c. As an authorized agent, does certify that the principals named in subdivision K.5.2 b above have not participated, and will not participate, in any action contrary to subparagraphs K.5.1 a - c; and
 - d. As an agent, has not participated, and will not participate, in any action contrary to subparagraphs K.5.1 a - c above.
- (c) If the bidder deletes or modifies subparagraph K.5.2 b above, the bidder must furnish with its bid a signed statement setting forth in detail the circumstances of the disclosure.

K.7 TAX CERTIFICATION

Each bidder must submit with its bid, a sworn Tax Certification Affidavit, incorporated herein as Section J.5

SECTION L
INSTRUCTIONS, CONDITIONS AND NOTICES TO BIDDERS

L.1 METHOD OF AWARD

L.1.1 The District reserves the right to accept/reject any/all bids resulting from this solicitation. The Contracting Officer may reject all bids or waive any minor informality or irregularity in bids received whenever it is determined that such action is in the best interest of the District.

L.1.2 The District intends, but is not obligated, to award a single contract resulting from this solicitation to the responsive and responsible bidder who has the lowest bid.

L.2 PREPARATION AND SUBMISSION OF BIDS

L.2.1 Bidders shall submit a signed original and two (2) copies. The District will not accept a facsimile copy of a bid as an original bid. All items accepted by the District, all pages of the Invitation for Bids (IFB), all attachments and all documents containing the bidder's offer shall constitute the formal contract. Each bid shall be submitted in a sealed envelope conspicuously marked: "**Bid in Response to Solicitation No. DCHC-2011-D-3026 -Safe Sex Products – Condoms and Lubricant Packets**"

L.2.1.1 Bidders shall provide firm fixed pricing in accordance with Section B.

L.2.1.2 The Contractor shall include a sample of the Contractor's Certificate of Conformance with the Contractor's bid.

L.2.1.3 Bidders must complete and return the Tax Certification Affidavit (Attachment C).

L.2.1.4 Bidders shall have a minimum of two (2) previous clients complete and return Past Performance Evaluations Forms (Attachment J.7) to Antwanette Murphy, Contract Specialist, by the bid closing date. Evaluation forms must be submitted electronically to Antwanette.Murphy@dc.gov.

L.2.2 The original bid shall govern if there is a variance between the original bid and the copy submitted by the bidder. Each bidder shall return the complete solicitation as its bid.

L.2.3 The District may reject as non-responsive any bid that fails to conform in any material respect to the Invitation for Bids.

L.2.4 The District may also reject as non-responsive any bids submitted on forms not included in or required by the solicitation. Bidders shall make no changes to the requirements set forth in the solicitation.

L.3 FAMILIARIZATION WITH CONDITIONS (SERVICES)

Bidders 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. Bidders 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.4 BID SUBMISSION DATE AND TIME

Bids must be submitted no later than 2:00 PM, Local Time, December 13, 2010.

L.5 WITHDRAWAL OR MODIFICATION OF BIDS

A bidder may modify or withdraw its bid upon written, telegraphic notice, or facsimile transmission if received at the location designated in the solicitation for submission of bids, but not later than the exact time set for opening of bids.

L.6 LATE SUBMISSIONS, LATE MODIFICATIONS, AND LATE WITHDRAWALS

L.6.1 Bids, modifications to bids, or requests for withdrawals that are received in the designated District office after the exact local time specified above, are "late" and shall be considered only if they are received before the award is made and one (1) or more of the following circumstances apply:

- a. The bid or modification was sent by registered or certified mail no later than the fifth (5th) day before the date specified for receipt of bids; or
- b. The bid or modification was sent by mail and it is determined by the Contracting Officer that the late receipt at the location specified in the solicitation was caused by mishandling by the District after receipt.

L.6.2 POSTMARKS

The only acceptable evidence to establish the date of a late bid, late modification or late withdrawal sent either by registered or certified mail shall be a U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the bid, modification or withdrawal shall be deemed to have been mailed late. When the postmark shows the date but not the hour, the time is presumed to be the last minute of the date shown. If no date is shown on the postmark, the bid shall be considered late unless the bidder can furnish evidence from the postal authorities of timely mailing.

L.6.3 LATE SUBMISSIONS

A late bid, late request for modification or late request for withdrawal shall not be considered, except as provided in this section.

L.6.4 LATE MODIFICATIONS

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

L.6.5 LATE BIDS

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

L.7 ERRORS IN BIDS

Bidders are expected to read and understand fully all information and requirements contained in the solicitation; failure to do so will be at the bidder's risk. In event of a discrepancy between the unit price and the total price, the unit price shall govern.

L.8 QUESTIONS ABOUT THE SOLICITATION

If a prospective bidder has any questions relative to this solicitation, the prospective bidder shall submit the questions in writing to the Contracting Officer. The prospective bidder shall submit questions no later than 8 days prior to the closing date and time indicated for this solicitation. The District will not consider any questions received less than 8 days before the date set for submission of bids. The District will furnish responses promptly to all other prospective bidders. An amendment to the solicitation will be issued, if that information is necessary in submitting bids, or if the lack of it would be prejudicial to any other prospective bidders. Oral explanations or instructions given before the award of the contract will not be binding.

L.9 FAILURE TO SUBMIT BIDS

Recipients of this solicitation not responding with a bid should not return this solicitation. Instead, they should advise the Contracting Officer, Silvester Howell, Office of Contracting and Procurement, 441 4th Street, NW, Room 700 South, Washington, DC 20001, phone number 202 727-0252 and fax 202-727-8843. It is also requested that such recipients advise the Contracting Officer, Silvester Howell, Office of Contracting and Procurement of the reason for not submitting a bid in response to this solicitation. If a recipient does not submit a bid and does not notify the Contracting Officer, Silvester Howell, Office of Contracting and Procurement that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

L.10 BID PROTESTS

Any actual or prospective bidder or contractor who is aggrieved in connection with the solicitation or award of a contract must file with the D.C. Contract Appeals Board (Board) a protest no later than 10 business days after the basis of protest is known or

should have been known, whichever is earlier. A protest based on alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial bids shall be filed with the Board prior to bid opening or the time set for receipt of initial bids. In procurements in which bids are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into this solicitation, must be protested no later than the next closing time for receipt of bids following the incorporation. The protest shall be filed in writing, with the Contract Appeals Board, 717 14th Street, N.W., Suite 430, Washington, D.C. 20004. The aggrieved person shall also mail a copy of the protest to the Contracting Officer.

L.11 SIGNING OF BIDS

L.11.1 The Contractor shall sign the bid and print or type its name on the Solicitation, Offer and Award form of this solicitation. Each bid must show a full business address and telephone number of the bidder and be signed by the person or persons legally authorized to sign contracts. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the Contracting Officer.

L.11.2 All correspondence concerning the bid or resulting contract will be mailed to the address shown on the bid in the absence of written instructions from the bidder or contractor to the contrary. Any bid submitted by a partnership must be signed with the partnership name by a general partner with authority to bind the partnership. Any bid submitted by a corporation must be signed with the name of the corporation followed by the signature and title of the person having authority to sign for the corporation. Bidders shall complete and sign all Representations, Certifications and Acknowledgments as appropriate. Failure to do so may result in a bid rejection.

L.12 ACKNOWLEDGMENT OF AMENDMENTS

The bidder shall acknowledge receipt of any amendment to this solicitation (a) by signing and returning the amendment; (b) by identifying the amendment number and date in the space provided for this purpose in Section A.14 of the solicitation; or (c) by letter or telegram, including mailgrams. The District must receive the acknowledgment by the date and time specified for receipt of bids. Bidder's failure to acknowledge an amendment may result in rejection of the bid.

L.13 BIDS WITH OPTION YEARS

The bidder shall include option year prices in its price/cost bid. A bid may be determined to be unacceptable if it fails to include option year pricing.

L.14 LEGAL STATUS OF BIDDER

Each bid must provide the following information:

- L.14.1** Name, address, telephone number and federal tax identification number of bidder;
- L.14.2** A copy of each District of Columbia license, registration or certification that the bidder is required by law to obtain. This mandate also requires the bidder to provide a copy of the executed "Clean Hands Certification" that is referenced in D.C. Official Code §47-2862 (2001), if the bidder is required by law to make such certification. If the bidder 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 bid shall certify its intent to obtain the necessary license, registration or certification prior to contract award or its exemption from such requirements; and
- L.14.3** If the bidder 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.14.4** Bids submitted by a certified authorized agent for and on behalf of the primary manufacturer provided the bid shall include a notarized letter of authority from the primary manufacturer authorizing the designated agent to submit a bid for and on behalf of the primary manufacturer.

L.15 STANDARDS OF RESPONSIBILITY

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

- L.15.1** Evidence of adequate financial resources, credit or the ability to obtain such resources as required during the performance of the contract.
- L.15.2** Evidence of the ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.
- L.15.3** Evidence of the necessary organization, experience, accounting and operational control, technical skills or the ability to obtain them.
- L.15.4** Evidence of compliance with the applicable District licensing and tax laws and regulations.
- L.15.5** Evidence of a satisfactory performance record, record of integrity and business ethics.
- L.15.6** Furnish evidence of the necessary production, construction and technical equipment and facilities or the ability to obtain them.
- L.15.7** Evidence of other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations including documented evidence of all bidders'

qualification, experience, and capacity to be able to successfully fulfill the contract requirements on time for the commodities required.

L.15.8 If the prospective contractor fails to supply the information requested, the Contracting Officer shall make the determination of responsibility or nonresponsibility based upon available information. If the available information is insufficient to make a determination of responsibility, the Contracting Officer shall determine the prospective contractor to be nonresponsive.

SECTION M
EVALUATION FACTORS

M.1 Preferences for Local Businesses, Disadvantaged Businesses, Resident-owned Businesses, Small Businesses, Longtime Resident Businesses, or Local Businesses with Principal Offices Located in an Enterprise Zone

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

M.1.1 General Preferences

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

M.1.1.1 Three percent reduction in the bid price or the addition of three points on a 100-point scale for a small business enterprise (SBE) certified by the Small and Local Business Opportunity Commission (SLBOC) or the Department of Small and Local Business Development (DSLBD), as applicable;

M.1.1.2 Three percent reduction in the bid price or the addition of three points on a 100-point scale for a resident-owned business enterprise (ROB) certified by the SLBOC or the DSLBD, as applicable;

M.1.1.3 Ten percent reduction in the bid price or the addition of ten points on a 100-point scale for a longtime resident business (LRB) certified by the SLBOC or the DSLBD, as applicable;

M.1.1.4 Two percent reduction in the bid price or the addition of two points on a 100-point scale for a local business enterprise (LBE) certified by the SLBOC or the DSLBD, as applicable;

M.1.1.5 Two percent reduction in the bid price or the addition of two points on a 100-point scale for a local business enterprise with its principal office located in an enterprise zone (DZE) and certified by the SLBOC or the DSLBD, as applicable; and

M.1.1.6 Two percent reduction in the bid price or the addition of two points on a 100-point scale for a disadvantaged business enterprise (DBE) certified by the SLBOC or the DSLBD, as applicable.

M.1.2 Application of Preferences

The preferences shall be applicable to prime contractors as follows:

M.1.2.1 Any prime contractor that is an SBE certified by the SLBOC or the DSLBD, as applicable, will receive a three percent (3%) reduction in the bid price for a bid submitted by the SBE in response to an Invitation for Bids (IFB) or the addition of three points on a 100-point scale added to the overall score for proposals submitted by the SBE in response to a Request for Proposals (RFP).

M.1.2.2 Any prime contractor that is an ROB certified by the SLBOC or the DSLBD, as applicable, will receive a three percent (3%) reduction in the bid price for a bid submitted by the ROB in response to an IFB or the addition of three points on a 100-point scale added to the overall score for proposals submitted by the ROB in response to an RFP.

M.1.2.3 Any prime contractor that is an LRB certified by the SLBOC or the DSLBD, as applicable, will receive a ten percent (10%) reduction in the bid price for a bid submitted by the LRB in response to an IFB or the addition of ten points on a 100-point scale added to the overall score for proposals submitted by the LRB in response to an RFP.

M.1.2.4 Any prime contractor that is an LBE certified by the SLBOC or the DSLBD, as applicable, will receive a two percent (2%) reduction in the bid price for a bid submitted by the LBE in response to an IFB or the addition of two points on a 100-point scale added to the overall score for proposals submitted by the LBE in response to an RFP.

M.1.2.5 Any prime contractor that is a DZE certified by the SLBOC or the DSLBD, as applicable, will receive a two percent (2%) reduction in the bid price for a bid submitted by the DZE in response to an IFB or the addition of two points on a 100-point scale added to the overall score for proposals submitted by the DZE in response to an RFP.

M.1.2.6 Any prime contractor that is a DBE certified by the SLBOC or the DSLBD, as applicable, will receive a two percent (2%) reduction in the bid price for a bid submitted by the DBE in response to an IFB or the addition of two points on a 100-point scale added to the overall score for proposals submitted by the DBE in response to an RFP.

M.1.3 Maximum Preference Awarded

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

M.1.4 Preferences for Certified Joint Ventures

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

M.1.5 Vendor Submission for Preferences

M.1.5.1 Any vendor seeking to receive preferences on this solicitation must submit at the time of, and as part of its bid or proposal, the following documentation, as applicable to the preference being sought:

M.1.5.1.1 Evidence of the vendor's or joint venture's certification by the SLBOC as an SBE, LBE, DBE, DZE, LRB, or RBO, to include a copy of all relevant letters of certification from the SLBOC; or

M.1.5.1.2 Evidence of the vendor's or joint venture's provisional certification by the DSLBD as an SBE, LBE, DBE, DZE, LRB, or RBO, to include a copy of the provisional certification from the DSLBD.

M.1.5.2 Any vendor seeking certification or provisional certification in order to receive preferences under this solicitation should contact the:

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

M.1.5.3 All vendors are encouraged to contact the DSLBD at (202) 727-3900 if additional information is required on certification procedures and requirements.

M.2 EVALUATION OF OPTION YEARS

The District will evaluate bids 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.